

Donaldson Vs. Means

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Court : US Supreme Court

Decided On : 1791

Appeal No. : 4 U.S. 109

Appellant : Donaldson

Respondent : Means

Judgement :

DONALDSON v. MEANS - 4 U.S. 109 (1791)

U.S. Supreme Court DONALDSON v. MEANS, 4 U.S. 109 (1791)

4 U.S. 109 (Dall.)

Donaldson

v.

Means.

Supreme Court of Pennsylvania.

September Term, 1791

THIS was an action brought by the indorsee of three bills of exchange, against the indorsor. On the trial, it appeared, that the bills were drawn in April 1776, at thirty days sight, by Nathaniel Newton, on Wilt and Hobson of London, in favor of T. Armstrong, and indorsed successively by Armstrong, and by Means, the

defendant; that the bills were presented, and noted for non-acceptance, on the 24th of March 1777; and that they were presented, and protested for non-payment, on the 26th of April 1777.

The question to be decided, was, whether due notice had been given to the defendant to the protest of the bills; or he had done any act, which amounted to a waiver of notice?

On this point, a letter was produced from the plaintiff to his father, dated the 10th of May 1778, advising of the protest, and inquiring where Means resided. It was proved, that the father showed this letter to Means, as soon as possible after it was received, and Means repeatedly promised to remit the amount of the bills; but the protest was not exhibited to him, and never asked for; nor was any application made to the drawer, or to the first indorsor, for payment. Another letter was produced, dated the 12th of August 1779, written by the defendant at Philadelphia, to the plaintiff at St. Eustatia, in which he mentioned, that he had received a letter of the year 1776, referring to the protested bills; expressed a hope, that they would soon be paid; observed, that for want of a protest he had not been able to get payment from the drawer; but promising, nevertheless, to pay the amount to the plaintiff, whenever it was in his power to make a remittance.

For the plaintiff, it was contended, 1st. That during the war, when continental money was a tender, the holder of a bill of exchange

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should not be required to pursue that strict punctuality, which might properly be exacted from him in a time of peace, and when his debt was not liable to be discharged in a depreciated paper currency. 1 Dall. 271. That notice being in fact received of the dishonoured state of the bills, it was not necessary in law to produce the bills and the protests; and that since the letter of August 1779, the plaintiff relied upon the defendant's new promises of payment. 2d. That even if a protest ought to have been transmitted, yet, as the defendant, with a full knowledge of all the circumstances, has made a new assumption, it is too late for

him to take advantage of the omission in that respect. For, although want of notice may be considered, originally, as tantamount to payment; there are many cases in which the rule does not apply, or is dispensed with. As, where the drawer of a bill has no assets in the hands of the drawee; or where the drawer himself waives the right and benefit of notice. 1 T. Rep. 408, 9. Bull. N. P. 272. 276. 2 T. Rep. 713. And in the latter case, if he knows the fact, though he is ignorant of the law, he shall be bound of his waiver. Doct. and Stud. 303. For the defendant. Independent of the special promise alleged by the plaintiff, the defendant cannot be charged on the bills of exchange; for, a protest is essential to enable any of the parties to recover against the others; and it must be exhibited. The law, in this respect, is founded on good sense. By exhibiting the protest, the holder of the bill shows, that he looks to the person, whom the addresses, for payment; and by delivering the protest, upon receiving satisfaction himself, he enables that person to pursue his remedy against those who are ultimately responsible. But 1st. There is nothing in the letter of August 1779, which can be regarded as an express, unqualified, promise. The whole letter must be taken together. It complains of a want of the protest; and its general spirit is no more, than a declaration, that 'although the protest ought to have been sent, as it is presumed to have been received, yet the holder shall not be permitted to suffer.' 2d. Even regarding it, however, as a promise, it is not legally binding, if it was made under a mistake. 5 Burr. 2670. 2 T. Rep. 648. Cowp. 287. 1 P. Wms. 357. 2 Chan. Cas. 154.

By the COURT: The law upon the subject is so clear, that the whole case resolves itself into the question of fact, on which the law is to arise. If the proof is satisfactory, that the defendant, under a knowledge of all the circumstances, absolutely promised to pay, he is, incontestably, bound by his promise. But, if his engagement was of a conditional nature, that he would pay, when the protest was transmitted; or if any material fact was unknown to him at the time of making the promise, the verdict should certainly be in his favour. Verdict for the plaintiff. Coxe, for the plaintiff. E. Tilghman, for the defendant.