

Levy Vs. Gadsby

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Court : US Supreme Court

Decided On : 1805

Appeal No. : 7 U.S. 180

Appellant : Levy

Respondent : Gadsby

Judgement :

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Levy v. Gadsby

7 U.S. (3 Cranch) 180

ERROR TO THE CIRCUIT COURT OF THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

If A lends money to B, who puts it out at usurious interest and agrees to pay to A the same rate of interest which he is receiving upon A's money, this is usury between A and B, and an endorser of B's note to A may avail himself of the plea of

usury.

If the usury be specially pleaded and the court reject the evidence offered upon such special plea, it may be admitted upon the general issue notwithstanding it has been refused upon the special plea.

The court has the exclusive power of deciding whether a written contract be usurious.

No principle is more clearly settled than that the construction of written evidence is exclusively with the court.

This was an action of assumpsit by Levy, the endorsee of a promissory note, against Gadsby, payee and endorser of McIntosh's note.

The declaration consisted of three counts. The 1st, in addition to the common averments, alleged that the plaintiff had brought suit upon the note against McIntosh in Maryland and recovered judgment, but that before execution made, McIntosh died insolvent. The 2d count was in the usual form excepting that it alleged that Gadsby, became liable by the custom of merchants. The 3d count was for money had and received. The defendant pleaded 1st, *non assumpsit*; 2d, as to the first count, usury between McIntosh and Levy, stating the transaction as a loan, by the latter to the former; 3d, as to the first count, usury between the same parties, stating the transaction as a forbearance of an antecedent debt. The 4th and 5th were like pleas of usury to the 2d count. The 3d and 5th pleas, by mistake, alleged the note given, in pursuance of the corrupt agreement, to be a note made by Gadsby to McIntosh, and by him endorsed to Levy, whereas the note in the declaration mentioned was a note made by McIntosh to Gadsby and by him endorsed to Levy. To the pleas of usury there were general replications and issues and a general verdict for the defendant. On

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the trial, three bills of exception were taken by the plaintiff.

1st. The first stated that the plaintiff gave in evidence a promissory note in the usual form dated November 1, 1797, whereby McIntosh, six months after date, promised to pay to Gadsby or order \$1,436.62 for value received, negotiable at the Bank of Alexandria. And it was proved that Levy and McIntosh carried on trade and commerce in co-partnership, under the name and firm of Levy & McIntosh at Alexandria, Levy residing at Georgetown, about 8 miles distant from Alexandria. That they so continued to carry on trade and commerce from sometime in the year 1796 till 12 November, 1797, on which day the partnership was dissolved, and that the dissolution was advertised in the public papers on 19 October, 1797, to take place on the said 12 November, 1797. And the defendant, to support the issues on his part, offered in evidence a paper in the handwriting of the plaintiff and by him subscribed as follows:

"Georgetown, November 9, 1797"

"Received of Mr. John McIntosh, his two notes, one payable to John Gadsby for \$1,436.62, dated the first instant, negotiable at the Bank of Alexandria, at six months after date, endorsed by said Gadsby; the other to Thomas J. Beatty, of same date, at three months after date, for \$1270.87, negotiable at the Bank of Columbia and endorsed by said Beatty. The two notes making the sum of \$2,707.49, which, when paid, is on account of money due me from the firm of Levy & McIntosh, equal to \$2,210.24, as by their account, handed me by said McIntosh, dated October 23, 1797, and as the said McIntosh agrees, he is receiving an interest equal to the difference twixt the sum due me, as per their account current and the notes payable, he therefore allows me the same interest as the one he is receiving for my money. Therefore, on a settlement of accounts, I am

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only to stand debited for \$2,210.24 due as per account current, \$497.25 interest; \$2,707.49."

"N. LEVY"

The plaintiff's counsel objected to the said writing's being given in evidence by the defendant on the pleas of usury, and the court refused to permit it to go in evidence on those pleas. The plaintiff's counsel then objected to its going in evidence on the general issue of *nonassumpsit*, but upon that issue the court admitted it.

2d. The 2d bill of exceptions, after repeating the same facts, states that the plaintiff's counsel prayed the opinion of the court and its instruction to the jury whether the circumstances given in evidence as aforesaid amounted to proof of an usurious contract between Levy and McIntosh, and the court thereupon instructed the jury that those circumstances did amount to proof of an usurious contract between those parties.

3d. The 3d bill of exceptions was to the opinion of the court that the agreement mentioned in the receipt given by Levy to McIntosh, having been read in evidence and having been by the court declared an usurious agreement, the note given in pursuance thereof is void, and that the plaintiff is not entitled to recover thereon against the defendant in the present action.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

It was slightly contended by the counsel for the plaintiff in error that when usury has been specially pleaded and the evidence adduced to support such plea has been adjudged by the court to be inapplicable to the facts so pleaded, the same evidence cannot be admitted upon the plea of *nonassumpsit*. No cases in support of this position have been cited, and it does not appear to be supported by reasoning from analogy. In cases where there are special and general counts in a declaration and the evidence does not support the special counts, the plaintiff is allowed to apply the same evidence in support of the general counts. On a parity of reasoning, the defendant should be permitted to give in evidence upon the plea of *nonassumpsit*, the same facts which were adjudged inapplicable to the special pleas, but which might have been received on the general plea, if the special pleas

had not been pleaded.

The counsel for the plaintiff has also contended that although the paper writing produced would, on the face of it, import a usurious contract, yet as the jury might possibly have inferred from it certain extrinsic facts which would have shown the contract not to have been within the act, the jury ought to have been left at liberty to infer those facts. But in this case, the question arises upon a written instrument, and no principle is more clearly settled than that the construction of a written evidence is exclusively with the court.

This Court is of opinion that the court below has correctly construed the instrument upon which the question arose, and that therefore there is no error in the judgment.

Judgment affirmed with costs.

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