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Violett Vs. Patton

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Court : US Supreme Court

Decided On : 1809

Appeal No. : 9 U.S. 142

Appellant : Violett

Respondent : Patton

Judgement :

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U.S. Supreme Court Violett v. Patton, 9 U.S. 5 Cranch 142 142 (1809)

Violett v. Patton

9 U.S. (5 Cranch) 142

ERROR TO THE CIRCUIT COURT FOR THE DISTRICT

OF COLUMBIA IN THE COUNTY OF WASHINGTON

SYLLABUS

To constitute a consideration, it is not necessary that a benefit should accrue to the promisor. It is sufficient that something valuable flows from the promisee, and that the promise is the inducement to the transaction.

A blank endorsement upon a blank piece of paper with intent to give a person credit is in effect a letter of credit. And if a promissory note be afterwards written on the paper, the endorser cannot object that the note was written after the endorsement.

The English statute of frauds requires that the agreement should be in writing; the statute of Virginia requires only the promise to be in writing.

Before resort can be had to the endorser of a promissory note in Virginia, the maker must be sued, if solvent; but his insolvency renders a suit against him unnecessary.

It is a question to be left to the jury whether a suit against the maker would have produced the money.

Error to the Circuit Court for the District of Columbia sitting at Alexandria to reverse a judgment in an action of assumpsit brought by Patton, as endorsee of a promissory note against Violett, the endorser. The note was made by Brooke, payable, in 30 days, at the Bank of Alexandria to the order of Violett and by him endorsed to Patton.

The declaration had two counts. The first was upon the endorsement, and stated the making of the note by Brooke, for value received; the assignment by endorsement to Patton (but did not state that the assignment was for value received), by means whereof, and of the statute of Virginia, Patton had a right to demand and receive the money from Brooke; the demand of payment from Brooke; his refusal and insolvency at the time of demand; and notice thereof to Violett, whereby he became liable and in consideration thereof promised to pay, &c.;

The other count was for money had and received.

At the trial of the general issue, the defendant below took two bills of exceptions.

The first was to the following opinions and instructions of the court to the jury, *viz.:*

"That if the jury should be satisfied by the evidence that the defendant endorsed the note with intent to give a credit for the amount thereof to Brooke with the plaintiff, and that the body of the note was filled up by the plaintiff before it was signed by Brooke, and that the plaintiff, upon the faith of the note so drawn and endorsed, gave credit to Brooke to the amount thereof, the circumstance

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of such endorsement being made before the body of the note was filled up by the plaintiff and signed by Brooke, is no bar to the plaintiff's recovery in this action; although the jury should be satisfied that no other value was received by the defendant for his endorsement than the credit thus given by the plaintiff to Brooke. And further that the endorsement by the defendant with the intent aforesaid, if proved, authorized Brooke to make the note to the plaintiff in the form and manner in which it appears upon the face of it to be made, and that the circumstance that the body of the note was in the handwriting of the plaintiff was wholly immaterial to the present issue."

The second bill of exceptions stated that the defendant prayed the court to instruct the jury that if it should be satisfied by the evidence that Brooke, at the time the note became payable, or at any time previous to the commencement of this action, had property sufficient to pay the debt claimed by the plaintiff, and that both he and the plaintiff lived in the Town of Alexandria at the time the note became due, and that plaintiff brought no suit against Brooke to recover the amount of the note, but suffered him to leave the District of Columbia without suing him, or if the jury should be satisfied that the plaintiff and Brooke have, since the note became due, both lived in the County of Fairfax, in Virginia, and have continued to reside there until the bringing of the present suit, and that the plaintiff has not brought suit against Brooke in Virginia, then the defendant is not liable in this action. But the court refused to give those instructions as prayed.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

This case comes on upon two exceptions -- one to the opinion of the circuit court given to the jury and the other to the refusal of that court to give an

opinion which was prayed by the counsel for the defendant below.

The declaration contains two counts -- one upon the endorsement of a promissory note and the other for money had and received to the plaintiff's use. The question arising on the first bill of exceptions is whether the court erred in directing the jury respecting the liability of the defendant below on the endorsement which was the foundation of the action.

The endorsement was made before the note was written, and it appeared that the body of the note was filled up by Patton. The opinion of the court was that if the jury should be satisfied from the testimony, that Violett endorsed this paper for the purpose of giving Brooke a credit with Patton, and that upon the faith of the note so drawn and endorsed, Patton did credit Brooke to the amount thereof, the circumstances that the note was made subsequent to the endorsement, without any consideration from Brooke to Violett, and was filled up by the plaintiff did not bar the action, and further that the said Brooke was to be considered as authorized by the said Violett to make the note to Patton.

This opinion is said to be erroneous because

1. The endorsement was made without consideration.

2. It was made on a blank paper.

3. There was no memorandum of the agreement in writing.

In support of the first point, the counsel for the plaintiff in error have cited several cases, intending to prove that an endorsement made without consideration, though it transfers the paper to the endorsee, creates no liability in the endorser, and that

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a promise in writing, made without consideration, is void.

So far as respects the immediate parties having knowledge of the fact and so far as relates to an endorsement under the statute of Virginia, this is correct; but the real question in the cause is does the testimony prove a sufficient consideration for the promise created by the endorsement? This is not intended to comprehend any writing on which an action of debt is given.

To constitute a consideration, it is not absolutely necessary that a benefit should accrue to the person making the promise. It is sufficient that something valuable flows from the person to whom it is made and that the promise is the inducement to the transaction. In the common case of a letter of credit given by A. to B., the person who, on the faith of that letter, trusts B. is admitted to have his remedy against A., although no benefit accrued to A. as the consideration of his promise. So in the present case, Patton trusted Brooke on the credit of Violett's name, and Violett wrote his name for the purpose of giving Brooke that credit with Patton. It was, in effect and in intention, a letter of credit. The case shows that this was both the intention and the effect of Violett's giving his name to Brooke. In conscience and in substance, then, it is a letter of credit, upon which the money it was intended to secure was advanced, and although in point of form the transaction takes the shape, and was intended to take the shape, of an endorsement, yet so far as respects consideration, the endorsement has the full operation of an undertaking in the form of a letter of credit.

It is common in Virginia for two persons to join in a promissory note, the one being the principal and the other the security. Although the whole benefit is received by the principal, this contract has never been considered as a *nudum pactum* with regard to the security. So far as respects consideration, no

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difference is perceived in the cases. Violett has signed his name upon this paper for the purpose of giving Brooke a credit with Patton, and his signature has

obtained that credit. The consideration is precisely the same whether his name be on the back or the face of the paper.

2. The second objection is that the endorsement preceded the making of the note.

This objection certainly comes with a very bad grace from the mouth of Violett. He endorsed the paper with the intent that the promissory note should be written on the other side and that he should be considered as the endorser of that note. It was the shape he intended to give the transaction, and he is now concluded from saying or proving that it was not filled up when he endorsed it. It would be to protect himself from the effect of his promise by alleging a fraudulent combination between himself and another to obtain money for that other from a third person. The case of *Russel v. Langstaffe,* reported in Douglass, is conclusive on this point.

3. The third objection is that there was no memorandum of the agreement in writing.

The argument on this point is founded on the idea that the statute of frauds in Virginia is copied literally from the statute of Charles II. This is not the fact. The first section of the act of Virginia differs from the 4th sec. of the statute of Charles II in one essential respect. The statute of England enacts that no action shall be brought in the cases specified "unless the agreement on which such action shall be brought, or some memorandum or note thereof shall be in writing," &c.; The Virginia act enacts that no action shall be brought in the specified cases "unless the promise or agreement on which such action shall be brought or some memorandum or note thereof shall be in writing," &c.; The reasoning of the judges in the cases in which they have decided that the consideration ought to be

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in writing turns upon the word "agreement," of which the consideration forms an integral part. This reasoning does not apply to the act of Virginia, in which the word "promise" is introduced.

It was thought proper to notice this difference between the act of Parliament and the act of Virginia, although the opinion of the Court is not determined by it. In this case, the assignment does express a consideration. It is made for value received.

It is unnecessary to decide in this case whether the declaration ought to have alleged that the endorsement was made on consideration. With that question the jury had no concern, and the direction of the court was not affected by it. There being no demurrer, it could only occur in arrest of judgment. But on a motion in arrest of judgment, the defendant below could not have availed himself of this error, if it be one, because there are two counts in the declaration, one of which is unquestionably good, and the Court cannot perceive on which the verdict was rendered. By the act of jeofails in Virginia, there is no error if any one count will support the judgment.

The second exception is to the refusal of the circuit court to give the opinion prayed for by the counsel for the defendant below.

When the error alleged is not that the court has misdirected the jury, but that the court has refused to give a particular opinion, the opinion demanded must be so perfectly stated that it becomes the duty of the court to give it as stated.

In this case, the opinion required by the counsel consists of two parts. The first is to instruct the jury

"that if they shall be satisfied from the evidence that Richard Brooke, the maker of the note in this case, had, at the time the note became due or at any time previous to the commencement of this suit against the defendant, property sufficient to pay

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the debt claimed,"

&c.;, and the plaintiff brought no suit, then this action is not maintainable.

This Court conceives that the circuit court ought not to have given this opinion. Had Richard Brooke possessed property before the making of the note, and not

afterwards, the opinion, in the terms in which it was required, would have been a direction to find a verdict for the defendant. So if Richard Brooke had been in possession of property for a single day, and had the next day become insolvent the court was asked to say that in such a case, the endorser could only be made liable by suit against the maker. Such a direction, in the opinion of this Court, would have been improper.

The second branch of the opinion the circuit court was required to give is in these words:

"Or if the jury shall be satisfied that the said plaintiff and the said Brooke have, since the said note became due, both lived in the County of Fairfax, in Virginia, and have continued to reside in the County of Fairfax until the beginning of the present suit, and the plaintiff hath not brought suit against the said Brooke in Virginia, then the defendant is not liable in this action."

If the plaintiff had sued Brooke elsewhere than in Virginia, or if Brooke had become insolvent previous to the making of the note and had continued to be so, the opinion of the court, if given as prayed, would have been that still a suit against the maker of the note was necessary to give a right of action against the endorser.

This is not understood to be the law of Virginia. It is understood to be the law that the maker of the note must be sued if he is solvent, but his insolvency dispenses with the necessity of suing him. It is not known that any decision of the state courts requires that this insolvency should be proved by taking the oath of an insolvent debtor, nor is it believed that this is the only admissible testimony of

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the fact of insolvency. Other testimony may be admitted. It would therefore have been proper to leave it to the jury to determine whether it was at any time in the power of the plaintiff to have made the money due on this note or any part of it from the maker by suit, and its verdict ought to have been regulated by the testimony in this respect.

This opinion was not required.

This Court is of opinion that there is no error, and that the judgment is to be affirmed with costs.

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