

**Welch Vs. Lindo**

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**SooperKanoon Citation :** [sooperkanoon.com/78541](http://sooperkanoon.com/78541)

**Court :** US Supreme Court

**Decided On :** 1812

**Appeal No. :** 11 U.S. 159

**Appellant :** Welch

**Respondent :** Lindo

**Judgement :**

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**Welch v. Lindo**

**11 U.S. (7 Cranch) 159**

*ERROR TO THE CIRCUIT COURT FOR THE*

*DISTRICT OF COLUMBIA AT ALEXANDRIA*

## **SYLLABUS**

The mere possession of a promissory note by an endorsee who had endorsed it to another while the assignment remained is not sufficient evidence of his right of action against his endorser, without a reassignment or receipt from the last

endorsee.

An endorsement "without recourse" is not evidence of money had and received by the endorser to the use of the endorsee.

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Welch brought an action of assumpsit against Lindo upon his endorsement of a promissory note. The declaration contained two counts. The 1st count stated that one John Kercheval, on 25 August, 1796, made and delivered a promissory note to Lindo, payable to his order on demand, for \$246 for value received. That Lindo, on 24 January, 1800, endorsed it to Welch (the plaintiff) in these words, viz., "Pay the within to James Welch, or order, without any recourse whatever on A. Lindo." That on 30 April, 1800, Welch assigned the note to a certain William Hodgsett by writing on the back thereof the following words, viz., "I assign the within to William Hodgsett," and signed his name thereto, and delivered it to Hodgsett. That Kercheval failed to pay the money to Hodgsett on demand, whereupon, Hodgsett, as assignee of the note, brought suit against Kercheval, the maker thereof, in the circuit court of Woodford County in the State of Kentucky, in which suit Kercheval pleaded that he had paid the debt to Lindo, upon which plea issue was joined and the jury found a general verdict thereupon for the defendant Kercheval, upon which the court rendered a judgment which still remains in full force, by reason of which premises the plaintiff, Welch, became liable to pay to Hodgsett the \$246, with interest, from the time the suit was brought, viz., 11 June, 1803, until 2 November, 1804, the time when he paid the same to Hodgsett, and the costs of that suit, amounting to \$11.72, and did pay the same, of all which premises the defendant had notice, and by reason whereof he became liable to pay the said \$246 dollars, with interest on the same, and the said \$11.72, being the costs as aforesaid, and being so liable, the defendant, in consideration thereof, afterwards, &c., undertook, &c., to pay the same sum to the plaintiff, &c.;

The 2d Count was for money had and received to the plaintiff use.

Upon the issue of *nonassumpsit* there was a verdict in the court below for the plaintiff on the first count and for the defendant on the second count, but the judgment on the first count was arrested and judgment was entered for the defendant.

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Upon the trial, the plaintiff took a bill of exceptions which stated that he offered in evidence, a duly authenticated copy of the record of the Circuit Court of Woodford County in the suit of Hodgsett against Kercheval, which was inserted in the bill of exceptions, and produced the original promissory note, with its endorsements, and proved the handwriting of the defendant, Lindo, to his endorsement, and offered no other evidence, whereupon the defendant's counsel prayed the court to instruct the jury that the evidence so offered and produced is not of itself competent to enable the plaintiff to retain his action, and the court decided that it was not competent to enable the plaintiff to recover upon the second count, but the judges were divided in opinion whether the same was competent to support the first count, and therefore refused to give the instruction as prayed. To the opinion that the evidence was not competent to support the action upon the count for money had and received the plaintiff excepted.

The motion in arrest of judgment, was grounded upon the general insufficiency of the first count.

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MR. CHIEF JUSTICE MARSHALL Delivered the following opinion of the Court:

This was an action brought by the plaintiff against the defendant in the Circuit Court for the County of Alexandria. The declaration contained two counts. The first was special, and the second for money had and received by the defendant to the plaintiff's use.

At the trial of the cause, the plaintiff gave in evidence, the record of the proceedings in a court in the State of Kentucky in a cause in which William Hodgsett, assignee of James Welch, who was assignee of Abraham Lindo was plaintiff, and John Kercheval was defendant. This suit was instituted on a promissory note. The defendant pleaded payment to Lindo. Issue

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was joined on this plea and a verdict was found for the defendant. The plaintiff also produced the original note with the endorsements thereon, the last of which was an assignment made by him to Hodgsett.

On the prayer of the defendant, the court decided that this evidence was not in itself sufficient to support the action on the second count, and to this opinion the counsel for the plaintiff excepted.

The testimony offered by the plaintiff was certainly incompetent of itself to prove that the defendant had received money to his use. The mere possession of a note which he had assigned to another could not, while that assignment remained, be evidence that the note was his property. Some reassignment or receipt from the last assignee was necessary while the endorsements remained to prove that the title against the prior endorser was in him, and that he had paid a sum of money which gave him a claim on that endorser. And if the record of the State of Kentucky could prove that Lindo had received the money due upon the note, it would not prove that he had received it to the use of the plaintiff. Nor, under this endorsement, which is an assignment of the note without expressing value received, and that too without recourse against the assignor, can it be fairly inferred that the nominal value of the note was actually paid.

There is, then, no error in the direction given by the circuit court.

On the first count, there was a verdict for the plaintiff, but judgment was arrested because that count was insufficient in law.

This count states that a promissory note was made by John Kercheval payable to Abraham Lindo; that Lindo endorsed that note to the plaintiff in these words, "pay the within to James Welch, or order, without any recourse whatever on A. Lindo." That the plaintiff endorsed the said note to William Hodgsett, who instituted a suit thereon, in which the said Kercheval pleaded, that he had paid the debt to Abraham Lindo. A verdict was found for the defendant on which a judgment

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was rendered which remains in full force. By these proceedings the plaintiff became liable to pay the said Hodgsett the amount of the said note and costs of suit, which he had actually paid. The declaration then proceeds to state that by reason of the premises, the defendant Abraham Lindo became liable to pay the plaintiff the amount of the said note and costs of suit, and, being so liable, he assumed, &c.;

Under the mere assignment from Lindo to Welch, it is clear that this suit is not sustainable, because it is a part of the contract that Lindo shall not be liable under his endorsement. The count is also defective in not stating that the endorsement was made on a valuable consideration and also in not averring that Lindo had actually received the money for which the note was given.

These are substantial faults which are not cured by a verdict. The declaration presents a case in which there was no liability on the part of the defendant to the plaintiff which can sustain the assumpsit found by the verdict.

There is no error, and the judgment is

*Affirmed.*