

Morgan Vs. Reintzel

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 273

Appellant : Morgan

Respondent : Reintzel

Judgement :

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Morgan v. Reintzel

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ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA AT WASHINGTON

SYLLABUS

In a suit against the maker of a promissory note by an endorser who has been obliged to take it up, the plaintiff must produce the note upon the trial.

The payment of the money by the endorser after protest is a good consideration for an assumpsit on the part of the maker to pay the amount of the note with costs of protest.

The maker of a promissory note payable to order is, under the custom of merchants, liable to refund the amount of the note and costs of protest to an endorser who has been obliged to take up the note after protest.

Error to the circuit court for the District of Columbia sitting in Washington in an action of assumpsit brought by Reintzel against Morgan upon a promissory note made by Morgan payable to Reintzel or order.

The declaration contained three counts: 1st, upon the promissory note in the usual form under the statute of Anne; 2d, for money paid, laid out, and expended; and 3d, the following special count, *viz.*:

"And whereas also afterwards, to-wit, on . . . , the said William Morgan, according to the custom and usage of merchants, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date on the day and year aforesaid (August 9, 1809), by which said note the said William Morgan, sixty days after the date thereof, promised to pay to the said Anthony Reintzel or order five hundred dollars, without offset, value received, and then and there delivered the said note to

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the said Anthony Reintzel, and the said Anthony Reintzel, to whom or to whose order the payment of the said sum of money, mentioned in the said note, was to be made before the payment thereof or any part thereof and before the time appointed by the said note for the payment thereof -- that is to say on the day and year last aforesaid, at the county aforesaid -- endorsed the said note, his own proper handwriting being thereto subscribed, by which said endorsement the said Anthony Reintzel ordered and appointed the contents of the said note to be paid to the president, directors, and company of the Bank of the United States, and then and there delivered the said note, so endorsed, to the said president, directors,

and company of the Bank of the United States, of which said endorsement, so made on the said note, the said William Morgan, afterwards, to-wit, on the day and year aforesaid, had notice, by reason whereof and also by force of the statute in such case made and provided, the said William Morgan became liable for and chargeable to pay to the said president, directors, and company of the Bank of the United States the said sum of money mentioned in the said note according to the tenor and effect thereof, and in consideration thereof assumed upon himself so to do."

"And the said Anthony Reintzel avers that the said William Morgan, although afterwards, to-wit, on 8 October, 1809, at the county aforesaid, he, the said William Morgan, was called upon by the said president, directors, and company of the Bank of the United States and solemnly required to pay the sum of money in the said note mentioned, refused to pay the same, whereupon afterwards, upon the day and year last aforesaid the said president, directors, and company of the Bank of the United States, having made no order concerning the payment thereof, protested the said note at the county aforesaid, according to the said usage and custom of merchants upon such nonpayment, by reason whereof the said Anthony Reintzel, according to the usage and custom of merchants became liable to pay to the said president, directors, and company of the Bank of the United States the contents of the said note together with the interest and damage which should accrue from the delay of payment thereof, and being so liable, afterwards, to-wit, on the day and year last aforesaid at the county

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aforesaid [did] pay to the said president, directors, and company, the contents of the said note and the costs of protest thereon, whereof the said William Morgan afterwards, to-wit, on the day and year last aforesaid at the county aforesaid, had notice; by reason of the premises, and by force of the statute and usage and custom of merchants, the said William Morgan became liable to pay to the said Anthony Reintzel the said sum of money in the said note mentioned and the said costs of protest, and being so liable afterwards, to-wit, on the day and year last aforesaid at the county aforesaid, upon himself assumed and to the said Anthony

Reintzel then and there faithfully promised to pay the same when he should be thereunto afterwards required; and which said costs of protest and the said sum of money in the said note mentioned amount unto the sum of \$502.28 current money, whereof the said William Morgan afterwards, to-wit, on the day and year last aforesaid at the county aforesaid had notice."

After a general verdict for the plaintiff in the court below upon the issue of *nonassumpsit* to all the counts, the defendant moved in arrest of judgment and assigned as a reason therefor that the last count in the declaration was bad. The court, however, overruled the motion and rendered judgment upon the verdict.

The defendant took out a writ of error

MR. CHIEF JUSTICE MARSHALL, after stating the case, observed that the Court could see no error in the judgment.

The payment of the money by the plaintiff under the circumstances stated in the count was a sufficient consideration for the assumpsit.

The principal objection was that the count ought to have been founded upon the note so as to oblige the plaintiff to produce it on the trial. But it states that

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the note was paid by the plaintiff, and the Court thinks that the note must have been produced upon the trial.

Judgment affirmed.