

Dugan Vs. United States

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Court : US Supreme Court

Decided On : 1818

Appeal No. : 16 U.S. 172

Appellant : Dugan

Respondent : United States

Judgement :

Dugan v. United States - 16 U.S. 172 (1818)

U.S. Supreme Court Dugan v. United States, 16 U.S. 172 (1818)

Dugan v. United States

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ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND

SYLLABUS

Where a bill of exchange was endorsed to T.T.T., Treasurer of the United States, who received it in that capacity and for account of the United States, and the bill had been purchased by the Secretary of the Treasury (as one of the

commissioners of the sinking fund and as agent of that board) with the money of the United States, and was afterwards endorsed by T.T.T., Treasurer of the United States, to W. & S. and by them presented to the drawees for acceptance and protested for nonacceptance and nonpayment, and sent back by W. & S. to the Secretary of the Treasury, *held* that the endorsement to T.T.T. passed such an interest to the United States as enabled them to maintain an action on the bill against the first endorser.

Quaere whether, when a bill is endorsed to an agent, for the use of his principal, an action on the bill can be maintained by the principal in his own name?

However this may be between private parties, the United States ought to be permitted to sue in its own name whenever it appears, not only on the face of the instrument, but from all the evidence, that it alone is interested in the subject matter of the controversy.

Held that the United States might recover in the present action without producing from W. & S. a receipt or a reendorsement of the bill; that W. & S. were to be presumed to have acted as the agents or bankers of the United States; and that all the interest which W. & S. ever had in the bill was divested by the act of returning it to the party from whom it was received.

If a person who endorses a bill to another, whether for value or for the purpose of collection, comes again to the possession thereof, he is to be regarded, unless the contrary appears in evidence, as the *bona fide* holder and proprietor of such bill, and is entitled to recover thereon notwithstanding there may be on it one or more endorsements in full, subsequent to the endorsement to him, without producing any receipt or endorsement back to him from either of such endorsees, whose names he may strike from the bill or not as he thinks proper.

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By the special verdict in this cause it appeared, that on 22 December, 1801, Aquila Brown, at Baltimore, drew a bill of exchange on Messrs. Van Staphorst & Co. at

Amsterdam, for 60,000 guilders, payable at 60 days' sight, to the order of James Clarke, the defendants' testator. James Clarke endorsed the bill to

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Messrs. Brown & Hackman, who afterwards endorsed it to Beale Owings, who endorsed the same to Thomas T. Tucker, Esq., Treasurer of the United States, or order, and delivered it to him as Treasurer as aforesaid, who received it in that capacity and on account of the United States. It further appeared that this bill had been purchased with money belonging to the United States and under the order and by an agent of the then Secretary of the Treasury of the United States for the purpose of remitting the same to Europe for the government of the United States, who, in ordering the purchase of this bill, acted as one of the commissioners of the sinking fund and as agent for that board. The bill was afterwards endorsed to Messrs. Wilhem & Jan Willink & N. & J. & R. Van Staphorst by Thomas Tucker, Treasurer of the United States, and appears by an endorsement thereon to have been registered by the proper officer at the Treasury of the United States on 28 December, 1801, before it was sent to Europe. The bill having been regularly presented for acceptance by the last endorsees to the drawees, who protested for nonacceptance. It was afterwards protested for nonpayment and then returned by them to the Secretary of the Treasury of the United States for and on their behalf, who directed this action to be brought. Of these protests due notice was given to the drawer of the bill.

On this state of facts, the circuit court rendered judgment for the United States, to reverse which, this writ of error was brought.

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MR. JUSTICE LIVINGSTON delivered the opinion of the Court, and after stating the facts, proceeded as follows:

The first question which will be disposed of, although not the first in the order of argument, will be whether the endorsement of this bill to Mr. Tucker, under the

peculiar circumstances attending the transaction, did not pass such an interest to the United States as to enable it to sue in its own name. In deciding this point it will be taken for granted that no doubt can arise on the special verdict as to the party really interested in this bill. It was purchased with the money of the United States. It was endorsed to its treasurer; it was registered at its Treasury; it was forwarded by its Secretary of the Treasury, to whom it was returned, after it had been dishonored, for and on behalf, as the jury expressly found, of the United States. Indeed, without denying the bill to be the property of the United

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States, it is supposed that the action should have been in the name of Mr. Tucker, its treasurer, and not in the name of the *cestuy que trust*. If it be admitted, as it must be, that a party may in some cases declare according to the legal intendment of an instrument, it is not easy to conceive a case where such an intendment can be stronger, than in the case before the Court, but it is supposed that before any such intendment can be made, it must appear that Mr. Tucker acted under some law and that his conduct throughout comported with his duties as therein prescribed. It is sufficient for the present purpose that he appears to have acted in his official character, and in conjunction with other officers of the Treasury.

The court is not bound to presume that he acted otherwise than according to law or those rules which had been established by the proper departments of government for the transaction of business of this nature. If it be generally true that when a bill is endorsed to the agent of another for the use of his principal, an action cannot be maintained in the name of such principal (on which point no opinion is given), the government should form an exception to such rule, and the United States be permitted to sue in its own name whenever it appears not only on the face of the instrument, but from all the evidence, that it alone was interested in the subject matter of the controversy. There is a fitness that the public, by its own officers, should conduct all actions in which it is interested, and in its own name, and the inconveniences to which individuals may be exposed in this way, if any, are light when weighed against

those which would result from its being always forced to bring an action in the name of an agent. Not only the death or bankruptcy of an agent may create difficulties, but setoffs may be interposed against the individual who is plaintiff, unless the court will take notice of the interest of the United States, and if it can do this to prevent a setoff, which courts of law have done, why not at once permit an action to be instituted in the name of the United States? An intimation was thrown out that the United States had no right to sue in any case without an act of Congress for the purpose. On this point the Court entertains no doubt. In all cases of contract with the United States, it must have a right to enforce the performance of such contract or to recover damages for their violation by actions in their own name, unless a different mode of suit be prescribed by law, which is not pretended to be the case here. It would be strange to deny to it a right which is secured to every citizen of the United States.

It is next said by the plaintiff in error that if the endorsement to Mr. Tucker, as Treasurer of the United States, passed such an interest to the latter as to enable it to sue in its own name, yet such title was divested by Mr. Tucker's endorsing the bill to the Messrs. Willinks & Van Staphorst, which endorsement appeared on the bill at the trial and is still on it.

The argument on this point is that the transfer to the last endorsees being in full, a recovery cannot be had in the name of the United States without producing from it a receipt, or a reendorsement of

the bill, and that this endorsement not being in blank could not be obliterated at the trial, so that the court and jury were bound to believe that the title to this bill was not in the United States, but in the gentleman to whom Mr. Tucker had endorsed it.

The mere returning of this bill with the protest for nonacceptance and nonpayment by the Messrs. Willinks & Van Staphorst to the Secretary of the Treasury of the United States for its account is presumptive evidence of the former's having acted

only as agents or as bankers of the United States. When that is not the case, it is not usual to send a bill back to the last endorser, but to some third person, who may give notice of its being dishonored and apply for payment to such endorser as well as to every other party to the bill. In the case of an agency then so fully established, it would be vain to expect either a receipt or a reendorsement of the bill. The first could not be given consistent with the truth of the fact, and the latter might well be refused by a cautious person who had no interest whatever in the transaction. In such case, therefore, a court may well say that all the title which the last endorsees ever had in the bill, which was a mere right to collect it for the United States, was divested by the single act of returning it to the party of whom it was received. But if this agency in the Messrs. Willinks & Van Staphorst were not established, the opinion of the Court would be the same. After an examination of

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the cases on this subject (which cannot all of them be reconciled), the Court is of opinion that if any person who endorses a bill of exchange to another, whether for value or for the purpose of collection, shall come to the possession thereof again, he shall be regarded, unless the contrary appear in evidence, as the *bona fide* holder and proprietor of such bill, and shall be entitled to recover, notwithstanding there may be on it one or more endorsements in full subsequent to the one to him, without producing any receipt or endorsement back from either of such endorsees, whose names he may strike from the bill or not as he may think proper.

Judgment affirmed.