Union Bank Vs. Hyde

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Court : US Supreme Court

Decided On : 1821

Appeal No. : 19 U.S. 572

Appellant : Union Bank

Respondent : Hyde

Judgement :

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Union Bank v. Hyde

19 U.S. (6 Wheat.) 572

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

A protest of an inland bill or promissory note is not necessary, nor is it evidence of the facts stated in it.

A protest belongs altogether to foreign mercantile transactions, upon which it is an indispensable incident to making a drawer of a bill or endorser of a note liable. On foreign bills it is the evidence of demand and an indispensable step toward the legal notice of nonpayment in consequence of which the undertaking of the drawer or endorser becomes absolute. Hence of foreign transactions it is justly predicated of a protest that it has a legal or binding effect.

The following undertaking of the endorser of a promissory note,

"I do request that hereafter any note that may fall due in the Union Bank in which I am or may be endorser shall not be protested, as I will consider myself bound in the same manner as if the said notes had been or should be legally protested,"

held to be ambiguous as to whether it amounted to a waiver of demand and notice, and parol proof admitted to show that it was the understanding of the parties that the demand and notice required by law to charge the endorser, should be dispensed with.

MR. JUSTICE JOHNSON delivered the opinion of the Court.

This cause turns upon the construction of a written

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instrument in these words:

"I do request that hereafter any notes that may fall due in the Union Bank on which I am or may be endorser shall not be protested, as I will consider myself bound in the same manner as if the said notes had been or should be legally protested."

"THOMAS HYDE"

Two constructions have been contended for -- the one, literal, formal, vernacular; the other resting on the spirit and meaning as a mercantile and bank transaction.

The former has been sustained in the court below, and the correctness of that opinion is now to be examined.

The defendant, it appears, became endorser to one Foyles, and the note was discounted in the Union Bank; on its falling due, it is admitted that no demand was made on the drawer or notice given to the endorser.

The case presents the right of the plaintiffs under two aspects: 1st, upon the just construction of the written instrument; 2d, the practical exposition of it by the defendant himself, and it might also have presented a third, the specific waiver of demand and notice on the note in suit. By some assumed analogy or mistaken notions of law, this practice of protesting inland bills has now become very generally prevalent, and since the inundation of the country with bank transactions and the general resort to this mode of exposing the breaches of punctuality which occur upon notes, a solemnity, cogency,

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and legal effect have been given to such protests in public opinion which certainly has no foundation in the law merchant. The nullity of a protest on the legal obligations of the parties to an inland bill is tested by the consideration that independently of statutory provision (if any exists anywhere) or conventional understanding, the protest on an inland bill is no evidence in a court of justice of either of the incidents which convert the conditional undertaking of an endorser into an absolute assumption.

The protest belongs altogether to foreign mercantile transactions, upon which, on the contrary, it is an indispensable incident to making a drawer of a bill or endorser of a note liable. On foreign bills, it is the evidence of demand and an indispensable step towards the legal notice of nonpayment, in consequence of which the undertaking of the drawer or endorser becomes absolute. Hence, as to foreign transactions, it is justly predicated of a protest that it has a legal or binding effect.

But the writing under consideration has reference exclusively to inland bills, and as to them the protest has no legal or binding effect. The endorser became liable only on demand and notice, and of these facts the protest is no evidence. How, then, shall the waiver of the protest be adjudged a waiver of demand and notice or in

effect convert his conditional into an absolute undertaking?

Had the defendant omitted one word from his undertaking, it would have been difficult to maintain an affirmative answer to this proposition. But what

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are we to understand him to intend when he says, "I will consider myself bound in the same manner as if said notes had been or should be legally protested?" Except as to foreign bills, a protest has no legal binding effect, and as to them it is evidence of demand and incident to legal notice. It either then had this meaning or it had none.

This reasoning, it may be said, goes no further than to a waiver of the demand, but what effect is to be given to the word "bound?" It must be to pay the debt or it means nothing. But to cast on the endorser of a foreign bill an obligation to take it up, protest alone is not sufficient; he is still entitled to a reasonable notice in addition to the technical notice communicated by the protest. To bind him to pay the debt, all these incidents were indispensable, and may therefore be well supposed to have been in contemplation of the parties, when entering into this contract.

It is not unworthy of remark that the writing under consideration asks a boon of the plaintiff, for which it tenders a consideration. It requests to be exempted from an expense, exposure, or mortification, on the one hand, and on the other what is tendered in return? The intended object and conceived effect of the protest, on the one hand, is to convert his undertaking into an unconditional assumption, and the natural return is to make his undertaking at once absolute as the effectual means of obtaining the benefit solicited.

If this course of reasoning should not be held conclusive, it would at least be sufficient to prove the

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language of the undertaking equivocal, and that the sense in which the parties used the words in which they express themselves, may fairly be sought in the practical exposition furnished by their own conduct, or the conventional use of language established by their own customs or received opinions.

On this point the evidence proves that, by the understanding of both parties, this writing did dispense with demand and refusal, that the company on the one hand, discontinued their practice of putting the notes endorsed by defendant in the usual course for rendering his assumption absolute, and the defendant, on the other, continued up to the last moment to acquiesce in this practice by renewing his endorsements without ever requiring demand or notice. This was an unequivocal acquiescence in the sense given by the Company to his undertaking, and he cannot be permitted to lie by and lull the Company into a State of security of which he might at any moment avail himself after making the most of the credit thus acquired.

Judgment reversed and venire facias de novo awarded.