Gaither Vs. Farmers and Mechanics Bank of Georgetown

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 37

Appellant : Gaither

Respondent : Farmers and Mechanics Bank of Georgetown

Judgement :

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Gaither v. Farmers & Mechanics Bank of Georgetown

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SYLLABUS

C. & Co. discounted their notes with the F. & M. Bank of Georgetown at thirty days, and, in lieu of money they stipulated to take the post notes of the bank, payable at a future day without interest, while post notes were at a discount of one and one-half percent in the market at the time of the transaction. Such a contract is usurious. The endorsement of a promissory note of a stranger to the transaction

which was passed to the hank as a collateral security for the usurious loan, although the note itself is not tainted with the usury, yet the endorsement is void and passes no property to the bank in the note, and the subsequent payment of the original note for which the security was given and the repayment of the sum received as usury will not give legality to the transaction.

When an action is in its origin instituted in the name of A for the use of B, the *cestui que use* is, by the law of Maryland, regarded as the real party to the suit.

If a note be free from usury in its origin, no subsequent usurious transactions respecting it can affect it with the taint of usury, although an endorser of the note, whose property in it was acquired through a usurious transaction, may not be able to maintain a suit upon it.

The act of assembly of Maryland declares "all bonds, contracts, and assurances whatever, taken on an usurious contract to be utterly void." And the endorsement of a promissory note for a usurious consideration is a contract within the statute, and was void.

This suit was instituted by the defendants in error against George R. Gaither as the drawer of a promissory note, dated Georgetown, 24 July, 1822, for $1,513.96, payable six months after date to the order of W. W. Corcorran & Co. Endorsers, W. W. Corcorran & Co., and Thomas Corcorran. Before the swearing of the jury in the case it was stated by the counsel of both plaintiff and defendant to one of the judges of the court, who, being a stockholder in the bank, objected to sitting in the case, and the same was also stated to the court before the jury was sworn; that the bank was not interested in the event of the cause; and, on the trial, it was also shown to the court by the clerk that this suit, standing on the docket in the name of the bank, was, by direction of the plaintiff, on the morning of and just before the cause was called for trial, entered for the use of Thomas Corcorran, and the jury were sworn to try the cause standing on the docket to the use of Thomas Corcorran.

W. W. Corcorran & Co., merchants of Alexandria, were in the frequent receipt of large discounts from the bank upon their own notes, endorsed by Thomas Corcorran, for which

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other notes payable to them were from time to time deposited in bank as collateral securities for the notes discounted, which collateral notes were kept in deposit by the bank and, as collected, were passed to the credit of the borrowers, and the collateral notes, a short time before they became due, were so entered in the deposit book of the bank as that the bank became the collectors upon its own account of their respective amounts, to be appropriated as stated.

The note of the plaintiff in error was treated in this manner, and before it became due and was protested, it had been entered on the deposit book of the bank, and had remained in possession of the bank until the day of the trial of the cause. The discounts of the bank for W. W. Corcorran & Co. were not generally to a large extent in cash, but when large discounts were made, it was with an understanding that the proceeds of the same should be received in post notes having some time to run, without any rebate, for the time being allowed by the bank, but the bank retaining the usual discount of six percent per annum on the amount of the discounts, and the post notes were made payable at various periods from twenty to ninety days, but most generally payable when the note discounted or the note received as a collateral security became due. The amount of discounts received by W. W. Corcorran & Co., from 24 July, 1822, to 22 February, 1823, was $77,732, and during that time the post notes issued for their use by the bank exceeded $59,000.

The post notes, at the time they were received, were at a discount of one percent per month in the market, and some of those received by W. W. Corcorran & Co. were sold at that rate. The bank always held the note of the defendant below as a collateral security for the notes discounted for W. W. Corcorran & Co., and the defendant paid to the bank on 1 February, 1823, $500 on account of the note. Within two days of the trial, when the bank having collected as much money as

reduced the debt due by W. W. Corcorran & Co. to a small sum; they ordered the suit to be marked for the use of Thomas Corcorran, under authority of an order, dated February 17, 1823, signed by W. W. Corcorran & Co.,

"to deliver to him what notes of theirs might remain in possession of the bank, after the debt due by them, for which they were left as collateral security, should be paid."

The defendant below also proved that the name of Thomas Corcorran was not upon the note when it was passed to the bank, nor until after the note became due, and he produced and offered in evidence to set off the promissory notes of W. W. Corcorran & Co., which had been transferred to him,

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by the payee thereof after the note upon which this suit was brought had been transferred to the bank, but before this suit was brought and before they fell due, which was after 17 February, 1823.

The plaintiff below offered W. S. Nicholls, admitted to be one of the stockholders of the bank, as a witness, who was objected to as being interested in the event of the suit, but the court overruled the objection and he was sworn and examined. The defendants prayed the court to instruct the jury that if it believed the evidence of the transaction between the bank and W. W. Corcorran & Co. were usurious, the plaintiff could not recover, which instruction the court refused to give. The court refused to suffer the defendants to give the evidence of setoff which they proposed to exhibit. To these decisions of the court a bill of exceptions was tendered, and the case was brought up to this Court by writ of error.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

The plaintiff here was defendant in the court below to an action instituted by the Farmers and Mechanics Bank of Georgetown on a note made by him to W. W.

Corcorran & Co. and by them endorsed in blank to the Bank.

The record makes out a case for this Court of which the following is a summary:

That W. W. Corcorran & Co. discounted their own notes with this bank, at thirty days; the bank expressly stipulating that in lieu of money, they should receive what they call a post note of their own, payable at a future day, without interest. The evidence would make out that the post notes given for this discounted note, were at thirty-five days after date; that it is two days after the discounted note fell due, so that in fact there was no advance of money, although an interest of six percent per annum was taken from the Corcorrans, and the post notes of the Bank were proved to be at a discount of one percent making one and a half percent for thirty days, or eighteen percent per annum. The note on which this suit was instituted was passed to the Bank as a collateral security for the discounted note, and was altogether unaffected with

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usury in its origin. The ground on which the right of the Bank is resisted is not that Gaither is discharged from his contract with W. W. Corcorran & Co., but that the endorsement to the plaintiff below, having been made to secure a note given on an usurious contract, could vest no interest or cause of action in the endorsee. In order to avoid the pressure of this defense in the court below, the plaintiffs there gave in evidence a writing addressed by W. W. Corcorran & Co. to the Bank, bearing date 17 February, 1823, prior to the institution of that suit, in these words:

"Please deliver to Thomas Corcorran what notes of ours may remain in your possession after the debt due the Bank, for which they are left as collateral security, shall have been paid, or hold the same subject to his order."

And it was further shown that a few days before the issue was tried below, an adjustment had taken place between the Bank and Thomas Corcorran, who was then endorser and assignee of W. W. Corcorran & Co., upon which Gaither's note had been delivered to Thomas Corcorran; he then endorsed his name on Gaither's note below that of W. W. Corcorran & Co., and thereupon the Bank, before the jury

were charged, had the name of Thomas Corcorran entered on the docket, as the *cestui que use* for whom they were prosecuting their suit, and the jury, it appears, was charged with the cause according to the exhibition of parties thus made upon the docket -- that is, to try an issue between the Bank to the use of Thomas Corcorran, plaintiff, and Gaither, defendant.

This practice is familiar with the Maryland courts, and when the action originates in that form, the *cestui que use* is regarded as the real party to the suit.

It is now contended that although substituted at the eleventh hour, Thomas Corcorran is to be regarded in that relation, and under that idea this cause has been argued as though the question of usury had been raised between Gaither and an innocent endorser.

But it is obviously impossible in the present action to pay any regard to Thomas Corcorran's interest or claims. The arrangement which introduced his name into the cause was too obviously concocted for the purpose of rescuing the interests of the plaintiffs in the record from the effects of the defense of usury. It therefore can pretend to no merit in the administration of justice. But if the effects of that transaction be examined without reference to the motive, it is equally clear it can have no bearing upon the present action. The interest in or power over Gaither's note was only inchoate and contingent until all the debts due the Bank should be paid or they otherwise be induced to relinquish it to him, and this did

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not take place until long posterior to the institution of the suit, and even after issue joined.

The bank sue on its own interest, declared on its own right, and acknowledge no participation with Thomas Corcorran in the interest or the action until the moment when the cause is going to trial. It was surely then too late to permit them to assume a new character, or interpose a new party, however liberally this Court might be disposed to sacrifice the forms and rules of law to the Maryland practice.

We will therefore put Thomas Corcorran's interest out of view, and will consider the parties at the commencement of the action as the parties at its close.

This puts the question on the right of an innocent endorser out of the cause, since the endorsee of Gaither's note received the usurious interest and the endorser paid it. The only questions on the point of usury, then, are,

1st, whether Gaither, in the relations in which he stood to these parties, could set up the usury in his defense.

2d, and whether that defense could be set up after payment of the note on which the usury had been received.

The objection in the first point is that as there was no usury in the concoction of Gaither's contract, he ought not to be permitted to avail himself of the usurious contract between the endorser and endorsee to avoid a debt which he justly owes.

And this is unquestionably true, for the rule cannot be doubted that if the note free from usury in its origin, no subsequent usurious transactions respecting it can affect it with the taint of usury. Nor does Gaither propose by this defense to relieve himself from paying the note; it goes only to his liability to pay it to this individual, and reason, analogy, and adjudged cases, will sustain the defense. Suppose a note given to a woman who marries, and then endorses it without her husband's authority; such endorsement would be void, 1 East 432, and the endorsee could not recover, yet the husband and wife may recover.

In a comment on the case of *Jones v, Davison* in Holt's Reports, 1 Holt 256, an usurious note is likened to a bill of exchange on a bad stamp. If a stamp were necessary to give validity to an endorsement, it cannot be doubted that none who claim through such an endorsement could maintain an action against the drawer. The endorsement, though actual, was ineffectual for the purpose of transferring an interest in the note. It was a void act.

This case is governed by the laws of Maryland, and the act of Maryland against usury is in the words of the statute of Ann. It declares "all bonds, contracts, and

whatever taken on an usurious contract" to be utterly void. Now the endorsement of a negotiable note creates several contracts, and if in this case it could give a right of action against Gaither, the drawer, it ought also to sustain an action against W. W. Corcorran & Co., the endorsers, but against them it is perfectly clear that an action could not be maintained, for they were parties to the usurious loan. It follows that their endorsement was a void act, and the property and of consequence the right of action never passed to these plaintiffs. There is a very strong case on this subject which we believe was not quoted in argument to be found in the books to which we usually refer. We mean the case of *Harrison v. Hamell* in Taunton's Reports, 5 Taunton 780, in which the rights of a collateral surety to avail himself of usury in the original transaction is distinctly recognized when the contract of the collateral was wholly unaffected by usury. The case was reserved for argument, and the whole court concurred in the legality of the defense. The language of the judges is strong, and applies to the case before us. One of them remarks:

"That if a man lends 1,000 pounds on an usurious interest, and gets from a third person a collateral security for 800 pounds only, without usurious interest, I hold that bond is void not because it is given for securing usurious interest, but because it is given for enforcing a contract for usurious interest."

And another says "That if giving these collateral acceptances would alter the case, it would be a shift or device, by which the statutes of usury would be defeated."

With regard to the second point, it is necessary to see the force of the argument which would deduce from the payment of the discounted note a cure to the taint with which the contract of endorsement was affected. The law declares it absolutely void. By what operation, then, is it to be rendered valid by the payment of the discounted note? It is argued by the payment and extinguishment of the latter note, the usury is extinct and as if it had never existed. We cannot perceive

how this reasoning can prevail either in point of fact or inference. In point of fact the crime was only consummated by the payment of that note, since the bank thereby incurred a liability under the statute, to be sued for three times the sum paid them, and as to the inference, it seems very difficult to conceive how the payment of the usurious note should operate to confirm or give birth to a contract which the law declares never had existence, and was *ab initio* utterly null and void. There have been cases in which usurious contracts have been cancelled, the usury refunded, and new contracts substituted free from the taint of usury, and the law gives to the offender this *locus poenitentiae.* But there is no analogy between such a

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transaction and that here presented, in which the money loaned has been paid by the borrower, and only passed into the vaults of the Bank to be deposited with the usurious interest previously taken. We have not heard of the refunding of this usury, and this, at least, would have been indispensable to removing the taint. But even that would never have given validity to an endorsement which in the eye of the law was as though it had never existed.

As the decision on this point disposes of the right of action and leaves no probability that the cause will be again brought up to this Court, we deem it unnecessary to notice any other of the points made in argument.

The judgment was reversed, and the cause remanded to the circuit court with directions to award a venire facias de novo.