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Konig Vs. Bayard

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 250

Appellant : Konig

Respondent : Bayard

Judgement :

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U.S. Supreme Court Konig v. Bayard, 26 U.S. 1 Pet. 250 250 (1828)

Konig v. Bayard

26 U.S. (1 Pet.) 250

ON DIVISION OF OPINION OF THE JUDGES OF THE COURT OF THE

UNITED STATES FOR THE SECOND CIRCUIT AND DISTRICT OF NEW YORK

SYLLABUS

A stranger to the drawer and endorser of a nonaccepted bill of exchange may intervene *supra* protest to pay the same for the honor of an endorser or drawer.

It is no objection to this intervention that it has been done at the request and under the guarantee of the drawees of the bill, who had refused to accept or pay the same. The arrangements made by the payer of the dishonored bill with the drawee, by which he was to be protected from loss, do not affect the liability of the party to the bill for whose honor it has been paid.

If A, at the request of the drawee of a bill of exchange and under his guarantee, accept and pay the bill, *supra* protest, for the honor of the endorser, the party against whom suit is brought for the amount paid may avail himself of every defense which he could have had if the bill had been paid *supra* protest for the honor of the endorser by the drawee and suit brought for the same.

This was an action of assumpsit instituted in the Circuit Court of the United States for the Southern Circuit of New York by William Konig, a merchant of Amsterdam, carrying on business under the firm of William Konig & Co. against the defendants, merchants in New York trading under the firm of Le Roy Bayard & Co.

The action was upon a foreign bill of exchange, and the declaration charges that the same was drawn at Baltimore on 2 September, 1822, by John C. Delprat, on N. & J. & R. Van Staphorst, of Amsterdam, in Holland, at sixty days sight, for 21,500 florins, in favor of the defendants and made payable to them or order. That the defendants, on the fourth of September in the same year, endorsed the same to L. H. Huder, who endorsed it to Rougemont & Behrends, and that they, on 25 November, 1822, presented the bill (the same being unaccepted and unpaid) to the drawees for acceptance, by whom acceptance was refused and the bill protested for nonacceptance, and that the plaintiff on the same day, at Amsterdam, to prevent the bill from being sent back to the defendants, did, under that protest and for the honor and account of the defendants, accept the bill in writing and gave notice thereof to the defendants.

That the bill was afterwards, and before payment, endorsed by Rougemont & Behrends to N. M. Rothschild, who endorsed it to M. Rothschild & Sons, who endorsed it to B. J. De Jongh & Fils, and the last endorsees, when the bill became due

and payable, *viz.,* on 25 January, 1823, at Amsterdam, presented it to the drawees for payment; that payment was refused, and the holders, being the last endorsees aforesaid, caused the bill to be protested for nonpayment, and the plaintiff thereupon, upon the protest and for the honor and account of the defendants, the first endorsers, paid the bill to B. J. De Jongh & Fils, together with two thousand guilders for the cost of the protest and other charges, and gave due notice thereof to the defendants.

The declaration also contained the usual money counts, upon which the general issue was pleaded, and upon the trial of the cause a verdict was taken for the plaintiff for $9,852.78, subject to the opinion of the court on the following case, with liberty to either party to turn the same into a special verdict or bill of exceptions.

It was admitted that the bill was drawn by John C. Delprat in favor of defendants, and that on 18 October, 1822, the defendants endorsed it and transmitted it to Messrs. Rougemont & Behrends at London, and that afterwards the bill was endorsed by Messrs. Rougement & Behrends to N. M. Rothschild, who endorsed it to M. Rothschild & Sons, who endorsed it to B. J. De Jongh & Fils, as charged in the declaration. And in order to prove that the bill was duly protested for nonacceptance and nonpayment and that after the same was so protested for nonacceptance the same was accepted, *supra* protest, by the plaintiff for the honor and account of the defendants, the endorsers, and that after the said bill was protested for nonpayment, the same was paid, *supra* protest, by the plaintiff for the honor and account of the defendants, the endorsers; the plaintiff read in evidence the protest for nonacceptance and nonpayment, which were admitted by the counsel of the defendants to be read in evidence for that purpose.

The endorsements on the bill were:

"Pay Mr. L. Huder, or order, value received. New York, 4 Sept., 1822. Signed, LE ROY, BAYARD & CO. Pay to the order of Messrs. Rougement & Behrends, of London, value in account. New York, 1 October, 1822. Signed, L. H. HUDER. Dec.

28, No. 279, presented for stamp at Amsterdam, 22 Nov., 1822. Received with the augmentation, fl. 13 75. Signed, ELVESTER."

The protest for nonacceptance stated that on the application of the notary to the drawees, N. & J. & R. Van Staphorst, Amsterdam, they refused to accept the bill, stating

"that whereas the drawer has quite wrongfully drawn his bill, we therefore cannot accept the same, and moreover regret that in order to preserve our just rights against him (meaning the

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drawer), we cannot even interfere in behalf of those to whom this bill was passed."

The protest also stated the following "Act of Intervention:"

"And forthwith appeared and came forward those same gentlemen, Messrs. Wm. Konig & Co., who declared that they were actually ready, on account and for the honor of the firm of Messrs. Le Roy Bayard & Co. as endorsers upon this same bill of exchange, to accept the said bill, and for the purpose of paying the amount thereof on the day of its maturity, and accordingly the same gentlemen, Messrs. Wm. Konig & Co., in fact did and have signed the same."

The protest for nonpayment stated the same answer to have been given by the drawees when payment of the bill was demanded as made when acceptance was applied for, and also that after the protest for nonpayment.

"Subsequently, the gentlemen, Messrs. Konig & Co., commission merchants, residing in this city, at the Cloveniers Burgwal, duly patented for the past year, as appears by their certificate, dated 24 June, No. 1333, to us the Notaries exhibited, who, after having previously examined and read the aforecopied bill of exchange, as likewise this present protest, declared that they, in consequence of their acceptance under protest, should honor and pay this bill of exchange, and which in fact they have done for the honor and on account of Messrs. Le Roy Bayard & Co., as the first endorsers thereon, reserving at the same time their right against

them and all the others thereby interested."

The following letters were offered in evidence on the part of the defendants and objected to on the part of the plaintiff, but the objection being overruled by the court, they were read in evidence as follows:

" *Messrs. ROUGEMONT & BEHRENDS, London"*

"New York, 18 October 1822"

"Gentlemen -- We have now simply to request you to obtain acceptance of the enclosed draft; we do not wish it negotiated until it should be first accepted, either for the honor of the drawer or for ours and endorsers; we only wish that it may appear as having been sent to you for negotiation by the last endorser. It is drawn by the agent of the Amsterdam house, and as we enclose it as such, we wish it to be returned with the regular formality of law should it not, contrary to our expectations, be accepted."

"With respect, we are, &c.;"

"LE ROY, BAYARD & CO."

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It was admitted that the above letter was not transmitted, nor the contents thereof communicated by Messrs. Rougemont and Behrends, to the plaintiff.

" *ROUGEMONT & BEHRENDS to Messrs. WILLIAM KONIG & CO. Amsterdam"*

"London, 19 November 1822"

"We beg you to have the enclosed accepted 1st of fl. 21,500, 60 days on N. & J. & R. Van Staphorst, and hold the same to the disposal of the 2d, 3d, and 4th. You will oblige me by mentioning the day of acceptance, and, in case of refusal, you will have the bill protested. If accepted, please let us know the amount of stamp

duties, &c.;"

The defendants also read in evidence the following extracts of letters from the plaintiff to Rougemont & Behrends.

"Amsterdam, 22 November 1822"

"Messrs. ROUGEMONT & BEHRENDS, London."

"We had this pleasure 19th instant, and are today in possession of your favor. The enclosed fl. 21,500 on N. & J. & R. Van Staphorst, will be presented for acceptance, and kept to the disposal of duplicate; for stamp duty we debit you in postage account, which is fl. 14. 5s. Messrs. Van Staphorst have deferred the answer whether they will accept said bill till tomorrow. We cannot inform you of the result until Tuesday, and in case of refusal will forward you the protest."

"Amsterdam, 26 November, 1822"

"Messrs. ROUGEMONT & BEHRENDS, London."

"We refer to our respects of the 22d instant. Messrs. N. & J. & R. Van Staphorst, after having deferred the acceptance of the bill of fl. 21,500, 60 days, till yesterday, now refuse to accept; we had also the bill presented for nonacceptance, at the same time honoring it for account of Le Roy Bayard & Co. in New York. The bill has also been accepted on 25 November, and will be due on 24 January next. We will keep it at the disposition of the 1st, 3d, or 4th, or any copy authenticated by your endorsement."

They also read in evidence the following letters from the plaintiff to the defendants.

"Amsterdam, 26 November 1822"

"Messrs. LE ROY, BAYARD & CO. New York."

"Gentlemen -- Having been charged by Messrs. Rougemont & Behrends of London, to procure the acceptance of a second of exchange of bill of fl. 21,500, Mr. John C. Delprat at Baltimore, of 2 September, to your order, on Messrs. N. &

J. & R. Van Staphorst. These gentlemen have refused to accept it, expressing their regret at being unable on this occasion even to protect your signature, and save you heavy damages.

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We have determined to offer it on the assurance that this intervention would be agreeable to you, and we remit you annexed, in consequence, the protest for nonacceptance, and the act of intervention for the fl. 21,500, becoming due 24 January -- accepted 25 November for your account. At maturity we will send you all the papers in order, and as it appears certain that Messrs. Van Staphorst will not pay the draft of Mr. Delprat, you can at present admit that you will leave it to reimburse us this intervention, with commission, expenses, and interest. We renew, gentlemen, on this occasion, the offer of our services, desirous that it may be agreeable to you to require them."

"Amsterdam, 28 January, 1823"

"Messrs. LE ROY, BAYARD & CO. New York."

"Gentlemen -- We have the honor to confirm our letter of 26 November, of which a triplicate is annexed, and to inform you that Messrs. N. & J. & R. Van Staphorst, having persisted in their refusal to pay the bill of exchange of fl. 21,500, of Mr. John C. Delprat to your order upon them, we have paid it under protest, and act of intervention, for your honor."

"Accompanying this you receive the papers consisting of first draft in first and second; 2. protest of act of intervention; 3. amount relative thereto. Will you, gentlemen, please to acknowledge the accuracy of this amount, on 24 January, fl. 21,647, and credit us the amount."

"Amsterdam, 2 September, 1823"

"Messrs. LE ROY, BAYARD & CO. New York."

"Gentlemen -- On 26 November past year we informed you of our having intervened with acceptance, for your honor and account, as endorsers, a draft of fl. 21,500, John C. Delprat's draft 60 ds. sight, Baltimore, 2 September, in your favor, protested for nonacceptance against the said drawer, while on 28 January we had the honor to inform you that we had paid the above bill, by intervention, for your account, handing you at the same time the original bill, duly discharged, together with necessary protest and act of intervention. Since that time we have only received your lines of 31 January last, by which you thank us for the intervention made by us but observe that Messrs. N. & J. & R. Van Staphorst had at the same time informed you that they had guaranteed to us the reimbursement of that draft, for which reason you refer us to these gentlemen."

"To our letter returning to you duly discharged and paid by us for your account the aforementioned bill you did not give us any reply. Messrs. N. & J. & R. Van Staphorst have only guaranteed us in case we should not be able to recover our reimbursement

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from you, for whose account we intervened, and they are thus entitled to ask from us that we enforce that payment from you, to which measure that guarantee obliges us, and the effect of which we cannot but maintain, so that, in order the obtain that payment which you owe us, we have now valued this day on you at sixty days, $3,600, $3,400, $1,932.80, order Gulian Ludlow, Esq. at the exchange of 50 *stg.* -- fl. 22,332, being the exact amount of our intervention, together with interest and charges to this day, as per note annexed, which we recommend to your protection, and request you to honor in payment of the amount expended by us for your account. If you, against our expectation, refuse to pay this bill, we must inform you that we have given our most strict and precise order immediately to enforce payment by force of law, to which purpose we must then demand from you the original bill paid, with protest, &c.;, which we request and authorize you, by the present, to deliver to Gulian Ludlow, Esq. of your city, whom we have empowered to give receipt for these documents, which are our property till you have paid us for them. We are obliged to do this act of devoir in order to obtain final

reimbursement, while we hope and trust you cannot take this measure, necessary to us, in any evil light."

"We remain, very sincerely, gentlemen,"

"Your most obedient servants,"

"WILLIAM KONIG & CO."

The following letter from N. & J. & R. Van Staphorst to the defendants was also offered in evidence and objected to on the part of the plaintiff, but the objection being overruled by the court, was read, as follows:

"Amsterdam, 25 November, 1822"

"Messrs. LE ROY, BAYARD & CO. New York."

"Gentlemen -- We confirm our last respects of 12th inst., and have since received your esteemed letters of the 4th and 5th ult. first of which accuses receipt of our sundry letters up to the 23d of July, inclusive."

"The draft advised in your esteemed favor of 5th ult. 60 days sight -- No. 368 -- fl. 7,000 -- favor John Telfair, meets due honor at presentation to the debit of your account. We have yesterday received letters from Mr. Delprat, dated 10, 11, and 15 October, of which we cannot fail to communicate in a few words the purport. It is such as we might expect; instead of attempting to clear up any of the distressing items alluded to in our letters to him, or to refute any of the arguments which founded our conduct, Mr. D. merely falls on our circulars, as he calls them (written at the time to only four of those who were owing us moneys at Baltimore, and of which

we annex copy in our defense) as having injured his credit, and further declaims against an answer, which he had been erroneously informed that we had given in the protest of one of his bills; further, Mr. Delprat chiefly writes that he is very

desirous to have his accounts closed and sent up to him, so that, all items being properly brought therein, it may be approved by him and our intercourse finally closed. We, of course, shall not be backward in complying with that wish, and on correctness and justice you will easily believe that Mr. Delprat can safely calculate. When we wrote to you our last letters, and therein stated the amount drawn by Mr. Delprat so much above anything that prudence or correctness warranted, we were indeed far from prepared for the appearance of a fresh draft of Mr. D., valued (as the French term it) *de but enblanc,* without any light being spread by the letter of advice attached to it."

"Fl. 21,500 -- Baltimore, 2 September, at 60 ds. sight in your favor. This draft, confirmed in no letter of Mr. Delprat and dated at such an ominous time, was calculated to yield much matter to think on. If Mr. Delprat knew of the protests of his former drafts, to what ought this new flourish to serve if not, what was his intention by drawing such a large sum again over and above all his former dispositions -- a valuation which, placing all possible folly and imprudence on our side, it could not yet possibly be thought that we should honor without attempting to explain the matter. We have merely to express our regret at observing again your endorsement on the bill, and notwithstanding your silence in your last favor of 4th and 5th instant with regard to former interventions, in fact rather disagreeable to us, and whatever might be the intentions of Mr. D. at drawing the bill, we were too much your friends, my dear sirs, not immediately to come forward on account of your signature, but consulting our legal adviser on this so strange and surprising incident, we were sorry to find that it was his positive opinion that in this peculiar case we ought not to value at all this draft nor in the least manner to allow that such a draft might properly have been issued by the drawer, and thus that we ought not to consider it at all, nor to meddle with it in the least. So firm was our counsel in that idea that he was completely against our intervening on behalf of any endorser, as being prejudicial to the system we ought to follow with regard to this bill; but he thought that it was proper to note in the protest our reason for nonacceptance and nonintervention. We were thus put in a disagreeable position, as on the one side we did not wish to act contrary to his advice and to depart from a system which he though necessary to us, and on the other we were fully

determined at all events not to suffer

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your signature to go back without being honored. In this predicament, we applied to our friends Messrs. Wm. Konig & Co. who had the said bill in hand, informed them of the whole case, and requested these gentlemen, under our guarantee, to intervene on behalf of your signature, with acceptance and payment of above bill, which favor these gentlemen have not refused to us, so that, without our prejudice, and completely without yours, we have duly protected your interest. We are well persuaded you would not wish us to have done any act which we might think detrimental to us, and we thus are confident that you will duly appreciate our conduct in this truly awkward affair."

The defendants also read in evidence the following letter from them to the plaintiff:

"New York, January 31, 1823"

"Messrs. WM. KONIG & CO. in Amsterdam."

"Gentlemen -- We are favored with your letters of 26 November apprising us that Messrs. Rougemont & Behrends of London had sent you for acceptance a draft for fl. 21,500, drawn at Baltimore, by Mr. John C. Delprat in our favor, at 60 days sight, upon Messrs. N. & J. & R. Van Staphorst, that these gentlemen had refused the acceptance, and that you had intervened for our honor as endorsers; that you had no reason to believe that it would at maturity be paid by the drawers, and that you would thus be called upon to discharge it. Messrs. N. & J. & R. Van Staphorst inform us, under the date of 25 November, that they had informed you of the whole case (in relation to this draft) and had requested you, under their guarantee, to intervene. It remains, therefore, but for us to thank you for the honor which you purposed doing us, and to refer you to Messrs. N. & J. & R. Van Staphorst for a release from the responsibility assumed under their guarantee, and for them."

"We have the honor to be, Gentlemen,"

"Your humble servants,"

"LE ROY, BAYARD & CO."

It was admitted that the said bill, for fl. 21,500, was drawn several days after the date of it. That the same was drawn by the said John C. Delprat on his own account generally, and not on any shipment, and that the said bill was drawn after the said J. C. Delprat heard from the defendants that his bills on Messrs. N. & J. & R. Van Staphorst had been protested. That the said J. C. Delprat sent to the defendants an order on Messrs. N. & J. & R. Van Staphorst, dated 4 September, 1822 (a copy of which order is hereunto annexed), and that the said bill was sent therewith to the defendants; that there

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were other dealings between the defendants and the said John C. Delprat, besides those growing out of the agency of the said John C. Delprat for the Messrs. N. & J. & R. Van Staphorst; that the defendants, in the course of those dealings, during the summer of 1822, loaned to the said John C. Delprat a large sum of money on his own account, which loans were carried by them into their general account with the said John C. Delprat, and that the said bill was given to the defendants by the said John C. Delprat to repay them for the said advances to him, as far as the same would go.

"Messrs. N. & J. & R. VAN STAPHORST, Amsterdam."

"Baltimore, Sept. 4, 1822"

"Gentlemen -- You will please hold all balances due to me by you; all the proceeds of goods sold or unsold, shipped in my name, per *Virgin* and other vessels, to the order and for the use of Messrs. Le Roy Bayard & Co., and for which this letter will be your sufficient authority."

"I remain, with esteem,"

"Your obedient servant,"

"JOHN C. DELPRAT"

The Judges of the circuit court divided in opinion upon the following points, which were certified to this Court.:

1. Whether the letters offered in evidence by the defendants, and objected to, ought to have been admitted.

2. Whether the plaintiff had a right under the circumstances to accept and pay the bill upon which the suit was brought for the honor of the defendants, and is entitled to receive the amount thereof, with charges and interest.

The first point was waived by the counsel for the plaintiff and the whole argument was directed to the second point.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This suit was brought in the Court of the United States for the second Circuit and District of New York on a bill of exchange drawn by John C. Delprat, of Baltimore, on Messrs. N. & J. & R. Van Staphorst, of Amsterdam, in favor of Le Roy Bayard & Co. of New York and endorsed by them. The bill was regularly presented and protested, after which it was accepted and paid by the plaintiff, for the honor of the defendants. The jury found a verdict for the plaintiff, subject to the opinion of the court on a case stated by the parties. The Judges of the circuit court were divided in opinion on the following points:

1. Whether the letters offered in evidence by the defendants, and objected to, ought to have been admitted.

2. Whether the plaintiff had a right, under the circumstances, to accept and pay the bill in question under protest for the honor of the defendants, and is entitled to recover the amount, with charges and interest.

The first question is understood to be waived. It is a question which was decided by the court at the trial, and could not arise after verdict unless a motion had been

made for a new trial.

The second requires an examination of the case stated by counsel. The bill was transmitted by Roy, Bayard & Co. to Messrs. Rougemont & Bebrings, of London, to have it presented for acceptance, who enclosed it to the plaintiff, in a letter, from which the following is an extract:

"We beg you to have the enclosed accepted, 1st, of fl. 21,500, 60 days, on N. & J. & R. Van Staphorst, and hold the same to the disposal of 2d, 3d, and 4th. You will oblige me by mentioning the day of acceptance, and in case of refusal, you will have the bill protested."

The plaintiff gave immediate notice of the dishonor of the bill, and of their intervention, for the honor of the defendants.

Messrs. N. & J. & R. Van Staphorst addressed a letter to the defendants, dated 26 November, 1822, giving notice that the bill was dishonored, the drawer having no right

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to draw, and that they were advised by counsel not to interpose, in their own names, for the honor of the defendants. The letter adds,

"In this predicament, we applied to our friends, William Konig & Co., who had the said bill in hand, informed them of the whole case, and requested these gentlemen, under our guarantee, to intervene on behalf of your signature, with acceptance and payment of the above bill, which favor these gentlemen have not refused to us, so that, without our prejudice and completely without yours, we have duly protected your interest."

The defendants also gave in evidence a letter from the plaintiff stating that he had intervened at the request of N. & J. & R. Van Staphorst and under their guarantee, but that they required him to proceed against the defendants as preliminary to the performance of that guarantee.

It was admitted that the bill was drawn by J. C. Delprat on his own account, and not on any shipment for a debt due from him to the defendants for advances previously made to him, and that he had given to the defendants an order on N. & J. & R. Van Staphorst for all balances due from them to him.

It is not alleged that the drawees had any funds of the drawer in their hands.

The plaintiff in this case must be considered as the agent of N. & J. & R. Van Staphorst and as having paid the bill at their instance. All parties concur in stating this fact. The Van Staphorsts adopted this circuitous course instead of interposing directly in their own names under the advice of counsel. They however immediately stated the transaction in its genuine colors to the defendants. It is impossible to doubt that a person may thus intervene through an agent if it be his will to do so. The suspicion which might be excited by proceeding unnecessarily in this circuitous manner cannot affect a transaction which was immediately communicated, with all its circumstances, to the persons in whose behalf the intervention had been made unless those persons were exposed to some inconvenience to which they would not have been exposed had the interposition been direct. This is not the case in the present instance, since it cannot be doubted that the defendants might have availed themselves of every defense in this action of which they could have availed themselves had N. & J. & R. Van Staphorst been plaintiffs. The case shows plainly that the bill was not drawn on funds, and that the drawees were not bound to accept or pay it. No reason, therefore, can be assigned why the person who has made himself the holder of the bill by accepting and paying it under protest should not recover its amount from the drawer and endorsers.

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This cause came on to be heard on a certificate of division of opinion of the judges of the Circuit Court of the United States for the Southern District of New York, and on the points on which the said judges were divided in opinion, and was argued by counsel, on consideration whereof, this Court is of opinion that the plaintiff had a

right, under the circumstances, to accept and pay the bill in question under protest for the honor of the defendants, and is entitled to recover the amount, with charges and interest, which is ordered to be certified to the said circuit court.

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