

**Buckner Vs. Finley and Van Lear**

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**Court :** US Supreme Court

**Decided On :** 1829

**Appeal No. :** 27 U.S. 586

**Appellant :** Buckner

**Respondent :** Finley and Van Lear

**Judgement :**

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**Buckner v. Finley & Van Lear**

**27 U.S. (2 Pet.) 586**

*ERROR TO THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE MARYLAND DISTRICT*

## **SYLLABUS**

Bills of exchange drawn in one state of the Union, on persons living in another state partake of the character of foreign bill, and ought to be so treated in the courts of the United States.

For all national purposes embraced by the federal Constitution, the states and the citizens thereof are one, united under the same sovereign authority and governed by the same laws. In all other respects, the states, are necessarily foreign and independent of each other.

The action was instituted in the circuit court on a bill of exchange drawn on 16 March, 1819, by the defendants at Baltimore on Stephen Dever at New Orleans in favor of Rosewell L. Colt or order, of Baltimore, and by him endorsed for value received to the plaintiff, a citizen of New York.

A judgment was confessed by the defendants for \$2,100, subject to the opinion of the court, upon a case stated, and which presented the question whether the circuit court had jurisdiction in the case.

The defendants objected to the jurisdiction on the ground that the bill was an inland, and not a foreign, bill of exchange, and therefore the defendants and the drawee Rosewell L. Colt, being citizens of Maryland, although the bill was regularly in the hands of the plaintiff as endorsee, who is a citizen of a different state, the circuit court had no cognizance of the claim.

The provision of the act of Congress upon which the question arises is in the 11th section of the "Act to establish the judicial powers of the courts of the United States," passed September 24, 1789. The words of the act are

"Nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange. "

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The judges of the circuit court divided in opinion on the question of jurisdiction, and ordered the record to be certified to this Court.

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MR. JUSTICE WASHINGTON delivered the opinion of the Court.

This is an action of assumpsit founded on a bill of exchange drawn at Baltimore in the State of Maryland upon Stephen Dever at New Orleans in favor of R. L. Colt, a citizen of Maryland, who endorsed the same to the plaintiff, a citizen of New York. The action was brought in the Circuit Court of the United States for the District of Maryland, and upon a case agreed stating the above facts, the judges of that court were divided in opinion whether they could entertain jurisdiction of the cause upon the ground insisted upon by the defendants' counsel that the bill was to be considered as inland. The difficulty which occasioned the adjournment of the cause to this Court is produced by the 11th section of the Judiciary Act of 1789, which declares that no district or circuit court shall have

"cognizance of

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any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of *foreign* bills of exchange."

The only question is whether the bill on which the suit is founded is to be considered a foreign bill of exchange.

It is to be regretted that so little aid in determining this question is to be obtained from decided cases either in England, or in the United States.

Sir William Blackstone, in his commentaries, [ [Footnote 1](#) ] distinguishes foreign from inland bills by defining the former as bills drawn by a merchant residing abroad upon his correspondent in England or *vice versa*, and the latter as those drawn by one person on another when both drawer and drawee reside within the same Kingdom. Chitty 16, and the other writers [ [Footnote 2](#) ] on bills of exchange are to the same effect, and all of them agree that until the statutes of 8 and 9 W. III, ch. 17, and 3 and 4 Anne, ch. 9, which placed these two kinds of bills

upon the same footing and subjected inland bills to the same law and custom of merchants which governed foreign bills, the latter were much more regarded in the eye of the law than the former, as being thought of more public concern in the advancement of trade and commerce.

Applying this definition to the political character of the several states of this union in relation to each other, we are all clearly of opinion that bills drawn in one of these states upon persons living in any other of them partake of the character of foreign bills, and ought so to be treated. For all national purposes embraced by the federal Constitution, the states and the citizens thereof are one, united under the same sovereign authority and governed by the same laws. In all other respects, the states are necessarily foreign to and independent of each other. Their constitutions and forms of government being, although republican, altogether different, as are their laws and institutions. This sentiment

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was expressed with great force by the president of the Court of Appeals of Virginia in the case of *Warder v. Arrell*, 2 Wash. 298, where he states that in cases of contracts, the laws of a foreign country where the contract was made must govern, and then adds as follows:

"The same principle applies, though with no greater force, to the different states of America, for though they form a confederated government, yet the several states retain their individual sovereignties and, with respect to their municipal regulations, are to each other foreign."

This character of the laws of one state in relation to the others is strongly exemplified in the particular subject under consideration, which is governed, as to the necessity of protest and rate of damages, by different rules in the different states. In none of these laws however, so far as we can discover from Griffith's Law Register, to which we were referred by the counsel, except those of Virginia, are bills, drawn in one state upon another, designated as inland, although the damages allowed upon protested bills of that description are generally and with

great propriety lower than upon bills drawn upon a country foreign to the United States, since the disappointment and injury to the holder must always be greater in the latter than in the former case. It is for the same reason, no doubt, that by the laws of most of the states, bills drawn in and upon the same state and protested are either exempt from damages altogether or the rate is lower upon them than upon bills drawn on some other of the states.

The only case which was cited at the bar or which has come to our knowledge to show that a bill drawn in one state upon a person in any other of the states is an inland bill is that of *Miller v. Hackley*, 5 Johns. 375. Alluding to this case in the third volume of his Commentaries 63 in a note, Chancellor Kent remarks very truly that the opinion was not given on the point on which the decision rested, and he adds that it was rather the opinion of Mr. Justice Van Ness than that of the court. It is not unlikely, besides, that that opinion was in no small degree influenced by what is said by Judge Tucker in a note to 2 Black.Com.

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467, which was much relied upon by one of the counsel in the argument, where the author would appear to define an inland bill, as being one drawn by a person residing in one state on another within the United States. He is so understood by Chancellor Kent in the passage which has been referred to, but this is undoubtedly by a mistake, as the note manifestly refers to the laws of Virginia, and by an act of that state, passed on 28 December, 1795, it is expressly declared that all bills of exchange drawn by any person residing in that state on a person in the United States shall be considered in all cases as inland bills. The case of *Miller v. Hackley* therefore can hardly be considered as an authority for the position which it was intended to maintain. We think it cannot be so considered by the courts of New York, since the principle supposed to be decided in that case would seem to be directly at variance with the uniform decisions of the same courts upon the subject of judgments rendered in the tribunals of the sister states. In the case of *Hitchcock v. Aicken*, 1 Caines 460, all the judges seem to have treated those judgments as foreign in the courts of New York, and the only point of difference between them grew out of the construction of the 1st section of the Fourth Article

of the Constitution of the United States and the Act of Congress of 26 May, 1790, ch. 38, respecting the effect of those judgments and the credit to be given to them in the courts of the sister states.

It would seem from a note to the case of *Bartlett v. Knight*, 1 Mass. 430, where a collection of state decisions on the same subject is given, that these judgments had generally if not universally been considered as foreign by the courts of many of the states. If this be so, it is difficult to understand upon what principle bills of exchange drawn in one state upon another state can be considered as inland unless in a state where they are declared to be such by a statute of that state.

It has not been our good fortune to see the case of *Duncan v. Course*, 1 South Carolina Constitutional Reports 100, but the note above referred to in 3 Kent's Com. informs us that it decides that bills of this description are to be

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considered in the light of foreign bills, and the learned commentator concludes, upon the whole and principally upon the ground of the decision just quoted, that the weight of American authority is on that side.

That it is so in respect to the necessity of protesting bills of that description was not very strenuously controverted by the counsel for the defendant. But he insists that under a just construction of the 11th section of the Judiciary Act, concerning the jurisdiction of the federal courts, these bills ought to be considered and treated as inland. The argument is that the mischief intended to be remedied by the provisions in the latter part of that section by the assignment of promissory notes and other choses in action is the same in relation to bills of exchange of the character under consideration.

We are of a different opinion. The policy which probably dictated this provision in the above section was to prevent frauds upon the jurisdiction of those courts by pretended assignments of bonds, notes, and bills of exchange strictly inland, and as these evidences of debt generally concern the internal negotiations of the inhabitants of the same state and would seldom find their way fairly into the hands

of persons residing in another state, the prohibition as to them would impose a very trifling restriction, if any, upon the commercial intercourse of the different states with each other. It is quite otherwise as to bills drawn in one state upon another. They answer all the purposes of remittances and of commercial facilities equally with bills drawn upon other countries or *vice versa*, and if a choice of jurisdictions be important to the credit of bills of the latter class, which it undoubtedly is, it must be equally so to that of the former.

Nor does the reason for restraining the transfer of other choses in action apply to bills of exchange of this description, which, from their commercial character, might be expected to pass fairly into the hands of persons residing in the different states of the union. We conclude upon the whole that in no point of view ought they to be considered otherwise than as foreign bills.

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This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland and on the questions and points on which the judges of the said circuit court were opposed in opinion and which were certified to this Court for its opinion and was argued by counsel, on consideration whereof it is the opinion of this Court that the bill of exchange on which this action is brought ought to be considered as a foreign bill within the meaning of the 11th section of the Judiciary Act of 24 September, 1787, and that the said circuit court has jurisdiction of this cause, whereupon it is considered, ordered, and adjudged by this Court, that it be certified to the said Circuit Court for the District of Maryland that the bill of exchange on which this action is brought ought to be considered as a foreign bill within the meaning of the 11th section of the Judiciary Act of 24 September, 1787, and that that Court has jurisdiction of the cause. [ [Footnote 3](#) ]

[ [Footnote 1](#) ]

Vol. II, p. 467.

[ [Footnote 2](#) ]

Bayley, Kyd.

[ [Footnote 3](#) ]

The opinion of Mr. Justice Washington in the case of *Lonsdale v. Brown*, in which the same point was ruled in the Circuit Court of the United States for the Eastern District of Pennsylvania, will be found in the appendix, No. II [omitted -- see printed version].

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