Thornton Vs. Bank of Washington

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Court : US Supreme Court

Decided On : 1830

Appeal No. : 28 U.S. 36

Appellant : Thornton

Respondent : Bank of Washington

Judgement :

Thornton v. Bank of Washington - 28 U.S. 36 (1830)
U.S. Supreme Court Thornton v. Bank of Washington, 28 U.S. 3 Pet. 36 36 (1830)

Thornton v. Bank of Washington

28 U.S. (3 Pet.) 36

ERROR TO THE CIRCUIT COURT OF THE COUNTY

OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

The party who demurs to evidence seeks thereby to withdraw the consideration of the facts from the jury, and is therefore bound to admit not only the truth of the evidence, but every fact which that evidence may legally conduce to prove in favor

of the other party. And if upon any view of the facts, the jury might have given a verdict against the party demurring, the court is also at liberty to give judgment against him.

The taking of interest in advance upon the discount of a note in the usual course of business by a banker is not usury. This has been long settled, and is not now open for controversy.

The taking of interest for sixty-four days on a note is not usury if the note given for sixty days, according to the custom and usage in the banks at Washington, was not due and payable until the sixty-fourth day. In the case of *Renner v. Bank of Columbia,* 9 Wheat. 581, it was expressly held that under that custom the note was not due and payable before the sixty-fourth day, for until that time the maker could not be in default.

Where it was the practice of the party who had a sixty day note discounted at the Bank of Washington, to renew the note by the discount of another note on the sixty-third day, the maker not being in fact bound to pay the note according to the custom prevailing in the District of Columbia; such a transaction on the part of the banker is not usurious, although on each note the discount for sixty-four days was deducted. Each note is considered as a distinct and substantive transaction. If no more than legal interest is taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note before it comes due, does not of itself make the transaction usurious. Something more must occur. There must be a contract between the bank and the party at the time of such discount, that the party shall not have the use and benefit of the proceeds until the former note becomes due, or that the bank shall have the use and benefit of them in the meantime.

This case was brought before the court to reverse the judgment of the circuit court on a demurrer to the evidence offered by the defendants in error, the plaintiffs below, to sustain a claim on Mr. Thornton as endorser on a promissory note discounted at the bank of Washington for the benefit of one Bailey, the maker of the note.

The facts of the case are stated in the opinion of the Court, delivered by MR. JUSTICE STORY.

Page 28 U. S. 40

MR. JUSTICE STORY, after stating the facts, delivered the opinion of the Court.

This case comes before us on a demurrer to the evidence in the court below, taken by the original defendant, now plaintiff in error, and this in our judgment is very important to be considered in the determination of the case. The party who demurs to evidence seeks thereby to withdraw the consideration of the facts from the jury, and is therefore bound to admit not only the truth of the evidence as given, but every fact which that evidence may legally conduce to prove in favor of the other party. And if upon any view of the facts the jury might have given a verdict against the party demurring, the court is also at liberty to give judgment against him.

The defense set up against this action by the defendant is that the transaction is usurious within the meaning of the statute of Maryland against usury, which (it is admitted) is substantially like the English statute on the same subject. To sustain the defense, it has been urged that the receipts of the interest in advance for sixty-four days upon the discount of the note is usury. But we are all of opinion that the taking of interest in advance upon the discount of notes in the usual course of business by a bank is not usury. The doctrine has been long settled, and is not now open for controversy. The taking of the interest for sixty-four days is not usury if the note, according to the custom and usage in the banks at Washington, was not due and payable until the sixty-fourth day. That custom was

Page 28 U. S. 41

completely established not only by the evidence in the present case, but by that in *Renner v. Bank of Columbia,* 9 Wheat. 581, which is referred to in this record. In the latter case, it was expressly held by the Court that under that custom, the note was not due and payable before the sixty-fourth day, for until that time the maker

could not be in default.

Then again it is argued that here there have been successive renewals of the note, or rather successive notes given by way of renewal of the original note, and that these renewals have been on the sixty-third day, and the money credited on that day, on account of the existing note, and thus in effect sixty-four days interest has been taken upon loans for sixty-three days only. If there had been proved any contract between the bank and the party for whose benefit the original discount was made, that the original note should be so renewed from time to time, and the extra day's interest thereupon be taken by the bank, so that the bank would have been bound to make the renewal, and the party would have been bound to renew and not to pay the note at maturity; there would have been strong grounds on which to rest the argument. But the difficulty is that no such contract is to be found in the evidence, and the party demurring to the evidence asks the court to infer it from facts which do not necessarily import it, and may well admit of an explanation favorable to the other party. It is quite consistent with every fact in the case that the original discount may have been made without any such contract and that the application for the renewals may have been made from time to time by the party interested for his own accommodation, and without any previous understanding or cooperation on the part of the bank. For aught that appears, he was at liberty to have paid the original note, or any one of those afterwards given at the time when it became due. If of choice he had paid it on the sixty-third day instead of the sixty-fourth, there is no pretense to say that it would have been a case of usury. If, instead of payment, he offers a new note for discount for the purpose of applying the proceeds to the payment or withdrawal of the former note, under

the like circumstances, the case is not substantially varied. Each note is considered as a distinct substantive transaction. If no more than the legal interest is taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note, before it becomes due, does not of itself make the transaction usurious. Something more must occur. There must be a contract between the bank and the party at the time of such

discount, that the party shall not have the use or benefit of the proceeds until the former note becomes due, or that the bank shall have the use and benefit of them in the meantime. Such a contract being illegal is not to be presumed; it must be established in evidence. The argument requires the court to infer such illegality from circumstances in their own nature equivocal, and susceptible of different interpretations, and this in favor of the party demurring to the evidence. Even if the jury might have made such an inference from the evidence, we think it ought not to be made by the court, for the rule of law requires the court in such a case to make every inference and presumption in favor of the other party which the jury might legally deduce from the evidence; nor is this any hardship upon the party demurring to the evidence, for it is his own choice to withdraw from the jury, to whom it properly belongs, the consideration of the facts which he relies on as presumptive of usury.

Upon the other point suggested in the cause, whether banks are within the statute of usury, we entertain no doubt that they are. But, for the reasons already stated, we are of opinion that the judgment below ought to be

Affirmed.