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Mcdonald Vs. Magruder

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Court : US Supreme Court

Decided On : 1830

Appeal No. : 28 U.S. 470

Appellant : Mcdonald

Respondent : Magruder

Judgement :

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McDonald v. Magruder

28 U.S. (3 Pet.) 470

ERROR TO THE CIRCUIT COURT OF THE COUNTY

OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

A note was discounted at the Office of Discount and Deposit of the Bank of the United States in the City of Washington for the accommodation of the drawer, endorsed by Magruder and by McDonald, neither of the endorsers receiving any

value for his endorsement, but endorsing the note at the request of the drawer, without any communication with each other. The note was renewed from time to time under the same circumstances, and was at length protested for nonpayment, and separate suits having been brought by the bank against the endorsers, the drawer being insolvent, judgments in favor of the bank were obtained against both the endorsers. The bank issued an execution against Magruder, the first endorser, and he, having paid the whole debt and costs, instituted this suit against McDonald, the second endorser, for a contribution, claiming one-half of the sum so paid by him in satisfaction of the judgment obtained by the bank. *Held* that he was not entitled to recover.

That a prior endorser is, in the regular course of business, liable to his endorsee although that endorsee may have afterwards endorsed the note is unquestionable. When he takes up the note, he becomes the holder as entirely as if he had never parted with it, and may sue the endorser for the amount. The first endorser undertakes that the maker shall pay the note, or that he, if due diligence be used, will pay it for him. This undertaking makes him responsible to every holder and to every person whose name is on the note subsequent to his own and who has been compelled to pay its amount.

The endorser of a promissory note who receives no value for his endorsement from a subsequent endorser or from the drawer cannot set up the want of consideration received by himself; he is not permitted to say that the promise is made without consideration, because money paid by the promisee to another is as valid a consideration as if paid to the promisor himself.

Co-sureties are bound to contribute equally to the debt they have jointly undertaken to pay, but the undertaking must be joint, not separate and successive.

This was an action of assumpsit instituted in the circuit court by the defendant in error against the plaintiff in this Court. The matters in controversy were submitted to the jury by a case agreed which stated that the plaintiff produced in evidence a promissory note drawn by Samuel Turner, Jr., in favor of George B. Magruder or order at sixty days for $900, payable at the Office of Discount and Deposit at

Washington for value received, which note was signed by

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Samuel Turner and endorsed by George B. Magruder and by John G. McDonald.

The note was so drawn and endorsed with the understanding of all the parties thereto that it should be discounted in the Office of Discount and Deposit for the sole use and accommodation of the maker, Samuel Turner, no value being received by either of the endorsers. It was so discounted, and the proceeds thereof applied to the credit of Turner, in the office. Long before the making of the note, *viz.,* in the year 1819, Turner had two notes discounted for his use and accommodation in the office, *viz.,* one for $270, endorsed by George B. Magruder and by G. McDonald, and one for $710, endorsed by George B. Magruder and one Samuel Hambleton, which last mentioned note was continued, by renewal, with the endorsement of Magruder and Hambleton, until September, 1820, when, in consequence of Hambleton's absence, it was protested, after which the office permitted the accommodation to be renewed upon condition that Turner would get another good endorser in the place of Hambleton. Whereupon John G. McDonald, upon the solicitation of Turner, endorsed a note for the sum of $710, which was brought to him, already endorsed by George B. Magruder. That in March, 1821, a small part of the money having been paid, the two notes were consolidated and renewed by one note for $950, drawn by Turner and endorsed by Magruder and by McDonald, which was from time to time renewed by notes similarly drawn and endorsed, the last of which is this note, so produced in evidence by the plaintiff. Neither at the time of endorsing the notes respectively nor at any other time was there any communication between Magruder and McDonald upon the subject of such endorsement. Both of them, however, knew at the time of endorsement the notes were intended to be discounted for the accommodation of Turner, and in every instance Magruder was the first endorser. The note, so produced in evidence by the plaintiff, not having been paid when due, was duly protested, and the payment thereof having been duly demanded, and due notice given of such demand, and of nonpayment having been

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given to the endorsers, judgments at law were recovered against both, by the Bank of the United States, and the whole amount having been paid by Magruder, he brought this suit to recover from McDonald one-half of the amount so paid by him.

By consent of the parties, a verdict was rendered for the plaintiff for one-half of the amount so paid by the said Magruder, in satisfaction of the judgment against him; subject to the opinion of the court upon the case agreed.

Upon the case stated, the court below gave judgment for the plaintiff, and the defendant sued out this writ of error.

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

This is a writ of error to a judgment rendered by the Circuit Court of the United States for the County of Washington in the District of Columbia, in an action of *indebitatus assumpsit,* brought by the first endorser of a promissory note against the second endorser, to recover half its amount. The note was made by Samuel Turner, Jr., and endorsed George B. Magruder, John G. McDonald. At the trial of the cause, a case was agreed by the parties and the judgment of the circuit court was rendered in favor of the plaintiff on a verdict given by the jury, subject to the opinion of the court.

That a prior endorser is, in the regular course of business, liable to his endorsee although that endorsee may have afterwards endorsed the same note is unquestionable. When he takes up the note, he becomes the holder as entirely as if he had never parted with it, and may sue the endorser for the amount. The first endorser undertakes that the maker shall pay the note or that he, if due diligence be used, will pay it for him. This undertaking makes him responsible to every holder and to every person whose name is on the note subsequent to his own and who has been compelled to pay its amount.

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This is the regular course of business where notes are endorsed for value, but it is contended that where less than the amount is received, the endorser is responsible to his immediate endorsee only for the sum actually paid; consequently, if nothing is paid, the mere endorsement does not bind the endorser to pay his immediate endorsee anything. If B. endorses to C. the note of A. without value, and A. fails to take it up, it is as between B. and C. a contract without consideration, on which no action arises. This is undoubtedly true if C. retains the note in his own possession, and may be equally true if he endorses it for value. When he repays the money he has received, he is replaced in the situation in which he would have been had he never parted with the note. If he puts it into circulation on his own account, new relations may be created between himself and his immediate endorsee which may be affected by circumstances. In the case under consideration, the note took the direction intended by all the parties. It was endorsed by Magruder for the purpose of enabling Turner to discount it at the bank. To insure this object, Turner applied to McDonald, who placed his name also on the paper. No intercourse took place between the endorsers. No contract, express or implied, existed between them other than is created by their respective liabilities produced by the act of endorsement. What are these liabilities? The first endorser gave his name to the maker of the note for the purpose of using it in order to raise the money mentioned on its face. He made himself responsible for the whole sum upon the sole credit of the maker. His undertaking is undivided. He does not understand that any person is to share this responsibility with him.

But either the bank is unwilling to discount the note on the credit of the maker and his single endorser or the maker supposes his object will be insured by the additional credit given by another name. He presents the note therefore to McDonald, and asks his name also. McDonald accedes to his request and puts his name on the instrument. If the maker passes the note for value, the liability of McDonald to the holder is the same as if that value had been received

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by McDonald himself. Why is this? No consideration is received by McDonald, and this fact is known to the holder and discounter of the note. But a consideration is paid by the holder to the maker, and paid on the credit of McDonald's name. He cannot set up the want of a consideration received by himself; he is not permitted to say that the promise is made without consideration; because money paid by the promisee to another is as valid a consideration as if paid to the promisor himself.

In what does the claim of the second on the first endorser differ from that of the holder on the second endorser? Neither has paid value to his immediate endorser, but the holder has paid value to the maker on the credit of all the names to the instrument. The second endorser, if he takes up the note, has paid value to the holder in virtue of the liability created by his endorsement. If this liability was founded equally on the credit of the maker and of the first endorser if his undertaking on the credit of both subjects him to the loss consequent on the payment of the note, how can the contract between him and his immediate endorser be said to be without consideration?

If it be true, as we think it is, that Magruder, when he endorsed the note and returned it to the maker to be discounted, made himself responsible for its amount on the failure of the maker, if this responsibility was then complete, how can it be diminished by the circumstance that McDonald became a subsequent endorser? How can the legal liability of a first endorser to the second, who has been compelled to take up the note, be changed otherwise than by an express or implied contract between the parties?

This question has arisen and been decided in the courts of several states. *Wood v. Repold,* 3 Harris & Johns. 125, was a bill drawn by A. Brown, Jr., at Baltimore, on Messrs. Goold & Son of New York in favor of G. Wood & Co., and endorsed by G. Wood & Co. and afterwards by Repold, the plaintiff. The bill was drawn and endorsed for the purpose of raising money for the drawer, and was discounted at the Bank of Baltimore. On being protested for nonpayment, it was taken up by Repold and this suit brought against the

first endorser. Payment was resisted because the endorsement was, without consideration, for the accommodation of the drawer, but the court sustained the action. The same question arose in *Brown v. Mott,* 7 Johns. 361, on a promissory note, and was decided in the same manner. In that case, the court said that if he had taken it up at a reduced price, it would seem that he could only recover the amount paid. Undoubtedly if McDonald had been compelled to pay a moiety of this note, he could have recovered only that moiety from Magruder.

The case of *Douglass v. Waddle,* 1 Hammond 413, was determined differently. This case was undoubtedly decided on general principles, but the custom of the country and a statute of the state are referred to by the court as entitled to considerable influence. The weight of authority as well as of usage is, we think, in favor of the liability of the first endorser.

The claim of Magruder has also been maintained on the principle that they are co-sureties, and that he who has paid the whole note may demand contribution from the other.

The principle is unquestionably sound if the case can be brought within it. Co-sureties are bound to contribute equally to the debt they have jointly undertaken to pay; but the undertaking must be joint, not separate and successive. Magruder and McDonald might have become joint endorsers. Their promise might have been a joint promise. In that event each would have been liable to the other for a moiety. But their promise is not joint. They have endorsed separately and successively in the usual mode. No contract, no communication, has taken place between them which might vary the legal liabilities these endorsements are known to create. Those legal liabilities therefore remain in full force.

Upon this question of contribution the counsel for the defendants in error rely on two cases, reported in 2 Bos. & Pull. 268 and 270. The first, *Cowell v. Edwards,* was a suit by one surety on a bond against his co-surety for

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contribution. It was intimated by the court that each surety was liable for his aliquot part, but not liable at law to any contribution on account of the insolvency of some of the sureties. The party who had paid more than his just proportion of the debt could obtain relief in equity only.

The second case, *Sir Edward Deering v. Earl of Winchelsea, Sir John Rous, and the Attorney General,* was a suit in chancery in the Exchequer. Thomas Deering had been appointed receiver of fines, &c.;, and had given three bonds conditioned for faithful accounting, &c.; In one of these the plaintiff was surety, in another Lord Winchelsea, and in the third Sir John Rous. Judgment was obtained on the bond in which the plaintiff was surety, and this suit was brought against the sureties to the two other bonds for contribution. It was resisted on the ground that there was no contract between the parties, they having entered into special obligations. The Lord Chief Baron was disposed to consider the right to contribution as founded rather on the equity of the parties than on contract, and the court decreed contribution.

In this case, the parties were equally bound, were equally sureties for the same purpose, and were equally liable for the same debt. Neither had any claim upon the other superior to what that other had on him. The parties stood in the same relation not only to the Crown, to whom they were all responsible, and to the person for whom they were sureties, but to each other. Under these circumstances, contribution may well be decreed *ex equali jure.* But in the case at bar, the parties do not stand in the same relation to each other. The second endorser gives his name on the faith of the first endorser as well as of the maker. The first endorser gives his name on the faith of the maker only. Unquestionably these liabilities may be changed by contract, but no contract existing between these parties, it is not a case to which the principle of contribution applies.

No notice has been taken of the form of the action. It is admitted that Magruder, having paid the whole note,

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may recover a moiety from McDonald, if their undertaking is to be considered as joint, if he, as first endorser, is not responsible to McDonald for any part of it which McDonald may have paid.

The judgment is to be reversed and the cause remanded with directions to set aside the verdict and enter judgment as on a nonsuit.

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