Boyce and Henry Vs. Edwards

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Court : US Supreme Court

Decided On : 1830

Appeal No. : 29 U.S. 111

Appellant : Boyce and Henry

Respondent : Edwards

Judgement :

Boyce & Henry v. Edwards - 29 U.S. 111 (1830)
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Boyce & Henry v. Edwards

29 U.S. (4 Pet.) 111

ERROR TO THE CIRCUIT

COURT OF SOUTH CAROLINA

SYLLABUS

Action on two bills of exchange drawn by Hutchinson on B. and H. in favor of E. which the drawers, B. and H. refused to accept, and with the amount of which bills E. sought to charge the defendants as acceptors, by virtue of an alleged promise

before the bills were drawn.

The rule on this subject is laid down with great precision by this Court in the case of *Coolidge v. Payson,* 2 Wheat. 75, after much consideration and a careful review of the authorities, that a letter written within a reasonable time before or after the date of a bill of exchange, describing it in terms not to be mistaken and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding on the person who makes the promise.

Whenever the holder of a bill seeks to charge the drawee as acceptor upon some occasional or implied undertaking, he must bring himself within the spirit of the rule laid down in *Coolidge v. Payson.*

The rule laid down in *Coolidge v. Payson* requires the authority to be pointed at the specific bill or bills to which it is intended to be applied in order that the party who takes the bill upon the credit of such authority may not be mistaken in its application.

The distinction between an action on a bill as an accepted bill and one founded on a breach of promise to accept seems not to have been attended to. But, the evidence necessary to support the one or the other is materially different. To maintain the former, the promise must be applied to the particular bill alleged in the declaration to have been accepted. In the latter, the evidence, may be of a more general character, and the authority to draw may be collected from circumstances and extended to all bills coming fairly within the scope of the promise.

Courts have latterly leaned very much against extending the doctrine of implied acceptances, so as to sustain an action upon a bill. For all practical purposes in commercial transactions in bills of exchange, such collateral acceptances are extremely inconvenient and injurious to the credit of bills, and this has led judges frequently to express their dissatisfaction that the rule has been carried so far as it has, and their regret that any other act than a written acceptance on the bill, had

ever been deemed an acceptance.

As it respects the rights and the remedy of the immediate parties to the promise to accept, and all others who may take bills upon the credit of such promise, they are equally secure and equally attainable by an action for the breach of the promise to accept as they would be try an action on the bill itself.

The contract to accept the bills, if made at all, was made in Charleston, South Carolina. The bills were drawn in Georgia on B. and H. in Charleston, and with a view to the State of South Carolina for the execution of the contract. The interest is to be charged at the rate of interest in South Carolina.

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An action of assumpsit was brought in the Circuit Court of South Carolina by Timothy Edwards, a citizen of the State of Georgia, against Boyce & Henry, merchants of Charleston, upon two bills of exchange drawn by Adam Hutchinson at Augusta, Georgia, on the plaintiffs in error, dated 27 February, 1827, payable sixty days after sight, amounting together to $4,431. The bills were duly protested for nonacceptance and nonpayment.

The plaintiff in the circuit court gave in evidence a letter from Boyce, Johnson & Henry dated at Charleston, March 9, 1825.

"Mr. Edwards -- Mr. Adam Hutchinson of Augusta is authorized to draw on us for the amount of any lots of cotton he may buy and ship to us as soon after as opportunity will offer; such drafts will be duly honored."

He also gave in evidence the following notice, signed by Kerr, Boyce, and George Henry, which was published in the Charleston newspaper on 28 March, 1825.

"The co-partnership heretofore existing under the firm of Boyce, Johnson & Henry is this day dissolved by the death of Mr. Samuel Johnson, Jr. The business will be conducted in future by the subscribers under the firm of Boyce & Henry, who improve this opportunity of returning thanks to their friends for their liberal

patronage, and hope by assiduity and attention to merit a continuance of their support."

The plaintiff also gave in evidence a letter from Boyce & Henry to Adam Hutchinson dated September 14, 1826, which contained these words. "But in the meantime, if you can buy cotton on good terms, you are at liberty to draw as before."

Also a letter from the same to the same, dated 16 September, 1826, advising him of the sale of a large parcel of cotton and saying, "we wrote you last mail with authority to draw on us as usual, if you could buy to make here at 8 to 9 cents."

Also another letter from the same to Adam Hutchinson

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of January 4, 1827.

"Your favor of the 1st instant is received. You have entirely mistaken us as to our losing confidence in you; our idea is this -- we are unable to keep so large a sum beyond our control as the amount which is now standing on our books. For instance, should any accident happen to you, where would be the money to pay your drafts which are now on us and are accepted? Should you die, the cotton or money would of course be held by whoever manages your estate. But to come to the point, we feel every disposition to give you every facility in our power; you are therefore at liberty to draw on us when you send the bill of lading. We do not put you on the footing of other customers, for we do not allow them to draw for more than three-fourths in any instance. You may draw for the amount,"

&c.;

Also a letter of February the 17, 1827, acknowledging the receipt of the bill of lading for 158 bales of cotton and stating as follows: "Your bills have been presented which you gave to Timothy Edwards, which we would have accepted had we heard from you concerning the first bill," &c.;

The plaintiff then gave in evidence a letter from Adam Hutchinson of February 7, 1827, to Boyce & Henry saying

"The cotton by the Edgefield you will please have reweighed and put into store, as I do not wish it sold until the draft drawn against it becomes due. I am shipping by the *Commerce* one hundred and nineteen bales cotton; it cost $3,320,"

&c.;

Also a letter of 9 February, 1827, from Adam Hutchinson to Boyce & Henry.

"After writing you by last mail, I bought thirty-nine bales of cotton more, and shipped it per the *Commerce,* &c.; the thirty-nine bales cost here $1,111. . . . I yesterday drew upon you two drafts for $2,331 and for $2,100 at sixty days in favor of Mr. T. Edwards, which please honor."

The defendants in the circuit court objected to the reading

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in evidence the letters from Boyce, Johnson & Henry to Timothy Edwards in March, 1827; also to the letters from Boyce & Henry and from Adam Hutchinson to Boyce & Henry. But the objections were overruled by the court.

The court stated to the jury that the letter of Boyce, Johnson & Henry of 9 March, 1825, in connection with other evidence in the cause, was sufficient to charge the defendants in the circuit court as acceptors. The court relied principally on the fact that Boyce & Henry, on 12 April, 1825, a few days after they had announced the dissolution of the co-partnership of Boyce, Johnson & Henry, had credited themselves in the account current which accompanies the bill of exceptions, with the sum of $1,313.58 due by Adam Hutchinson to the late firm, thus identifying the firms and continuing the responsibility under the letter of guarantee to the plaintiff dated 9 March, 1825. The court also relied upon the continued acceptance and payment by the defendants of numerous bills between the date of that letter and 15 February, 1827, previous to which day, *viz.,* on 12 February, 1827, they refused to accept the bills in question.

The court also charged the jury that unless from all the circumstances the jury should believe that the plaintiff knew of the letter from Boyce & Henry of 4 January, 1827, addressed to A. Hutchinson, and that he took the bills of 8 February, 1827 upon the faith of that letter, it would not legally bind them to accept the said bills, but that it was entirely a question for the jury whether the plaintiff had dealt with Hutchinson on the faith of that letter, and moreover whether he had or not was immaterial, because the previous letter, the notice, the accounts rendered, and the numerous bills drawn and accepted were ample authority for the plaintiff to take the bills in question. The court also instructed the jury that the true question was whether the plaintiff had dealt with Hutchinson on his credit or on the credit of Boyce & Henry. That the terms of the letter of 4 January having been complied with, the defendants were bound in good faith to accept the drafts of

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8 February; that the money raised by the sale of the 158 bales of cotton must be regarded as the money of Edwards, and not of Hutchinson; that it was not material whether the letter was written before or after the bill was drawn, for in either case it was, according to law, an acceptance.

A verdict and judgment were entered for the plaintiff in the circuit court allowing the plaintiff interest according to the laws of Georgia, and the defendants, having moved for a new trial which was refused, brought this writ of error.

They contended that the charge of the court was erroneous and that the verdict of the jury was contrary to law.

1. Because the letter of credit from Boyce, Johnson & Henry to Timothy Edwards in favor of Adam Hutchinson in March, 1825, was inadmissible as evidence against Boyce & Henry, and at all events it gave no authority to Hutchinson to draw on Boyce & Henry.

2. Because the other circumstances relied upon by the court to identify the firms of Boyce, Johnson & Henry and Boyce & Henry so as to extend the obligations of the said letters from the former to the latter were wholly insufficient for that purpose or

for making the defendants liable on other grounds.

3. Because the letters of Boyce & Henry to Adam Hutchinson and from Hutchinson to Boyce & Henry were inadmissible as evidence in this case, and even if they were not, they could create no right or obligation as between Edwards and Boyce & Henry, particularly as no proof was adduced to show that these letters were known to Edwards when he took the drafts.

4. Because the accounts current between Boyce & Henry and Hutchinson, produced by the plaintiff showed that at the time the drafts were drawn, Hutchinson was indebted to the defendants nearly $10,000, and the proceeds of the 158 bales of cotton were rightly applied to that balance.

5. Because Georgia interest ought not to have been allowed.

6. Because the charge of the judge and the finding of the

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jury, were erroneous in the foregoing particulars, and in several others.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This was an action of assumpsit, brought in the Circuit Court of the United States for the District of South Carolina,

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upon two bills of exchange drawn by Adam Hutchinson in favor of Timothy Edwards, the plaintiff in the court below, upon Boyce and Edwards the defendants, both bearing date on 8 February, 1827, the one for $2,100, and the other for $2,331, payable sixty days after sight.

The cause was tried before the district judge, and in the course of the trial several exceptions were taken on the part of the defendants below to the admission of evidence, and the ruling of the court upon questions of law, all which are embraced in the charge to the jury, to which a general bill of exceptions was taken, and the cause comes here upon a writ of error.

The bills of exchange were duly presented for acceptance, and on refusal were protested for nonacceptance and nonpayment, but the plaintiff sought to charge the defendants as acceptors, by virtue of an alleged promise to accept before the bills were drawn. And whether such liability was established by the evidence, is the main question in the cause. The evidence principally relied upon for this purpose consisted of two letters, the first as follows:

"Charleston, March 9, 1825"

"Mr. Edwards -- Dear Sir, Mr. Adam Hutchinson of Augusta is authorized to draw on us for the amount of any lots of cotton which he may buy and ship to us, as soon after as opportunity will offer; such drafts shall be duly honored by yours respectfully"

"Boyce, Johnson & Henry"

Johnson soon after died, and on the 28th of the same month of March, the defendants published a notice in the Charleston newspapers announcing a dissolution of the partnership by the death of Johnson and that the business would be conducted in future under the firm of Boyce & Henry. The other letter is from the defendants, of the date of 4 January, 1827, addressed to Adam Hutchinson, in which they say,

"You are at liberty to draw on us when you send the bill of lading. We do not put you on the footing of other customers, for we do not allow them to draw for more

than three-fourths in any instance. You may draw for the amount,"

&c.;

The defendants' counsel had objected to the admission of the first letter from Boyce, Johnson & Henry, and contended that this did not bind Boyce & Henry to accept bills drawn on them after the dissolution of the partnership was known, and desired the court so to instruct the jury. But the court stated to the jury that the said letter, in connection with the other evidence in the cause, was sufficient to charge the defendants as acceptors. The other evidence referred to by the court, as would appear from other parts of the charge, was the letter of 4 January, 1827; the notice of the dissolution of the partnership; the accounts rendered by the defendants; and the numerous bills, drawn and accepted by them, all which had been given in evidence in the course of the trial.

According to the view which we take of the instruction given by the court below at the trial, that the defendants upon the evidence were liable as acceptors, it becomes very unimportant to decide whether the letter of Boyce, Johnson & Henry should have been admitted or not. For we think in point of law there was a misdirection in this respect, even if the letter was properly admitted. We should incline, however, to the opinion that this letter, at the time when it was offered and objected to, and standing alone, would not be admissible evidence against the defendants. It was dated nearly two years before the bills in question were drawn, and was from a different firm. It was evidence between other and different parties. A contract alleged to have been made by Boyce & Henry could not be supported by evidence that the contract was made by Boyce, Johnson & Henry. It might be admissible, connected with other evidence showing that the authority had been renewed and continued by the new firm, and in support of an action on a promise to accept bills drawn on the new firm. But that was not the purpose for which it was received in evidence, or the effect given to it by the court in the part of the charge now under consideration. It was declared to be sufficient, in

connection with the other evidence, to charge the defendants as acceptors. And in this we think the court erred. Had the letter been written by the defendants

themselves, it would not have been sufficient to charge them as acceptors.

The rule on this subject is laid down with great precision by this Court, in the case of *Coolidge v. Payson,* 2 Wheat. 75, after much consideration, and a careful review of the authorities:

"That a letter written within a reasonable time, before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding the person who makes the promise."

This case was decided in the year 1817. The same question again came under consideration in the year 1828, in the case of *Schimmelpennich v. Bayard,* 1 Pet. 284, and received the particular attention of the court, and the same rule laid down and sanctioned, and this rule we believe to be in perfect accordance with the doctrine that prevails both in the English and American courts on this subject. At all events, we consider it no longer an open question in this Court, and whenever the holder of a bill seeks to charge the drawee as acceptor, upon some collateral or implied undertaking, he must bring himself within the spirit of the rule laid down in *Coolidge v. Payson,* and we think the present case is not brought within that rule.

With respect to the letter of 9 March, 1825, in addition to the objection already mentioned, that it is not an authority to draw emanating from the drawees of these bills; it bears date nearly two years before the bills were drawn, and what is conclusive against its being considered an acceptance is that it has no reference whatever to these particular bills, but is a general authority to draw at any time, and to any amount, upon lots of cotton shipped to them. This does not describe any particular bills in terms not to be mistaken.

The rule laid down in *Coolidge v. Payson* requires the authority to be pointed at the specific bill or bills to which

it is intended to be applied, in order that the party who takes the bill upon the credit of such authority may not be mistaken in its application.

And this leading objection lies also against the letter of 4 January, 1827. It is a general authority to Hutchinson to draw, upon sending to the defendants the bills of lading for the cotton. This is a limitation upon the authority contained in the former letter, even supposing it to have been adopted by the new firm, and must be considered *pro tanto* a revocation of it. Hutchinson is only authorized to draw, upon sending the bills of lading to the defendants. And although it may fairly be collected from the evidence, that that was done in the present case, it does not remove the great objection, that it is a general authority, and does not point to any particular bills, and describe them in terms not to be mistaken, as required by the rule in *Coolidge v. Payson.* The other circumstances relied on by the court to charge the defendants as acceptors are still more vague and indefinite, and can have no such effect.

The court therefore erred in directing the jury that the evidence was sufficient to charge the defendants as acceptors, and the judgment must be reversed.

The distinction between an action on a bill, as an accepted bill, and one founded on a breach of promise to accept, seems not to have been adverted to. But the evidence necessary to support the one or the other, is materially different. To maintain the former, as has been already shown, the promise must be applied to the particular bill alleged in the declaration to have been accepted. In the latter, the evidence may be of a more general character, and the authority to draw may be collected from circumstances, and extended to all bills coming fairly within the scope of the promise.

Courts have latterly leaned very much against extending the doctrine of implied acceptances, so as to sustain an action upon the bill. For all practical purposes, in commercial transactions in bills of exchange, such collateral acceptances are extremely inconvenient, and injurious to the credit of the bills, and this has led judges frequently to

express their dissatisfaction, that the rule had been carried as far as it has, and their regret that any other act, than a written acceptance on the bill, had ever been deemed an acceptance.

As it respects the rights and the remedy of the immediate parties to the promise to accept and all others who may take bills upon the credit of such promise, they are equally secure, and equally attainable by an action for the breach of the promise to accept, as they could be by an action on the bill itself.

In the case now before the Court, the evidence is very strong, if not conclusive, to sustain an action upon a count properly framed upon the breach of the promise to accept. The bills in question appear to have been drawn for the exact amount of the cost of the cotton shipped at the very time they were drawn. And if the bills of lading accompanied the advice of the drafts, the transaction came within the authority of the letter of 4 January, 1827, and if satisfactorily shown that the bills were taken upon the credit of such promise, and corroborated by the other circumstances given in evidence, it will be difficult for the defendants to resist a recovery for the amount of the bills.

With respect to the question of interest, we think that if the plaintiff shall recover at all, he will only be entitled to South Carolina interest. The contract of the defendants, if any was made upon which they are responsible, was made in South Carolina. The bills were to be paid there, and although they were drawn in Georgia, they were drawn, so far as repects the defendants, with a view to the State of South Carolina for the execution of the contract.

The judgment of the circuit court must be reversed and the cause sent back with directions to issue a venire de novo.