Bank of the Metropolis Vs. Jones

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Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 12

Appellant : Bank of the Metropolis

Respondent : Jones

Judgement :

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Bank of the Metropolis v. Jones

33 U.S. (8 Pet.) 12

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR

THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

In the case of *Bank of the United States v. Dunn,* 6 Pet. 51, this Court decided that a subsequent endorser was not competent to prove facts which would tend to discharge the prior endorser from the responsibility of his endorsement. By, the

same rule, the drawer of the note is equally incompetent to prove facts which tend to discharge the endorser.

The officers of the bank have no authority, as agents of the bank, to bind it by assurances which would release the parties to a note from their obligations. The principles of the case of *Bank of the United States v. Dunn,* 6 Pet. 51, affirmed.

This was an action on a promissory note drawn by Betty H. Blake, executrix of J. H. Blake, for the sum of $5,200 on 27 March, 1822, in favor of the defendant and by him endorsed to plaintiffs. The defendant pleaded nonassumpsit and the statute of limitation.

On the trial of the cause before the circuit court, the following bill of exceptions was signed.

"Be it remembered that on the trial of the above cause, the plaintiff, in order to sustain the issue, gave in evidence the following promissory note, on which the action was brought: "

" Washington City, March 27, 1822. $5,200. Sixty days after date, I promise to pay to Dr William Jones or order $5,200 for value received, negotiable at the Bank of the Metropolis."

"BETTY H. BLAKE"

" *Executrix of J. H. Blake* "

" 16 May, 1825. I do hereby admit that a part of the above note is due, and that I am bound to pay whatever balance thereof is due as far as I was originally bound as endorser."

"WILLIAM JONES"

" Endorsed -- WILLIAM JONES"

"And the defendant admitted the endorsement thereon, as well as the memorandum on the face thereof, to be in his handwriting,

and the plaintiff further proved that said note was regularly protested for nonpayment and notice thereof duly given to the defendant, and the defendant waived before the jury the defense upon the statute of limitation."

"Whereupon the defendant, to prove the issue on his part, under the plea of nonassumpsit, produced Mrs. Betty H. Blake, the drawer of said note, to whom a release was executed by defendant, exonerating her from any responsibility for the costs in this suit, to the form of which release no objection was made. The plaintiff objected to the competency of Mrs. Betty H. Blake to certify to any matters impeaching the original validity of the said note, or of said endorsement, but the court overruled the exception and permitted the said witness to be sworn and examined."

The evidence of Mrs. Blake was the following:

"That at the time of the death of her husband, Doctor James H. Blake, in the summer of 1819, there were several notes drawn by him running in said Bank of the Metropolis, and that said deceased was also indebted to other persons in various sums. That when the notary came with one of said notes to procure payment from her, she, being the sole devisee and executrix of the last will and testament of said deceased, objected to a renewal. Witness sent to General Van Ness, who was at the time the president of the said Bank of the Metropolis, and whom her deceased husband, on his death bed, had recommended to her to consult. Witness informed him that she did not wish to renew the notes, but he advised her to amalgamate the notes in bank. She informed him that she could not ask anyone to endorse for her; that she would prefer having the property sold, and the debts paid. She never heard General Van Ness say anything upon the subject of the endorsements by the defendant until long after they were made. Her conversation with General Van Ness was in relation to the endorsement by her son James; he was consulted by her as her confidential friend and adviser. He advised her against selling the property, as it was very valuable and would increase daily in value; that witness had better procure some friend to endorse for

her; that the security was so valuable the endorser would incur no responsibility. He suggested her son James as an endorser. She said he was not of age, and that she did

not wish him to commence the world encumbered with liabilities. He said it was immaterial; that the security was so valuable he could incur no risk. Under this impression, and in consequence of this conversation, she procured her son to endorse said note, and he continued on the note until he left Washington in the autumn of 1820; and she then mentioned to Dr Jones, the defendant, what General Van Ness had advised and informed her, who in consequence became the endorser, and so continued upon the renewal of said notes until the date of the note in question. She gave a deed of trust of certain property of James H. Blake, to secure the Metropolis Bank the amount of the note, which she has been advised she had no authority to give because she was not authorized to give a preference to the Bank of the Metropolis over other creditors, and she has repeatedly mentioned this circumstance."

The counsel for the plaintiff moved the court to instruct the jury that this evidence was incompetent upon the trial of the issue, but the court overruled the motion and instructed the jury that the evidence was competent and proper evidence for their consideration on the trial.

To this overruling exception was taken, and the plaintiffs prosecuted this writ of error.

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This cause was brought into this Court by writ of error to the Circuit Court of Washington County in the District of Columbia. In that court, an action was commenced by the Bank of the Metropolis against the defendant on a promissory note drawn by Betty H. Blake for the sum of $5,200, dated 27 March, 1822, payable in sixty

days and negotiable at the Bank of the Metropolis, which note was endorsed by the defendant to the bank.

The defendant pleaded nonassumpsit and the statute of limitations, but on the trial waived the latter plea.

The plaintiff proved the endorsement of the defendant, that the note was regularly protested for nonpayment and due notice given.

On the trial, Betty H. Blake, the drawer of the note, was offered as a witness after the defendant had executed to her a release from any responsibility on account of the costs of the suit, and the court permitted her to be sworn. Among other things, this witness gave in evidence to the jury

"That at the time of the death of her husband, Doctor James H. Blake, in the summer of 1819, there were several notes drawn by him running in the Bank of the Metropolis, and that he was also indebted to other persons in various sums. That when the notary came with one of said notes to procure payment from her, she being the sole devisee and executrix of the last will and testament of said deceased, she objected to a renewal. Witness sent to General Van Ness, who was at the time the president of the Bank of the Metropolis, and whom her deceased husband, on his deathbed, recommended her to consult. She informed him that she did not wish to renew the notes, but he advised her to amalgamate them in bank; that she informed him that she could not ask anyone to endorse for her, and would prefer having the property sold and the debts paid. General Van Ness advised her against selling the property, as it was very valuable and would increase daily in value, and that she had better procure some friend to endorse for her; that the endorser would incur no responsibility, as the property was so valuable. In pursuance of this advice, she procured the endorsement of her son James, who was underage, and afterwards, when he had left the City of Washington, she procured the defendant to endorse for her on stating to him the advice and information given to her by General Van Ness."

Whereupon the counsel for the plaintiffs moved the court to overrule said evidence and to instruct the jury that it was incompetent upon the trial of the said issue, but the court refused to do so, and they instructed the jury that the said evidence was

competent and proper for their consideration, to which opinion and instructions of the court a bill of exceptions was taken.

The principle involved in this case is substantially the same that was decided by this Court in the case of *Bank of the United States v. Dunn,* 6 Pet. 51. In that case, the Court said, "it is a well settled principle that no person who is a party to a negotiable instrument shall be permitted, by his own testimony, to invalidate it." And this doctrine is sustained by reason and authority. If an individual whose name appears upon the face of a negotiable instrument, either as drawer, endorser, or acceptor, shall be a competent witness to prove facts or circumstances which lessen or destroy its value before or at the time he gives it currency, the credit of commercial paper could not be sustained. The rule laid down in 1 Term 296 on this subject is a sound one and was sanctioned by this Court in the case above cited.

On the part of the defendant in error it is contended that the witness objected to was not the only witness in the case, and that her testimony was competent as far as it went. That the court were not called on to decide whether the facts stated by the witness were sufficient in law to discharge the defendant from his responsibility, but whether they conduced to prove an imposition practiced on him by the bank which ought to discharge him.

If the testimony of the witness impaired the obligation of the note, it was inadmissible under the rule stated, and that this was the tendency of the evidence appears from the facts stated and the argument just noticed. In the case cited of *Bank of the United States v. Dunn,* this Court decided that Carr, who was an endorser after Dunn, was not competent to prove facts which would tend to discharge Dunn from the responsibility of his endorsement. And is it not clear by

the same rule that in the case under consideration, the drawer of the note is equally incompetent to prove facts which tend to discharge the endorser?

In both cases, the discharge of the endorser was urged on the ground that certain statements had been made by the officers of the bank which induced the endorser to sign the paper under a belief that by doing so he incurred no responsibility. As the ground already stated is clear, it is unnecessary to add

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in this case, as was stated by the court in the case of *Dunn,* that the officers of the bank had no authority, as agents of the bank, to bind it by the assurances which they gave.

The judgment of the circuit court is

Reversed and the cause remanded for further proceedings.

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 Columbia, holden in and for the County of Washington, and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein according to law and justice and in conformity to the opinion of this Court.