Lee Vs. Dick

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SooperKanoon Citation : sooperkanoon.com/79560

Court : US Supreme Court

Decided On : 1836

Appeal No. : 35 U.S. 482

Appellant : Lee

Respondent : Dick

Judgement :

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Lee v. Dick

35 U.S. (10 Pet.) 482

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF WEST TENNESSEE

SYLLABUS

Commercial guarantee. L., at Memphis, Tennessee, addressed a letter to D. & Co. at New Orleans stating that N. & D. wished to draw on them for $2,000, saying, "Please accept their draft, and I hereby guarantee the punctual payment of it." In a

letter of the same date to one of the firm of N. & D., he says "I send a guarantee for $2,000. The balance I have no doubt your friend W. will do for you." N. & D. drew a bill on D. & Co. for $4,250, which they accepted, and after having paid the draft, they gave notice to L. that they looked to him for the money. No notice was given by D. & Co. to L. that they intended to accept or had accepted and acted upon the guarantee before they paid the draft. The drawers of the bill did not reimburse D. & Co. for any part of it. Action was instituted to recover $2,000 from L., being part of the bill for $4,250. *Held* that although the bill was drawn for $4,250, the guarantee would have operated to bind L. for the sum of $2,000 included in it if notice of the acceptance of it had been given by D. & Co. to L.; but having omitted to give such notice, or that they intended to accept or had accepted and acted on the guarantee, L. was not liable to D. & Co. for any part of the bill for $4,250.

A guarantee is a mercantile instrument, and to be construed according to what is fairly to be presumed to have been the understanding of the parties, without any strict technical nicety.

If the guarantee stood alone, unexplained by the letter which accompanied it, it would undoubtedly be limited to a specific draft for $2,000, and would not cover that amount in a bill for a larger sum; but the letter which accompanied it fully justifies the conclusion that the defendant undertook to guarantee $2,000 in a draft for a larger amount. The letter and guarantee were both written by the defendant on the same sheet of paper, bear the same date, and may be construed together as constituting the guarantee.

The decision of the Court in the case of *Douglass v. Reynolds,* 7 Pet. 125, affirmed. In that case, the Court held that a party giving a letter of guarantee has a right to know whether it is accepted and whether the person to whom it is addressed means to give credit on the footing of it or not. It may be most material not only as to his responsibility, but as to future rights and proceedings. It may regulate in a great measure his course of conduct and his exercise of vigilance in regard to the party in whose favor it is given. Especially it is important in case of a continuing guarantee, since it may guide his judgment in recalling or suspending it.

This last remark by no means warrants the conclusion that notice is not necessary in a guarantee of a single transaction, but only that the reason of the rule applies more forcibly to a continuing guarantee.

The same strictness of proof as to the time in which notice of the intention to act under the guarantee is to be given to charge a party upon his guarantee as would be necessary to support an action upon the bill itself when by the law of merchant a demand upon and refusal by the acceptors must be proved in order to charge any other party upon the bill. There are many cases where the guarantee

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is of a specific existing demand by a promissory note or other evidence of a debt and such guarantee is given upon the note itself or with reference to it and recognition of it, when no notice would be necessary. The guarantor in such cases knows precisely what he guarantees and the extent of his responsibility, and any further notice to him would be useless. But when the guarantee is prospective and to attach upon future transactions and the guarantor uninformed whether his guarantee has been accepted and acted upon or not, the fitness and justice of the rule requiring notice is supported by considerations that are unanswerable.

IN error to the Circuit Court of the United States for the District of West Tennessee.

On 24 September 1832, Samuel B. Lee, the plaintiff in error, of Memphis, Tennessee, addressed to N. & J. Dick and Company, at New Orleans, a letter in the following terms:

"Gentlemen -- Nightingale & Dexter, of Maury County, Tennessee, wish to draw on you at six and eight months; you will please accept their draft for $2,000, and I do hereby guarantee the punctual payment of it."

"SAMUEL B. LEE"

On the same paper containing this guarantee and on the same day, Mr. Lee wrote a letter to P. B. Dexter, one of the firm of Nightingale & Dexter, in which he says

"I have no objections to guarantee your bill except it might affect my own operations. I, however, send guarantee for $2,000, which you can use if you choose. The balance, I have no doubt your friend Mr. Watson will do for you. I would cheerfully do the whole amount, but expect to do business with that house and do not wish to be cramped in my own operations."

On 5 October, 1832, Nightingale & Dexter, at Nashville, having forwarded the letter of guarantee given by the plaintiff in error, drew a bill of exchange for $4,250 on N. & J. Dick, at New Orleans, payable six months after date, which bill was accepted on the faith of the guarantee, and they paid the same, and gave notice to Mr. Lee that they looked to him for the money.

The defendants in error not having been repaid the amount of the bill by the drawers, instituted an action against Samuel B. Lee on his guarantee, and in September, 1835, the cause was tried and a verdict and judgment were rendered in favor of the plaintiffs.

During the progress of the trial of the cause, the following bill of exceptions was tendered, and was sealed by the court.

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The court charged the jury that if the defendant intended to guarantee a bill of exchange, to be drawn for $2,000, he would not be liable upon a bill drawn for upwards $4,000, but if he intended to guarantee $2,000 of a bill to be drawn for a larger amount, that then he would be liable for the $2,000. That the court was of opinion the letter accompanying the guarantee was admissible in evidence to explain whether the guarantor meant to guarantee a bill for $2,000 or only $2,000 in a bill for a larger amount, and it was the opinion of the court that the true construction of the guarantee was that he intended to guarantee the payment of $2,000 in a bill to be drawn for a larger amount. The court also charged the jury that no notice by N. & J. Dick & Co. to the defendant that they intended to accept or had accepted and acted upon this guarantee was necessary.

The defendant prosecuted this writ of error.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This was a special action on the case on a guarantee given by the plaintiff in error in favor of Nightingale & Dexter. The declaration is special, stating that the defendant in the court below, by his guarantee bearing date 24 September in the year 1832, directed and addressed to the plaintiffs below, requested them to accept the draft of Nightingale & Dexter for the amount of $2,000, and thereby promised to guarantee the punctual payment of the same to that amount, and avers that Nightingale & Dexter afterwards, on 5 October, 1832, drew a bill on the plaintiffs below for $4,250, and that, confiding in the promise of the defendant, they accepted the same, &c.; The declaration contains a count alleging an agreement by the defendant to guarantee the payment of $2,000, part of the $4,250, with the necessary averments to charge the defendant with the payment of the $2,000.

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The defendant pleaded the general issue; and upon the trial of the cause, the plaintiff produced the following evidence:

"Memphis, September 24, 1832"

"Messrs N. & J. Dick & Co."

"Gentlemen: Nightingale & Dexter, of Maury County, Tennessee, wish to draw on you at six or eight months date. You will please accept their draft for $2,000, and I do hereby guarantee the punctual payment of it. Very respectfully your obedient servant."

"SAMUEL B. LEE"

"Nashville, October 5, 1832"

"Exchange for $4,250 00."

"Six months after date of this first of exchange (second unpaid), pay to H. R. W. Hill or order, $4,250, value received, and charge the same to account of yours, &c.;"

"NIGHTINGALE & DEXTER"

"To N. & J. Dick & Co., New Orleans"

The plaintiff also offered in evidence the following letter of the defendant, Samuel B. Lee, which letter was written upon the same sheet of paper with the guarantee, but on different parts of it.

"Memphis, September 24 1832"

"Mr. P. B. Dexter."

"Dear Sir: Yours of the 15th inst. came to hand in due time. I was absent, or should have answered it sooner. I left Mount Pleasant sooner than I expected when I saw you last. I learned that my presence was wanted at Savannah, and put o p h. I had calculated to get along with business without having anything to do with drawing bills or with the bank, but there is no cash in this quarter, and our bills at the east are falling due, and I have no other alternative but to draw for what funds I am compelled to have, and may, during the winter (should I go largely into the cotton market), wish to draw for a considerable amount. I have no objections to guarantee your bill, except it might affect my own operations. I, however, send a guarantee for $2,000, which you can use if you choose. The balance, I have no doubt, your friend Mr. Watson will do for you. I would cheerfully to the whole amount, but expect to do business with that house, and do not wish to be cramped

in my own operations. Spun thread, also coarse homespun, are in good demand. My compliments to Mrs. and Miss Nightingale. Your friend,"

"SAMUEL B. LEE"

It was agreed by the counsel that the bill of exchange and letter should go to the jury, and their effect, &c.;, be charged upon by the court. The plaintiff proved that N. & J. Dick & Co. accepted the above bill upon the faith of the said guarantee, and that they had paid it, and gave notice to the defendant that they looked to him for the money. The court charged the jury that if the defendant intended to guarantee a bill of exchange to be drawn for $2,000, he would not be liable for a bill drawn for upwards of $4,000. But if he intended to guarantee $2,000 of a bill to be drawn for a larger amount, then he would be liable for the $2,000. That the court was of opinion that the letter accompanying the guarantee was admissible in evidence to explain whether the guarantor meant to guarantee a bill for $2,000 or only $2,000 in a bill for a larger amount. The court also charged the jury that no notice by N. & J. Dick & Co. to the defendant that they intended to accept or had accepted and acted upon this guarantee was necessary. To which opinion of the court the defendant excepted.

The questions arising upon this case are:

1st, whether this evidence will warrant the conclusion, that the defendant intended to guarantee $2,000 in a bill to be drawn for a larger sum.

2dly, whether N. & J. Dick & Co. were bound to give notice to the defendant that they intended to accept or had accepted and acted upon the guarantee.

A guarantee is a mercantile instrument, and to be construed according to what is fairly to be presumed to have been the understanding of the parties, without any strict technical nicety. If the guarantee stood alone, unexplained by the letter which accompanied it, it would undoubtedly be limited to a specific draft for $2,000, and would not cover that amount in a bill for a larger sum, but the letter which accompanied it fully justifies the conclusion that the defendant undertook to guarantee $2,000 in a draft for a larger amount. The letter and guarantee were both written by the defendant on the same sheet of paper, bear the same date, and may be

construed together as constituting the guarantee. 11 U. S. 7 Cranch 89. This letter is obviously in answer to one received from Dexter, one of the firm of Nightingale & Dexter, for he says,

"Your letter of the 15th instant came to hand in due time, &c.; I have no objection to guarantee your bill, except it might affect my own operations. I, however, send a guarantee for $2,000, which you can use if you choose."

This was clearly in answer to an application to guarantee a larger sum, and admits of no other construction than that he should have no objection to guarantee the whole sum he requested if he was not under apprehensions that it would affect his own operations. The bill not having been drawn until 5 October, eleven days thereafter, the letter must have referred to a bill he wished to draw. But this is not all. He adds, "The balance I have no doubt your friend, Mr. Watson, will do for you." The balance! What balance could this mean? Clearly the balance between the $2,000 for which he sent the guarantee and the amount of the sum mentioned in the letter for which he wanted a guarantee. And again he says: "I would cheerfully do the whole amount, but expect to do business with that house, and do not wish to be cramped in my own operations." The whole amount! What amount is here referred to? This admits of no other answer than that it was the amount of the sum mentioned in the letter he had written to Dexter, in which he requested a guarantee. The opinion of the circuit court, therefore, upon the construction of the guarantee was correct.

The next question is whether the plaintiffs were bound to give notice to the defendant that they intended to accept or had accepted and acted upon this guarantee. It is to be observed that this guarantee was prospective. It looked to a draft thereafter to be drawn, and this question is put at rest by the decisions of this Court. The case of *Russell v. Clark's Executors,* 7 Cranch 69, 11 U. S. 91 , was a bill in chancery to recover a sum of money upon a guarantee alleged to grow out of several letters, written by Clark & Nightingale, to Russell. The Court said

"We cannot consider these letters as constituting a contract by which Clark & Nightingale undertook to render themselves liable for the engagements of Robert Murray & Co. to Nathaniel Russel. Had it been such a contract, it would certainly have been the duty of the plaintiff to have given immediate notice to the defendant of the extent of his engagements."

Although the point now in question was not precisely the one before the Court in that case, as there was

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no contract of guarantee made out, yet it is laid down as a settled and undisputed rule. The case of *Edmondson v. Drake & Mitchell,* 5 Pet. 624, was an action founded on a letter of credit given by Edmondson to Castello & Black as follows:

"Gentlemen: The present is intended as a letter of credit in favor of my regarded friends, Messrs. J. & T. Robinson to the amount of $40 or $50,000, which sum they may wish to invest through you in the purchase of your produce. Whatever engagements these gentlemen may enter into will be punctually attended to."

On the trial, the court was requested to instruct the jury that in order to make the defendant liable to the plaintiff under the contract, they were bound by the law merchant to give him due notice. Upon this prayer the court was divided, and the instruction was not given, and this Court decided that the instruction ought to have been given. The Court said it would indeed be an extraordinary departure from that exactness and precision which peculiarly distinguish commercial transactions, which is an important principle in the law and usages of merchants, if a merchant should act on a letter of this character and hold the writer responsible without giving notice to him that he had acted on it. The authorities on this point, said the Court, unquestionably establish this principle. And again, the case of *Douglass v. Reynolds,* 7 Pet. 125, was an action upon a guarantee, and the court was requested to instruct the jury that to enable the plaintiff to recover on the letter of guarantee, they must prove that notice had been given in a seasonable time after said letter of guarantee had been accepted by them to the defendant that the

same had been accepted. This instruction the court below refused to give, and this Court said the instruction asked was correct, and ought to have been given. That a party giving a letter of guarantee has a right to know whether it is accepted and whether the person to whom it is addressed means to give credit on the footing of it or not. It may be most material not only as to his responsibility, but as to future rights and proceedings. It may regulate in a great measure his course of conduct, and his exercise of vigilance in regard to the party in whose favor it is given. Especially it is important in case of a continuing guarantee, since it may guide his judgment in recalling or suspending it. This last remark by no means warrants the conclusion that notice is not necessary in a guarantee of a single transaction, but only that the reason of the rule applies more forcibly to a continuing

guarantee. It is unnecessary, after such clear and decided authorities in this Court on this point, to fortify it by additional adjudications. We are not aware of any conflict of decisions on this point, and if there are, we see no reason for departing from a doctrine so long and so fully settled in this Court.

We do not mean to lay down any rule with respect to the time within which such notice must be given. The same strictness of proof is not necessary to charge a party upon his guarantee as would be necessary to support an action upon the bill itself when by the law merchant a demand upon and refusal by the acceptors must be proved in order to charge any other party upon the bill. 8 East 245. There are many cases where the guarantee is of a specific existing demand by a promissory note or other evidence of a debt and such guarantee is given upon the note itself or with a reference to it and recognition of it when no notice would be necessary. The guarantor in such cases knows precisely what he guarantees and the extent of his responsibility, and any further notice to him would be useless, 14 Johns. 349; 20 Johns. 365. But when the guarantee is prospective and to attach upon future transactions and the guarantor uninformed whether his guarantee has been accepted and acted upon or not, the fitness and justice of the rule requiring notice is supported by considerations that are unanswerable.

We are accordingly of opinion that the circuit court erred in deciding that notice was not necessary, and that the judgment must be

Reversed.

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 West Tennessee 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.