

**Adams, Cunningham and Co. Vs. Jones**

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**Court :** US Supreme Court

**Decided On :** 1838

**Appeal No. :** 37 U.S. 207

**Appellant :** Adams, Cunningham and Co.

**Respondent :** Jones

**Judgement :**

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207 (1838)

**Adams, Cunningham & Co. v. Jones**

**37 U.S. (12 Pet.) 207**

*ON CERTIFICATE OF DIVISION OF OPINION OF THE JUDGES OF  
THE CIRCUIT COURT FOR THE DISTRICT OF WEST TENNESSEE*

## **SYLLABUS**

Where a case is certified from a circuit court of the United States, the judges of the circuit court having differed in opinion upon questions of law which arose on the

trial of the cause, the Supreme Court cannot be called upon to express an opinion on the whole facts of the case instead of upon particular points of law, growing out of the case.

Upon a letter of guarantee addressed to a particular person or to persons generally for a future credit to be given to a party in whose favor the guarantee is drawn, to charge the guarantor, notice is necessarily to be given to him that the person giving the credit has accepted or acted upon the guarantee, and has given credit on the faith of it. This is not an open question in this Court after the decisions which have been made in [Russell v. Clarke](#), 7 Cranch. 69, 2 Cond. 417; [Edmondston v. Drake](#), 5 Pet. 624; [Douglass v. Reynolds](#), 7 Pet. 113, and [Lee v. Dick](#), 10 Pet. 482.

The defendant, Calvin Jones, was attached by a writ of *capias ad respondendum* issued on 22 May, 1835, to answer Adams, Cunningham & Company, they claiming from him the sum of fifteen hundred and twenty five dollars for goods furnished to Miss Betsey Miller under the following letter of guarantee.

"Mr. WILLIAM A. WILLIAMS: "

"SIR -- On this sheet you have the list of articles wanted for Miss Betsey Miller's millinery establishment, which you were so very good as to offer to purchase for her. I will be security for the payment, either to you, or the merchants in New York of whom you may purchase, and you may leave this in their hands or otherwise, as may be proper. I hope to your favor and view will be added all possible favor by the merchants to the young lady, in quality and prices of goods, as I have no doubt she merits as much, by her late knowledge of her business, industry, and pure conduct and principles, as any whatever."

"CALVIN JONES"

Mr. Williams, the person named in the guarantee, purchased the articles, according to the list furnished, from the plaintiffs, who were

merchants of New York, on 28 October, 1832. The goods were furnished on the faith of the guarantee, which was left with the plaintiffs.

During the progress of the cause, and whilst the same was before the jury, it occurred as a question "whether the plaintiffs were bound to give notice to the defendant, that they had accepted or acted upon the guarantee, and given credit on the faith of it." Upon which question, the opinions of the judges were opposed, whereupon, on motion of the plaintiffs, by their attorney, that the point on which the disagreement hath happened, may be stated, under the direction of the judges, and certified under the seal of the court, to the Supreme Court, to be finally decided. It was ordered that a statement of the pleadings and a statement of facts, which was made under the direction of the judges, be certified, according to the request of the plaintiffs, and the law in that case made and provided.

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MR. JUSTICE STORY delivered the opinion of the Court.

This cause comes before us upon a certificate of division of opinion of the judges of the Circuit Court of West Tennessee. The plaintiffs, Adams and others, brought an action against the defendant, Jones, for the amount of certain goods supplied by them upon the credit of the following letter of guarantee:

"Raleigh, September 25, 1832"

"MR. WILLIAM A. WILLIAMS: "

"SIR -- On this sheet you have the list of articles wanted for Miss Betsey Miller's millinery establishment, which you were so very good as to offer to purchase for her. I will be security for the payment, either to you or to the merchants in New York of whom you may purchase, and you may leave this in their hands or otherwise, as may be proper. I hope to your favor and view will be added all possible favor by the merchants to the young lady, in quality and prices of goods, as I have no doubt she merits as much, by her late knowledge of her business, industry, and pure conduct and principles as any whatever."

"CALVIN JONES"

"After the compliment that is paid me above, I should hardly be willing to place my name so near it, was I not told it was necessary and proper the merchants should know my handwriting generally, and particularly my signature."

"ELIZABETH A. MILLER"

The list of the articles was appended to the letter.

Upon the trial of the cause upon the general issue before the jury, it occurred as a question "whether the plaintiffs were bound to give notice to the defendant, that they had accepted or acted upon the guarantee, and given credit on the faith of it." Upon which question the opinions of the judges were opposed, and thereupon, according to the act of Congress, on motion of the plaintiffs, by their attorney, the point has been certified to this Court. A statement of the pleadings, and also a statement of facts made under the direction of the judges, have been certified as a part of the record. Some diversity of opinion has existed among the judges, as to the true nature and extent of the question certified; whether it meant to ask the opinion of this Court, whether, under all the circumstances disclosed in the evidence, any personal notice to the defendant, or any other notice than what was

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made known to Williams, was necessary to fix the liability of the defendant, or whether it meant only to put the general question of the necessity of notice in cases of guarantee. If the former interpretation were adopted, it would call upon this Court to express an opinion upon the whole facts of the case, instead of particular points of law growing out of the same; a practice which is not deemed by the majority of the Court to be correct, under the act of Congress on this subject. Act of 1802, ch. 31 sec. 6. The latter is the interpretation which we are disposed to adopt, and the question which, under this view, is presented is whether upon a letter of guarantee addressed to a particular person or to persons generally for a future credit to be given to the party in whose favor the guarantee is drawn, notice is necessary to be given to the guarantor that the person giving the credit has

accepted or acted upon the guarantee, and given the credit on the faith of it. We are all of opinion that it is necessary, and that this is not now an open question in this Court, after the decisions which have been made in *Russell v. Clarke*, 7 Cranch 69; *Edmondson v. Drake*, 5 Pet. 624; *Douglass v. Reynolds*, 7 Pet. 113; *Lee v. Dick*, 10 Pet. 482, and again recognized at the present term in the case of *Reynolds v. Douglass*. It is in itself a reasonable rule, enabling the guarantor to know the nature and extent of his liability; to exercise due vigilance in guarding himself against losses which might otherwise be unknown to him, and to avail himself of the appropriate means in law and equity, to compel the other parties to discharge him from future responsibility. The reason applies with still greater force to cases of a general letter of guarantee, for it might otherwise be impracticable for the guarantor to know to whom, and under what circumstances the guarantee attached, and to what period it might be protracted. Transactions between the other parties, to a great extent, might from time to time exist, in which credits might be given, and payments might be made, the existence and due appropriation of which might materially affect his own rights and security. If, therefore, the question were entirely new, we should not be disposed to hold a different doctrine, and we think the English decisions are in entire conformity to our own.

It is highly probable that the real questions intended to be raised before this Court, upon the certificate of division, were whether, upon the whole evidence, Williams was not to be treated as the agent of the defendant as well as of Miss Miller, in the

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procurement of this credit from the plaintiffs, and if so, whether the knowledge of Williams of the credit by the plaintiffs to Miss Miller, upon the faith of the guarantee, was not full notice also to the defendant, and thus dispensed with any further and other notice to the defendant. These were matters of fact, very proper for the consideration of the jury at the trial, and, if satisfactorily established, would have dispensed with any farther notice, but are by no means matters of law upon which we are called on the present occasion to give any opinion.

A certificate will be sent to the circuit court in conformity to this opinion.

MR. JUSTICE BALDWIN dissented.

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 on the point and question on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court "That the plaintiffs were bound to give notice to the defendant that they had accepted or acted upon the guarantee, and given credit on the faith of it." Whereupon it is now here adjudged and ordered by this Court that it be so certified to the said circuit court.

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