

**Swift Vs. Tyson**

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**SooperKanoon Citation :** [sooperkanoon.com/79764](http://sooperkanoon.com/79764)

**Court :** US Supreme Court

**Decided On :** 1842

**Appeal No. :** 41 U.S. 1

**Appellant :** Swift

**Respondent :** Tyson

**Judgement :**

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U.S. Supreme Court Swift v. Tyson, 41 U.S. 16 Pet. 1 1 (1842)

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**41 U.S. (16 Pet.) 1**

## **SYLLABUS**

Action in the Circuit Court of New York on a bill of Exchange accepted in New York, instituted by the holder, a citizen of the state of Maine. The Acceptance and endorsement of the bill were admitted, and the defence was rested on allegations that the bill had been received in payment of a preexistent debt, and that the acceptance had been given for lands which the acceptor had purchased from the drawer of the bill, to which lands the drawer had no title, and that the quality of the

lands had been misrepresented, and the purchaser imposed upon by the fraud of the drawer, and those who were co-owners of the land and cooperators in the sale. The bill accepted had been received *bona fide*, and before it was due.

There is no doubt that a *bona fide* holder of a negotiable instrument for valuable consideration, without any notice of the facts which implicate its validity as between the antecedent parties, if he takes it under an endorsement made before the same becomes due, holds the title unaffected by those facts, and may recover thereon although, as between the antecedent parties, the transaction may be without any legal validity.

The holder of negotiable paper, before it is due, is not bound to prove that he is a *bona fide* holder for valuable consideration, without notice, for the law will presume that in the absence of all rebutting proof, and therefore it is incumbent of a defendant to establish by way of defence satisfactory proofs of the contrary, and thus to overcome the *prima facie* title of the plaintiff.

The thirty-fourth section of the Judiciary Act of 1789, which declares

"[t]hat the laws of the several states, except where the Constitution, treaties, or statutes of the United States shall otherwise recognise or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States in cases where they apply,"

has uniformly been supposed by the Supreme Court to be limited in its application to state laws strictly local -- that is to say, to the positive statutes of the state and the construction thereof adopted by the local tribunals, and to rights and titles to

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things having a permanent locality, such as the rights and titles to real estate and other matter immovable and intraterritorial in their nature and character. The section does not extend to contracts or other instruments of a commercial nature, the true interpretation and effect whereof are to be sought not in the decisions of the local tribunals, but in the general principles and doctrines of commercial

jurisprudence.

On a certificate of division from the Circuit Court for the Southern District of New York.

This action was instituted in the circuit court upon a bill of exchange dated at Portland, in the state of Maine, on the first day of May 1836, for \$1,536.30, payable six months after date, drawn by Nathaniel Norton and Jairus S. Keith upon and accepted by the defendant, the bill having been drawn to the order of Nathaniel Norton, and by him indorsed to the plaintiff. The principal and interest on the bill, up to the time of trial, amounted to \$1,862.06. The defense to the action rested on the answers to a bill of discovery filed by the defendant against the plaintiff, by which it appeared that the bill had been received by him from Nathaniel Norton, with another draft of the same amount, in payment of a protested note made by Norton & Keith, and which had been paid by him to the Maine Bank. When the draft was received by the plaintiff, it had been accepted by the defendant, who resided in New York. The plaintiff had no knowledge of the consideration which had been received for the acceptance, and had no other transaction with the defendant. He had received the drafts and acceptances in payment of the protested note, with a full belief that the same were justly due, according to their tenor, and he had no other security for the payment of the protested note except the drafts, nor had he any knowledge of any contract or dealing between the defendant and Norton out of which the said draft arose.

The defendant then offered to prove that the bill of exchange was accepted by him as part consideration for the purchase of certain lands in the state of Maine, of which Keith & Norton, the drawers of the bill, represented themselves to be the owners, and represented them to be of great value, made certain estimates

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of them which were warranted by them to be correct, and also contracted to convey a good title to the land, all of which representations were in every respect fraudulent and false, and that said Keith & Norton had never been able to make a

title to the land; whereupon, the plaintiff, by his counsel, objected to the admission of said testimony, or any testimony, as against the plaintiff, impeaching or showing the failure of the consideration on which said bill was accepted, under the facts aforesaid admitted by the defendant, and those proved by him, by reading said answers in equity of the plaintiff in evidence. And the judges of the court divided in opinion on the point or question of law, whether, under the facts last mentioned, the defendant was entitled to the same defence to the action, as if the suit was between the original parties to the bill, that is to say, the said Norton, or the said Norton & Keith, and the defendant? And whether the evidence so offered in defence, and objected to, was admissible as against the plaintiffs in this action.

And thereupon, the said point or question of law was, at the request of the counsel for the said plaintiff, stated as above, under the direction of the judges of the court, to be certified under the seal of the court to the supreme court of the United States at the next session thereof to be held thereafter, to be finally decided by the said last-mentioned court.

The case was submitted to the court, on printed arguments, by Fessenden for the plaintiff and by Dana for the defendant.

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STORY, Justice, delivered the opinion of the court.

This cause comes before us from the circuit court of the southern district of New York upon a certificate of division of the judges of that court. The action was brought by the plaintiff, Swift, as indorsee, against the defendant, Tyson, as acceptor, upon a bill of exchange dated at Portland, Maine, on the first day of May, 1836, for the sum of \$1,540.30, payable six months after date, and grace, drawn by one Nathaniel Norton and one Jairus S. Keith upon and accepted by Tyson, at the city of New York, in favor of the order of Nathaniel Norton, and by Norton indorsed to the plaintiff. The bill was dishonored at maturity.

At the trial, the acceptance and indorsement of the bill were admitted, and the plaintiff there rested his case. The defendant then introduced in evidence the answer of Swift to a bill of discovery by which it appeared that Swift took the bill, before it

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became due, in payment of a promissory note due to him by Norton & Keith; that he understood that the bill was accepted in part payment of some lands sold by Norton to a company in New York; that Swift was a *bona fide* holder of the bill, not having any notice of anything in the sale or title to the lands or otherwise impeaching the transaction, and with the full belief that the bill was justly due. The particular circumstances are fully set forth in the answer in the record, but it does not seem necessary further to state them. The defendant then offered to prove that the bill was accepted by the defendant, as part consideration for the purchase of certain lands in the state of Maine which Norton & Keith represented themselves to be the owners of, and also represented to be of great value, and contracted to convey a good title thereto, and that the representations were in every respect fraudulent and false, and Norton & Keith had no title to the lands, and that the same were of little or no value. The plaintiff objected to the admission of such testimony, or of any testimony, as against him, impeaching or showing a failure of the consideration, on which the bill was accepted, under the facts admitted by the defendant, and those proved by him, by reading the answer of plaintiff to the bill of discovery. The judges of the circuit court thereupon divided in opinion upon the following point or question of law: whether, under the facts last mentioned, the defendant was entitled to the same defence to the action as if the suit was between the original parties to the bill, that is to say, Norton, or Norton & Keith, and the defendant. and whether the evidence so offered was admissible as against the plaintiff in the action. And this is the question certified to us for our decision.

There is no doubt, that a *bona fide* holder of a negotiable instrument, for a valuable consideration, without any notice of facts which impeach its validity, as between the antecedent parties, if he takes it under an indorsement made before

the same becomes due, holds the title unaffected by these facts, and may recover thereon although, as between the antecedent parties, the transaction may be without any legal validity. This is a doctrine so long and so well established, and so essential to the security of negotiable paper, that it is laid up among the fundamentals of the law, and requires no authority or reasoning to be now brought

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in its support. As little doubt is there that the holder of any negotiable paper, before it is due, is not bound to prove that he is a *bona fide* holder for a valuable consideration, without notice, for the law will presume that in the absence of all rebutting proofs, and therefore, it is incumbent upon the defendant to establish, by way of defence, satisfactory proofs of the contrary, and thus to overcome the *prima facie* title of the plaintiff.

In the present case, the plaintiff is a *bona fide* holder, without notice, for what the law deems a good and valid consideration, that is, for a preexisting debt, and the only real question in the cause is whether, under the circumstances of the present case, such a preexisting debt constitutes a valuable consideration in the sense of the general rule applicable to negotiable instruments. We say under the circumstances of the present case for, the acceptance having been made in New York, the argument on behalf of the defendant is that the contract is to be treated as a New York contract, and therefore to be governed by the laws of New York, as expounded by its courts, as well upon general principles, as by the express provisions of the 34th section of the judiciary act of 1789, ch. 20. And then it is further contended that, by the law of New York, as thus expounded by its courts, a preexisting debt does not constitute, in the sense of the general rule, a valuable consideration applicable to negotiable instruments.

In the first place, then, let us examine into the decisions of the courts of New York upon this subject. In the earliest case, *Warren v. Lynch*, 5 Johns. 289, the supreme court of New York appear to have held that a preexisting debt was a sufficient consideration to entitle a *bona fide* holder, without notice, to recover the amount of a note indorsed to him which might not, as between the original parties,

be valid. The same doctrine was affirmed by Mr. Chancellor Kent in *Bay v. Coddington*, 5 Johns Chan.Rep. 54. Upon that occasion, he said that negotiable paper can be assigned or transferred by an agent or factor, or by any other person, fraudulently, so as to bind the true owner, as against the holder, provided it be taken in the usual course of trade, and for a fair and valuable consideration, without notice of the fraud. But he added that the holders in that case were not entitled to the benefit of the rule because it was not negotiated to

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them in the usual course of business or trade, nor in payment of any antecedent and existing debt, nor for cash, or property advanced, debt created, or responsibility incurred, on the strength and credit of the notes, thus directly affirming that a preexisting debt was a fair and valuable consideration within the protection of the general rule. And he has since affirmed the same doctrine, upon a full review of it, in his Commentaries. 3 Kent, Com. 44, p. 81. The decision in the case of *Bay v. Coddington* was afterwards affirmed in the court of errors, 20 Johns. 637, and the general reasoning of the chancellor was fully sustained. There were, indeed, peculiar circumstances in that case which the Court seems to have considered as entitling it to be treated as an exception to the general rule upon the ground either because the receipt of the notes was under suspicious circumstances, the transfer having been made after the known insolvency of the indorser, or because the holder had received it as a mere security for contingent responsibilities, with which the holders had not then become charged. There was, however, a considerable diversity of opinion among the members of the Court upon that occasion, several of them holding that the decree ought to be reversed, others affirming that a preexisting debt was a valuable consideration sufficient to protect the holders, and others again insisting that a preexisting debt was not sufficient. From that period, however, for a series of years, it seems to have been held by the supreme court of the state that a preexisting debt was not a sufficient consideration to shut out the equities of the original parties in favor of the holders. But no case to that effect has ever been decided in the court of errors. The cases cited at the bar, and especially *Rosa v. Brotherson*, 10 Wend. 85; *Ontario Bank*

*v. Worthington*, 12 Wend. 593, and *Payne v. Cutler*, 13 Wend. 605, are directly in point. But the more recent cases *Bank of Salina v. Babcock*, 21 Wend. 490, and *Bank of Sandusky v. Scoville*, 24 Wend. 115, have greatly shaken, if they have not entirely overthrown, those decisions, and seem to have brought back the doctrine to that promulgated in the earliest cases. So that to say the least of it, it admits of serious doubt whether any doctrine upon this question can, at the present time, be treated as finally established, and it is certain

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that the court of errors have not pronounced any positive opinion upon it.

But, admitting the doctrine to be fully settled in New York, it remains to be considered whether it is obligatory upon this court if it differs from the principles established in the general commercial law. It is observable that the courts of New York do not found their decisions upon this point upon any local statute or positive, fixed or ancient local usage, but they deduce the doctrine from the general principles of commercial law. It is, however, contended that the 34th section of the judiciary act of 1789, ch. 20, furnishes a rule obligatory upon this court to follow the decisions of the state tribunals in all cases to which they apply. That section provides

"that the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the United States, in cases where they apply."

In order to maintain the argument, it is essential, therefore, to hold that the word "laws" in this section includes within the scope of its meaning the decisions of the local tribunals. In the ordinary use of language, it will hardly be contended that the decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and are not, of themselves, laws. They are often reexamined, reversed and qualified by the courts themselves whenever they are found to be either defective or ill-founded or otherwise incorrect. The laws of a state are more usually

understood to mean the rules and enactments promulgated by the legislative authority thereof, or long-established local customs having the force of laws. In all the various cases which have hitherto come before us for decision, this court have uniformly supposed that the true interpretation of the 34th section limited its application to state laws, strictly local that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matters immovable and intraterritorial in their nature and character. It never has been supposed by us that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or

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local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding that this section, upon its true intendment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly the decisions of the local tribunals upon such subjects are entitled to, and will receive, the most deliberate attention and respect of this court, but they cannot furnish positive rules or conclusive authority by which our own judgments are to be bound up and governed. The law respecting negotiable instruments may be truly declared in the languages of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. 883, 887, to be in a great measure not the law of a single country only, but of the commercial world. *Non erit alia lex Romae, alia Athenis, alia nunc, alia*

*posthac, sed et apud omnes gentes, et omni tempore una eademque lex obtinebit.*

It becomes necessary for us, therefore, upon the present occasion, to express our own opinion of the true result of the commercial law upon the question now before us. And we have no hesitation in saying that a preexisting debt does constitute a valuable consideration in the sense of the general rule already stated, as applicable to negotiable instruments. Assuming it to be true (which, however, may well admit of some doubt from the generality of the language) that the holder of a negotiable instrument is unaffected with the equities between the antecedent parties of which he has no notice only where he receives it in the usual course of trade and business, for a valuable consideration, before it becomes due, we are prepared to say that receiving it in payment of, or as security for, a preexisting debt

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is according to the known usual course of trade and business. And why, upon principle, should not a preexisting debt be deemed such a valuable consideration? It is for the benefit and convenience of the commercial world to give as wide an extent as practicable to the credit and circulation of negotiable paper that it may pass not only as security for new purchases and advances, made upon the transfer thereof, but also in payment of, and as security for, preexisting debts. The creditor is thereby enabled to realize or to secure his debt, and thus may safely give a prolonged credit, or forbear from taking any legal steps to enforce his rights. The debtor also has the advantage of making his negotiable securities of equivalent value to cash. But establish the opposite conclusion that negotiable paper cannot be applied in payment of, or as security for, preexisting debts, without letting in all the equities between the original and antecedent parties, and the value and circulation of such securities must be essentially diminished, and the debtor driven to the embarrassment of making a sale thereof, often at a ruinous discount, to some third person, and then, by circuitry, to apply the proceeds to the payment of his debts. What, indeed, upon such a doctrine, would become of that large class of cases where new notes are given by the same or by other parties, by way of renewal or security to banks, in lieu of old securities discounted by them,

which have arrived at maturity? Probably more than one-half of all bank transactions in our country, as well as those of other countries, are of this nature. The doctrine would strike a fatal blow at all discounts of negotiable securities for preexisting debts.

This question has been several times before this court, and it has been uniformly held that it makes no difference whatsoever, as to the rights of the holder, whether the debt for which the negotiable instrument is transferred to him is a preexisting debt or is contracted at the time of the transfer. In each case, he equally gives credit to the instrument. The cases of [Coolidge v. Payson](#), 2 Wheat. 66, [15 U. S. 70](#) , [15 U. S. 73](#) , and [Townsley v. Sumrall](#), 2 Pet. 170, [27 U. S. 182](#) , are directly in point. In England, the same doctrine has been uniformly acted upon. As long ago as the case of *Pillans and Rose v. Van Mierop*, 3 Burr. 1664, the very point was made, and the objection was overruled. That, indeed, was a case of far more stringency

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than the one now before us, for the bill of exchange, there drawn in discharge of a preexisting debt, was held to bind the party as acceptor upon a mere promise made by him to accept, before the bill was actually drawn. Upon that occasion, Lord Mansfield, likening the case to that of a letter of credit, said that a letter of credit may be given for money already advanced, as well as for money to be advanced in future, and the whole court held the plaintiff entitled to recover. From that period downward, there is not a single case to be found in England in which it has ever been held by the court that a preexisting debt was not a valuable consideration, sufficient to protect the holder, within the meaning of the general rule, although incidental dicta have been sometimes relied on to establish the contrary, such as the dictum of Lord Chief Justice Abbott in *Smith v. De Witt*, 6 Dow. & Ryl. 120, and *De la Chaumette v. Bank of England*, 9 Barn. & Cres. 209, where, however, the decision turned upon very different considerations.

Mr. Justice Bayley, in his valuable work on bills of exchange and promissory notes, lays down the rule in the most general terms. "The want of consideration,"

says he,

" *in toto* or in part cannot be insisted on if the plaintiff, or any intermediate party between him and the defendant, took the bill or note *bona fide* and upon a valid consideration."

Bayley on Bills, p. 499-500 (5th Lond. edit. 1830). It is observable that he here uses the words "valid consideration," obviously intended to make the distinction that it is not intended to apply solely to cases where a present consideration for advances of money, on goods or otherwise, takes place at the time of the transfer and upon the credit thereof. And in this he is fully borne out by the authorities. They go further and establish that a transfer as security for past, and even for future, responsibilities will, for this purpose, be a sufficient, valid and valuable consideration. Thus, in the case of *Bosanquet v. Dudman*, 1 Stark. 1, it was held by Lord Ellenborough that, if a banker be under acceptances to an amount beyond the cash balance in his hands, every bill he holds of that customer's, *bona fide*, he is to be considered as holding for value, and it makes no difference though he hold other collateral securities more than sufficient to cover the excess of his acceptances.

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The same doctrine was affirmed by Lord Eldon in *Ex parte Bloxham*, 8 Ves. 531, as equally applicable to past and to future acceptances. The subsequent cases of *Heywood v. Watson*, 4 Bing. 496, and *Bramah v. Roberts*, 1 Bing. New Ca. (N.C.) 469, and *Percival v. Frampton*, 2 Crompt. Mees. & Rose 180, are to the same effect. They directly establish that a *bona fide* holder, taking a negotiable note in payment of or as security for a preexisting debt, is a holder for a valuable consideration, entitled to protection against all the equities between the antecedent parties. And these are the latest decisions which our researches have enabled us to ascertain to have been made in the English courts upon the subject.

In the American courts, so far as we have been able to trace the decisions, the same doctrine seems generally, but not universally, to prevail. In *Brush v.*

*Scribner*, 11 Conn.R. 388, the supreme court of Connecticut, after an elaborate review of the English and New York adjudications, held, upon general principles of commercial law, that a preexisting debt was a valuable consideration, sufficient to convey a valid title to a *bona fide* holder against all the antecedent parties to a negotiable note. There is no reason to doubt that the same rule has been adopted and constantly adhered to in Massachusetts, and certainly, there is no trace to be found to the contrary. In truth, in the silence of any adjudications upon the subject, in a case of such frequent and almost daily occurrence in the commercial states, it may fairly be presumed that whatever constitutes a valid and valuable consideration in other cases of contract to support titles of the most solemn nature is held *a fortiori* to be sufficient in cases of negotiable instruments, as indispensable to the security of holders and the facility and safety of their circulation. Be this as it may, we entertain no doubt that a *bona fide* holder, for a preexisting debt, of a negotiable instrument is not affected by any equities between the antecedent parties where he has received the same before it became due, without notice of any such equities. We are all, therefore, of opinion that the question on this point propounded by the circuit court for our consideration ought to be answered in the negative, and we shall accordingly direct it so to be certified to the circuit court.

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Mr. Justice CATRON said:

Upon the point of difference between the judges below, I concur that the extinguishment of a debt, and the giving a post consideration, such as the record presents, will protect the purchaser and assignee of a negotiable note from the infirmity affecting the instrument before it was negotiated. But I am unwilling to sanction the introduction into the opinion of this court a doctrine aside from the case made by the record, or argued by the counsel, assuming to maintain that a negotiable note or bill, pledged as collateral security for a previous debt, is taken by the creditor in the due course of trade, and that he stands on the foot of him who purchases in the market for money or takes the instrument in extinguishment

of a previous debt. State courts of high authority on commercial questions have held otherwise, and that they will yield to a mere expression of opinion of this court, or change their course of decision in conformity to the recent English cases referred to in the principal opinion, is improbable, whereas, if the question was permitted to rest until it fairly arose, the decision of it either way by this court probably would, and I think ought to, settle it. As such a result is not to be expected from the opinion in this cause, I am unwilling to embarrass myself with so much of it as treats of negotiable instruments taken as a pledge. I never heard this question spoken of as belonging to the case until the principal opinion was presented last evening, and therefore I am not prepared to give any opinion, even was it called for by the record.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and on the point and question on which the judges of the said circuit court were opposed in opinion, and which were certified to this court for its opinion agreeable 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 defendant was not, under the facts stated, entitled to the same defence to the action as if the suit was between the original parties to the bill; that is to say, the said Norton, or the said Norton & Keith and the defendant; and that the evidence

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offered in defence, and objected to, was not admissible as against the plaintiff in this action. Whereupon, it is now here ordered and adjudged by this court that an answer in the negative be certified to the said circuit court.