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Henderson Vs. Anderson

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Court : US Supreme Court

Decided On : 1845

Appeal No. : 44 U.S. 73

Appellant : Henderson

Respondent : Anderson

Judgement :

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U.S. Supreme Court Henderson v. Anderson, 44 U.S. 3 How. 73 73 (1845)

Henderson v. Anderson

44 U.S. (3 How.) 73

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

I N AND FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

This Court adheres to the rule laid down in *Walton v. Shelly,* 1 T.R. 296, sustained as it has been by the decisions of this Court in *Bank of the United States v. Dunn,* 6 Pet. 57; *Bank of the Metropolis v. Jones,* 8 Pet. 12, and *Scott*

v. Lloyd, viz., that a party to a negotiable paper, having given it value and currency by the sanction of his name, shall not afterwards invalidate it by showing, upon his own testimony, that the consideration on which it was executed was illegal.

Anderson was a citizen of Kentucky, and William Henderson of Louisiana. Henderson was a partner in the commercial house of John Henderson and Co., carrying on business in the Town of Warrenton, Warren County, Mississippi.

On 4 February, 1837, Thomas J. Green drew the following inland bill:

"Warrenton, February 3, 1837"

"Exchange for $3,795."

"Twelve months after date of this my first of exchange (second of the same tenor and date unpaid), pay to the order of Messrs. John Henderson & Co. thirty-seven hundred and ninety-five dollars, value received, and charge the same to account of"

"Your obedient servant,"

"THOS. J. GREEN"

"To Messrs. Briggs, Lacoste & Co., Natchez"

It was endorsed by John Henderson & Co. and D. G. Barlow & Co., and passed into the hands of Anderson. Being protested for nonacceptance and nonpayment, Anderson instituted suit against William Henderson, the partner, by way of petition, according to the practice in Louisiana, as follows:

"That the petitioner is holder and owner of a certain bill of exchange, for the sum of thirty-seven hundred and ninety-five dollars, drawn by Thomas J. Green, endorsed and directed to Messrs. Briggs, Lacoste & Co., Natchez, which said bill was drawn to the order, and was endorsed by John Henderson & Co., dated at Warrenton, in the State of Mississippi, on 3 February, 1837, payable twelve months after date,

which said bill of exchange, on 8 February, 1837, was protested for nonacceptance, and on 6 February, 1838, the day of maturity, was duly protested for nonpayment by James B. Cook, a notary public, in the City of Natchez, duly commissioned and qualified, and that said John Henderson & Co. was, by said notary, duly notified of said protest for nonacceptance, and for nonpayment by, all of which will appear by reference of said bill of exchange and protest thereof, and said bill of exchange annexed is made a part thereof."

"At the time said bill was endorsed, petitioner avers that said William Henderson was a member of the late commercial firm of

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John Henderson & Co., formerly doing business at Warrenton under the said style and firm of John Henderson & Co., and as a member of the said firm, he is now liable *in solido* to pay to petitioner the amount of said bill of exchange, with interest, cost, and damages, and by the laws of the State of Mississippi petitioner is entitled to five percent damages on the amount of said bill."

"Petitioner alleges further that the said William Henderson, though amicably requested, has neglected to pay the amount or any part thereof, for which he is indebted as aforesaid."

This petition was answered as follows:

"Now comes the defendant in the above entitled cause and, by way of exception, says that he is not bound to answer thereto because he has not received nor been served with a true and exact copy of the petition, which by law he is entitled to, and that he has not been legally cited to appear and answer herein. Wherefore he prays judgment, to be dismissed hence with his costs &c.;"

"And if the foregoing exception be overruled, he pleads the general denial. He denies that he is in any manner liable to pay the bill of exchange sued on. He avers specially that he neither signed and endorsed said bill himself nor in any way authorized the name of said from of John Henderson & Co. to be signed and

endorsed on the same; that it was so signed and endorsed as aforesaid by one John Henderson, without the knowledge and consent of defendant, and without any authority whatever; that such endorsement was made neither for the benefit, nor for any debt or liability, of the defendant or of said firm, nor was it made within the scope of the partnership powers, or on account of said firm; but without any due authority, and without the knowledge and consent of the defendant, the said bill was signed and endorsed as aforesaid by said John Henderson, purely for the benefit and accommodation of the drawer, the said Thomas J. Green, of all which the parties to said bill, and the holders thereof, before and after maturity, had due notice. Defendant requires strict proof of every allegation in the petition."

"Wherefore he prays judgment, with his costs, &c.;"

After sundry proceedings, a commission was issued to take the testimony of John Henderson, the acting partner and endorser of the bill, and the cause came on for trial in February, 1842. At the trial, the court excluded the evidence thus taken, and there was a judgment for the plaintiff; but the following bill of exceptions being taken to the ruling of the court, the decision came up for review.

"Be it remembered that on the trial of the above entitled cause, the defendant's counsel, in order to prove the allegations set forth by the defendant in his answer, offered in evidence the deposition of one John Henderson, who, at the time of the drawing and endorsement of the bill of exchange sued on, was a co-partner with

defendant, the firm doing business under the name and style of John Henderson & Co., and especially in order to prove that said John Henderson endorsed upon said bill the partnership name without any authority whatever, without the knowledge or consent of defendant, and contrary to their articles of co-partnership, and the course of dealing of said firm; that it was so endorsed in the presence of the plaintiff, purely for the accommodation of the drawer, Thomas J. Green, in discharge of a promissory note held by the plaintiff against said Green; that said bill was not endorsed as aforesaid, for the accommodation, or on account of the

said firm of John Henderson & Co., nor in any manner for the benefit of said firm of John Henderson & Co., nor in any matter in which said firm was interested, and that the plaintiff, when said bill was so drawn, and endorsed, and delivered to him, was fully cognizant of all the above facts. The plaintiff's counsel objected to the reception of said deposition, on the ground that the said John Henderson was incompetent to testify to any fact tending to invalidate the said bill, policy for the protection of commerce and the public morals requiring the rejection of such evidence. The court, after taking time to consider, sustained the objection, and rejected the deposition, on the ground taken, as aforesaid, by the plaintiff's counsel."

"To this decision of the court, the defendant takes this his bill of exceptions, and prays that the same be allowed and signed by the court."

Conrad, for the plaintiff in error.

This is an action by the holder of a bill of exchange against one of the members of a commercial firm by which it purports to have been endorsed.

The endorsement is admitted, but the defense is that it was made by one member of the firm, without the knowledge or consent of his co-partner, the defendant, solely for the accommodation of the drawer, and in a matter in which the partnership had no interest or concern whatever.

To prove these facts, the partner who made the endorsement of the firm on the bill was examined under a commission, and his deposition, to be found at page 17 of the record, does fully establish them.

This deposition, however, was objected to on the ground that, being a party to the bill, he could not impeach it by his testimony. The objection was sustained by the court, and the deposition excluded. To this decision a bill of exceptions was taken, page 13 of the record, and the only question presented is as to the correctness of this decision.

As Henderson had no interest in the event of the suit, his general competency is not denied, but it is said, on the authority of the doctrine first distinctly laid down in *Walton v. Shelly,* that his testimony

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is inadmissible so far as it goes to establish that the endorsement made by him was not binding on his co-partners.

Apart from the sanction which the doctrine, that a witness will not be permitted to impeach his own acts, derives from judicial decisions, it is difficult to perceive on what rational grounds it can rest. In either a moral or a legal point of view it seems to be equally untenable. In a moral aspect, to confess a fault, is in some degree to atone for it, and what is under all circumstances a merit becomes an imperative duty when the concealment of a fault by the one who had committed it would involve an innocent person in its consequences.

In a legal point of view the doctrine appears equally unsound. The civil law *maxim nemo allegans turpitudinem suam est audiendus,* invoked by Lord Mansfield in its support, is manifestly misapplied. Its proper application is to parties to the suit, not to witnesses. Its meaning is that no man shall allege his own turpitude as the foundation of a claim or a right. It is equivalent to another axiom in that system, *ex turpi causa non nascitur actio,* and is analogous to the common law principle that "no one shall take advantage of his own wrong."

In fact, in all other case, courts of justice have adopted the opposite principle. The general rule is not only that a man may confess his own turpitude, but that he is bound to do so whenever his confession will not subject him to a criminal prosecution, and even this exception, being established solely for the protection of the witness, may be waived by him. In criminal trials, witnesses are every day allowed to prove crimes in the commission of which they aided and abetted. In chancery, which has borrowed the practice from the civil law, even parties may be compelled to disclose acts of fraud and moral turpitude.

It was no doubt a conviction on the part of the English courts that the rule was erroneous in principle and inconvenient in practice that induced them first to limit its application to negotiable instruments and finally to abandon it altogether. *Jordaine v. Lashbrook,* 7 T.R. 601.

In this country, in some of the states the rule has never been followed. In others, where it had been originally adopted, the courts have been gradually receding from it. *Stafford v. Rice,* 5 Cow. 23; *Powell v. Waters,* 8 *id.* 673; *Williams v. Walbridge,* 3 Wend. 415.

The rule is now universally held to apply only to negotiable paper.

This limitation of the rules is a virtual abandonment of the ground on which it was originally founded, inasmuch as the impropriety or indecency of allowing a man to contradict his own acts can in no manner depend on the form or character of the instrument thus sought to be impeached.

The rule thus restricted must rest, therefore, on another principle, to-wit, the public policy of protecting negotiable paper. Now on

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this point, I will observe, first, that if the holder received the paper in good faith, he is sufficiently secured by the principle which protects such paper in the hands of a *bona fide* holder against all equities that may exist between the original parties. If, on the contrary, he took the paper *mala fide,* there can be no good reason why he should be protected. In the first hypothesis, the evidence would be irrelevant; in the second, the reason for its exclusion does not exist.

There are, it is true, two exceptions to this remark, to-wit, where the defense set up is that the note or bill originated in a gaming or usurious consideration. In these cases, the instrument, even in the hands of a *bona fide* holder, is tainted with the illegality of its origin. But is not this exception founded on considerations of public policy? If so, how can a rule which excludes the evidence of the facts be also founded on public policy? How can it be at the same time politic to allow the

consideration of negotiable paper to be inquired into in these cases and at the same time impolitic to prevent the introduction of the only evidence by which in the great majority of cases the facts can be established?

At all events, if the object of the rule be to protect negotiable paper in the hands of *bona fide* holders for a valuable consideration (and we apprehend it can hardly be desirable to protect any other), then the rule itself should be co-extensive with the object sought to be attained. As the only cases, therefore, where the consideration can in such cases be inquired into are those in which usury or gaming is set up as a defense, it would be sufficient for all the public policy of the rule to say, that a party to a negotiable instrument should not be permitted to prove that it originated in a gambling or usurious consideration.

I have ventured on these general remarks in relation to the origin of this rule, because the rule itself is of recent origin, and the jurisprudence in regard to it, both in England and in this country, is so fluctuating that I do not consider it as firmly established.

But we contend that the rule, even when carried as far as it has ever been by this Court, does not apply to the present case.

1. In the first place, for it to be applicable, the paper sought to be attacked must not only be negotiable, but have been actually negotiated. *United States v. Dunn,* 5 Pet. 51; *United States v. Liffler,* 11 Pet. 91; *Blagg v. Phoenix Ins. Co.,* 3 Wash.C.C. 7; *Baird v. Cochrane,* 4. Serg. & R. 397.

Now the draft in the present case is still in the hands of a party to the original transaction. In point of form, it is true that the present holder is the assignee of the payee and endorser, but in point of fact he was a party to the transaction in which it originated, and had full knowledge of the purposes for which it was executed. It was only a mode whereby the endorsers undertook to become sureties for a debt due by the drawers to the plaintiff. *Powell v. Waters,* 8 Cow. 692.

2. Even supposing that the draft can be considered in a technical sense as having been negotiated, the endorsee certainly took it *mala fide,* and with a full knowledge that Henderson, in endorsing on it the signature of his firm, was committing a fraud on his co-partners. Now it is well settled that the rule does not apply to cases of fraud or misconduct to which the holder was a party. *Peterson v. Willing,* 3 Dall. 506; *Langer v. Felton,* 1 Rawle 141; *McPherson v. Powers,* 1 Serg. & R. 102.

3. The draft was drawn and payable in the State of Mississippi. Its nature and effect must therefore be tested by the laws of that state. Now the law of that state provides, in substance, that in all cases where a promissory note or other obligation in writing has been assigned, the defendant shall be allowed the benefit of all want of lawful consideration, failure of considerations, payments, discounts, and setoffs made, had, or possessed against the same, previous to notice of the assignment, any law, usage, or custom in any wise to the contrary notwithstanding, in the same manner as if the same had been sued and prosecuted by the obligee or payee therein. Law of June 25, 1822, sec. 12. *See* Howard & Hutchinson's Dig. 372.

By this law negotiable instruments are placed precisely on the same footing with all other securities, and therefore the distinction on which alone the principle which prevents a party to an instrument from impeaching it by his testimony rests, is unknown in that state. The defense in the present case is want of consideration. Had the suit been brought by the assignee of an instrument not negotiable, the witness would unquestionably have been competent to prove this fact. But by the laws of Mississippi the assignee of a note or bill of exchange has no other or greater rights than the assignee of a bond or other instrument not negotiable in its character. The witness is, therefore, as competent in the one as in other. The case is similar to that of *Baring v. Shippen,* 2 Binn. 165.

4. The *lex fori* must regulate the competency of witnesses, Story's Conflict of Laws 526, sec. 635, and by the laws of Louisiana the witness was competent. Louisiana Code, art. 2260.

MR. JUSTICE DANIEL delivered the opinion of the Court.

Upon a writ of error to the Circuit Court of the United States for the Eastern District of Louisiana.

This was an action instituted at law in the Circuit Court for the Eastern District in the state above mentioned, by petition, according to the modes of proceeding in the courts of that state, in the name of the defendant in error, as endorsee and holder of a bill of exchange for $3,795, against the plaintiff in error, as an endorser of that bill.

The petition sets forth the facts following: that the petitioner is the holder and owner of the bill in question, which was drawn by one Thomas J. Green, at Warrenton, Mississippi, on 3 February,

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1837, directed to Briggs, Lacoste & Co., at Natchez, payable, twelve months after date, to John Henderson & Co., by whom it was endorsed. That on 8 February, 1837, this bill was protested for nonacceptance, and on 6 February, 1838, was duly protested for nonpayment in the City of Natchez, and that John Henderson & Co., were regularly notified of said protests for nonacceptance and nonpayment. That at the time at which the said bill was so endorsed, the plaintiff in error was a member of the firm of John Henderson & Co., then doing business at Warrenton, in Mississippi, and as a member of that firm is liable to the petitioner for the amount of the bill of exchange, with interest, costs, and damages. That the petitioner is a citizen and resident of the State of Kentucky, and the said William Henderson, a citizen and inhabitant of the Parish of Carroll, in the State of Louisiana. Upon the aforegoing petition the plaintiff below prayed judgment, with his costs, &c.;

The defendant below, in the first place, took an exception to the petition on the ground that he had not been served with a true copy thereof, according to law, nor had been legally cited to appear, and therefore prayed to be dismissed; secondly, he interposed what is there styled "the general denial," corresponding with the

general issue, and thirdly, he averred specially, that he neither signed nor endorsed the said bill himself, nor in any way authorized the name of the firm of John Henderson & Co., to be signed and endorsed on the same; that it was so signed and endorsed by one John Henderson without the knowledge and consent of the defendant, and without any authority whatsoever, and that such endorsement was made neither for the benefit, nor for any debt or liability of the defendant, nor of the said firm; nor was it made within the scope of the partnership powers, or on account of the firm, but that without any due authority, and without the knowledge and consent of the defendant, the bill was signed and endorsed by said John Henderson purely for the benefit of the said Thomas J. Green, the drawer, of all which the parties to the said bill, and the holders thereof, before and after the maturity thereof, had notice.

At a subsequent day the exception first taken for the alleged want of regular service of the petition, was waived by the defendant, and the cause was continued; afterwards, upon the trial thereof, the defendant, in order to prove the allegations in his answer to the petition, offered in evidence the deposition of John Henderson, who, at the time of the drawing and endorsement of the bill of exchange sued on, was a co-partner with the defendant in the firm, doing business under the name and style of John Henderson & Co.; this evidence being designed to show that John Henderson endorsed the partnership name upon the bill without authority, without the knowledge or consent of the defendant, and contrary to their articles of co-partnership and to the course of their dealings, and that it was so

endorsed, in the presence of the plaintiff, purely for the accommodation of the drawer, Thomas J. Green, and not for the accommodation, nor on account of, nor in any manner for the benefit of the firm of John Henderson & Co. The reception of this deposition was objected to on the ground that John Henderson, as a member of the firm by whom and at the time the endorsement was made, was incompetent to testify to facts tending to invalidate the bill; the court sustained this objection, and rejected the deposition of John Henderson. To the ruling of the court on this point the defendant took an exception, which was reserved to him.

The exception thus taken presents the whole controversy in this case, which, controlled by principles heretofore ruled by this Court, would seem to be limited within a very narrow compass. The inquiry how far a party to a negotiable instrument may be heard in a court of law to impeach or invalidate that instrument in the hands of another, is one which has led to considerable discussion and to different conclusions in the courts both of England and in this country. In the case of *Walton v. Shelly,* 1 T.R. 296, the Court of King's Bench decided, that a party to a negotiable paper, having given it value and currency by the sanction of his name, shall not afterwards invalidate it by showing, upon his own testimony, that the consideration on which it was executed was illegal. Subsequently, by the same court, this rule was so far relaxed or abrogated as to permit the impeachment of such an instrument by persons standing in the same relation to it. *See Jordaine v. Lashbrook,* 7 T.R. 601. Amongst the different states of our union, the decisions of the Court of King's Bench of either side of this question have been adopted. In this Court, the rule laid down in the case of *Walton v. Shelly* has been admitted and adhered to with a uniformity which establishes it as the law of the Court. Thus, in the case of *Bank of the United States v. Dunn,* 6 Pet. 51, it was enforced in an action by the holder of a note against an endorser, in which an attempt was made to impeach the note upon the testimony of a subsequent endorser; in the case of *Bank of the Metropolis v. Jones,* 8 Pet. 12, in which the maker of a note was deemed an incompetent witness, in an action by the holder, to testify to facts in discharge of the liability of the endorser; and in the case of *Scott v. Lloyd,* the decision of this Court, though not directly upon the same point, may be regarded as approving the rule established by the cases previously adjudicated. The judgment of the Circuit Court for the Eastern District of Louisiana now under review being fully sustained by these authorities, that judgment is hereby

Affirmed.

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