**Wilson and Co. Vs. Smith**

**Wilson and Co. Vs. Smith**

**SooperKanoon Citation** : sooperkanoon.com/79923

**Court** : US Supreme Court

**Decided On :** 1845

**Appeal No.** : 44 U.S. 763

**Appellant** : Wilson and Co.

**Respondent** : Smith

**Judgement** :

Wilson & Co. v. Smith - 44 U.S. 763 (1845)
U.S. Supreme Court Wilson & Co. v. Smith, 44 U.S. 3 How. 763 763 (1845)

**Wilson & Co. v. Smith**

**44 U.S. (3 How.) 763**

*ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE*

*CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF GEORGIA*

## SYLLABUS

Whenever, by express agreement of the parties, a sub-agent is to be employed by an agent to receive money for the principal, or where an authority to do so may fairly be implied from the usual course of trade, or the nature of the transaction;

the principal may treat the sub-agent as his agent, and when he has received the money, may recover it in an action for money had and received.

If, in such case, the sub-agent has made no advances and given no new credit to the anent on account of the remittance of the bill, the sub-agent cannot protect himself against such an action by passing the amount of the bill to the general credit of the agent, although the agent may be his debtor.

The record, being very short, it will be inserted entire.

"This was an action of assumpsit brought in this Court by the plaintiffs, to recover from the defendant the sum of eight hundred dollars and interest, being the amount of a draft or bill of exchange drawn by one Henry B. Holcombe, of Augusta, in the State of Georgia, upon one Charles F. Mills, of Savannah, in said state, and accepted by him, and paid to the defendant. The declaration contained two counts. The first was for money collected and received by the defendant to and for the use of the plaintiffs, upon the particular bill of exchange set out and described in the declaration; the second count was generally for money had and received. The plea of nonassumpsit was pleaded by the defendant in bar of the action, 'it being proved that the draft or bill of exchange upon which the money was collected and received by the defendant was the property of the plaintiffs;' that it had been by them placed in the hands of their agent, David W. St. John, at Augusta, Georgia, for

Page 44 U. S. 764

collection, and by him, St. John, forwarded to the defendant, St. John's agent, at Savannah, Georgia, for acceptance and collection; that it was accepted and paid to the defendant, by whom the proceeds were received and credited to the account of St. John, from whom the defendant received the draft or bill for collection, and who was indebted to the defendant at the time. That at the time the said bill was so paid to the defendant, and by him credited to the account of St. John, he, St. John, had failed in business, and had departed this life; that he failed, and had not recovered his affairs at the time of his death, and was insolvent; that

the credit for the amount of the bill, carried by the defendant to St. John's account, was made in payment of a previously existing debt due by St. John to the defendant, no new transaction having arisen between the defendant and St. John after the payment of the said bill to the defendant;"

"that to secure the payment of his debt to the defendant, St. John had transferred to the defendant three hundred shares of the capital stock of the Augusta Insurance and Banking Company, upon which $100 per share had been paid; that the defendant appeared satisfied with this security, and that St. John would then have given additional security had the defendant required it."

That the draft or bill of exchange was made payable to the order of Henry B. Holcombe, the drawer, and by him endorsed in blank, and endorsed by St. John to H. Smith, Esq. (the defendant), or order. That when the draft was sent to the defendant for collection he was not apprised to whom it belonged, nor were any instructions or directions given to him as to the disposition of the money when collected.

"The following point was presented, during the progress of the trial, for the opinion of the judges, on which the judges were opposed in opinion, *viz.,* whether there was such privity of contract between the plaintiffs and defendant, either express or implied, as would enable the plaintiffs to maintain the action for money had and received."

"Which said point, upon which the disagreement has happened, is stated above, under the direction of the judges of the said court, at the request of the counsel for the parties in the cause, and ordered to be certified into the Supreme Court of the United States at the next session, pursuant to the act of Congress in such case made and provided. "

Page 44 U. S. 769

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

We think the question certified has been settled by the decision of this Court, and that it is unnecessary to go into an examination of the English laws which were cited in the argument. It is admitted that the bill was the property of the plaintiff, and was transmitted to St. John, at Augusta, for collection, and by him transmitted to the defendant, at Savannah, where the drawer resided, and that no consideration was paid for the bill, either by the defendant or St. John. According to the usual course of dealing among merchants, the transmission of the paper to St. John gave him an implied authority to send it for collection to a sub-agent at Savannah, for it could not have been expected by the plaintiff that St. John was to go there in person, either to procure the acceptance of the bill, or to receive the money, nor could St. John have so understood it. So far, therefore, as the question of privity is concerned, the case before us is precisely the same with that of *Bank of the Metropolis v. New England Bank,* 1 How. 234. In that case, the bills upon which the money had been received by the plaintiff in error were the property of the New England Bank, and had been placed by it in the hands of the Commonwealth Bank for collection, and were transmitted by the last mentioned bank to the Bank of the Metropolis, in Washington, where the bills were payable. And upon referring to the case, it will be seen that the court entertained no doubt of the right of the New England Bank to maintain the action

Page 44 U. S. 770

for money had and received, against the Bank of the Metropolis, and the difficulty in the way of its recovery in the action was not a want of privity, but arose from the right of the Bank of the Metropolis to retain, under the circumstances stated in the case, for its general balance against the Commonwealth Bank. In that case, as in the present, the agent transmitting the paper appeared, by the endorsements upon it, to be the real owner, and the party to whom it was transmitted had no notice to the contrary, and the money received was credited to the Commonwealth Bank. We think the rule very clearly established, that whenever, by express agreement between the parties, a sub-agent is to be employed by the agent to receive money for the principal, or where an authority to do so may fairly be implied from the usual course of trade, or the nature of the transaction, the principal may treat the

sub-agent as his agent, and when he has received the money, may recover it in an action for money had and received.

Another question has been raised in the argument -- that is whether the defendant has a right to retain on account of the money due to him from St. John? As this point has not been certified, it is not regularly before the court, yet as it has been fully argued on both sides, and evidently arises in the case, it seems proper to express our opinion upon it, as it may save the parties from further litigation and expense.

Upon this part of the case, as well as upon the question certified, we think the case of *Bank of the Metropolis v. New England Bank,* decisive against the defendant. It appears from the statement that he made no advances, and gave no new credit to St. John on account of this bill. He merely passed it to his credit in account. Now if St. John had owed him nothing, upon the principles we have already stated, the plaintiff would be entitled to recover the money, and we see no reason why he should be barred of his action because St. John was debtor to the defendant, since the case shows that he incurred no new responsibility upon the faith of this bill, and his transactions with St. John remained in all respects the same as they would have been if this bill had never been transmitted to him. In the case of the Bank of the Metropolis and the New England Bank, it appeared in evidence that there had for a long time been mutual dealings between these two banks, in the collection of money for each other, and that balances were suffered to remain and credit given upon the faith of the paper transmitted or expected to be received, according to the usual course of their business with one another. And the court held that if credit had been so given, the party giving it had the same right to retain as if he had made an advance of money; the hazard he ran by the extension of the credit giving him as just and equitable a right to retain, as if he had incurred responsibility by an advance of money. The right to retain, in that case, depended upon the fact that credit was given. But in

the case at bar this fact is expressly negatived, and there is no ground, therefore, upon which he can retain, according to the principles decided in the case referred to.

As this point, however, is not in strictness regularly before this Court, we shall confine our answer to the question sent here for decision, and shall direct it to be certified to the circuit court, that there was such a privity of contract between the plaintiffs and defendant as would enable the former to maintain the action for money had and received.