Smyth Vs. Strader

Smyth Vs. Strader

SooperKanoon Citation : sooperkanoon.com/79973

Court : US Supreme Court

Decided On : 1847

Appeal No. : 45 U.S. 404

Appellant : Smyth

Respondent : Strader

Judgement :

Smyth v. Strader - 45 U.S. 404 (1847)
U.S. Supreme Court Smyth v. Strader, 45 U.S. 4 How. 404 404 (1847)

Smyth v. Strader

45 U.S. (4 How.) 404

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

The statutes of Alabama require the negotiability and character of bills of exchange, foreign and inland, and promissory notes, payable in bank, to be governed by the general commercial law.

If a partner draws notes in the name of the firm, payable to himself and then endorses them to a third party for a personal and not a partnership consideration, the first endorsee cannot maintain an action upon them against the firm if he knew that the notes were antedated.

But if the first endorsee passes them away to a second endorsee before the maturity of the notes in the due course of business, and the second endorsee has no knowledge of the circumstances of their execution and first endorsement, he may be entitled to recover against the firm although the partner who drew the notes committed a fraud by antedating them.

But if the second endorsee received the notes after their maturity, or out of the

ordinary course of business, or under circumstances which authorize an inference that he had knowledge of the fraud in their execution or first endorsement, he cannot recover.

These things are matters of evidence for the jury.

Evidence is admissible to show that, in an account current between the first and second endorsee, no credit was given in it for the notes when they were passed from the first to the second endorsee.

So evidence of drawing and redrawing between the first and second endorsee, alluded to in the account current, is admissible.

The testimony of one of the partners, offered for the purpose of proving the fraud committed by the drawer of the notes, is not admissible. This Court again recognizes the rule upon this subject established in the case of *Henderson v. Anderson,* 3 How. 73.

The partner offered as a witness was a party upon the record, and thus also disqualified.

The facts in the case are stated in the commencement of the opinion of the Court, which the reader is requested to turn to and peruse before reading the argument of counsel.

Page 45 U. S. 413

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The plaintiff brought his action as the second endorsee of two promissory notes in favor of E. Stevenson, purporting to be signed by Strader, Perrine & Co., which partnership consisted of Daniel

Page 45 U. S. 414

P. Strader, James Perrine, E. Stevenson, and John H. Woodcock. The notes were assigned by Stevenson to Stinson & Campbell of New Orleans, and by them to the plaintiff. Stevenson died before the commencement of the suit, and the process was served only on Perrine and Woodcock. At the fall term of 1842, Woodcock pleaded a discharge under the bankrupt law and Perrine pleaded that the partnership of Strader, Perrine & Co. commenced in November, 1835, and that in December of the same year he withdrew from it. That at the time of leaving the firm he sold, for one thousand dollars, his interest to Stevenson, who, by Stinson & Campbell through one Primrose, paid him the above sum; and that they knew of his withdrawal. That the notes were antedated, and were not in possession of Stinson & Campbell or assigned to them till after 17 May, 1836.

Issues being joined on these pleas, the case was submitted to a jury, who found in favor of Perrine, and that Woodcock had been discharged under the bankrupt law.

The questions for decision arise on a bill of exceptions taken by the plaintiff.

The plaintiff proved by the deposition of Hood that Stevenson was a member of the firm of Strader, Perrine & Co., and that he executed the notes, and that they are dated before any public notice was given of the dissolution of the firm. That the firm of Stinson & Campbell was indebted to the plaintiff in a large sum in the

summer of 1831, and that in part payment, the notes, before maturity, were assigned to him, for which a credit on their account was entered. And here the plaintiff's evidence closed.

The defendant, Perrine, proved

"that he withdrew from the firm 6 December, 1835, but that there was no public advertisement giving notice of the dissolution of the firm until 23 April, 1836, although the fact was known to Stinson & Campbell at the time of Perrine's withdrawal."

The defendant also proved by John Test that in August, 1836, he saw in the hands of the plaintiff's agent an account current between him and the firm of Stinson & Campbell; that he made a copy of the same, which he produced, and from which it appeared that no credit had been entered for the notes sued on.

The plaintiff's counsel moved the court to exclude from the jury all testimony as to the transactions between Stevenson and the firm of Stinson & Campbell or between Stevenson and the other members of the firm of Perrine & Co., there being no proof of any notice to the plaintiff of any of these matters insisted on by the defendant in his defense. But the court overruled the motion and

"instructed the jury, that if they believed the said notes were made by Stevenson without the knowledge and consent of his partners and that he passed them off to the said Stinson &

Page 45 U. S. 415

Campbell without the knowledge or consent of his partners, and that if the said Stinson & Campbell at the time of their receiving the notes, knew that, prior to that time, to-wit, on 6 December, 1835, Perrine had withdrawn from said firm and was not then a partner, and that if it was also proved to them that the said notes were passed to the said Stinson & Campbell by Stevenson for his individual benefit, and not for the interest and benefit of the said firm, and that this was known to the said Stinson & Campbell when they received the said notes, that then the jury must find

for Perrine, the defendant."

To the above ruling and instruction exceptions were taken by the plaintiff.

From the instruction of the court it appears the notes in controversy were considered as governed by the law merchant. By the Alabama statute of 1812 (Clay's Dig. 381), the assignee of "bonds, obligations, bills single, promissory notes, and all other writings for the payment of money" may sue in his own name, but all equities and grounds of defense remain open as fully as though the instrument had not been assigned until the defendant had notice of the assignment. But by the act of 1828 (Clay's Dig. 383) it is provided

"that the same remedy on bills of exchange, foreign and inland, and on promissory notes payable in bank, shall be governed by the law merchant, as to days of grace, protest, and notice,"

and by the succeeding section, all other contracts for the payment of money &c.;, are made

"assignable as heretofore, and the assignee may maintain such suit thereon as the obligee or payee could have done, whether it be debt, covenant, or assumpsit."

The phraseology of this section would seem to place all other instruments, for the payment of money &c.;, on a different footing from those described in the preceding section. The provision of that section appears only to relate to the remedy on bills of exchange and promissory notes payable at bank under the law merchant, as regards the days of "grace, protest, and notice." But as the following section defines the rights of the assignee of "all other contracts in writing for the payment of money," &c.;, it may perhaps be fairly inferred that the legislature intended the negotiability and character of the instruments above named should be regulated by the general commercial law. Such seems to be the opinion of the Supreme Court of Alabama. In the case of *McDonald v. Husted,* 3 Ala. 297, it was held

"that a note made negotiable and payable at bank is not subject to offset, in the hands of a *bona fide* endorsee, who has acquired it previous to maturity, although it has never been negotiated at the bank where it is made payable."

Also in *Beal v. Bennett,* 6 Ala. 156, the same principle is recognized.

However fairly Stevenson may have acted in the execution of these notes payable to himself, it is clear that he could not have

Page 45 U. S. 416

sustained on them an action at law. A partner of a firm cannot at law sue it, for that would be to sue himself. But a *bona fide* assignee of Stevenson might maintain an action. *Jones, Assignees v. Yates,* 9 Barn. & Cressw. 532; *Bosanquet v. Wray,* 6 Taunt. 597; *Aubert v. Maze,* 2 Bos. & Pul. 371; *Smith v. Lusher,* 5 Cowen 688. Stevenson, in executing the notes to himself, under the circumstances proved, committed a fraud against his partners, and this fraud was greatly aggravated if, as alleged, he antedated the notes so as to charge Perrine as partner. That he assigned the notes to Stinson & Campbell, if for any consideration, for one that was personal to himself, and wholly disconnected with the partnership, is not controverted. These facts, or a part of them, of which Stinson & Campbell must have had knowledge, would have defeated a recovery by them. Every

"contract in the name of the firm, in order to bind the partnership, must not only be within the scope of the business of the partnership, but it must be made with a party who has no knowledge or notice that the partner is acting in violation of his obligations and duties to the firm or for purposes disapproved of by the firm, or in fraud of the firm."

Story on Partnership 193. This rule as well applies to the endorsement of negotiable instruments as to other contracts.

But the fraud of Stevenson and the knowledge of that fraud by Stinson & Campbell do not necessarily defeat the plaintiff's action. And the charge of the court on this

point was clearly erroneous. If, before the maturity of the notes, in the due course of business, and without any knowledge of the circumstances of their execution and first endorsement, the plaintiff received them, he may be entitled to recover notwithstanding the fraud. By

"forming a partnership, the partners declare themselves to the world satisfied with the good faith and integrity of each other and impliedly undertake to be responsible for what they will respectively do within the scope of the partnership concerns."

Story on Partnership 161. On this principle, the firm is bound for the frauds committed by one of its partners. Where one of two innocent persons must suffer by the act of a third person, the rule is just that he shall suffer who reposed the higher confidence and credit in such person.

But if the plaintiff received these notes after their maturity, he holds them subject to all the defenses which might have been set up against them in the hands of Stinson & Campbell. Or if he received them out of the ordinary course of business, without consideration, or under circumstances which authorize an inference that he had knowledge of the fraud in their execution or their first endorsement, he cannot recover. These are matters of evidence for the jury.

The testimony of John Test, which was excepted to, we think

was rightfully admitted. He proved that in August, 1836, he saw in the hands of an agent of the plaintiff an account current between him and the firm of Stinson & Campbell. That he copied the account, which copy he exhibited and from which it did not appear that a credit had been entered for the notes in controversy. As this, compared with the evidence of the plaintiff, might conduce to disprove the consideration alleged to have been paid for the notes by the plaintiff, it was properly admitted. The relevancy of the deposition of Charles, which was also excepted to, is not very apparent. It shows that Stinson & Campbell in 1836, drew a large amount of drafts on the plaintiff, in part payment of drafts which he had

previously drawn on them. This drawing and redrawing constituted no part of the account current spoken of by Test, but at the foot of the account a memorandum was made of these drafts. As this deposition conduced to show the nature of the accounts between the plaintiff and the firm of Stinson & Campbell, no very strong objection is perceived to its admission as evidence. It could not have misled the jury.

The deposition of Strader, which was also excepted to by the plaintiff, was not admissible under the decisions of this Court. He was one of the firm of Strader, Perrine & Co., and his testimony conduced to show the fraud of Stevenson in the execution of the notes. In the case of *Bank of the United States v. Dunn,* 6 Pet. 57, this Court said, "It is a well settled principle that no one who is a party to a negotiable note shall be permitted, by his own testimony, to invalidate it." The same principle was held in *Bank of Metropolis v. Jones,* 8 Pet. 12. This was decided in the case of *Walton v. Shelley,* 1 Term 296, and although that decision was overruled by the King's Bench in the case of *Jordaine v. Lashbrooke,* 7 Term 601, this Court, in the cases cited and in several subsequent cases, has established the rule as above stated. In the state courts, there is a great diversity of judgment on this point.

Strader was a party on the record, and that rendered him an incompetent witness. *Scott v. Lloyd,* 12 Pet. 149; *Stein v. Bowman,* 13 Pet. 219.

Upon the whole, the judgment of the circuit court is

Reversed and a venire de novo awarded.

MR. JUSTICE CATRON.

In this case, my opinion is founded on considerations that differ so much from those proceeded on in the principal opinion, that I am under the necessity of stating my own views, or of dissenting, which I am not prepared to do.

In the first place, Stevenson had been one of the firm of Strader, Perrine & Co. He made the note payable to himself, and signed the name of the firm to it. Being both

a maker and the payee, the

Page 45 U. S. 418

note was void on its face, or at least could have no legal effect; when negotiated, that is, when it was endorsed by Stevenson, and sold to Stinson & Campbell it could only become a binding instrument in their hands on Strader, Perrine & Co., as Stinson & Campbell could enforce payment. The time of negotiation, therefore, is the true date of the note.

It is in proof that the firm of Strader, Perrine & Co. was dissolved on 23 April, 1836, and that the usual advertisement was then made of the fact. This bound all persons who had not had previous dealings with the firm; nor is there any proof found in the record, showing that either Stinson & Campbell or Smyth, the plaintiff, had had any such dealings. If the note was negotiated, therefore, to Stinson & Campbell after the dissolution of the partnership, it was void, and does not bind Perrine, inasmuch as Stevenson had no power to bind him.

2. Perrine is proved to have withdrawn from the firm in December, 1835. But as no regular notice was given of this fact, it rests on him to bring home knowledge of it to the holder of the paper. If Stinson & Campbell had knowledge, when they took the note from Stevenson, then they could not have recovered from Perrine on it.

So again, if Stinson & Campbell took the note from Stevenson in discharge of the individual debt of the latter, they could not recover from Perrine, whether he was or was not a partner at the date of its negotiation. The proof of either of these events is imposed on the plaintiff. But having shown either of the two last circumstances, then the plaintiff is bound to prove "under what circumstances, or for what value, he became the holder." I need only refer to Chitty on Bills (9th ed) 648, for the established rule. If the plaintiff fails to show, in such case, that he came by the note in the due course of trade, and before it fell due, then the defendant is entitled to a verdict.

3. In regard to the question of the competency of Strader's evidence, I have found much difficulty. The competency of Strader to depose, in the principal opinion, is

held to be governed by the cases of *United States Bank v. Dunn,* 6 Pet. 51, and *Bank of Metropolis v. Jones,* 8 Pet. 12. In the one case, Carr, the first endorser, was introduced by the second endorser, Dunn, who was sued to make out a defense. In the second case, Jones, the endorser and defendant, introduces Mr. Blake, the maker of the note, to establish a defense; and, in each instance, this Court held that the witness was incompetent to invalidate the negotiable paper to which he was a party; and the decision in *Walton v. Shelley,* 1 Term 296, was followed. Of this case, Mr. Chitty says (669) -- "Though it was formerly held, that no party should be permitted to give testimony to invalidate an instrument he had signed, a contrary rule now prevails," and refers to *Bent v. Baker,* 3 Term 36, and

Page 45 U. S. 419

Jordaine v. Lashbrooke, 7 Term 601. "The general rule is," says Chitty,

"that it is no objection to the competency of a witness, that he is also a party to the same bill or note, unless he be directly interested in the event of the suit, and he be called in support of such interest or unless the verdict, to obtain which his testimony is offered, would be admissible evidence in his favor in another suit."

This was the principle on which the cases of *Bent v. Baker* and *Jordaine v. Lashbrooke* proceeded. By the statute of 3 and 4 Will. IV, ch. 42, 26, for the amendment of the law, the rule was enlarged so as to let in parties to negotiable paper as witnesses for or against whom the verdict and judgment might be evidence, the statute providing that the record should not be evidence for or against them. And thus the law of evidence in this regard now stands in the courts of Great Britain. It is also settled, and had been long before 1832, when the decision in *Bank of the United States v. Dunn* was made, in a large majority of the states of this Union, in accordance with the principles laid down in *Jordaine v. Lashbrooke* and *Bent v. Baker,* and the question now is for this Court to determine how far the United States circuit courts, when acting in the states, shall enforce the doctrine laid down in *Dunn's Case,* and which was very properly applied in that of *Jones.* The decision is "That no man who is *a party' to the note or bill shall, by his own evidence, invalidate it." But suppose he is no party to it,*

and that his name has been put on it, or to it, by forgery, and he is called on by another to establish that the defendant's name was forged as well as that of the witness, is he then competent? He gave no credit to the paper, and if the evidence of all those who could prove the defense is cut off by the mere name appearing, nothing more would be required to effectuate the fraud than to put on the names of all persons who could prove the fraud. In such an instance I feel sure the rule laid down by this Court does not apply. Nor can I, satisfactorily to my own mind, distinguish the case put from one where a fraudulent note is made in the name of a firm, by one of the original partners, after the dissolution of the partnership, when he had no authority to use the name of those he attempts to bind. Indeed it is difficult to say that Stevenson was not guilty of forgery, if he made the notes and passed them off to Stinson & Campbell after the dissolution of the partnership in discharge of his own debt and with the intention to defraud his former partners. In the cases that have heretofore come before this Court, the witnesses proved in advance that they gave credit to the paper by signing their names, and that they were, beyond dispute, parties to it as well as the defendant.

The principle assumed in *Walton v. Shelley* is in violation of one of the most familiar and general principles of evidence known to courts of justice -- that is to say that any person of sufficient

Page 45 U. S. 420

age and sanity can be a competent witness to depose in any cause where he is not directly interested in the event of the suit. To this rule there are exceptions, but they are almost uniformly favorable to the admission of the testimony, are of comparatively recent origin, founded on experience, and conducive to the due administration of justice in a high degree.

Again, the Act of May 19, 1838, declares that

"The forms and modes of proceeding in suits, in the courts of the United States (in states admitted into the Union since 1789), in those of common law, shall be the same in each of those states respectively as are now used in the highest court of

original and general jurisdiction of the same."

That the court below proceeded, in the admission of Strader as a witness, according to the modes of proceeding in the circuit courts of the State of Alabama, is not questioned. The method and manner of administering justice in the state courts is the mode referred to in the act of Congress, as I understand it, and I cannot resist the conclusion, that the modes prescribed by the act of Congress to the federal courts held in that state embrace the rules in regard to the competency of evidence; without evidence there can be no proceedings; rules for its admission are indispensable; these rules must be derived from some authority; from statutes they cannot be, and therefore Congress has said the state courts shall furnish them to the foreign tribunals administering, the laws there -- and this for the plain reason, that the measure of justice shall be the same in the foreign that it is in the domestic tribunals, and evidence is the measure of justice in great part.

There can be no objection to the competency of Strader because he was a party of record. The original writ issued against him and Perrine jointly, but Strader was not found, and a *nolle prosequi* was entered as to him, and Perrine was declared against alone.

I concur that the charge of the circuit court was erroneous insofar as it assumed that the instruments sued on were subject to the same equities in the hands of Smyth that they were when held by Stinson & Campbell. The courts of Alabama have construed the statutes of that state affecting negotiable paper, and held they did not apply to notes payable in bank; of which description are the ones sued on. The charge therefore violated the commercial rule that the innocent endorsee takes the paper discharged of a previous infirmity.