

Bridges Vs. Armour

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Court : US Supreme Court

Decided On : 1847

Appeal No. : 46 U.S. 91

Appellant : Bridges

Respondent : Armour

Judgement :

Bridges v. Armour - 46 U.S. 91 (1847)

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Bridges v. Armour

46 U.S. (5 How.) 91

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

A party upon the record, although divested of all interest in the event of the suit, is not a competent witness in a cause.

If a person be declared a bankrupt at a time when a suit is pending to which he is a party, his discharge would not be a bar to his liability for costs upon a judgment obtained subsequently to his discharge. His liability for costs, therefore, excludes him as a witness upon the ground of interest.

If the event of the suit may increase the effects of the bankrupt in the hands of the assignee, and thus increase the surplus which would belong to him, he is an incompetent witness.

On 26 September, 1840, Bridges, Mabray & Co., gave their promissory note to Armour, Lake & Walker, or order, payable one day after date, for \$3,158.69, being balance of book account, bearing interest at eight percent per annum, from 1 August, 1840, until paid.

The note not being paid, a suit was commenced on 12 of November following. As no question arises upon the pleadings, it will be unnecessary to refer to them. They resulted in several issues of fact.

On the trial, in June term, 1844, the plaintiffs offered in evidence the deposition of Walker, a co-plaintiff on the record, taken in answer to interrogatories and cross-interrogatories before a commissioner in New Orleans, in pursuance of a stipulation between the attorneys, and in which the attorney for the defendants agreed to waive any exception for want of issuing a commission, in due form, to take the testimony, or for want of notice of its execution to the defendants.

It appeared on the trial that Walker had obtained a discharge under the bankrupt act, by which he was discharged from all his debts owing by him at the time of presenting his petition, to-wit, on

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30 December, 1842. The discharge was granted on 12 May, 1843.

In one of the interrogatories in chief the question was put to the witness whether or not he had any interest in the event of the suit, and, if none, in what manner his interest had ceased. To which he answered, that he had none, and that his

interest ceased on obtaining his discharge.

The counsel for the defendants objected to the admission of the deposition, on the ground that Walker was a party to the record, one of the plaintiffs in the suit, but the objection was overruled, and the evidence admitted, to which the counsel excepted. The plaintiffs had a verdict.

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MR. JUSTICE NELSON delivered the opinion of the Court.

Whether a party on the record, divested of all interest in the result of the suit, and therefore unexceptionable on that ground, is a competent witness or not in the cause, can scarcely be regarded as an open question in this Court, after what has already fallen from it.

It is true, as stated by the counsel in the argument, that in all the cases in which the question has arisen, the party was liable for the costs of suit, and therefore interested; but whenever the question has been presented, the language of the court has been uniform, that the witness was incompetent on the ground of his being a party on the record; [*De Wolf v. Johnson*](#), 10 Wheat. 367, [23 U. S. 384](#) ; [*Scott v. Lloyd*](#), 12 Pet. 145; [*Stein v. Bowman*](#), 13 Pet. 209.

In *Scott v. Lloyd*, the Court referred to a case in 1 Pet.C.C. 301, where it had been held, that a party named on the record might be made a competent witness by a release of his interest, and expressed its unqualified dissent, and in [*Stein v. Bowman*](#), 13 Pet. 209, in which Bowman, a party, had been admitted, the Court, after noticing his liability for costs, remarked that if he had been released or a sum of money sufficient to cover the costs of suit brought into court, his competency would not have been restored.

The exclusion is placed on the ground of policy, which forbids a party from being a witness in his own cause, and that this would be the practical effect and operation of a rule of evidence which would enable a party to qualify himself for a witness by releasing his interest in the suit. Though nominally discharged by the release, he

would usually be the real and substantial party to the suit in feeling, if not in interest, thereby holding out to litigants temptations to perjury and to the manufacturing of witnesses in the administration of justice.

The question is one in respect to which different courts have entertained different opinions, and we admit that the argument in favor of the admission of the party, upon the general principles of evidence governing the competency of witnesses, is plausible and not without force. But the tribunals which maintain the competency of the party, if divested of interest, still hold that he cannot be compelled to testify, and also that he cannot be compelled to testify when called against his interest, which, upon general principles, if consistently carried out and allowed to govern the question in the admission of the party, would lead them to an opposite result. They should be compelled to testify, for if the admission is

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placed, as it undoubtedly is, upon principles applicable to the admission and rejection of witnesses generally in the cause, and the party to be regarded as competent when without interest, or indifferent, or when called against his interest, then, like all other witnesses, he should be subject to the writ of subpoena and to the compulsory process of the court, and not left at liberty to withhold or bestow his testimony at will.

There can be no distinction in principle in this respect in favor of a party to the record, if allowed as a witness at all, and the only ground upon which the court can stop short of going the length indicated is by giving up general principles and placing itself upon policy and expediency, as upon the whole best subserving, in the instances mentioned, the interests of justice and of all concerned in its administration -- a ground which has been supposed by those holding a different opinion upon the question quite sufficient to justify the entire exclusion of the party.

But the witness in this case is also liable to objection on the ground of interest. This suit was pending at the time he was declared a bankrupt and obtained his discharge, and it is quite clear, if the defendants had eventually succeeded, the

discharge would not have been a bar to his liability for the costs of the suit. The judgment would have been a debt accruing subsequent to the discharge, which could not have been proved under the act. Act of Congress, August 19, 1841, 4, 5 Stat. 443; *Haswell v. Thorogood*, 7 Barn. & C. 705; *Brough v. Adcock*, 7 Bing. 650. His future effects, therefore, would have been liable.

And even if the discharge could have operated in bar of his liability for the costs, the witness was still interested to procure a recovery in favor of the plaintiffs, as it would to increase the effects of his estate in the hands of the assignee to the extent of his interest in the demand in suit, and to increase the surplus, if any, which would belong to him.

For this reason, a defendant who has pleaded his certificate, upon which a *nolle prosequi* has been entered by the plaintiff, is not a competent witness for his codefendant without first releasing his interest in this fund. He would otherwise be interested in defeating a recovery of the demand in suit, as he would thereby diminish the claims upon his joint and separate property, and thus increase the surplus, if any, in winding up the estate. *Butcher v. Forman*, 6 Hill 583; *Aflalo v. Fourdrinier*, 6 Bing. 306.

On all these grounds, we think the witness was incompetent and that the deposition should have been rejected.

It has been suggested that the objection to the witness came too late, and should have been made before the commissioner and before the cross-examination. But the case shows that both parties were aware of the legal objections to his competency, and that the testimony was taken by an arrangement between them, for the purpose

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of presenting the question to the court. The counsel for the plaintiffs assumed, as is apparent from his interrogatories in chief, that the witness was incompetent on the ground of his being a party in interest, and took upon himself the burden of removing the objections. For this purpose, he produced his discharge in

bankruptcy, and on the 14th inst. put the question to him whether he had any interest in the suit, and if not, to tell how it had ceased.

The question suggested does not arise in the case, and therefore it is unnecessary to examine it.

For the above reasons, we think the court below erred and that the judgment must be

Reversed with a venire de novo.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Mississippi and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said district court with directions to award a *venire facias de novo*.

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