Pease Vs. Dwight

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Court : US Supreme Court

Decided On : 1848

Appeal No. : 47 U.S. 190

Appellant : Pease

Respondent : Dwight

Judgement :

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Pease v. Dwight

47 U.S. (6 How.) 190

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF MICHIGAN

SYLLABUS

Where a promissory note was payable to the order of several persons, the name of one of whom was inserted by mistake, or inadvertently left on when the note was endorsed and delivered by the real payees, one of whom was also the maker

of the note, the endorsee had a right to recover upon the note, although the names of all the payees were not upon the endorsement, and had a right also to prove the facts by evidence.

On 1 January, 1837, the following promissory note was executed.

" *Detroit, January 1, 1837* "

"Two years from date I promise to pay to the order of Walter Chester and Pease, Chester & Co. one thousand five hundred dollars, for value received, at the Farmers and Mechanics' Bank of Michigan, with interest."

"[Signed] JOHN CHESTER"

Endorsed by Pease, Chester & Co., but not by Walter Chester.

The firm of Pease, Chester & Co. was composed of William T. Pease (the plaintiff in error), John Chester, and Tarleton Jones.

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The note having passed into the hands of William Dwight, a citizen of Massachusetts (the defendant in error), and not being paid at maturity, Dwight brought suit in the circuit court against Pease, Chester, and Jones. The course which Pease took will be stated presently. Chester pleaded bankruptcy, which was demurred to, but the demurrer overruled and the plea sustained. Jones was a citizen of Illinois, and could not be found.

There were several counts in the declaration, but the only one upon which judgment was rendered, and which it is material now to state, was the following:

"For that whereas one John Chester heretofore, to-wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-seven, at Detroit, in said district, made his certain promissory note in writing, bearing date the same day and year aforesaid, and thereby then and there promised, two years from the date thereof, to pay to the order of Walter Chester and the said defendants, under

the co-partnership name and style of these said defendants, Pease, Chester & Co., one thousand five hundred dollars, for value received, at the Farmers and Mechanics' Bank of Michigan, with interest, and then and there delivered the said promissory note to the defendants, who then and there, using their co-partnership name and style of Pease, Chester & Co., endorsed said note, and delivered the same to the plaintiff, and the said plaintiff avers that the said John Chester was one of the said persons using the name and style of Pease, Chester & Co., and that the name of the said Walter Chester was inserted in the said promissory note as one of the persons to whose order the said sum of money should be payable by the said John Chester, for the purpose of, and with the intention on the part of the said John Chester, of procuring the said Walter to endorse the said note for the accommodation and benefit of the said John Chester, and for no other purpose; that the said note was never delivered to the said Walter Chester, and that the said Walter Chester never had at any time any interest or property, or any rights therein, or to the money specified and mentioned therein."

"That the said note was by the said John Chester delivered to the said Pease, Chester & Co. alone, who received the same and endorsed it solely, who waived the endorsement of the said Walter Chester, and having solely endorsed the same, delivered the said note, so endorsed as aforesaid, to the said plaintiff. And the said plaintiff avers that afterwards, and when the said promissory note became due and payable, according to the tenor and effect thereof, to-wit, on the fourth day of January,

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in the year eighteen hundred and thirty-nine, at the said Farmers and Mechanics' Bank of Michigan, the said note was presented and shown to and at the said bank for payment thereof, and payment thereof requested; but that neither the said John Chester, nor any other person, did or would pay the said sum of money therein specified, but then and there wholly neglected and refused to do so; of all which said several premises the said defendants then and there had due notice."

Pease demurred to this count, and filed the following causes of demurrer:

"1st. Because it is not averred in said first count, that Walter Chester, one of the joint payees of the said promissory note described in said counts, ever endorsed or delivered the same to the said plaintiff, or any other person whatever."

"2d. For that said first count is in other respects informal, insufficient, and defective."

Dwight put in a joinder in demurrer.

In November, 1845, the circuit court overruled the demurrer, entered up judgment for the plaintiff, and assessed his damages at $2,427 and costs. To review this judgment, a writ of error brought the case up to this Court.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

We think that the only point presented by the record in this case for the decision of the court was rightly ruled by the circuit court.

That point is whether a promissory note payable to the order of several persons, one of whom inceptively refused to be a payee of it, and who was treated by the drawer and other payees, both in the delivery of the note and in its negotiation, as no party and having no interest in it, *can be transferred by the endorsement of the real payees, so as to give the ownership of it to the endorsee, and a right of action upon it ex directo, under the statute of 3 & 4 Anne, c. 9.*

The statute is that

"Any person, to whom a promissory note that is payable to any person or his order is endorsed or

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assigned, or the money therein mentioned ordered to be paid by endorsement thereon, shall and may maintain an action for such sum of money, either against

the person signing such note, or against any of the persons who endorsed the same, in like manner as in cases of inland bills of exchange."

The statute requires a transfer to be made by the endorsement of the person to whom the note is payable, and the interpretation of it is that, where a note is payable to the order of several persons not in partnership, all must separately sign their names as endorsers. The object being that before an endorsee shall recover the contents of the note in his own name, he shall show he has acquired a property in it by a transfer from those who were the original payees or from others who were their endorsers. The statute is not merely a form requiring all the payees in endorse, but a substantial requisition, *upon the presumption that all the payees upon the face of the paper have an interest in it, and that they have endorsed it.* We have, then, the rule and the reason of the rule. And it seems to us that to permit it to comprehend a case of an undertaking between the real parties because a name had been mistakenly inserted or had been inadvertently left upon the face of the paper when the note was delivered to the real payees by the drawee would be to wrest the statute out of its meaning and to sacrifice the substantial intention of it merely to form. The statute meant to deal with real parties. The omission to erase the name in such a case does not lessen the drawer's obligation to pay his not to the real payees, or their right of action upon it against the drawer as a note of hand. If, then, the real payees shall endorse the note to a third person, they are within the words of the statute as endorsers, and the endorsee, in an action against them or the drawer, may be permitted to prove the real character of the undertaking, by showing that the name of a person had been inadvertently left upon the paper as a payee, who had refused to be such, and who had been waived as a party to the note, both by the drawer and the real payees, when the contract had been completed between them by the delivery of the note. In the case before us, the declaration recites the particular circumstances under which the note was made and endorsed. The demurrer admits them. That is that the paper had been endorsed by the real payees of it, but not by the nominal payee, who never was an actual payee nor ever had any interest in the note by being in any way a party to it. It would really be going very far to say, that the statute giving the endorsee a right of action *for such sum of money, either against*

the person signing such note or against any of the persons who endorsed the same, did not

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mean it to be exercised because a person's name was upon the face of the paper who never had been a party to it. No such decision has been made. It may be because no case of this kind has ever occurred before. We can find none like it. In the absence of all authority against our conclusion, we must take upon ourselves the responsibility of announcing it as an original application of the statute to this case, and for any case of a like kind which may occur, without intending it to go further. We think, however, that the interpretation is sustained by what has been the practice under the statute in some other particulars -- that it is within the spirit of the principle upon which the statute has been administered. For instance, the statute requires the endorsement of a note to be made by the person to whom it is payable, and one of several partners may endorse in the partnership name; but though a note be made payable to a partnership, a transfer in the name of one partner alone will pass the partnership interest, if it be proved that it has been the practice of the firm to endorse for them in the name of one only. *South Carolina Bank v. Case,* 8 Barn. & Cres. 436. So if one partner transfer in the name formerly used by the partnership. *Williamson v. Johnson,* 1 Barn. & Cres. 146; 2 D. & R. 281.

Also, where a bill is drawn upon a firm, and one partner writes "Accepted," adding only his own name, it will bind the firm, if they were in partnership at the time of the acceptance. An endorsement by the cashier of a bank of a note payable directly to the bank is good, upon the ground that he represents the interest of the bank in it, though he is not officially or otherwise a payee upon the face of the note. In *Goddard v. Lyman,* 14 Pick. 268, it is said, a negotiable note payable to three persons may be legally transferred by endorsement by two of them to the third payee and a stranger, and, if this were doubtful, the endorsement of the third payee to the stranger will clearly pass the property to him. In *Snelling v. Boyd,* 5 Monroe 173, it is said, one of several joint holders of a bill of exchange may transfer the whole interest in it by endorsement. Where the maker of a promissory

note endorsed the same, for his own benefit, in the payee's name, by virtue of a parol authority for that purpose communicated to him by the payee, it was held to be well endorsed, and that the payee was liable upon such endorsement in the same manner as if it had been made by himself in his own hand. *Turnbull v. Trout,* 1 Hall 336. The foregoing, it will be perceived, are all of them cases in which parol proof has been admitted to show the character of the agencies by which notes or bills have been transferred or accepted, without any one of

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the notes having been endorsed within the exact letter of the statute, though all of them are within its spirit.

But we rely altogether in this case upon the fact, that the note was transferred by the endorsement of those who were its real payees -- by those who had the absolute property in it. We think the true meaning of the statute is that such as have the property in the note have the right to endorse, though there shall be a name upon the paper of another person, which was inserted by mistake as a payee, or inadvertently left in when the note was delivered, and that in an action by the endorsee he should be permitted to prove such a fact. Upon this point of the right of those to endorse who have the absolute property in a bill or note, we will cite what was said by the learned Chief Justice Willes in the conclusion of his opinion in the case of *Stone v. Rawlinson,* Willes 562:

"On the strength of this case I think I may make a syllogism, which will be conclusive in the present case. Whoever has the absolute property in a bill, made payable to one or his order, may assign it as he pleases, within the provision of the statute, and such assignee may maintain an action in his own name; the executor or administrator of a person to whom such bill is made payable has the absolute property in it, and therefore he may assign it to whomsoever he pleases, and such assignee may maintain an action in his own name."

This was said in answer to an objection, that an executor or administrator cannot assign a promissory note made payable to a person or order, so as to enable the

endorsee to bring an action in his own name. So a bill or note made payable or endorsed to a *feme sole* who afterwards marries, or where it is made during the coverture, the right of transfer vests in the husband, so as to give his endorsee a right of action upon it in his own name, and the husband may be sued as an endorser. Neither the case of the executor nor that of the husband is within the letter of the statute, but both are according to the spirit and intention of it, to permit endorsements to be made by those who have a property in promissory notes, so as to enable their endorsee to maintain an action in his own name.

The judgment of the circuit court is affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Michigan, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs and damages at the rate of six percentum per annum.