

Miller Vs. Austen

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 54 U.S. 218

Appellant : Miller

Respondent : Austen

Judgement :

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Miller v. Austen

54 U.S. (13 How.) 218

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

A statute of Ohio declares all promissory notes, drawn for a sum certain, payable to any person or order, or to any person or his assignees, negotiable by endorsement.

The following paper, namely,

"No. 959. Mississippi Union Bank, Jackson, Miss. February 8, 1840."

"I hereby certify that Hugh Short has deposited in this bank, payable twelve months from 1 May, 1839, with five percent interest till due, fifteen hundred dollars for the use of Henry Miller and payable only to his order upon the return of this certificate."

"\$1,500 Wm. P. Grayson, *Cashier* "

was negotiable by endorsement under the statute, and the endorser had a right to maintain an action against an endorser.

On 8 February, 1840, the Mississippi Union Bank issued the following certificate:

"MISSISSIPPI UNION BANK"

"Jackson, Miss., Feb. 8th, 1840"

"I hereby certify, that Hugh Short has deposited in this bank, payable 12 months from 1 May, 1839, with 5 percent interest till due, fifteen hundred dollars, for the use of Henry Miller, and payable only to his order, upon the return of this certificate."

"\$1500 WM. P. GARYSON, *Cashier* "

On which are the following endorsements:

"Pay to George Lockwood or order. HENRY MILLER,"

"Cincinnati, Ohio"

"Pay Austen, Wilmerding & Co. or order, without recourse."

"GEORGE LOCKWOOD"

On 4 May, 1840, L. V. Dixon, justice of the peace and *ex officio* notary public, presented the paper declared on at the counter of the Mississippi Union Bank at Jackson and demanded

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of the teller payment in specie or its equivalent, which that officer, after consultation with the other officers of the bank, refused, but offered to pay in the notes of the bank, which the notary would not accept. The defendant, Miller, was duly notified as endorser by a written and printed notice directed to him at Cincinnati and deposited in the post office in time for the first mail of the next day.

In July, 1847, Austen, Wilmerding & Co. brought an action against Miller in the Circuit Court of Ohio. The suit was brought against Miller as endorser, and the declaration contained three counts.

1st. Alleging it to be a promissory note of the Union Bank, payable to the order of Henry Miller, and by him endorsed to George Lockwood, who endorsed it to plaintiffs below.

2d. Alleging it to be a draft drawn by Henry Miller, on the Mississippi Union Bank, at Jackson, requesting the said bank to pay to George Lockwood, and by him endorsed to the plaintiffs below, and charging a due presentment for payment and notice of nonpayment.

3d. On a common count for money lent and advanced, paid, laid out, and expended, money had and received, and on an account stated.

The plea was *nonassumpsit*.

In October, 1850, the cause came on for trial, when the jury found a verdict for the plaintiff for \$2,468.86.

Upon the trial, the plaintiff offered the note in evidence, together with the protest &c.; Objection was taken, but the court overruled it and admitted the evidence. This was the subject of the first bill of exception.

The second exception was to the refusal of the court to grant certain prayers asked for by the defendant, of which it is only necessary to notice the following.

1st. That the paper offered in evidence is not negotiable instrument under the laws of Ohio, and cannot be sued on by the plaintiffs in the cause.

6th. That said paper offered in evidence is not a promissory note, nor is it a bill of exchange, but is a mere certificate, acknowledging the receipt and deposit of paper or obligations of some kind, which are payable twelve months after 1 May 1839, bearing interest at the rate of five percent till due.

Upon these exceptions the case came up to this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

The only question this case presents that we deem worthy of notice is whether the paper sued on is a negotiable instrument; it is as follows:

"No. 959. Mississippi Union Bank, Jackson, Miss Feb. 8, 1840. I hereby certify, that Hugh Short has deposited in this bank, payable twelve months from 1 May, 1839, with 5 percent interest till due, fifteen hundred dollars, for the use of Henry Miller, and payable only to his order upon the return of this certificate. \$1,500. Wm. P. Grayson, Cashier."

The suit was by the last endorsee against his immediate endorser, and brought in Ohio. The statute of that state declares all promissory notes, drawn for a sum certain, payable to any person or order or to any person or his assigns negotiable by endorsement.

The established doctrine is that a promise to deliver or to be accountable for, so much money is a good bill or note. Here the sum is certain, and the promise direct. Every reason exists

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why the endorser of this paper should be held responsible to his endorsee that can prevail in cases where the paper endorsed is in the ordinary form of a promissory note, and as such note, the state courts generally have treated certificates of deposit payable to order, and the principles adopted by the state courts in coming to this conclusion are fully sustained by the writers of treatises on bills and notes. Being of opinion that the circuit court properly held the paper endorsed negotiable, it is ordered that the judgment be

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 Ohio 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.

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