

**Sigerson Vs. Mathews**

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**Court :** US Supreme Court

**Decided On :** 1857

**Appeal No. :** 61 U.S. 496

**Appellant :** Sigerson

**Respondent :** Mathews

**Judgement :**

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**Sigerson v. Mathews**

**61 U.S. (20 How.) 496**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MISSOURI*

## **SYLLABUS**

Where the endorser of a promissory note, in conversation with the agent of the holder, before its maturity, dispensed with a presentation of the note and demand of payment, and promised to pay it, or provide for its payment, at maturity, he

could not, when sued, set up as a defense that the note was not presented for payment and demand made therefor when it was due, and that no notice of its dishonor was given.

If, after the maturity of the note, the endorser promised the agent of the holder to pay the same, having at the time of making such promise knowledge of the fact that the note had not been presented for payment, and no demand made therefor or notice of nonpayment, he could not, when sued, set up as a defense a want of such demand or notice.

The facts are stated in the opinion of the Court.

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

An action was brought by Mathews against John Sigerson, as endorser on a note of James Sigerson, now deceased, dated the 10th of March, 1852, for the payment of the sum of two thousand dollars, two years after date, at the Bank of the State of Missouri, with interest from the date.

It was proved on the trial that in 1851 Mathews advanced largely to John Sigerson on some transactions in pork, whereby Sigerson became indebted to him in the sum of two thousand dollars; that Sigerson wanted two years' time, on which Mathews required a mortgage on real estate as security; but Sigerson offered to give the note of his brother James, endorsed by himself, instead of the mortgage; and he represented

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that his brother James was the owner of a valuable real estate near St. Louis, which offer was accepted, and the note was given.

Sometime in the fall of 1852, Joseph E. Elder, a witness, received the note from Mathews for collection soon after the death of James Sigerson and before the note

became due. Witness called on John Sigerson, and asked him if he should have the note protested against the estate of James Sigerson. He replied that the witness need not do so, and that the note should be paid at maturity. The witness then placed the note in his portfolio, where it remained until after due. After it was due, witness called on John Sigerson and informed him that he had neglected to put the note in bank for collection, and asked him what he was going to do; he said he would see witness in a few days, and arrange it. Afterwards Sigerson said to the witness that he did not consider himself liable as endorser, as the note had not been protested.

In February, 1852, John Sigerson sold his interest in the farm near St. Louis, which was one-half of it, and which contained about one thousand acres, to James Sigerson, who was to pay off the encumbrances on the land, which amounted to about sixteen thousand dollars. James executed twenty notes for two thousand dollars each, payable in six, twelve, and eighteen months, and John Sigerson made him a deed. In July, 1852, James reconveyed the land to John, and the bargain was rescinded. This was done because James had not fulfilled his contract. Nineteen of the notes were given up, but the note now in suit was not surrendered, and for which the account of James was credited on the books of John, James, on his decease, left no property.

On the above facts, the court charged the jury,

"If they believe from the evidence that, before the maturity of the note, in conversation with the agent of the plaintiff, the defendant dispensed with a presentation of the note and demand of payment, and promised to pay it or provide for its payment at maturity, he cannot now set up as a defense to this suit that the note was not presented for payment and demand made therefor when it was due and that no notice of its dishonor was given."

That

"If, after the maturity of the note, the defendant promised the plaintiff or his agent to pay the same, having at the time of making said promise knowledge of the fact

that the note had not been presented for payment, and that no demand had been made therefor, or notice of nonpayment given, the defendant cannot now set up, as a defense to said note, a want of such demand or notice. "

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"If the defendant dispensed neither with the presentation of the note and notice, nor promised to pay the same, having knowledge as above stated, the plaintiff cannot recover."

Exception was taken to these instructions.

Certain instructions were asked by the defendant, which were refused, but it is unnecessary to state them, as they are substantially embraced in those given by the court.

As there was no formal demand of payment, nor protest for nonpayment and notice, those requisites must have been waived by the defendant to make him responsible as endorser, and to this effect were the instructions of the court; and we think the testimony not only authorized the instructions given, but also the verdict rendered by the jury. Before the note was due, the defendant said to Elder, the agent of Mathews, and who held the note, that he need not take steps to collect it from the estate of his brother James, as it should be paid at maturity. This was an assurance which could not be mistaken, and it was relied on by the agent. He placed the note in his portfolio, where it remained until after it became due. After this, the agent called on the defendant and informed him that he had neglected to take measures for the collection of the note, and asked him what he was going to do; he answered that in a few days he would see the witness and arrange it. This was an unconditional promise to pay the note which no one could misunderstand and which he could not repudiate at any subsequent period.

A promise by an endorser to pay a note or bill dispenses with the necessity of proving a demand on the maker or drawer or notice to himself. *Pierson v. Hooker*, 3 Johns. 68; *Hopkins v. Liswell*, 12 Mass. 52. Where the drawer of a protested bill, on being applied to for payment on behalf of the holder, acknowledged the

debt to be due and promised to pay it, saying nothing about notice, it was held that the holder was not bound to prove notice on the trial. *Walker v. Lavery*, 6 Manf. 487. An unconditional promise by the endorser or a bill to pay it, or an acknowledgment of his liability and knowledge of his discharge by the laches of the holder, will amount to an implied waiver of due notice of a demand of the drawee, acceptor, or maker. [\*Thornton v. Wynn\*](#), 12 Wheat. 183; [\*Bank of Georgetown v. Magruder\*](#), 7 Pet. 287. We think the instructions of the court were correct, and that consequently the judgment must be

*Affirmed with costs.*

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