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Leftwitch Vs. Lecanu

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 187

Appellant : Leftwitch

Respondent : Lecanu

Judgement :

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Leftwitch v. Lecanu

71 U.S. (4 Wall.) 187

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

1. When a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it or so marked by letter, number, or other means of identification mentioned

in the bill as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions, otherwise it will be disregarded.

2. That a copy of a paper is attached to a pleading in the case which purports to be the same as the paper mentioned in the bill of exceptions does not make it a part of that bill, nor can this Court presume that it is the same paper read in evidence and excepted to.

A statute of Louisiana * enacts

"That notaries shall keep a book in which they shall transcribe all the protests by them made, with mention made of the notices which they shall have given to drawers and endorsers &c.;, which declaration, duly recorded *under the signature* of the notary public *and two witnesses,* shall be received as a legal proof of the notices."

With this statute in force, Lecanu sued Leftwitch and others in the Circuit Court of the United States for the Eastern District of Louisiana, as endorsers of a promissory note. The suit was in the form usual in Louisiana, that is to say, by petition, and the plea was a general denial.

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On the trial before a jury, the counsel for the plaintiff below offered in evidence an instrument in writing on the back of the protest, and purporting to be a certificate of the notary, that he had notified the endorsers of the note, which is contained in the record.

The certificate, although it stated in the body of it that it was signed by two persons, Janin and Lenes, the "two witnesses," *had not their signatures to it.*

The counsel for the defendants objected to reading the instrument on the ground that the certificate was not in conformity with the laws of Louisiana, and consequently that it did not prove the notice. The court overruled the objection, and the plaintiff excepted.

The bill of exceptions stated that

"plaintiff offered in evidence an instrument in writing on the back of the protest, purporting to be a certificate of the notary, that he had notified the endorsee to this note, *which is hereunto annexed for reference as a part of this bill,* to which certificate counsel for defendant objected,"

&c.; No such paper was, however, found attached to the bill of exceptions nor in any manner referred to or marked or identified as being a part of it or as the paper which was offered in evidence.

MR. JUSTICE MILLER delivered the opinion of the Court.

The only allegation of error in this record relates to a certificate of a notary public that he had notified the endorsers of a promissory note of the dishonor of said note.

The bill of exceptions states that

"plaintiff offered in evidence an instrument in writing on the back of the protest, purporting to be a certificate of the notary, that he had notified the endorser of the note, *which is hereunto annexed for reference as a part of this bill,* to which certificate counsel for defendant objected,"

&c.; No such paper is found annexed to the bill of exceptions nor in any manner referred to or marked or identified as being a part of the bill of exceptions, or as the paper which was offered in evidence.

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The suit, being in the Circuit Court for the District of Louisiana, was commenced by petition, and according to the practice in such cases, there is annexed to the petition a copy of the note sued on and of the protest and certificate of notice to the endorsers. But this is merely a copy attached to and a part of the pleading, and is certainly not the paper which was offered in evidence. It may or may not be a

perfect copy of that paper, but whether it is so or not, it is certain that it does not become a part of the bill of exceptions by being attached to the pleading.

If a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it or so marked by letter, number, or other means of identification mentioned in the bill as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions.

There is nothing of the kind here, and as we must presume the ruling of the court to be right in the absence of anything showing it to be wrong, the judgment must be

Affirmed.

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* Stat. of 1855, p. 48, § 7.

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