Davidson Vs. Lanier

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Appeal No. : 71 U.S. 447

Appellant : Davidson

Respondent : Lanier

Judgement :

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Davidson v. Lanier

71 U.S. (4 Wall.) 447

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

1. It is not required that a writ of error be allowed by a judge. It is enough that it is issued and served by copy lodged with the clerk of the court to which it is directed.

2. A mistake in the date of the writ of error is not important, when it is clear that such mistake is a clerical one merely, and when, from the judgment described and the number given to it, the party cannot be misled.

3. A statute declared by its title to be "an act to suppress private^ banking," and making it penal to "erect, establish, institute, or put in operation, or to issue any bills or notes for the purpose of erecting, establishing, or putting in operation any banking institution, association, or concern," covers with its prohibition not only the primary steps in establishing and putting into operation the bank, but also the whole range of its transactions, by which illegitimate currency is imposed on a community,

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and contracts made in furtherance of such transactions are as void as those made to give it original operation.

4. A bill of exchange drawn in one state upon a party in another, the known and common purpose of both parties being to carry on a business declared unlawful by statute of the first state, is void as to the drawer in the hands of a party to the bill having notice of its true character.

5. As between the parties, the delivery of negotiable paper, signed and endorsed in blank, authorizes the receiver to fill it up in conformity with the authority given him, but it does not authorize him to do more, nor give him power to fill it up at pleasure. In a suit by the drawee upon such paper against drawer or endorser, the burden of proof that an agreement as to filling up had been violated is on the defendant, but if he can make the proof, it will avail him.

Error to the District Court of the United States for the Northern District of Mississippi, the suit having been by Lanier, curator of the succession of John J. McMahon, of New Orleans, against Davidson, on a bill of exchange drawn, as was alleged, by Davidson and others, and judgment having been given in favor of the plaintiff.

The case, as stated by THE CHIEF JUSTICE, was thus:

A statute of Tennessee, enacted in 1827 and entitled "An act to suppress private banking," made it penal to erect, establish, institute, or put in operation or to issue any bills or notes for the purpose of erecting, establishing, or putting in operation any banking institution, association, or concern.

In January, 1856, this act being in force, several persons, of whom one Richard M. Kirby seems to have been the principal, undertook to establish a banking association or company in Memphis, Tennessee, under cover of a charter granted by the State of Arkansas for a corporation styled "The Cincinnati and Little Rock Slate Company." Their object was to issue bills for circulation as money, and use them in the cotton trade.

About the time of the organization of the company, Kirby visited McMahon, of whose estate the defendant in error is curator, at New Orleans, and exhibited the charter and explained the views of the company, whereupon McMahon agreed to act as its treasurer and financial agent.

In pursuance of this arrangement, circulating notes of the

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company, to the amount of twelve thousand dollars, were sent to McMahon, who used them, as far as he could, for currency. He also made advances to the company by accepting and paying bills drawn on him, and in the result, became its creditor in a sum somewhat exceeding eleven thousand dollars.

At the time of the arrangement with McMahon, Davidson, the plaintiff in error, and one J. B. Ellis, were members of the company, but afterwards withdrew. Subsequently, however, upon the request of Kirby, Davidson, with two others, consented to sign, and Ellis consented to endorse several bills of exchange in blank, and among them that on which the suit below was brought. All the bills seem to have been addressed to McMahon as drawee. Shortly before or very soon after this transaction, H. M. True, the secretary and treasurer of the company

at Memphis, absconded, taking with him all the cash in his possession.

There was some obscurity, and perhaps some contradiction of evidence in the record, as to the time and purpose of signing and endorsing the blank bills of exchange. Kirby stated that they were signed and endorsed before the absconding of True, to enable himself to protect the circulation of the company. Another witness said that they were signed and endorsed after that event, at the suggestion of Kirby, to relieve McMahon from the consequences of True's theft; but this witness said also that he only knew the object of the bills from a statement by Kirby, made when the other parties were not present, and was not confident as to the time of signing and endorsement.

However these things may have been, it was certain that the bills were sent by Kirby to McMahon, in July, 1856, and were filled up some months later, after vain attempts to obtain payment of the balance due him.

All the bills, when they went into McMahon's hands, seemed to have had engraved on their face the formal parts of a bill of exchange, with the name of the place of date, "Memphis, Tenn.," and the direction to the drawer, "John J. McMahon, New Orleans," and all but one seemed to have

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borne the words, "Exchange for $1,000" in the upper left hand corner. In other respects, as to time of date, amount to be paid, and time of payment, they were left blank. The one now in controversy was filled up with the date, "July 15, 1856," with the time of payment, "eight months after date," with the sum to be paid, "eight thousand nine hundred and ninety-two dollars and forty-four cents," and with a stipulation for "eight percent interest from maturity until paid." Thus filled up, the bill sued on read as follows:

"Exchange for $8,992.44."

"MEMPHIS, TENN., July 15, 1856"

"Eight months after date of this, our first of exchange (second unpaid), pay to the order of J. B. Ellis eight thousand nine hundred and ninety-two dollars and forty-four cents, value received, and charge the same to account of your obedient servants, with eight percent interest from maturity until paid."

"JAS. R. FERGUSON"

"J. LOCKE"

"THOMAS J. DAVIDSON"

"TO JOHN J. MCMAHON, New Orleans"

"Endorsed: J. B. ELLIS, Ripley, Miss."

"RICHARD M. KIRBY"

Upon the trial, the court charged the jury that if McMahon's object in advancing his money was to enable the company to put into operation a banking company in violation of the laws of Tennessee, the jury must find for the defendant, and also that if McMahon agreed with Kirby to redeem the circulation, intending thereby to enable the company to go into operation, and the company did go into operation, issuing bank notes in pursuance of that agreement, then the transaction was illegal, and the plaintiff could not recover.

But the following instructions, numbered in the record 5th, 6th, and 7th, were also given by the court:

"5. If, at the time the bills were given, the holder, McMahon, knew that the money would be used for the purpose of carrying on a banking company contrary to the laws of Tennessee, and if the banking company was then in operation,

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then the consideration of the bills is not affected by the use made of the proceeds of the bill, and the plaintiff is entitled to recover, unless the defense is sustained on some other ground."

"6. The signing of a bill of exchange in blank, is the giving of the holder an unlimited authority to fill it up at pleasure, and the party so drawing or endorsing is bound by the act of the party filling up the same."

"7. If the bills sued on were signed in blank, and delivered to Kirby to be sent in blank to McMahon, that would authorize him, McMahon, to fill up the bills and insert any rate of interest that was lawful, and the jury should find for the plaintiff, unless the defense is made out and sustained on some other ground."

It was upon these instructions, considered in connection with the evidence, that the questions to be decided in this case arose.

Before arguing the merits, a motion to dismiss the writ of error was made.

The judgment of the district court for $11,312.42 was rendered on the 6th of June, 1860. On the 7th, a writ of error was sued out, and a copy was lodged with the clerk of the court on the same day, and bond for supersedeas given in double the amount of the judgment. A citation was also issued, dated 16 April, which was served on the 14th September, 1860, and the record, with the writ of error and the citation, was returned to the next term of this Court. Another citation and apparently another writ of error, were issued on the 7th of June. Of the last-mentioned writ and citation there seemed to have been no service.

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THE CHIEF JUSTICE delivered the opinion of the Court, and after stating the case went on thus:

Before proceeding to consider the questions arising on the instructions regarded in connection with the evidence, a motion to dismiss the writ of error must be disposed of.

It is objected to the writ of error that it was not allowed by any judge; but this is not required. It is enough that it was issued and served by copy lodged with the clerk of the court to which it was directed.

It is objected to the citation that it was dated 16 April, which was before the date of the judgment; but it is clear from the number which it bears, taken in connection with the judgment it describes, that it was issued after the rendition on the 6th of June. The date must have been a mere clerical error, and the service on the 14th of September was regular and sufficient.

The fact that another writ of error and another citation, not served, were issued, cannot prejudice the writ and citation which were duly issued and served.

It is also urged that the appeal bond was not approved by the judge. But it is a fair inference from the acts of the

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judge, in signing the citation, and in witnessing the appeal bond, that he approved of the security. The Judiciary Act does not in terms require that the judge shall put his approval of the bond in writing, nor can a writ of error be treated as a nullity because sufficient security is not given. This Court will take care, on application, that the rights of the defendant in error be not prejudiced by the omission, but will not dismiss the writ except on failure to comply with such terms as it may impose. [Footnote 1]

The motion to dismiss in this case must be denied.

The first question upon the merits arises upon the fourth and fifth instructions. The court had already charged in substance that a contract in consideration of aid to be given in putting in operation an illegal banking company in Tennessee was void. From the fifth instruction, taken in connection with those which preceded, and with the evidence, the jury must have understood that in the judgment of the court a contract in consideration of aid in promoting the objects and effecting the purposes of an illegal banking company, when once in operation, was valid.

We think this construction of the statute of Tennessee too narrow. The intention of the act was declared by its title. It was an act to suppress private banking. Its object was the protection of the people against the evils of an unauthorized

currency -- than which hardly any object of legislation is more important. The currency measures all values, and is the medium, directly or indirectly, of all exchanges. To keep it sound, and to guard it as far as possible from fluctuation are among the most imperative duties and among the most difficult problems of government.

In the construction of this act it was the duty of the court below, as it is ours here, to give effect to its obvious intention, if that can be done without disregarding settled rules of interpretation.

What, then, is the true sense of the prohibition to erect, establish, institute, or put in operation any banking company,

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or to issue any bills or notes with intent or purpose to do so? What is meant by putting in operation or establishing a banking company? We think that this language has a much wider import than mere commencement of business. To establish a company for any business means complete and permanent provision for carrying on that business, and putting a company in operation may well include its continued as well as its first or original operation.

This construction is supported by the prohibition to issue bills or notes. Taking the act of establishment and putting in operation, in the restricted sense of the instructions, the issue of circulation could not precede but must follow those acts. The prohibition of such issues, therefore, must be taken as proof that the legislature did not use the words in that sense.

The emission and circulation of unauthorized notes and bills as money was the main object and business of the company, and it was precisely this object and business which the legislature intended to defeat and prohibit.

We must construe the act, therefore, as covering with its penal prohibition the whole range of devices by which illegitimate currency is imposed on the community. It prohibits the use of such currency during the whole period of the

establishment of an illegal company, and applied as completely to the last as to the first step of its operations. Any other construction would frustrate the legislative intent and leave the great mischief, which the statute was made to prevent, wholly without restraint or check.

It was quite clear, upon the evidence, that McMahon entered into the transaction, which resulted in the bill sued on, in the expectation of profit from aiding the operation of the prohibited banking company. He was engaged with its officers and stockholders in the scheme of imposing upon the community a prohibited and fraudulent currency. His name was upon its circulating bills, and his credit promoted their circulation. His curator cannot look to the law for remedies against his associates in this illegal undertaking.

With this view of the statute and we cannot

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distinguish this case from that of *Brown v. Tarkington,* [Footnote 2] decided at the last term. In that case, we held that notes given for a balance found due on a settlement of accounts with an illegal banking company, and for advances to redeem its circulation, could not be enforced in favor of a payee who had been participant in the illegal business. The bill in this case, in our judgment, is of the same character.

It was urged in argument that the contract we have been considering was made in Louisiana, and not invalid by the laws of that state. But this is not so. The bill of exchange was made in Tennessee. It bears date at Memphis, and was signed there, and the contract of the defendant below was to be performed there. We by no means say that it would be valid if made in Louisiana. It is not necessary to consider that question; the laws of Tennessee determine the question of its validity, and we think that according to those laws it was invalid.

In our judgment, therefore, the fifth instruction was erroneous.

The sixth and seventh instructions remain to be considered. The sixth announced, without qualification, the proposition that the holder of a bill of exchange, signed and endorsed in blank, has unlimited authority to fill it up at pleasure and bind the signer and endorser by his act.

This instruction cannot be sustained. The delivery of a bill of exchange signed and endorsed in blank only authorizes the receiver, as between himself and the drawer and endorser, to fill it up in conformity with the authority given him. If there has been no agreement, the authority is general; if there has, it must be pursued. The burden of proof that there was an agreement, and that its terms have been violated is in such a case upon the defendant; but if he can make the proof it will avail him. No person, unless authorized, either directly or by just inference from the nature of the transaction, can fill up a blank bill for his own benefit, nor can such a bill be enforced against the drawer

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and endorser in favor of anyone who takes it in bad faith -- that is, with knowledge that it has been filled up without authority or in fraud. [Footnote 3]

It is highly probable that the court below intended that its instructions should be taken with this limitation, but it was too general in its terms, and was, we think, calculated to mislead the jury.

The seventh instruction directed the jury in substance to find for the plaintiff if satisfied that the bill was signed in blank and delivered to Kirby to be sent to McMahon. It asserted that McMahon had the right in the case supposed to fill up the bill with any amount due him and make the drawers and endorsers liable on the bill to himself.

It is doubtless true that, subject to the limitations just stated, the delivery of a signature in blank is in general an authority to the holder to fill it up as he thinks proper. This rule, in its application to negotiable instruments, was very clearly stated by MR. JUSTICE CLIFFORD in *The Bank of Pittsburgh v. Neal,* [Footnote 4] as follows:

"Where a party to a negotiable instrument entrusts it to the custody of another, with blanks not filled up, whether it be for the purpose to accommodate the person to whom it was entrusted, or to be used for his own benefit, such negotiable instrument carries on its face an implied authority to fill up the blanks and perfect the instrument; and as between such party and innocent third parties the person to whom it was so entrusted must be deemed the agent of the party who committed such instrument to his custody -- or in other words, it is the act of the principal, and he is bound by it."

But the instruction before us went much further. It asserted the right of a drawee to fill up a blank bill and hold the drawers and endorsers, and this without any other authority than such as is implied in the fact that the bill was sent to him by the last endorser with the consent of the other endorser and of the drawers.

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Now it is quite clear that this fact implies no such authority. The only inference to be drawn from the circumstance that the bill was sent to McMahon in blank is that it was sent to him for acceptance. The structure of the paper excludes any other hypothesis. If, having received the bill in blank, he had accepted it and negotiated it to a third person, without notice of facts impeaching its validity between the antecedent parties, those parties would have been bound to the holder. But he, as drawee, could not transfer the bill to anybody without previous acceptance, and still less could he treat it as an obligation to himself.

We think there was error in these instructions as well as in the fifth.

The judgment of the district court must therefore be reversed and the cause remanded for new trial in conformity with this opinion.

[Footnote 1]

Martin v. Hunter's Lessee, 1 Wheat. 361; *Catlett v. Brodie,* 3 Wheat. 553.

[Footnote 2]

70 U. S. 3 Wall. 377.

[Footnote 3]

3 Kent's Com. 119; 10 Smedes & Marshall 590.

[Footnote 4]

63 U. S. 22 How. 107.