

Thompson Vs. Riggs

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 72 U.S. 663

Appellant : Thompson

Respondent : Riggs

Judgement :

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Thompson v. Riggs

72 U.S. (5 Wall.) 663

ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. The eighth section of the Act of Congress of 1863, 12 Stat. at Large 764, to reorganize the courts of the District of Columbia, and which says "that if, upon the trial of the cause, an exception be taken, the bill containing it need not be sealed

or signed," does not dispense with a regular bill of exceptions in the way usual in circuit courts of the United States when the rulings of the court, in admitting or rejecting evidence, or in giving or refusing instructions, are meant to be brought from the Supreme Court of the District to this Court for review. The provision has reference to carrying such rulings from the special to the general term of the Supreme Court of the District itself. [Pomeroy's Lessee v. Bank of Indiana](#), 1 Wall. 602, approved.

2. A customer of certain bankers at Washington, D.C., in times when specie payments having been lately suspended, coin was acquiring one value and currency (paper money) another and less, deposited with them both coin and paper money, the different deposits being entered in his pass book, the one as "coin" the other as "currency," &c.; Debts being at this time payable by law only in coin, the bankers requested their customer to make his full balance coin, which he did. Congress passed, about eight months afterwards, an act making certain Treasury notes lawful money for the payment of debts. The depositor went on depositing "coin" and "Treasury notes" then regarded as currency, and both were entered accordingly. He afterwards drew for "coin," for a part of his deposit, exceeding the coin deposited *after* the legal tender act, and his check was paid in coin. He afterwards drew for "coin" the bulk of his coin balance deposited *before* the legal tender act. Coin was refused and tender made of the notes declared by Congress a legal tender. On suit brought to recover the market value of the coin drawn for, the bank teller having testified among other things that

"after the suspension, and particularly after the act making Treasury notes a legal tender, his employers uniformly made with customer depositing with them a difference, in receiving and paying their

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deposits, between coin or specie and paper money, and in all cases when the deposit was in coin they paid the checks of their customers in coin when they called for coin, otherwise they paid currency, Treasury or bank notes"

-- the plaintiff offered evidence to show

"that the usage and mode of dealing between the said parties as set out in the testimony of the teller was uniformly used and practiced by all the banks and bankers of the District of Columbia with their customers,"

Held that the evidence was rightly excluded.

Riggs & Co. were bankers in the District of Columbia. Thompson was a businessman there, keeping a bank account with them, depositing specie, Treasury notes, bank notes, bills for collection, in the ordinary way of bank customers. Prior to April, 1861, no distinction apparently had been made in the mode of entering in his pass book credits of coin and credits of current bank notes, then payable throughout the country in coin on demand. All kinds of money deposited had been entered in the pass books alike. In April, 1861, the banks generally suspended specie payments, and a difference between the value of coin and of bank notes, or "current funds," as these were called, began to show itself, becoming by degrees, for some time, greater. Riggs & Co., at that date, began to make a difference in receiving and paying deposits, paying in coin when the deposit was made in coin and in currency when made in currency. On the 18th June, 1861, Thompson had made deposits:

Coin \$2,920.09

Currency 2,463.50

\$5,383.59

On that day, Riggs & Co. required him to make his full balance specie, which was done by his drawing a check, payable in currency, and depositing the check of another customer of the bank, payable in coin for a like sum, and which was received and credited by the bank as specie. On the 3d of September, 1861, Thompson drew another check on the bank for \$1,000, payable in currency, and at the same time deposited a check, drawn by the same customer, in like

manner, payable in specie, for \$1,000, which was credited as cash.

Afterwards, in like manner, Thompson, from time to time deposited with Riggs & Co. other checks, drawn on them by the same customer, payable in specie, some of which were credited as coin and others as cash, to an amount exceeding \$1,600.

An extract from the bank book shows the exact form of entries between June 18, 1861, and the 25th of February, 1862.

image:a

On the 25th February, 1862, above mentioned, Congress passed an act authorizing the issue of notes of the United States, which notes, the act declared, should be " *lawful*

money and a legal tender in payment of all debts, public and private " except duties, and interest on the national debt.

The entries of credits in the pass book, after the said 25th, were thus:

1862

Feb. 25. To balance \$7,724.96

M'ch 1. To T. notes 158.51

M'ch 8. Do. 41.00

M'ch 15. To coin. 71.94

M'ch 22. To coin. 65.34

On the 8th May, 1863, Thompson drew for \$750 coin, more than the amount deposited *after* the passage of the legal tender law. This was paid in coin.

On the 23d of February, 1864, he drew for \$6,600 "coin." Riggs & Co. made a tender of notes created by the act of Congress. These were declined, and assumpsit brought in the Supreme Court of the District of Columbia to recover a sum of money equal to the just commercial value of \$6,600 in gold coin, a value, on the day of the draft of \$157 for every \$100 of the notes tendered, and on the day of the suit of about \$200 for each such \$100.

The declaration had four counts:

Two on an alleged custom of bankers in Washington to receive gold and silver coin, bank and other notes on deposit, keeping separate entries of the character of the deposit, and to respond to the checks drawn upon them in kind; to pay coin for deposits in coin, and notes for deposits in notes, and that the plaintiffs so dealt with the defendants, and having a large balance to their credit, in February, 1864, in gold coin, they drew two checks for coin, payment of which was refused:

And two on a special agreement in substance the same as the usage above stated, arising in like manner.

Pleas: 1st. That the defendants did not promise as alleged. 2d. Tender of Treasury notes made by Congress a legal tender in payment of debts.

On the trial, at special term, before Mr. Justice Wylie, the teller of Riggs & Co. testified thus:

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"Prior to the suspension, the defendants paid all checks drawn upon them by their customers in gold or its equivalent, except when the deposit had been in Virginia or other depreciated paper, and then they paid in like kind. After the suspension, and particularly after the Act of February 25, 1862, making Treasury notes a legal tender, they uniformly made, with their customers depositing with them, a

difference, in receiving and paying their deposits, between coin or specie and paper money, and in all cases when the deposit was in coin they paid the checks of their customers in coin when they called for coin; otherwise they paid currency, Treasury or bank notes."

On cross-examination, he said:

"After the suspension, the defendants would no longer receive currency, then depreciated, as the equivalent of specie, as before; it continued to be received and credited to the customer, as appears by the books, *and went into the general funds of the bank*; the same money was never returned to the customer, and was not received on special deposit; *he plaintiffs never had made any special deposit with the defendants*; the books of the bank and the pass books were kept as before the suspension, except *that the different deposits were designated by being marked, respectively, coin and currency.* "

"Thereupon the plaintiff offered to give evidence to show that the usage and mode of dealing between the said parties, as set out in the testimony of the teller, was uniformly used and practiced by all the banks and bankers of the District of Columbia with their customers."

The record proceeded:

"Which last offered evidence, being objected to by defendants, is excluded by the court, and to said ruling of the court the plaintiff excepts in law, and prays the court to sign and seal this their first bill of exceptions, which is done accordingly, this eleventh day of June, 1864."

"[SEAL] ANDREW WYLIE"

The Supreme Court of the District, in which the action was brought, was created in 1863 by "An act to reorganize

the Courts of the District of Columbia." It is composed of four judges. A single justice holds what is called a "special term" (the *Nisi Prius*). Three justices hold the "general term," or ancient *Court in Banc*.

Any party aggrieved by a judgment of the court at special term, may appeal to the court at general term. The eighth section of the statute enacts:

"That if, upon the trial of a cause an exception be taken, it may be reduced to writing at the time or it may be entered on the minutes of the justice and afterwards settled in such manner as may be provided by the rules of the court, and then stated in writing in a case or bill of exceptions with so much of the evidence as may be material to the questions to be raised; *but such case or bill of exceptions need not be sealed or signed.* "

And the eleventh section says:

"Any final judgment &c., may be reexamined in the Supreme Court of the United States in the same cases and in like manner as is now provided by law in reference to final judgments &c., of the Circuit Court of the United States for the District of Columbia."

In this last-named court, bills of exceptions had been in the old and usual form -- that is to say had been signed and sealed by the judge.

On the trial, both parties resting, the plaintiffs prayed the court to give certain instructions set out in the record -- as "that, by the Constitution of the United States, no tender of the payment of a debt is good unless made in gold and silver coin &c.;" which the court refused to give, giving other instructions. And the record proceeded, *no judge's seal or signature appearing*:

"And to the said ruling of the court, as well as to refusing to give as to giving said instructions, the plaintiff excepts in law, and said exception and the evidence aforesaid *are hereby made record.* "

Verdict having gone for the defendant, the case was taken to the court at general term and judgment entered finally for the defendant.

The case being now here on error, two questions arose:

1st. Whether in order to bring exceptions to this Court from the court just named, it was necessary that they should be signed and sealed by the judge -- a question upon whose resolution, as it might be the affirmative or negative, depended the fact whether the instructions asked and given at the special term as to the constitutionality of the legal tender law had, or had not, got here for review.

2d. Whether the court had rightly refused the offer of proof that the usage and mode of dealing between the parties in this cause was uniformly used and practiced by all banks and bankers in the District with their customers.

The first question was suggested here by this Court.

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Substance of the declaration was that the defendants were bankers, exercising the trade and business of banking, and that the plaintiffs were their customers, and as such were in the habit of making their deposits at their bank, and that the defendants, as such bankers, were accustomed to receive as deposits gold and silver coin and other money currency of their customers, to be paid and returned in kind, agreeably to the custom of their bank and all other banks in the City of Washington, and that the plaintiffs, on the twenty-eighth day of February, 1864, having a balance due them at

the bank of the defendants of five thousand seven hundred and sixty-one dollars, as deposits previously made there in gold and silver coin, demanded payment and return of the same, and that the defendants then and there refused to make such payment and return as they had promised to do.

Defendants pleaded the general issue and that they, at a certain time prior to the suit, tendered and offered to pay to the plaintiffs the sum of money in their declaration mentioned in Treasury notes, made a legal tender in payment of debts, and that from that time they have been and still are ready to pay the same, and now bring the same into court.

1. Parties went to trial at a special term of the court and the verdict and judgment were for the defendants. Objection was duly taken by the plaintiffs to one of the rulings of the court in excluding certain testimony offered by them to show the usage and mode of dealing of other banks, and the bill of exceptions to the ruling was regularly drawn out and duly signed and sealed.

Prayers for instructions to the jury were duly presented by the plaintiffs and they were refused by the court, and other and different instructions were given in their place, but no bill of exceptions in that behalf was tendered by the plaintiffs or signed or sealed by the court.

Statement in the minutes is that the plaintiffs excepted in law as well to the refusal of the court to instruct the jury as requested as to the instructions given, and that the exceptions and the evidence are hereby made record. Plaintiffs also made a motion for new trial, assigning two causes: (1) because the court refused to instruct the jury as prayed by the plaintiffs; (2) because the court instructed the jury as prayed by the defendants.

Order of the court was that the motion should be heard before the court at general term. Both parties were heard before the full bench, and the court affirmed the judgment as rendered at the special term. Writ of error to this Court was sued out by the plaintiffs.

2. Principal questions discussed at the bar are presented, if at all, in the prayers for instructions which were refused,

and in the instructions which were given to the jury. Defendants contend that neither the prayers for instructions nor the instructions given are before the Court, as they are not exhibited in any bill of exceptions signed and sealed by the justice who presided at the trial.

Settled practice in this Court is that neither the rulings of the court in admitting or rejecting evidence or in giving or refusing instructions can be brought here for revision in any other mode than by a regular bill of exceptions. Final judgments in a circuit court may be reexamined in this Court and reversed or affirmed upon a writ of error, founded upon an agreed statement of facts, a special verdict, a demurrer to a material pleading, or a demurrer to evidence, as well as by a bill of exceptions, but none of the other modes will enable the appellate court to revise the rulings of the court in refusing to instruct the jury as requested, or the instructions as given, or the rulings of the court in admitting or rejecting evidence. Such rulings rest in parol, and can only be incorporated into the record by a bill of exceptions, and of course cannot be reexamined in any other way. [[Footnote 1](#)]

None of the other modes suggested, said the Court in the case of *Pomeroy's Lessee v. Bank of Indiana*, [[Footnote 2](#)] enable the complaining party to review or reexamine the rulings of the court except that of the bill exceptions, and we reaffirm that rule. [[Footnote 3](#)]

Instructions requested or given rest in parol, and do not, in the practice of this Court or in any other court where the common law prevails, become a part of the record unless made so by a regular bill of exceptions, sealed by the judge who presided at the trial, and it is the well settled practice in this Court that an entry of the ruling in the minutes cannot be of any benefit to the party unless he seasonably reduces

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the same to form and causes it to be sealed by the judge. [[Footnote 4](#)]

Views of the plaintiffs are that the bill of exceptions is not necessary in cases removed here from the Supreme Court of this District. Reference is made to the

eighth section of the act to organize the courts in this District, as furnishing support to the proposition, but it is quite evident that the section referred to relates exclusively to the practice in the subordinate court, and not to the proceedings for the removal of the cause into this Court for examination and revision.

Exceptions taken in the trial at the special term, before a single justice as there provided, may be reduced to writing at the time or may be entered in the minutes of the justice and settled afterwards in such manner as the rules of the court provide. Such exceptions must be

"stated in writing in a case or bill of exceptions, with so much of the evidence as may be material to the questions to be raised; but the case or bill of exceptions need not be signed or sealed. [[Footnote 5](#)]"

Motion for new trial may also be entertained by the justice who tries the cause, at the same term, in the manner therein described. When such motion, however, is made upon the minutes, an appeal to the general term may be taken from the decision, in which case a bill of exceptions or case shall be settled in the usual manner. Our only purpose in referring to that section is to show that no part of it has anything to do with the question before the Court.

No one of the clauses mentioned make any provision whatever for a writ of error or appeal to this Court. Regulations upon that subject are made by the eleventh section of the same act, which provides that any final judgment, order, or decree of the court may be reexamined and reversed or affirmed in the Supreme Court of the United States upon writ of error or appeal in the same cases and in like manner as is now provided by law in reference to the final judgments, orders, or decrees of the Circuit Court of the United

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States for this District. Writs of error and appeals were required to be prosecuted under that law in the same manner and under the same regulations as in the case of writs of error or appeals from judgments and decrees rendered in the circuit court of the United States. [[Footnote 6](#)]

Conclusion is that the regulations respecting the removal of cases from the Supreme Court of this District, on writs of error or appeal, are the same as from the circuit courts of the United States, and, of course, the questions presented in the prayers for instruction and in the instructions given to the jury in this case are not before the court, as neither the prayers for instruction nor the instructions given are any part of the record.

3. Remaining question arises under the exception to the ruling of the court in excluding the testimony offered by the plaintiffs to show the usage and mode of dealing of other bankers in this city. The teller of the defendants, called by the plaintiffs, testified that the defendants, prior to the suspension of specie payments in April, 1861, paid all checks drawn upon the bank by their customers in gold or its equivalent except when the deposit had been made in depreciated paper; that after that time, they uniformly made a difference with their customers in receiving and paying their deposits, between coin, or specie, and paper money, and that in all cases where the deposit had been made in coin, if requested, they paid the checks in coin; that after the suspension of the banks, the defendants refused to receive currency as the equivalent of specie; that currency continued to be received and credited to customers as before, but went into the general funds of the bank, and the same money was never returned to the customer, and it was not received on special deposit; that the plaintiffs had never made any special deposits with the defendants; that the books of the bank, and the pass books were kept as before the suspension, except that the different deposits were designated as coin, cash, checks, or Treasury notes.

4. Testimony of the teller of the bank is express to the

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point that the plaintiffs never made any special deposit with the defendants, and there is no testimony in the case to support any such theory. On the contrary, it is clear that they made their deposits for their own convenience, and were credited for the amount in the usual way on the books of the bank.

Clear inference from the whole testimony is that the deposits of the defendants were made without condition or special agreement of any kind, and in such cases the law is well settled that the depositor parts with the title to his money, and loans it to the bank. [[Footnote 7](#)]

Deposits may be made under circumstances where the legal conclusion would be that the title to the thing deposited remained with the depositor, and in that case the bank would become the bailee of the depositor, and the latter might rightfully demand the identical money deposited as his property.

Contracts between a banker and his customers are doubtless required to be performed, and must be construed in the same way as contracts between other parties. When the banker specially agrees to pay in bullion or in coin, he must do so or answer in damages for its value, and so if one agrees to pay in depreciated paper, the tender of that paper is a good tender, and in default of payment the promisee can recover only its market and not its nominal value. [[Footnote 8](#)]

But where the deposit is general and there is no special agreement proved, the title of the money deposited, whatever it may be, passes to the bank, and the transaction is unaffected by the character of the money in which the deposit was made, and the bank becomes liable for the amount as a debt, which can only be discharged by such money as is by law a legal tender. [[Footnote 9](#)]

Moneys deposited with the bank in this case were entered in a pass book in figures, expressing the amount in dollars

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and cents, and it appears that the character of the money deposited is marked against each sum as coin, cash, check, or Treasury notes, as the fact was in each particular instance. Such marks, however, are wholly insufficient to overcome the testimony of the teller, who was introduced by the plaintiffs and who was the only witness examined upon the subject. Proof that those words were written against the several deposits for any such purpose as is supposed by the plaintiffs is entirely wanting; and in the absence of such proof it is much more reasonable to

infer that they were put there as matter of convenience to the depositor, or to assist the memory as to the amount of the respective credits, in case of misrecollection or dispute.

No evidence of general usage or custom, in the ordinary sense of those terms, was offered by the plaintiffs or appears in the record. Customary rights and incidents universally attaching to the subject matter of the contract in the place where it was made are impliedly annexed to the language and terms of the contract unless the custom is particularly and expressly excluded. But evidence of usage is not admitted to contradict or vary express stipulations restricting or enlarging the exercise and enjoyment of the customary right. Omissions may be supplied in some cases by the introduction of such proof, but it cannot prevail over or nullify the express provisions and stipulations of the contract. So where there is no contract, usage will not make one, as it can only be admitted either to interpret the meaning of the language employed by the parties in the absence of express stipulations or where the meaning is equivocal or obscure. [[Footnote 10](#)]

Judge Story expressed himself strongly against local usages or customs in particular trades or kinds of business set up to controvert or annul the general liabilities of parties under the common law as well as under the commercial law, and remarked that there was great danger in admitting evidence of such loose and inconclusive usages and customs often unknown

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to parties, and always liable to great misunderstanding and misinterpretations, and allow it to outweigh the well known and well settled principles of law. [[Footnote 11](#)]

Usage contrary to law or inconsistent with the contract is never admitted to control the general rules of law or the real intent and meaning of the parties. [[Footnote 12](#)]

Evidence of local usage to sell commercial paper, pledged as a security for a loan, at private sale after demand of payment and notice that such sale would be made

in case of default was held to be inadmissible in the Court of Appeals in the State of New York, all the judges concurring. [[Footnote 13](#)]

Evidence of the usage of banks to regard drafts drawn upon them, payable at a day certain, as checks, and not entitled to days of grace, is inadmissible as evidence to control the rules of law in relation to such paper. [[Footnote 14](#)]

General rule of law is that if a merchant deposits money with a bank, the title to the money passes to the bank and the latter becomes the debtor of the merchant to that amount, and it is not perceived that the evidence offered, if it had been admitted, could have had any other effect than to control that general rule of law, as it is not pretended that the evidence showed a special deposit or any special contract. Viewed in any light consistent with the other evidence in the record, the testimony was either entirely immaterial or inadmissible as tending to control the well settled rules of law.

Judgment affirmed with costs.

[[Footnote 1](#)]

[Suydam v. Williamson](#), 20 How. 432.

[[Footnote 2](#)]

[68 U. S. 1](#) Wall. 602.

[[Footnote 3](#)]

Bulkeley v. Butler, 2 Barnewall & Cresswell 434; *Seward v. Jackson*, 8 Cowen 406; 2 Tidd's Practice 896; 4 Chitty's General Practice 7; 2 Institutes 427; *Dougherty v. Campbell*, 1 Blackford 24; *Cole v. Driskel*, *ibid.*, 16; *Strother v. Hutchinson*, 4 Bingham N.C. 89.

[[Footnote 4](#)]

[Pomeroy's Lessee v. Bank of Indiana](#), 1 Wall. 598.

[[Footnote 5](#)]

12 Stat. at Large 764.

[[Footnote 6](#)]

2 Stat. at Large 106; [United States v. Hooe](#), 1 Cranch 318.

[[Footnote 7](#)]

[Marine Bank v. Fulton Bank](#), 2 Wall. 256.

[[Footnote 8](#)]

[Robinson v. Noble](#), 8 Pet. 198; *McCormick v. Trotter*, 10 Sergeant & Rawle 96.

[[Footnote 9](#)]

[Bank of Kentucky v. Wister](#), 2 Pet. 325.

[[Footnote 10](#)]

[Bliven v. New England Screw Co.](#), 23 How. 431; Addison on Contracts 853; Greenleaf's Evidence, sec. 292.

[[Footnote 11](#)]

Schooner Reeside, 2 Sumner 569.

[[Footnote 12](#)]

Dykers v. Allen, 7 Hill 499; *Woodruff v. Merchants' Bank*, 25 Wendell 674.

[[Footnote 13](#)]

Wheeler v. Newbould, 16 N.Y. 395.

[[Footnote 14](#)]

Bowen v. Newell, 4 Selden 194.

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