

Michigan Bank Vs. Eldred

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 76 U.S. 544

Appellant : Michigan Bank

Respondent : Eldred

Judgement :

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Michigan Bank v. Eldred

76 U.S. (9 Wall.) 544

ERROR TO THE CIRCUIT

COURT FOR WISCONSIN

SYLLABUS

1. Evidence that by the articles of partnership, one partner had no right to endorse negotiable paper is inadmissible to defeat a *bona fide* holder of such paper endorsed with the firm name by a member of the firm, and taken by such bond fide

holder for value, and without notice of the articles.

2. Where a partnership is in the habit of endorsing negotiable paper, having blanks left for the date, and gives the paper so endorsed to a person to use -- he to fill the blank when he wishes to use it -- the firm is liable on the paper with the date filled in when, thus complete, it has passed to the hands of innocent *bona fide* holders for value.

3. The power to fill the blanks for dates implies in favor of such holders a power in the person trusted, to change the date after the note has been written and before it is negotiated.

4. It is error to charge upon a state of facts of which no evidence has been offered.

The Michigan Insurance Bank brought suit against Anson Eldred, Wm. Balcom, and Elisha Eldred, composing the firm of Eldreds & Balcom, as endorsers of a promissory note dated June 12, 1861, given by one F. E. Eldred, and the body and signature of which were in his handwriting.

The summons was served upon Anson Eldred, the only defendant residing within the District of Wisconsin and the only one who appeared in the cause. The execution of the note, its endorsement by Elisha Eldred, one of the firm of Eldreds & Balcom, with the firm name, demand of payment from the maker, nonpayment by him, and notice to the endorsers of nonpayment were all proved. The date of the note as originally written by the maker, F. E. Eldred, had been August 12, 1861, and the word "June" had been written by him over the word "August."

The defendant, Anson Eldred, then offered to read in evidence a clause of the articles of co-partnership of the firm of Eldreds & Balcom to the effect that Elisha Eldred, one of the firm, and who, as above stated, had endorsed this note

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in the firm name, had bound himself not to use the firm name except for the benefit of the said joint business. The evidence was objected to by the defendant, but the objection was overruled and testimony received.

There was no pretense that the bank had any knowledge of the articles of co-partnership or of the purpose for which the co-partnership's name in this instance had been used.

The defendant then introduced the deposition of F. E. Eldred, the maker of the note, and the brother of Anson Eldred, the defendant. He testified that the note was in his handwriting; that the endorsement of Eldreds & Balcom was made by Elisha Eldred, one of the firm; that he transferred the note as security for a loan about the time the note bore date. He said further:

"I had an arrangement with the firm of Eldreds & Balcom by which they endorsed my notes and I endorsed theirs, and the endorsements were made in blank, and were filled by the holders as they wanted to use them. This note was endorsed in that way, and this arrangement was known to Anson Eldred as well as to the other partners. The word 'June' was written by me, and was written by me before I used the note."

The defendant then read depositions, which showed that this note was transferred to the bank as collateral security for moneys lent to F. E. Eldred, the maker. Here the defendant rested, and upon this evidence the judge, in charging, made use of the following language:

"If the note in suit was never actually negotiated to the bank, but got up by Eldred and accepted by the bank in pursuance of a corrupt agreement between said Eldred and the bank to defraud the defendant, then the plaintiff cannot recover."

The testimony was without the least proof tending to show that this note had not been negotiated to the bank, or any tending to prove that it was "got up by Eldred and accepted by the bank in pursuance of a corrupt agreement between said Eldred and the bank to defraud the defendant."

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Verdict and judgment having gone for the defendant, the bank brought the case here.

MR. JUSTICE CLIFFORD stated the case and delivered the opinion of the Court.

Promissory notes, given for the payment of money without any condition or contingency and payable to order or bearer, are as much commercial instruments as bills of exchange, and the title to the same, and their transfer from

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one person to another, are governed and regulated by the same rules of commercial law.

Authorities may be found where it is held that it is not essential to the character of a promissory note or bill of exchange that it should be negotiable, and that other words besides the words "or order," or the words "or bearer," may be employed to express the quality of negotiability; but it is not necessary to discuss those topics, as the inquiry before the Court has respect to the execution, transfer, and title of a negotiable promissory note in the ordinary form. [[Footnote 1](#)]

Examined carefully, the pleadings and evidence exhibit the following facts which are material to the present investigation:

Claiming title to the note in question, the plaintiffs instituted the present suit against the defendant and one Uri Balcom and Elisha Eldred, alleging that they were co-partners in trade under the firm name of Eldreds & Balcom. They, the defendants, were engaged in business both in Chicago and Milwaukee, and the record shows that they were sued as endorsers of the note described in the declaration. Only one of their number, to-wit, the defendant, resided in that state, and he only was served with process. Besides a special count against the defendants as the endorsers of the note, the declaration also contained the common counts, to which was annexed a copy of the note, as notice that the note would be offered in evidence under those counts. Process having been served, the present defendant appeared and pleaded the general issue, and the parties went to trial, and the verdict and judgment were for the defendant. Exceptions were duly taken by the plaintiffs to the rulings and instructions of the court, and they sued out this writ of error and removed the cause here for reexamination.

Some further reference to the facts proved at the trial is necessary in order that the precise nature of the questions presented in the bill of exceptions may be understood.

Founded as the declaration was upon a promissory note, it was only necessary for the plaintiffs, under the general

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issue, to prove the execution of the note, the signature of the endorser, the demand of payment of the maker, the dishonor of the note, and notice of the dishonor, and nonpayment to the endorser. Having proved those facts, they introduced the note in evidence, of which the following is a copy:

"DETROIT, June 12, 1861"

"\$4,000. Sixty days after date, I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank, value received."

"(Signed) F. E. ELDRED"

Endorsed on the back of the note is the name of the firm to which the defendant belongs, to-wit, Eldreds & Balcom, and the allegations of demand, protest, and notice of dishonor and nonpayment were fully proved.

Witnesses were examined upon both sides, from whose testimony, as reported in the bill of exceptions, it appears that the maker of the note was engaged in business at Detroit, in the State of Michigan; that he and the firm of which the defendant is a member entered into an arrangement to interchange accommodation endorsements for business purposes; that the understanding was that the firm should endorse whatever paper he, the maker of that note, should find it necessary to use in his business, and that he, in consideration thereof, should endorse their paper intended for discount to such an extent as they might desire.

Pursuant to that arrangement, the respective parties endorsed numerous blank notes for each other, and it appears that the senior partner of the firm endorsed at one time some fifty or fifty-five blank notes of the kind, and that the defendant knew what was done and advised that the endorsements should be made. Packages of such blank notes, signed by the maker of the note in controversy, were sent by express to that firm for their endorsement, and when they were endorsed in blank they were returned through the same channel to the party by whom they were forwarded, and it appears that the note described in the declaration is one of the notes endorsed by the senior partner of the firm.

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Approved as the arrangement was by the defendant, he has no cause for complaint, and it also appears that the maker of the note borrowed money of the plaintiffs and that he endorsed the note to them as collateral security in the regular course of business.

Depositions were also introduced by the defendant, and he offered in evidence the third article in the co-partnership agreement of the endorsers of the note, which reads as follows:

"That neither of the parties shall employ any of the moneys, goods, or effects belonging to the said co-partnership, *or engage the credits thereof*, except for the benefit of the said joint business."

Seasonable objection was taken by the plaintiffs to the introduction of that article as evidence upon the ground that it was irrelevant and incompetent, but the court overruled the objection and the same was read to the jury, and the plaintiffs then and there excepted to the ruling of the court. Instructions supposed to be pertinent to the issue were then given by the court to the jury, to which no exceptions were taken, but the court also instructed the jury to the effect that if the note in suit was never actually negotiated to the bank, but was got up by the maker of the note and was accepted by the bank in pursuance of a corrupt agreement between the maker of the note and the bank to defraud the defendant, then the plaintiffs cannot

recover, to which instruction the plaintiffs then and there excepted.

Objection in the first place is taken by the plaintiffs in argument of the ruling of the court in admitting in evidence the third article of the co-partnership agreement. Attempt is made to sustain that ruling upon the ground that the evidence tended to show that the partner who endorsed the note with the firm name was unauthorized "to engage the credit" of the firm except for the joint business of the company; but there are two decisive answers to that suggestion:

(1) That the endorsements were made in pursuance of a previous understanding and arrangement between the firm and the maker of the note, and the evidence reported in the bill of exceptions shows that the defendant advised his partner to

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endorse the parcel of notes which contained the one in controversy.

(2) That the plaintiffs had no knowledge of the contents of the articles of co-partnership, nor of any fact or circumstance showing or tending to show that the endorsement was made without authority. On the contrary, the maker of the note, examined by the defendant, testified that the endorsement on the note described in the declaration was made by one of the partners of the defendant; that he, the witness, transferred the note to the plaintiffs as security for a loan made at the time the note bears date; that he had an arrangement with that firm that they should endorse his notes and that he would endorse their notes; that the endorsements were made in blank, and were filled up by the respective makers as they wanted to use the notes in their business, and that the note in controversy was endorsed in that way with the knowledge of the defendant as well as the other partners.

Unaccompanied by evidence showing or tending to show that the plaintiffs had knowledge of the restriction contained in the co-partnership agreement or the subsequent introduction of such evidence, it is quite clear that the article of the co-partnership agreement read to the jury was irrelevant and incompetent, as it clearly appeared that the plaintiffs were endorsers for value at the date of the note in the usual course of business, without notice of any equities between the

antecedent parties.

Such a party is regarded in the commercial law as a *bona fide* holder of the negotiable instrument, and the rule is irrepealably established by the decisions of this Court that the endorser under those circumstances takes the title unaffected by any equities between the antecedent parties to the instrument, and may recover thereon although, as between the antecedent parties to the same, the transaction may be without any legal validity. [[Footnote 2](#)]

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Bills of exchange or promissory notes may be transferred by endorsement, or, when endorsed in blank or made payable to bearer, they are transferable by delivery; and the settled rule of law is that if such a bill or note, so endorsed or made payable to bearer, be misappropriated by one to whom it was entrusted, or even if it be lost or stolen and is subsequently negotiated for a valuable consideration to a third person who receives it in the usual course of business, without knowledge of the condition annexed to the possession of the instrument or of the means by which the possession was acquired, his title is wholly unaffected by any such breach of trust or by any such unauthorized or felonious acquisition or appropriation of the note, and may recover the amount against any of the prior parties to the instrument. [[Footnote 3](#)]

Nothing can be inferred adverse to the authority of the member of the firm to make the endorsement from the fact that the blanks in the note were not filled up when he received it from the maker, as it is fully proved that the maker of the note was authorized by the arrangement between him and the firm to fill up the blanks and insert the date and the amount of the notes as he found it necessary to use the same in his business, and that defendant, as one of the partners, had knowledge of that arrangement.

Suppose, however, there was no proof of such knowledge on the part of the defendant, still it is well settled law that where a party to a negotiable bill of exchange or promissory note containing blanks entrusts it to the custody of

another, whether the blanks are in the date or the amount of the note and whether it be for the purpose of accommodating the person to whom it was entrusted or to be used to raise money for his own benefit, such bill or note, especially if it be endorsed in blank or is made payable to bearer, carries on its face an implied authority in the person to whom it is so entrusted to fill up the blanks in his discretion, and as

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between such party to the bill or note and innocent third parties holding the bill or note as transferees for value in the usual course of business, the person to whom it is so entrusted must be deemed to be the agent of the party who committed such bill or note to his custody, and the legal conclusion is that in filling up the blanks he acted under the authority of that party and with his approbation and consent. [[Footnote 4](#)]

So where a party signs his name to a blank paper as a means of accommodating another person, he thereby authorizes that person to whom he delivers the paper and for whose accommodation he signed it to fill up the instrument, and the conclusion of law is that the filling up the instrument under those circumstances, inasmuch as it is done by the authority of the party who signed the paper, is his act, and that as between him and innocent holders of the instrument after it is filled up, he is bound by his signature if the instrument was negotiated for value before it fell due, and in the usual course of business. [[Footnote 5](#)]

Testimony was introduced by the plaintiff to show that the endorsement of the firm name on the back of the note was made before the same was negotiated to them as security for the discounts to the maker, but the introduction of such evidence was unnecessary, as the presumption of law in the absence of opposing testimony is that such an endorsement, if without date, was made at the time the bill or note was executed and before the same was negotiated to the holder. [[Footnote 6](#)]

II. Apart from that ruling of the court, the plaintiffs also contend that the instruction given to the jury, as recited in the bill of exceptions, is erroneous and that the

judgment should be reversed on that account, even if it be held that

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the ruling of the court in admitting in evidence the third article of the co-partnership agreement is correct.

Contradicted as the first assumption of the instruction is by the testimony of the maker of the note, it does not seem to require any extended argument to show that it is unfounded, especially as it finds no support in any fact or circumstance introduced in evidence by either party.

Discounts were obtained of the plaintiffs by the maker of the note, and he negotiated the note in controversy to the plaintiffs as security for such loans, transferring the note to them at the time the loans were made.

Parties sometimes obtain discounts on such paper by endorsing their own name on the note, but it is a regular course of business frequently adopted and equally legitimate for a party to give his own note for the amount of the loan, and to negotiate a note like the one in question to the lender as collateral security, and whether the business is transacted in the one way or the other, the title of the lender of the money to the note negotiated as security for the loan is equally valid to the amount of the money loaned. [[Footnote 7](#)]

But the second assumption of the instruction is even more unjustifiable than the first, as it imputes concerted action, and a corrupt agreement between the maker of the note and the plaintiffs to defraud the defendant, when in point of fact there is not a particle of evidence in the record to sustain the charge or which has any tendency to support any such theory. When a prayer for instruction is presented to the court and there is no evidence in the case to support the theory of fact which it assumes, the prayer for instruction should be denied, and if given by the court, it is error, as the tendency of such an instruction is to mislead the jury by withdrawing their attention from the legitimate points of inquiry involved in the issue. [[Footnote 8](#)]

It is clearly error in a court, said Chief Justice Taney in

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United States v Breitling, [[Footnote 9](#)] to charge the jury upon a supposed or conjectural state of facts of which no evidence has been offered. Such an instruction presupposes that there is some evidence before the jury which they may think sufficient to establish the facts hypothetically assumed in the charge of the court, and if there is no evidence which they have a right to consider, then the charge does not aid them in coming to a correct conclusion, but its tendency is to embarrass and mislead, and may induce them to indulge in conjectures instead of weighing the testimony.

Reference is made to the fact that the word "June" is written over the word "August" in the date of the note, showing that the date originally was August, instead of June, as it now is; but the conclusive answer to that suggestion is that the maker of the note testifies that he wrote the word "June" as it now is in the date of the note before he negotiated the note to the plaintiffs, and as he was the agent of the firm in filling up the note, the defendant, as between him and the plaintiffs, has no cause of complaint.

Judgment reversed and the cause remanded, with directions to issue a new venire.

[[Footnote 1](#)]

[Wells v. Brigham](#), 20 How. 363; *Raymons v. Middleton*, 29 Pa.St. 530; Story on Bills 60.

[[Footnote 2](#)]

[Goodman v. Simonds](#), 20 How. 363; [Murray v. Lardner](#), 2 Wall. 110; [Bank of Pittsburgh v. Neal](#), 22 How. 108; [Swift v. Tyson](#), 16 Pet. 15; *Goodman v. Harvey*, 4 Adolphus & Ellis 870.

[[Footnote 3](#)]

Chitty on Bills, ed. 1842, 257; *Belmont Branch Bank v. Hoge*, 35 N.Y. 65; *Hoge v. Lansing*, 35 *ib.* 136.

[[Footnote 4](#)]

Mitchell v. Culver, 7 Cowen 336; [Goodman v. Simonds](#), 20 How. 361; [Violett v. Patton](#), 5 Cranch 142; *Rusel v. Langstaffe*, 2 Douglass 514.

[[Footnote 5](#)]

Lank v. Kimball, 10 Cushing 373; *Collis v. Emett*, 1 H. Blackstone 313; *Montague v. Perkins*, 22 English Law & Equity 516.

[[Footnote 6](#)]

Ranger v. Cary, 1 Metcalf 369; *Balch v. Onion*, 4 Cushing 559; *Rice v. Isham*, 1 Keyes 44.

[[Footnote 7](#)]

Chicopee Bank v. Chapin, 8 Metcalf 40; *Stoddard v. Kimball*, 6 Cushing 469; *Blanchard v. Stevens*, 3 *ib.* 162; *Atkinson v. Brooks*, 26 Vt. 569.

[[Footnote 8](#)]

[Goodman v. Simonds](#), 20 How. 359.

[[Footnote 9](#)]

[61 U. S. 20](#) How. 252.