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Bank of the Republic Vs. Millard

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 77 U.S. 152

Appellant : Bank of the Republic

Respondent : Millard

Judgement :

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Bank of the Republic v. Millard

77 U.S. (10 Wall.) 152

I N ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. The holder of a bank check cannot sue the bank for refusing payment in the absence of proof that it was accepted by the bank or charged against the drawer.

2. The fact that the check was properly drawn on a national bank (a public depositary) by an officer of the government in favor of a public creditor does not alter this general rule.

Millard, a captain in the military service of the United States, was in 1865, on leaving the service, a creditor of the government for $859, arrears of pay as captain. In settlement of this account, the proper paymaster of the army drew and issued a check for that sum upon The national Bank of the Republic, a *depositary of public moneys and financial agent of the United States,* for the custody, transfer, and disbursement of the government funds, having funds for the payment of the check.

The bank, as testimony tended to show, had once paid the check on a forged endorsement of Millard's name. Ascertaining and exposing the forgery, and recovering possession of the check, Millard now presented the same, demanding

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payment to himself. This payment the bank refused to make. Thereupon he sued it, declaring on a special count on the transaction, and also on a general count for money had and received by the bank to his use.

On the trial, the bank requested the court to charge,

"That unless the jury were satisfied from the evidence that it accepted the check in favor of the plaintiff, or his assignees, or promised to pay the same to the plaintiff, or his assignees, he was not entitled to recover."

But the court refused so to charge, and verdict and judgment having gone against the bank, it brought the case here on error, the questions here argued and considered being:

1st. The general one -- whether the holder of a bank check could sue the bank for refusing payment in the absence of proof that it was accepted by the bank or charged against the drawer.

2d. If not, whether the fact existing in this particular case, that the check was on a national bank (a public depositary of the government funds) by an officer of the government, in favor of a public creditor, varied the general rule.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

The only question presented by the record which it is material to notice is this: can the holder of a bank check sue the bank for refusing payment in the absence of proof that it was accepted by the bank or charged against the drawer?

It is no longer an open question in this Court, since the decision in the cases of *Marine Bank v. Fulton Bank* [Footnote 1] and of *Thompson v. Riggs,* [Footnote 2] that the relation of banker and customer in their pecuniary dealings is that of debtor and creditor. It is an important part of the business of banking to receive deposits, but when they are received, unless there are stipulations to the contrary, they belong to the bank, become part of its general funds, and can be loaned by it as other moneys. The banker is accountable for the deposits which he receives as a debtor, and he agrees to discharge these debts by honoring the checks which the depositors shall from time to time draw on him. The contract between the parties is purely a legal one, and has

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nothing of the nature of a trust in it. This subject was fully discussed by Lords Cottenham, Brougham, Lyndhurst, and Campbell in the House of Lords in the case of *Foley v. Hill,* [Footnote 3] and they all concurred in the opinion that the relation between a banker and customer who pays money into the bank or to whose credit money is placed there is the ordinary relation of debtor and creditor, and does not partake of a fiduciary character, and the great weight of American authority is to the same effect.

As checks on bankers are in constant use, and have been adopted by the commercial world generally as a substitute for other modes of payment, it is

important for the security of all parties concerned that there should be no mistake about the status, which the holder of a check sustains towards the bank on which it is drawn. It is very clear that he can sue the drawer if payment is refused, but can he also, in such a state of case, sue the bank? It is conceded that the depositor can bring assumpsit for the breach of the contract to honor his checks, and if the holder has a similar right, then the anomaly is presented of a right of action upon one promise, for the same thing, existing in two distinct persons, at the same time. On principle, there can be no foundation for an action on the part of the holder, unless there is a privity of contract between him and the bank. How can there be such a privity when the bank owes no duty and is under no obligation to the holder? The holder takes the check on the credit of the drawer in the belief that he has funds to meet it, but in no sense can the bank be said to be connected with the transaction. If it were true that there was a privity of contract between the banker and holder when the check was given, the bank would be obliged to pay the check, although the drawer, before it was presented, had countermanded it, and although other checks, drawn after it was issued, but before payment of it was demanded, had exhausted the funds of the depositor. If such a result should follow the giving of checks,

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it is easy to see that bankers would be compelled to abandon altogether the business of keeping deposit accounts for their customers. If, then, the bank did not contract with the holder of the check to pay it at the time it was given, how can it be said that it owes any duty to the holder until the check is presented and accepted? The right of the depositor, as was said by an eminent judge, [Footnote 4] is a chose in action, and his check does not transfer the debt, or give a lien upon it to a third person without the assent of the depositary. This is a well established principle of law, and is sustained by the English and American decisions. [Footnote 5]

The few cases which assert a contrary doctrine, it would serve no useful purpose to review.

Testing the case at bar by these legal rules, it is apparent that the court below, after the plaintiff closed his case, should have instructed the jury, as requested by the defendant, that the plaintiff, on the evidence submitted by him, was not entitled to recover. The defendant did not accept the check for the plaintiff, nor promise him to pay it, but, on the contrary, refused to do so. If it were true, as the evidence tended to show, that the bank, before the check came to the plaintiff's hands, paid it on a forged endorsement of his signature, to a person not authorized to receive the money, it does not follow that the bank promised the plaintiff to pay the money again to him, on the presentation of the check by him for payment.

It may be, if it could be shown that the bank had charged the check on its books against the drawer, and settled with him on that basis, that the plaintiff could recover on the

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count for money had and received, on the ground that the rule *ex aequo et bono* would be applicable, as the bank, having assented to the order and communicated its assent to the paymaster, would be considered as holding the money thus appropriated for the plaintiff's use, and therefore, under an implied promise to him to pay it on demand.

It is hardly necessary to say, that the check in question having been drawn on a public depositary, by an officer of the government, in favor of a public creditor, cannot change the rights of the parties to this suit. The check was commercial paper, and subject to the laws which govern such paper, and it can make no difference whether the parties to it are private persons or public agents. [Footnote 6]

As soon as the deposit was made to the credit of Lawler as paymaster, the bank was authorized to deal with it as its own, and became answerable to Lawler for the debt in the same manner that it would have been had the deposit been placed to his personal credit.

Judgment reversed and a venire de novo awarded.

[Footnote 1]

69 U. S. 2 Wall. 252.

[Footnote 2]

72 U. S. 5 Wall. 663.

[Footnote 3]

2 Clark and Finnelly 28.

[Footnote 4]

Gardiner, J., Chapman v. White, 2 Selden 417.

[Footnote 5]

Chapman v. White, 2 Selden, 412; *Butterworth v. Peck,* 5 Bosworth 341; *Ballard v. Randall,* 1 Gray 605; *Harker v. Anderson,* 21 Wendell 373; *Dykers v. Leather Manufacturing Co.,* 11 Paige 616; *National Bank v. Eliot Bank,* 5 American Law Register 711; Parsons on Bills and Notes, edition of 1863, pp. 59, 60, 61, and notes; Parke, Baron, in argument in *Bellamy v. Majoribanks,* 8 English Law and Equity 522, 523; *Wharton v. Walker,* 4 Barnewall & Cresswell 163; *Warwick v. Rogers,* 5 Manning & Granger 374; Byles on Bills, chapter "Check on a Banker;" Grant on Banking, London edition, 1856, 96.

[Footnote 6]

United States v. Bank of Metropolis, 15 Pet. 377.

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