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United States Vs. Isham

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Decided On : 1873

Appeal No. : 84 U.S. 496

Appellant : United States

Respondent : isham

Judgement :

United States v. Isham - 84 U.S. 496 (1873)
U.S. Supreme Court United States v. Isham, 84 U.S. 17 Wall. 496 496 (1873)

United States v. Isham

84 U.S. (17 Wall.) 496

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES

OF THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

1. The words "memorandum, check," in that part of the schedule of instruments required by the statute of June 30, 1864, 13 Stat. at Large p. 298, § 158, to be stamped, which in the printed statute books are printed with a comma between

them, should read, "memorandum-check," with a hyphen instead of a comma.

2. In settling whether an instrument should be stamped or not, regard is to be had to its form, rather than to its operation. Though it may be a device to avoid the revenue acts, and though its operation may have the effect of avoiding them, yet if the device be carried out by means of legal forms, it is subject to no legal censure.

The Act of June 30, 1864, "to provide internal revenue to support the government," &c.;, [Footnote 1] requires certain instruments, specified in a schedule which it contains, to be stamped. The schedule is as follows:

BANK-CHECK, draft, or order for the payment

of any sum of money whatever, drawn upon

any bank, banker, or trust company, or for

any sum exceeding $10 drawn upon any other

person or persons, companies or corporations,

at sight or on demand . . . . . 2 cents

Bill of exchange (inland), draft, or order

for the payment of any sum of money not

exceeding $100, otherwise than at sight

or on demand, *or any promissory note*

(except bank notes issued for circulation,

and checks made and intended to be forthwith

presented, and which shall be presented to

a bank or banker for payment), or *any memo-*

randum, check, receipt, or *other written or*

printed evidence of an amount of money to

be paid on demand, or at a time designated,

for a sum not exceeding $100. . . . . 5 "

And for every additional $100, or fractional

part thereof in excess of $100 . . . . . 5 "

This statute being in force, the United States filed, in 1871, a criminal information in the court below against E. B. Isham, for issuing without a stamp and with intent to evade

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the provisions of the above-quoted act, a paper in the form of a draft drawn upon one C. J. Canda. The paper, which was attached to and made part of each count of the information, was in this form:

image:a

It appeared from the testimony offered by the government that the Iron Cliffs Company was a corporation of Michigan, situated at Negaunee, in the state just named, and engaged in mining iron ore and in manufacturing pig iron. It had an office at Negaunee where its business was carried on and a head office in New York, where its board of directors met and its funds were kept. Isham was superintendent of the works at Negaunee and resided there. Canda was treasurer of the company, and resided in New York. The company had been in the practice of issuing paper like the instrument above set forth in payment for labor or other debts due at the mine since January, 1868, nearly all payments of balances due for labor having been made since that time and up to 1871, when the information was filed, in it. The amount issued annually since that time had been about $100,000. The blanks were sent to Isham from New York, and signed by him as

drawn. The denominations issued were of $1, $2, $3, $5 and $10. When the Iron Cliffs Company began to issue this paper, there were hardly any facilities for getting currency into the country except taking it through one hundred and twenty miles of staging, and through a wilderness chiefly, and when it was issued, it to some extent went into circulation and answered the purpose of a local currency. It was taken at a store, in which the company was interested, in payment for

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goods and by all the banks and banking houses in that region, and sometimes paid out by them on checks. But when in the course of business it came into the hands of a bank or banker or a merchant, it was generally retained until a considerable amount of it was on hand -- say from $1,000 to $2,000 -- and then either sent to New York by express for redemption or Isham took it up and gave to the holder a draft on New York for the amount. When Isham took this paper in this way, by giving the holder a large draft for it, he frequently reissued it, or paid it out again in the course of the company's business at the mine; but when it was finally paid in New York, it was cancelled and destroyed.

On this and similar evidence, the following questions arose, concerning which the defendant requested the court to instruct the jury in his favor, and for a verdict of acquittal:

"1st. Whether the instrument was on its face subject to be stamped?"

"2d. Whether the evidence tending to prove that Isham was superintendent of the Iron Cliffs Company, and drew the instrument in that capacity, or that Canda was the treasurer of the said company, and the instrument was drawn upon him in that capacity, or that the said paper was drawn in the course of the company's business, was relevant and admissible?"

"3d. Whether, if the paper in question was made and issued with the design that it should be used as a local circulating medium, and was actually used by the holders as such, it thereby became subject to be stamped, and whether the evidence given by the prosecution, tending to prove these facts, was relevant and

admissible?"

"4th. Whether, assuming every fact which the evidence in support of the prosecution tended to prove, the defendant was guilty of the offense charged?"

"5th. Whether the information in this case sufficiently charged any offense under the laws of the United States?"

And the following further question, upon which the district attorney requested the court to charge in favor of the prosecution:

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"6th. Whether if the instrument set forth in the information and adduced in evidence was issued with the design and intent to secure time for the payment of the debt it represented, it was therefore subject to stamp duty?"

Which questions (the judges being divided in opinion upon them) were now certified to this Court for its opinion.

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MR. JUSTICE HUNT delivered the opinion of the Court.

We are of the opinion that the position taken by the counsel of the defendant is correct -- that the paper issued required no stamp, and that the prosecution must fail.

The schedule of instruments required by the statute of 1864 to be stamped, designates the various instruments and writings to be taxed by the well known names and descriptions of the paper, and specifies the amounts of duty in substance as follows:

1st. Every bank-check, 2 cents.

2d. Every draft or order for the payment of any sum of money *at sight or on demand* (except where the draft or order is so drawn on a person, company, or corporation other than a bank, banker, or trust company, and for a sum not exceeding $10), 2 cents.

3d. Every bill of exchange, draft, or order for the payment of any sum of money *otherwise* than *at sight or on demand,* for every $100, 5 cents.

4th. Every promissory note, for each $100, 5 cents.

5th. Every memorandum, check, receipt, or other written or printed evidence of an amount of money to be paid on demand or at a time designated, for a sum not exceeding $100, 5 cents.

6th. If the draft or order is drawn on a person not a banker, or a bank or a trust company, and does not exceed $10, then no stamp is required.

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There is probably an error in the punctuation of the statute in regard to the item which reads, "memorandum, check, receipt, or other written or printed evidence of an amount of money to be paid." It should read "memorandum-check (with a hyphen between the words), receipt, or other written or printed evidence." A "check" was specifically provided for already in the schedule, and it is not to be assumed that Congress would, in the same schedule, make two provisions, differing from each other, for the same subject. A memorandum-check, however, is an instrument well known in the commercial law, which, it might be claimed, did not come under the general term of a check, and which therefore had not been specifically provided for. A memorandum-check is in the ordinary form of a bank-check, with the word "memorandum" written across its face, and is not intended for immediate presentation, but simply as evidence of an indebtedness by the drawer to the holder.

Mr. Parsons, in his work on Notes and Bills, [Footnote 2] says:

"It has been said that the word 'memorandum,' or 'mem.,' written on the check would not affect the right of the holder. We think this might have been doubted, because there is a well known custom in all our commercial cities of drawing and using checks in this form merely as due-bills, or as what they are, and are called 'memorandum-checks.'"

In *Dykers v. Leather Manufacturers' Bank,* [Footnote 3] it was said:

"The weight of the testimony is that this memorandum amounts to nothing more than an indication of an understanding that the check is not to be presented immediately for payment, so as to destroy the drawer's credit with the bank, where he has not provided funds to meet the draft."

It is stated further in Parsons, [Footnote 4] that the holder may present the same for payment if the name of the bank is not cancelled on the check.

In *Franklin Bank v. Freeman,* [Footnote 5] the court speaks of memorandum-checks

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as well known in Boston, and says that the rules of business with regard to them are well understood.

In *Glover v. Graeser,* [Footnote 6] it is said that memorandum-checks, being regular bank-checks with the word "memorandum" written on their face, are constantly used in settlement of accounts between merchants, as admissions of amounts of money due.

This reading makes the statute harmonious and sensible, providing for bank-checks, drafts, inland bills, promissory notes, memorandum-checks, receipts, and assigning to each its proper position.

It is said that in many instances, the statute refers to the same subject more than once, under different names and with different rates of duty, and that embarrassment in the construction of the statute may arise from this cause. Thus

a check, whether drawn upon a bank or an individual, is in the nature and form of an inland bill of exchange, having a drawer, a drawee, and usually a payee. The statute describes checks, drafts, and promissory notes, and subsequently speaks of a memorandum-check; also of a receipt or other written or printed evidence of an amount of money to be paid. These general terms plainly include the specifications already made. A bank-check, a memorandum-check, a draft, or a bill of exchange each furnishes written or printed evidence of an amount of money to be paid. So does a promissory note. A note is, indeed, the regular and usual evidence in dealings between men that money is to be paid, whether in cities or in the country and whether the transactions be limited or extensive, and yet bank-checks and drafts, or orders at sight or on demand, require different stamps from memorandum-checks, bills of exchange, and promissory notes.

A few simple rules will dispose of the most of the difficulties that may arise:

1st. Instruments described in technical language, or in

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terms especially descriptive of their own character, are classed under that head, and are not to be included in the general words of the statute.

2d. The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation except where scientific or technical terms are used.

3d. The liability of an instrument to a stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and cannot be affected by proof of facts outside of the instrument itself.

4th. If there is a doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption because, in the language of Pollock, C.B., in *Girr v. Scudds,* [Footnote 7] "a tax cannot be imposed without clear and express words for that purpose."

These principles are based in good sense, and are sustained by the authorities.

In *Williams v. Jarrett,* [Footnote 8] where the question was, whether a bill was liable to the stamp duty imposed upon bills "exceeding two months after date," it was held, that the date meant the time expressed on the face of the bill, and that it did not depend upon the fact that the bill actually had more than two months to run. Denman, C.J., said:

"If a bill bears no date, we must ascertain by evidence the day when it issued, but where there is a date, that must be considered as the time to which the schedule refers."

In *Whistler v. Forster,* [Footnote 9] the same language was used by Erle, C.J., and by Willes, J. The latter said:

"Drafts payable to order, not being affected by either of those enactments, fall within the law as to bills of exchange, which have been repeatedly held not to be void by postdating, though that

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should have the effect of making the instrument require a less stamp than if it had been dated correctly and payable at the same time."

In *Bull v. O'Sullivan,* [Footnote 10] decided in 1871, the cases of *Whistler v. Forster* and *Williams v. Jarrett* are approved, and the rule is thus announced:

"There is nothing in the statutes to invalidate a postdated check on a banker payable to order on demand, and in determining what is the requisite stamp to make such an instrument admissible in evidence, the instrument alone is to be looked at. Such a check is available in the hands of a person who took it with knowledge that it was postdated, and is admissible in evidence with only a penny stamp."

Hannan, J., further said:

"We are of opinion that the stamp acts above referred to, so far as they relate to bills of exchange and orders for the payment of money, deal with those documents

only as they appear on their face, without reference to any collateral agreement or condition by which their apparent operation may be affected."

It is not necessary, in this view of the case, to decide whether an order drawn by one officer of a corporation upon another officer of the same corporation is in law a promissory note, nor whether it may simply be treated as such in pleading; nor is it necessary to decide whether the fact that the order is drawn upon Mr. Canda individually, and not as treasurer of the corporation, will affect the result. Whatever may be the law on this subject, it will not affect the case before us. The instrument we are considering is, in form, a draft or check upon an individual. It is not in form a promissory note. It must therefore pay the stamp duty of a draft or order, and not that of a promissory note. It is not permissible to the courts, nor is it required of individuals who use the instrument in their business, to inquire beyond the face of the paper. Whatever upon its face it purports to be, that it is for the purpose of ascertaining the stamp duty. The paper here, as we have said, has the distinctive

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form of a draft or check upon an individual. It falls under that specific description, and is to be taxed according to that description, not varied by proof, and not ranked under any general terms contained in the statute.

It is said that the transaction proved upon the trial in this case is a device to avoid the payment of a stamp duty, and that its operation is that of a fraud upon the revenue. This may by true, and if not true in fact in this case, it may well be true in other instances. To this objection there are two answers:

1st. That if the device is carried out by the means of legal forms, it is subject to no legal censure. To illustrate. The Stamp Act of 1862 imposed a duty of two cents upon a bank-check, when drawn for an amount not less than twenty dollars. A careful individual, having the amount of twenty dollars to pay, pays the same by handing to his creditor two checks of ten dollars each. He thus draws checks in payment of his debt to the amount of twenty dollars, and yet pays no stamp duty. This practice and this system he pursues habitually and persistently. While his

operations deprive the government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud. He resorts to devices to avoid the payment of duties, but they are not illegal. He has the legal right to split up his evidences of payment and thus to avoid the tax. The device we are considering is of the same nature.

Another answer may be given to the objection more comprehensive in its character. It is this: that the adoption of a rule that the form of the instrument can be disregarded, and its real character be investigated for the purpose of determining the stamp duty, would produce difficulties and inconveniences vastly more injurious than that complained of. Such a rule would destroy the circulating capacity of bills, or drafts, or orders. The present act imposes the same stamp duty upon inland bills of exchange and promissory notes, but this is an accidental circumstance only. Suppose that the draft is made subject to a tax of five cents on the

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hundred dollars, and the note to a tax of ten cents on the hundred dollars. The defendant contends that a draft or bill drawn by one officer of a company upon another officer of the same company is, in legal effect, a promissory note. Upon the supposition thus made, its real character would require a tax of twice the amount of that indicated upon its face, and if the stamp be too small, the instrument is absolutely void from its inception. [Footnote 11] In the language of the statute, it shall be "deemed invalid and of no effect."

Is every man to whom a paper in the form of a bill of exchange is presented bound to inquire whether there are not outside circumstances that may affect its nature? Having ascertained this, is he bound to delay all proceedings until he can take legal advice upon its nature and character? This he must do upon the theory contended for, and he must be certain also that his advice is correct; otherwise he will lose the money he advances upon the bill. The same rule, it is contended, will apply where the drawee does not appear upon the face of the bill to be an officer of the company. Such is the case before us, where Mr. Canda, the drawee, does

not appear upon the bill itself to be connected with the company, and yet the prosecution contends that it may be proved that he is its treasurer, and that thereupon the instrument ceases to be a draft or order for the payment of money and becomes a promissory note.

That the rule contended for is impracticable in a commercial country is too obvious to require farther illustration. We are satisfied that the principles heretofore laid down must govern the case before us.

These views require that an answer in the negative should be given to each of the questions certified to this Court. They are accordingly so answered, and the record must be returned to the court below with directions to

Dismiss the information.

[Footnote 1]

13 Stat. at Large § 158, p. 298, amended by the Act of July 13, 1866; 14 *id.* 144.

[Footnote 2]

Vol. 2, p. 66.

[Footnote 3]

11 Paige 615.

[Footnote 4]

Supra.

[Footnote 5]

16 Pickering 535.

[Footnote 6]

10 Richardson's Equity 446.

[Footnote 7]

11 Exchequer 191; *see also Conroy v. Warren,* 3 Johnson's Cases 259, to the same effect.

[Footnote 8]

5 Barnewall & Adolphus 32.

[Footnote 9]

14 Common Bench (New Series) 257.

[Footnote 10]

Law Reports 6 Q.B. 209.

[Footnote 11]

Stat., § 158.

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