

Carter Vs. Carusi

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Court : US Supreme Court

Decided On : Dec-15-1884

Appeal No. : 112 U.S. 478

Appellant : Carter

Respondent : Carusi

Judgement :

Carter v. Carusi - 112 U.S. 478 (1884)

U.S. Supreme Court Carter v. Carusi, 112 U.S. 478 (1884)

Carter v. Carusi

Argued November 24-25, 1884

Decided December 15, 1884

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IN ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

The provision in 715 Rev.Stat. District of Columbia that a lender contracting to receive an illegal rate of interest shall forfeit all such interest and shall be entitled to recover only the principal sum applies only to cases in which the illegal interest has been contracted for but has not been paid.

The remedy given by 716 Rev.Stat. District of Columbia to recover back unlawful interest actually paid is exclusive.

It is not error in a charge to make no reference to an issue raised by a plea, but unsupported by proof.

Failure to instruct a jury upon an issue raised by a plea cannot be assigned as error, if the court below was not requested to charge the jury upon that issue.

The Revised Statutes of the United States relating to the District of Columbia provide as follows:

" 715. If any person or corporation shall contract to receive a greater rate of interest than ten percent upon any contract in writing, or six percent upon any verbal contract, such person or corporation shall forfeit the whole of the interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation."

" 716. If any person or corporation shall directly or indirectly take or receive any greater amount of interest than is provided for in this chapter upon any contract or agreement whatever, it shall be lawful for the person or his personal representative or the corporation paying the same to sue for and recover all the interest paid upon any such contract or agreement from him or his personal representative or from the corporation receiving such unlawful interest, but the suit to recover back such unlawful interest shall be brought within one year after such unlawful interest shall have been paid or taken."

The transactions out of which the cause of action in this case and the defenses thereto arose occurred in the District of Columbia while these sections were in force.

The suit was brought October 16, 1878, by the defendants in error, executors of Nathaniel Carusi, deceased, against Carter, the plaintiff in error, as endorser upon a note, dated May 29, 1873, made by Joseph Daniels, for the payment to Carter of \$4,000 three years after date, with interest at the rate of eight percent per annum.

Carter filed six pleas, the first five of which only it is material to notice. The first two pleas were, in substance, the general issue.

The third plea averred that the plaintiffs ought not to recover \$992 of the amount of the note sued on, with the interest on said sum, because Carusi, the testator, after becoming the owner of the note, made, on February 4, 1876, a verbal agreement with Daniels, the maker, by which he contracted to receive from Daniels interest at the rate of ten percent per annum, payable quarterly, upon the full amount of the principal and interest due on the note at its maturity, to-wit, \$4,960, and in pursuance of such agreement did, between February 4, 1876, and January 1, 1878, receive, as illegal interest, eight payments of \$124 each, amounting to \$992.

The fourth plea was similar to the third except that it averred that the installments of illegal interest were paid, some to Carusi, the testator in his lifetime and the others, after his death to the plaintiffs.

The fifth plea averred that the defendant was only liable on the note as endorser; that on June 1, 1876, Carusi, the testator, in consideration of the promise of Daniels, the maker, to pay the usurious interest of ten percent on the note, in quarterly installments of \$124 each, agreed to extend, and did extend, the time of payment from quarter to quarter as long as Daniels paid the quarterly installments of usurious interest, and that Daniels paid said quarterly installments until January 1, 1878, and that the extension of the time for the payment of the note was agreed to by Carusi without the consent of the defendant Carter.

Issue was taken on the pleas, and upon the trial in special term the jury returned a verdict for the plaintiffs, upon which the court rendered judgment. The case was

carried by writ

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of error to the Supreme Court of the District of Columbia in general term, by which the judgment of the court in special term was affirmed. The present writ of error brings up that judgment for review.

It appeared by the bill of exceptions taken upon the trial that the making and endorsing of the note having been admitted by the counsel for the defendant, the plaintiffs gave evidence tending to prove that demand for payment thereof was duly made upon the maker, and notice of the dishonor was duly given by the plaintiffs to the defendant, and the plaintiffs rested.

Thereupon the defendant gave evidence tending to prove that Carusi, the testator, in his lifetime, and his executors, after his death, received, after the maturity of the note sued on, from Daniels, the maker, in quarterly installments, interest thereon down to September 1, 1877 at the rate of ten percent per annum, calculated upon the amount of principal and interest due on the note at maturity, and that such installments amounted to \$621.10, but that the payments were not made in pursuance of any contract, verbal or written, between Carusi, the testator, and Daniels, or the plaintiffs and Daniels.

Thereupon the plaintiffs introduced evidence tending to show the following facts:

"That Joseph Daniels, the maker of the note sued on, had, in or about the month of January, 1876, negotiated a loan of \$10,000 from [Carusi], the testator"

of the plaintiffs, upon which he agreed to pay interest quarterly at the rate of ten percent per annum, and to secure which he offered to execute a deed of trust on certain property in the City of Washington.

This property was encumbered by a deed of trust made by Daniels to secure the note sued on, and two others of the same date, made also by him, for \$4,000 each, payable to Carter, the first in one and the other in two years. Carusi, learning that the property was thus encumbered, declined to lend the money until the

encumbrances were removed; but Daniels promising to do this, and urging Carusi "to hold said negotiation open" until he could do it, the \$10,000 was "deposited in bank" by Carusi "and reserved for Daniels."

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Carter, being still the holder of the second and third notes executed to him by Daniels, and the second being now overdue, threatened to sell the real estate covered by the deed of trust given to secure them. Thereupon, as a temporary expedient to relieve Daniels, Carusi, the testator, agreed to purchase the third note which had not matured, and the defendant Carter agreed to extend the time for the payment of the second note. The third note, which is the one sued on in this case, was purchased accordingly before maturity by Carusi, and was endorsed by Carter, the payee, who received therefor from Carusi \$4,853, that sum being the principal with the interest due thereon at the date of its transfer. Daniels voluntarily offered to pay interest at the rate of ten percent per annum on the amount both of principal and interest due on the note at maturity, that amount being \$4,960, but Carusi declined to receive the same without first obtaining the consent of the defendant thereto, and he communicated to the defendant the offer of Daniels to pay interest as aforesaid, and the defendant consented that Carusi might receive the same, and no payment of interest by Daniels was received by the plaintiffs without their first having obtained the consent of Carter thereto. The plaintiffs further gave evidence tending to prove that there was no agreement between them or their testator and Daniels for indulgence or extension of time for payment of the note, or for forbearance to sue thereon.

Upon this state of the pleadings and evidence the defendant requested the court to charge the jury:

First. That if either the third or fourth plea was proven, their verdict should be for \$4,000, the principal of the note, less whatever amount the jury might regard as proven to have been paid by Daniels in the nature of interest to the testator or to the plaintiffs.

Second. That if the jury found that either the testator or the plaintiffs at any time after the maturity of the note in suit received interest thereon at a greater rate than six percent per annum, the receipt of such interest was illegal, and would prevent the plaintiffs from recovering more than the principal of the note, less all amounts of interest paid on account of it.

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The court refused these charges, and instructed the jury that the only remedy for the recovery of money paid for interest in excess of the interest allowed by law is suit brought, under 716 of the Revised Statutes of the District of Columbia, within one year, and that the prohibition contained in 715 of the Revised Statutes of the District of Columbia applies exclusively to cases in which illegal interest has been contracted for, but not paid.

The errors assigned were the refusal of the court to give the instructions prayed for by the defendant, and the instructions given by the court.

MR. JUSTICE WOODS delivered the opinion of the Court. He recited the facts as above stated, and continued:

We are of opinion that there is no error in the charges given, or in the refusal to charge as requested. The sections of the Revised Statutes relating to the District of Columbia were correctly construed by the court. Their meaning is plain. 715 provides for the case where the party contracts to receive a greater rate of interest than ten percent, upon a written, and six percent upon a verbal, contract, and declares that he shall forfeit the whole interest so contracted to be received, and shall recover only his principal debt. The evidence tended to show that the payment by Daniels to Carusi, the testator, of ten percent interest was voluntary, and that there was no contract for its payment, or agreement for indulgence or extension of time for payment, on account thereof. It is plain that under this section the plaintiff in error was not entitled to the charges requested by him.

716 provides for the recovery, by the person who has paid a greater rate of interest than is allowed by law, upon any agreement or contract, of all interest paid on such contract or agreement, provided he brings suit to recover the same within one year after the unlawful interest shall have been paid. This

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section, it is also clear, brings no aid to the plaintiff in error. This is not a suit to recover back usurious interest paid, but to enforce the collection of the note upon which it is contended the usurious interest was received. The plaintiff in error did not pay the unlawful interest, but it was paid by Daniels, and it was paid by him more than a year before this suit was brought, and more than a year before the defense set up by the plaintiff in error. If Daniels himself, who paid the alleged usurious interest, had brought a suit to recover it back, his action would have failed, because not begun within the time prescribed by the statute. The plaintiff in error therefore who has paid no interest, legal or illegal, is in no better position at least, than Daniels, and cannot set up the provisions of 716 in his defense. Under neither section is the plaintiff in error entitled to any relief.

His counsel, however, contend that if he is not entitled to relief under the statute, his common law right to reclaim or set off usurious interest paid still remains to him.

But this Court has repeatedly decided against this contention of the plaintiff in error. In *Farmers' Mechanics' National Bank v. Dearing*, [91 U. S. 29](#) , the Court declared that the penalty imposed on a national bank for taking a greater rate of interest than that allowed by the National Banking Act, was the loss of the entire interest, and that no loss of the entire debt was incurred by the bank as a penalty by reason of the provisions of the usury law of a state.

So, in *Barnet v. National Bank*, [98 U. S. 555](#) , it was held that in a suit by a national bank against the parties to a bill of exchange discounted by it, the assignees of an acceptor could not, having intervened as parties, set up by way of counterclaim or setoff that the bank knowingly took and was paid a greater rate of

interest thereon than that allowed by law, but that, the National Banking Act having prescribed as a penalty for the taking of such unlawful interest that the person paying the same might, in an action of debt against the bank, recover back twice the amount so paid, he could have redress in no other form or mode of procedure.

So, in *Driesbach v. National Bank*, [104 U. S. 52](#) , it was held

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that usurious interest paid to a national bank on renewing a series of notes, of which those in suit were the last, could not be applied in satisfaction of the principal of the debt. See also *Cook v. Lillo*, [103 U. S. 792](#) , and *Walsh v. Mayer*, [111 U. S. 31](#) . In the case last cited it was held generally that a statute which prescribes a legal rate of interest, and forbids the taking of a higher rate, under penalty of a forfeiture of the entire interest, and declares that the party paying such higher rate of interest may recover it back by suit brought within twelve months, confers no authority to apply the usurious interest actually paid to the discharge of the principal debt, and that a suit for its recovery, brought within twelve months, was the exclusive remedy.

There was therefore no error in the refusal of the court to charge as requested or in the charge given.

It is further assigned for error that the court neglected to give the jury any instruction upon the issue raised by the fifth plea, the plaintiff in error contending that there was evidence to support that plea, and that the court, though not requested, should have submitted to the jury the issue of fact raised by the plea. We look in vain through the record to find any evidence that would have justified the jury in returning a verdict for the defendant on the fifth plea. On the contrary, the evidence tended strongly to disprove it. The court might therefore without injustice to the defendant, have withdrawn from the jury the consideration of the fifth plea. *Parks v. Ross*, 11 How. 362, [52 U. S. 373](#) ; *Hickman v. Jones*, 9 Wall. 197; *Pleasants v. Fant*, 22 Wall. 116; *Commissioners of Marion County v. Clark*, [94 U. S. 278](#) .

But even if there had been evidence to support the plea, as it does not appear that the court was requested to charge the jury upon the issue raised thereby, the failure of the court to do so cannot be assigned for error. [Express Co. v. Kountz](#), 8 Wall. 342.

We find no error in the record.

The judgment of the Supreme Court of the District of Columbia must therefore be affirmed.

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