No. 13366

Supreme Court of Illinois

Aetna Ins.Co.

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vs.

Alton Bank

SUPREME COURT—JANUARY TERM, A. D. 1861.

ÆTNA INSURANCE COMPANY, Plaintiff in Error,
vs.
ALTON BANK, Defendants in Error.

Error to Madison. Alton City Court

BRIEF AND AUTHORITIES OF DEFENDANT IN ERROR.

In this case the Bank received the bill for collection in the usual and regular course of banking business, and it is the usual and customary course, when a bank receives a bill or note upon a drawee or payee residing at a different place from the residence of the Bank, to transmit the same for collection to some responsible correspondent in the place where the payee or drawee resides; and in this case the Alton Bank transmitted the bill for collection in seasonable time to Benoist & Co., of St. Louis, (where the payee resided), who it is agreed, are responsible bankers residing in said city. Upon this agreement of facts, the defendant insists upon the following points:

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1st. That it fully complied with its undertaking when it transmitted the bill for collection to Messrs. Benoist & Co., and is not responsidle to the plaintiff in error for the default or neglect of Benoist & Co. See Bellmire v. Bank U. S., 4 Wheat, 105; Jackson v. Union Bank, 6 Harris and Johnson, 146; Tiernan v. Commercial Bank Natchez, 7 Howard, 648; Agricultural Bank v. Commercial Bank, 7 Smedes and Mar., 598; Citizens' Bank v. Howell, et al., 8 Maryland, 530; Hyde & Goodard v. Planters' Bank. 17 Louisana, 560.

2d. That it was well understood between the parties that the Bank was to transmit the bill for collection to its correspondent at St. Louis, and was not personally to see to the collection of the same.

3d. That where a bill or note is deposited with a Bank for collection in the usual course of banking business, without any other instructions, upon a party residing at a different place from the residence of the Bank, the only duty imposed upon the Bank is to transmit the said bill or note for collection in seasonable time, to a competent and responsible correspondent in the place where the payee or drawee resides. See East Haddam Bank v. Scovill, 12 Conn., 303; Fabans v. Mercantile Bank, 23 Pickering, 330; Dorchester and Milton Bank v. New England Bank, 1 Cushing, 177; Jackson v. Union Bank, 6 Harris & Johnson, 146; Bank of Orleans v. Smith, Hill, 563; Allen v. Merchants' Bank, 15 Wend., 483; Bank of Washington v. Triplatt, 1 Peters. 25; Parson's Mercantile Law, 144.

4th. In this case Benoist & Co., became the agent of the plaintiff in error, and are liable to said plaintiff for any loss occasioned by their default, and the said plaintiff cannot hold the Bank responsible for the default of Benoist & Co.

5th. The facts agreed upon in this case show that the Bank received the bill for the purpose of being transmitted to its correspondent in St. Louis for collection, and nothing more.

Levi Davis
for Def't in error

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Filed Jan 23/9

SUPREME COURT.

SECOND GRAND DIVISION,
January Term, A. D. 1861.

THE ÆTNA INSURANCE COMPANY,
vs.
THE ALTON BANK.

Error to ~~Madison~~. Alton City Court

This is an action on the case upon promises, instituted in the Alton City Court, of the April Term, A. D. 1860.

There are three counts in the declaration, all setting out substantially the same state of facts: They aver that on the 15th day of April, A. D. 1858, at Omaha City, in the Territory of Nebraska, one, William Young Brown, drew his certain Bill of Exchange of that date, upon the Citizen's Savings Institution of the City of St. Louis, and State of Missouri, for the sum of Five Hundred and Fifty Dollars, payable ten days after sight, to the order of one, Lyman Richardson: That before said Bill became due and payable, the said Lyman Richardson indorsed the same to one, O. L. Richardson, and O. L. Richardson indorsed it to George L. Miller, and George L. Miller indorsed it to J. B. Bennett, and J. B. Bennett indorsed it to the said Plaintiff; And that thereupon the said Plaintiff indorsed and delivered the same to the said Defendant for collection, on behalf of the said plaintiff: That in consideration of the said Plaintiff so indorsing and depositing said Bill of Exchange, to, and with said Defendant, said Defendant undertook and promised to present the same for acceptance, and to demand payment of the same, and in case said Bill was not accepted, to cause said Bill to be protested for such non-acceptance, and due notice thereof to be given to the said drawer and indorsers thereof.

That afterwards, on the 29th day of ~~February~~ April, A. D. 1858, the said Bill was presented to the said Citizen's Savings Institution for acceptance, which was refused, and that the said Bill for such non-acceptance was not protested, nor was notice of such non-acceptance given to the said drawer and indorsers thereof, whereby the said plaintiff lost the said sum of money, specified in said Bill, to its damage, &c.

To which declaration there was interposed a plea of the general issue.

At the September Term, the case was tried by the Court, without the introvention of a jury, upon the following statement of facts, agreed to by the parties, and other evidence introduced on behalf of the Plaintiff, to-wit:

It is agreed that the Bill of Exchange was drawn and indorsed, as set forth in said Plaintiff's declaration, and that on or about the 27th day of April, 1858, the said Plaintiff indorsed and delivered the said Bill of Exchange to the said Alton Bank for collection, in the usual and regular course of banking business: That on the day of said indorsement, and delivery of said Bill of Exchange to the said Alton Bank, the said Alton Bank, by C. A. Caldwell, its cashier, indorsed and transmitted the same for collection, to L. A. Benoist & Co., Bankers, of the City of St. Louis, State of Missouri; the proceeds of said Bill, when collected by said L. A. Benoist & Co., to be placed to the credit of said Alton Bank.

That the said Citizen's Savings Institution, of St. Louis, Missouri, upon which the said Bill of Exchange was drawn, is situated, and does its business in the said City of St. Louis.

That on the 29th day of April, 1858, the said L. A. Benoist & Co. presented the said Bill of Exchange to the said Citizen's Savings Institution, the drawer of the same for acceptance, when the acceptance of the same was refused by the said drawee, and that the said Bill of Exchange was not, by reason of such refusal, protested for such non-acceptance, nor was notice of such non-acceptance given to the said William Young Brown, the drawer of said Bill, or to any of the said indorsers thereof.

That subsequently on the 12th day of May 1858, the said Bill of Exchange was presented by the said Benoist & Co. to the said Citizen's Savings Institution for payment, when payment was refused, and that thereupon at the request of said Benoist & Co., the said Bill was duely protested for such non-payment, and that due notice thereof was given to the said drawer and endorsers of said Bill.

That the said L. A. Benoist & Co., are responsible Bankers in the said City of St. Louis, where the said drawee of said Bill is situated and does its business; That the said Bill of Exchange was indorsed by the said Alton Bank to the said Benoist & Co. for collection, in the usual and customary manner of doing business, and making collections, when bills or notes are left with the Bank for collection, payable at a different place than where the Bank is situated.

That when bills or notes are deposited with a Bank for collection when the drawer or payer resides at a different place from the residence of the Bank, it is usual and customary for the Bank with which such note or bill is left, to transmit the same for collection to some responsible correspondent in the place where the payee or drawee resides. It is also the custom and duty of Banks, with which notes or bills are left for collection, payable at the place where such Bank is situated, or the correspondent of such Bank, when the note or bill is payable at a different place than where the Bank is situated, to attend and see that the same is properly protested, and due notice given to all drawers, makers and indorsers of such notes or bills, for both non-acceptance and non-payment.

Signed: H. S. BAKER. *Plaintiff's Attorney.*
LEVI DAVIS, *Defendant's Attorney.*

In addition to which, there was also introduced, as testimony on behalf of said Plaintiff, a certified copy 83 of the record and proceedings of a suit, had, and determined in District Court of the Territory of Nebraska upon said Bill of Exchange, wherein the said Ætna Insurance Company was Plaintiff, and the said William Young Brown was defendant, and wherein judgment was rendered for said Defendant, and against the said Ætna Insurance Company for cost.

Which was all the evidence in the case. The Court gave judgment for the Defendant, and against the said Plaintiff for cost, to which Plaintiff by its counsel excepted.

The Plaintiff in error presents the following Points, and Authorities.

1st. A Bank receiving notes or bills for collection, although no commissions are charged, still the possible use of the money is consideration sufficient to render it liable, as an Agent, for compensation, and that as such Agent, it is responsible for due care and skill in all acts and measures necessary in the collection of such notes or bills, whether performed through the Officers of the Bank, or through other Agents, employed by the Bank.

Bayley on Bills 250
Edwards on Bills 403
6 Louis 740
1 Amer Leading Cases 603
20 John 371

2nd. That when notes or bills are deposited with a Bank for collection, payable at a different place than from where the Bank is situated, the Bank is an Agent to collect, and not merely to transmit for collection, and is liable for the neglect of any of its Agents or Correspondents, however proper the selection may have been.

Bayley on Bills 250-2
Edwards on Bills 403
1 Parsons on Cont (4th Edi) 586
1 Peters 25
4 Rawle 384
20 John 371
20 Wend 322
22 Wend 215
3 Hill (N Y) 560
6 Blackford 225
6 Louis 740
3 Hill (South Caro) 77

10 English Com Law Repts 145
17 Louisa Repts 560

3rd. A Bill of Exchange drawn by a citizen of one State or Territory, upon a citizen of another, is a Foreign Bill, and when payable after sight, must be presented for acceptance, which if refused protest must be made and notice given to the drawee and indorsers of the same, in order to hold them liable thereon.

Edwards on Bills 47
Bayley on Bills 12
3 Kent 82
1 Peters 91
20 Wend 81; 323

4th. That when a Bank receives a Bill for collection, and it, or its Agents neglect to take such measures as are necessary to bind the drawee and indorsers, whereby the holder is deprived of the benefit of such bill, the Bank becomes liable to the holder, and the measure of damages will be the amount specified in such bill, with interest from its maturity.

Edwards on Bills 402

H. L. Baker
Atty for
Plaintiff in Error

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Abstract & authorities on behalf of plaintiffs

Filed June 18/61

L. C. Leland
Clerk

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Filed Jan 23 69

W. L. Gurley
Clk