GAITHER v. LEE.

Case No. 5,182.

{2 Cranch, C. C. 205;[1] 18 Niles, Reg. 328.}

Circuit Court, District of Columbia. June Term, 1820.

WITNESS—COMPETENCY—INTEREST—USURY.

1. In an action by the indorsee against the acceptor of an inland bill of exchange, the indorser is a competent witness for the defendant to prove usury in the plaintiffs discounting of the bill.

{Cited in Bank of Alexandria v. Clarke, Case No. 844.}

2. If a bill be drawn, accepted, and indorsed for the purpose of raising money upon it in the market for the use of the payee, and be put into the hands of a broker who obtains the money from the plaintiff upon it, at four per cent, per month discount, the transaction is usurious and the bill void.

Assumpsit against the acceptor of a bill drawn by John Wells, Jr., upon the defendant, and by him accepted payable to James Hodnett, or order, on the 29th of March, 1819, and indorsed by him and A. Mclntire, for $350. The bill, having seventy-five days to run, was put into the hands of Mr. Nicholls, a broker, to raise money upon it for the use of the drawer. Mr. Nicholls procured the money upon it from the plaintiff, discounting $25 for the seventy-five days.

Mr. Marbury, for defendant offered Hodnett and Mclntire, the two indorsers, as witnesses to prove usury; and cited Brard v. Ackerman, 5 Esp. 119; Chit. Bills, 397; and Jordaine v. Lashbrooke, 7 Term R. 601.

Mr. Key, contra. Those cases were decided upon the ground of state policy; but in this country the decisions have been contrary; namely, that a party on a note shall not be admitted to give evidence to destroy it. Coleman v. Wise, 2 Johns. 165.

Mr. Ashton, in reply, contended that the witnesses were competent to show any tiling subsequent to the execution of the note, that would invalidate it. He admitted the bill to be good in its execution.

THE COURT (nem. con.) overruled the objection and admitted the testimony.

Mr. Marbury, for defendant, then prayed the court to instruct the jury, that if they should be of opinion, from the evidence, that the bill was drawn, accepted, and indorsed for the purpose of raising money upon it in the market and was put into the hands of Mr. Nicholls by Mr. Hodnett for that purpose, who procured the money from the plaintiff upon it, discounting $25 upon $350, the amount of the bill, which had seventy-five days to run, the transaction was usurious, and the bill void.

Which instruction THE COURT (MORSELL, Circuit Judge, contra) gave, upon the authority of the two cases cited by Mr. Marbury, namely, Jones v. Hake, 2 Johns. Cas. 60, and Wilkie v. Roosevelt, 3 Johns. Cas. 66; Id. 206.

Verdict for the defendant.

The plaintiff took a bill of exceptions to the instruction of the court to the jury, but not to the admission of the indorsers as witnesses for the defendant. No writ of error was prosecuted. The cause stood several terms upon a motion for a new trial on the ground of misdirection of the jury, but it was never brought to a hearing, and at October term, 1821, the cause was struck off by the plaintiff.

[1] {Reported by Hon. William Cranch, Chief Judge.}