MCDONALD v. MAGRUDER.

Case No. 8,761.

{3 Cranch, C. C. 298.}[1]

Circuit Court, District of Columbia. May Term, 1828.

CONTRIBUTION—ACCOMMODATION PAPER—SURETIES.

The indorsers of accommodation paper are to be considered as joint sureties, and liable to contribution.

Assumpsit by the last indorser against his immediate indorser of S. Turner's note, dated 15th October, 1823, for $150 at 60 days, payable to the defendant {George B. Magruder} at the Bank of the Metropolis, where it was discounted for the accommodation of Turner. The plaintiff {John G. McDonald}, being the last indorser, put his initials to these words, at one corner of the note, "Credit the drawer." The note not having been paid by the maker, was taken up by the plaintiff, who brought this suit against the first indorser. The plaintiff and the maker of the note were both clerks in the office of the secretary of the senate. The cause was tried at December term, 1825.

The counsel for the defendant contended that, as no consideration passed between these indorsers, the plaintiff could only recover upon the principle that joint sureties were liable to contribution. That the words "credit the drawer" were evidence that the indorsers were to be considered as joint sureties.

Mr. Wallach, for plaintiff, prayed the court to instruct the jury that these words were not evidence that the plaintiff and defendant had jointly agreed to become indorsers for the accommodation of Turner; which instruction THE COURT (MORSELL, Circuit Judge, absent) refused to give, and the jury found a verdict for the plaintiff for only half the amount of the note.

Mr. Wallach moved for a new trial, on the ground that the court erred in the refusal of the instruction.

But THE COURT (MORSELL, Circuit Judge, absent) refused the new trial. They thought the memorandum was evidence that the plaintiff never paid the defendant any thing for the note, and therefore the plaintiff could recover nothing from the defendant unless upon the ground that the defendant had agreed to become joint surety with the plaintiff; and that the jury did right in finding a verdict for only half of the amount of the note.

But see Magruder v. McDonald {Case No. 8,965}.

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