

DRYFUS v. BURNES et ux.

(Circuit Court, W. D. Arkansas. November 1, 1892.)

1. USURY—WHAT CONSTITUTES—BONUS TO BORROWER'S AGENT.

Where an agent in a loan transaction is agent of the borrower, and not of the lender, the fact that he receives a bonus from the borrower is immaterial to the plea of usury, for what the borrower pays to his own agent for procuring a loan is no part of the sum paid for the loan or forbearance of money.

2. SAME—BONUS TO LENDER'S AGENT.

If an agent in a loan transaction is agent of the lender, unless the proof shows that the lender gave express authority to the agent to exact for his benefit more than the lawful rate of interest, or he had knowledge, express or implied, that the agent had such a purpose, usury cannot be asserted to defeat the remedy.

3. SAME—AGENT'S AUTHORITY—PRESUMPTIONS.

An authority to loan money at a legal rate of interest does not include by implication the authority to loan at an illegal rate. An authority to violate the law will never be presumed.

(Syllabus by the Court.)

In Equity. Bill by Charles I. Dryfus against Charles Burnes and Catherine Burnes to foreclose a mortgage. Decree for plaintiff.

Clendening, Mechem & Youmans, for plaintiff.

Du Val & Pitchford and Mr. Mellette, for defendants.

PARKER, District Judge. This is a suit to foreclose a mortgage given to secure a loan of \$8,000 at 10 per cent. interest. The defendants plead usury. The facts produced in evidence show that the money of plaintiff was received by Burnes and wife from plaintiff through Patterson & Parker, loan and real-estate agents. By the contract, plaintiff was to have 10 per cent. interest on the loan. On agreement with Burnes and wife with Patterson & Parker they were to have 2 per cent. for negotiating the loan, for securing the money for them. Whose agents were they? I find from the proof offered in the case that they were the agents of Burnes and wife alone. This being true, it would make no difference that they received a bonus of \$100 from the borrowers. This doctrine is clearly sustained by *Vahlberg v. Keaton*, 51 Ark. 544, 11 S. W. Rep. 878, in which case the supreme court, speaking of a condition where the agent acted as such of the borrower alone, says:

"Whether he received or did not receive a bonus is immaterial to the plea of usury. What the borrower paid to his own agent for procuring a loan is no part of the sum paid for the loan or forbearance of money."

If it could be held from the facts that Patterson & Parker were the agents of plaintiff in this loan transaction, it could not be held from the proof that plaintiff had given Patterson & Parker any authority to exact for his benefit any more than the lawful rate of interest; nor that he had any knowledge, actual or constructive, of any such purpose. Then, upon this ground, under the doctrine declared in the case of *Call v. Palmer*, 116 U. S. 98, 6 Sup. Ct. Rep. 301, usury could not be asserted to defeat the remedy in this case, as,

under such circumstances, the loan is not thereby rendered usurious. In *Call v. Palmer*, this language is used:

"It is settled that when an agent, who is authorized by his principal to lend money for lawful interest, exacts for his own benefit more than the lawful rate, without authority or knowledge of his principal, the loan is not thereby rendered usurious."

Again, said case declares:

"An authority to loan money at a legal rate of interest does not include by implication the authority to loan at an illegal rate. An authority to violate the law will never be presumed."

From the proof in the case, and the law applicable thereto, it becomes manifest that the plea of usury has not been sustained. That leaves the case without any defense, and the decree must therefore go for plaintiff, and it is so adjudged.

FULLER et al. v. HAMILTON COUNTY.

(Circuit Court, E. D. Tennessee, S. D. December 14, 1892.)

RES JUDICATA—FEDERAL AND STATE COURTS.

A final decision by a state court bars a subsequent suit in a federal court on the same cause of action as effectually when the issues involve questions of general commercial law and the general principles of equity, and the like, as when they involve the construction of a state law or constitution, or some local law, usage, or custom; and it is immaterial whether the cause was decided as a question of law, on a demurrer to the petition, or after a full hearing on issues of fact.

In Equity. Bill by John P. Fuller and others against the county of Hamilton, Tenn., to establish title to a half interest in certain lands, and to have a partition thereof. Heard on a plea of *res judicata*. Plea sustained.

Wells & Body, for complainants.
W. H. De Witt, for defendant.

KEY, District Judge. Complainants allege in their bill of complaint that they are the tenants in common with defendant in lots 42 and 44, Walnut street, Chattanooga; that they are the only children and heirs at law of Simeon Fuller, who died intestate in 1846, seised of one half fee-simple interest in said lots; that commissioners of Chattanooga, in 1839, conveyed said lots to Simeon Fuller and Moses Pressley, jointly, (brothers-in-law,) and the deed was duly recorded in the register's office of Hamilton county, in Book I, p. 399. It is averred that said half interest has never been conveyed by said Fuller, his heirs or representatives, but that Fuller held it as tenant in common with Pressley until his death, and that it is now held by complainants, nor have they been ousted therefrom, or notified of any repudiation or adverse claim or holding,—and deny that any adverse possession can be charged against them. It is alleged that the register's office of Hamilton county gives notice to the world that Fuller's interest has never passed from or been divested out of him or his heirs. It is further alleged that soon after this purchase Fuller was