

EXCHANGE BANK v. HUBBARD et al.

(Circuit Court, S. D. New York. October 25, 1892.)

NEGOTIABLE INSTRUMENTS—DRAFTS—PROMISE TO ACCEPT.

Defendants, in order to enable a certain firm to buy cotton for them, promised the firm that they would cash such sight drafts as the firm should procure a certain bank to cash. The firm communicated this promise to the bank, which accordingly cashed the drafts, but defendants refused to pay them. *Held*, that defendants were liable to the bank precisely as if they themselves had directed the bank to cash the drafts.

At Law. Action by the Exchange Bank against Samuel T. Hubbard and others to recover money. On demurrer to the complaint. Demurrer overruled.

John R. Abney, for plaintiff.

Sullivan & Cromwell, for defendants.

WALLACE, Circuit Judge. This is a demurrer to a complaint in an action at law. The complaint proceeds upon the theory that the defendants are liable to the plaintiff for the amount of certain bills of exchange, as upon the breach of an agreement to accept and pay the bills. The complaint can be fairly read as stating that, to enable Hope & Co. to raise the money to buy 300 bales of cotton and ship it to the defendants, the latter promised Hope & Co. to accept and pay such drafts as Hope & Co. should procure the plaintiff to cash, the drafts to be drawn on defendants, and made payable on presentment at the city of New York; that the plaintiff, in reliance upon the promise of the defendants to Hope & Co., of which plaintiff had been informed by Hope & Co., as well as upon a telegram sent by defendants to Hope & Co., cashed the drafts in suit; that Hope & Co. used the proceeds to buy the cotton; that Hope & Co. shipped the cotton to defendants, and the defendants received it; and that the defendants neglected and refused to accept and pay the drafts upon proper presentment and demand.

The plaintiff's right of action does not depend upon the telegram sent by the defendants to Hope & Co. Its position is no better and no worse than if that telegram had not been sent, except to the extent that the message constituted a definite authorization to Hope & Co. as to the quantity of cotton to be purchased, the price to be paid, the mode of shipment, and some other details which need not be referred to. Read in the light of what had previously taken place between Hope & Co. and the defendants, the telegram contains a statement which may possibly be construed as authorizing the former to draw on defendants for the price to be paid to Hope & Co. for the cotton; but, standing alone, it does not purport to authorize Hope & Co. to procure the money from the plaintiff, or anybody else, upon the credit of defendants, and, if the statute of frauds were in the case, would have no effect as a promise in writing of the defendants to be answerable to the plaintiff for the debt of Hope & Co.

Upon the facts stated, it is claimed that the defendants authorized Hope & Co. to procure the money with which to buy the cotton from the plaintiff on such drafts as are set forth in the complaint. Defendants are therefore liable as principals for the contract of their agent, made within the terms of the authority conferred. If they had authorized Hope & Co. to borrow money for them, or on their credit, from the plaintiff, without regard to the form of the security to be given, they would have been liable as for money had and received for their use. Having authorized Hope & Co. to procure it upon sight drafts, they are liable precisely as though they had themselves directed the plaintiff to cash drafts drawn on them by Hope & Co. The demurrer is overruled.

ST. LOUIS S. W. RY. CO. v. HENSON.

(Circuit Court of Appeals, Eighth Circuit. October 16, 1893.)

No. 279.

1. APPEAL—OBJECTION NOT RAISED BELOW.

In an action by a husband for the alleged negligent killing of his wife, an objection that plaintiff has no legal capacity to sue will not be considered on appeal, where the objection is then made for the first time.

2. SAME—OBJECTIONS TO EVIDENCE.

An objection to the introduction of testimony which states no ground for the objection, deserves no consideration in the trial court, and will receive none in the appellate court.

3. DEATH BY WRONGFUL ACT—RECOVERY BY HUSBAND FOR LOSS OF WIFE'S SERVICES—MARRIED WOMEN'S ACT.

The Arkansas statute relating to married women, providing that their earnings shall be their sole and separate property, does not divest a husband of the right to his wife's services, nor, where her death has been caused by negligence, preclude him from recovering for the loss of such services.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas. Affirmed.

Statement by CALDWELL, Circuit Judge:

H. M. Henson, the defendant in error and plaintiff below, brought this suit in the circuit court of the United States for the eastern district of Arkansas against the St. Louis Southwestern Railway Company, the plaintiff in error, to recover damages for the alleged negligent killing of his wife by the railway company, while she was traveling in a boarding car attached to one of its trains. There was a trial before a jury, and a verdict and judgment for the plaintiff, and the company sued out this writ of error.

J. M. Taylor, J. G. Taylor, and Sam H. West, for plaintiff in error.

E. Foster Brown, Sterling R. Cockrill, and George H. Sanders, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

CALDWELL, Circuit Judge, after stating the facts as above, delivered the opinion of the court.