AMERICAN EXCH. NAT. BANK v. NORTHERN PAC. R. CO.

(Circuit Court, D. Washington, N. D. June 5, 1896.)

CONTRACT—SUIT BY THIRD PERSON.

An agreement made by one person with another to pay a debt due by
the latter to a third person is not the subject of suit by such third
person, when there was no intention to benefit him, and nothing of value
came under the contract within the control of the promisor which, in
equity, belonged to such third person, or is subject to a lien in his favor.

James Hamilton Lewis, for plaintiff.

Harold Preston, for defendant.

HANFORD, District Judge. This is an action by the American
Exchange National Bank of New York to recover a balance due to
the plaintiff from the Chicago & Northern Pacific Railroad Company.
The complaint alleges that, after the debt had been contracted, the
defendant, the Northern Pacific Railroad Company, entered into
and made an agreement with the said Chicago & Northern Pacific
Railroad Company whereby, for a valuable consideration moving
from the Chicago & Northern Pacific Railroad Company to the de-
fendant, said defendant assumed, covenanted, and agreed to pay the
amount of the indebtedness of said Chicago & Northern Pacific
Railroad Company to the plaintiff. The defendant has demurred to
the complaint, and upon the argument its counsel relies upon the
point that the plaintiff, being a stranger to the contract, cannot sue
the defendant. The explicit language of the complaint makes it
clear that the promise of the defendant was to pay an existing debt,
and it was made for the benefit of the Chicago & Northern Pacific
Railroad Company; and no facts are alleged from which an infer-
ence may be drawn that the parties to the contract were actuated
by a desire to benefit the plaintiff, nor that the scope of their in-
tentions included any provision for rights or interests other than
their own; and there is no pretense that under the contract any-
thing of value or assets have come to the promisor's hands, or under
its control, which, in equity, belongs to the plaintiff, or is subject
to any lien existing in favor of the plaintiff. The case, therefore,
comes fully and fairly within the rule of the decision of the supreme
court in the case of National Bank v. Grand Lodge, 98 U. S. 123–
125. The rule and the authority of the case cited have received
express recognition in the circuit court of appeals for the Ninth cir-
cuit, in the case of Sayward v. Dexter, Horton & Co., 19 C. C. A.
176, 72 Fed. 765. The decisions of the supreme court in the cases
of Hendrick v. Lindsay, 93 U. S. 143–150, and Albany & Rensselaer
Co. v. Lundberg, 121 U. S. 451–457, 7 Sup. Ct. 958, cited by the attor-
ney for the plaintiff, are not in conflict. In the former case the
supreme court construed the promise given to one person, upon the
faith of which the promisee and another became sureties upon a
supersedeas bond, as being in effect a promise to both, and held that,
as both sureties relied upon an understanding that the promised in-
demnity should be for their joint protection, they were entitled to

maintain a joint action. The distinguishing feature of that case is to be found in the fact that the evidence proved that the sureties construed the promise as if it were made for the benefit of both, and, with that understanding, assumed a liability. In the second case, the party who contracted in his own name as a principal, and not as agent for another, was held to be entitled to maintain an action upon the contract. Other cases cited by counsel for the plaintiff, although well considered and worthy of respect, in so far as they differ from National Bank v. Grand Lodge and Sayward v. Dexter, Horton & Co., must be passed without other comment than this: that they do not afford a pretext for ruling contrary to the decisions of the supreme court of the United States, and of the United States circuit court of appeals for this circuit. The demurrer is sustained.

ALLNUT et al. v. LANCASTER et al.

(Circuit Court, D. South Carolina. October 8, 1896.)

1. PARTIES—JOINT LIABILITY—ABSENT PARTIES.
Under Code Civ. Proc. S. C. § 157, which provides that in actions against a number of defendants jointly indebted on contract, some of whom are not served, plaintiff "may proceed against the defendants served, unless the court otherwise direct," the court will exercise its discretion by directing that all be served, when it appears that all reside within the jurisdiction. *Held,* that where over 100 persons, all residing within the jurisdiction, were made parties, but only 8 were served, the court would exercise its discretion by requiring service upon all; the act being apparently designed to meet cases in which some of the defendants were beyond the reach of process.

2. SAME—FEDERAL COURTS—FEDERAL AND STATE STATUTES.
Congress having provided that where some of the defendants are not inhabitants of the district, and cannot be found therein, the court may proceed to trial without them (Rev. St. § 737), this legislation is controlling in the federal courts to the exclusion of state legislation inconsistent therewith on the same subject. The statute adopting state practice, pleadings, and procedure (Rev. St. § 914) does not apply in respect to matters upon which congress itself has prescribed a definite rule.

This was an action at law by Allnut, Nixon & Goldsborough against S. T. D. Lancaster and others to recover a sum of money.

Cothran, Wells, Ansel & Cothran, for plaintiffs.
S. J. Simpson, for defendants.

SIMONTON, Circuit Judge. This case comes up now under these circumstances: There was,—perhaps still is,—in the county of Spartanburg, in the state of South Carolina, an unincorporated body or association known as the "Farmers' Alliance." One Zimmerman had opened a store or shop in that county for the purpose of selling merchandise of various kinds. His business was unprofitable, and he incurred many debts, among others to the plaintiffs in this suit. In order to obtain satisfaction of their demand, the plaintiffs brought their action against the defendants, who were alleged to have been present at a meeting which determined to appoint Zim-