
Bank of Orange County v. Colby.

The demand, therefore, was made before the note was payable, and this action cannot be maintained.

A case still stronger than this, in support of the general principle, is found in the Reports of Vermont, where B., residing in New-Hampshire, sold to D., in Cambridge, where D. resided, a quantity of cattle, for which D. there gave his promissory note, payable in fifteen days. B. brought this note to Vermont, where E. signed it. It was held, that as the note was originally made in Massachusetts, and bore date there, E. executed it with reference to the law of that place, and that E. was entitled to three days' grace upon it. 8 *Vermont R.* 325, *Bryant vs. Edson.*

Judgment for the defendant.

STEVENSON vs. CHAPMAN.

A grantor may be a witness to show that his deed is invalid, even for fraud, if he have no interest in the case. The weight of his testimony, if he swear to his own turpitude, is to be considered by the jury.

WRIT OF ENTRY, to recover an undivided half of about fifty acres of land in Tamworth.

Prior to 1835, Joseph A. Whitten was the owner of one half of the tract described. The plaintiff offered in evidence a deed from Whitten to himself, dated the 25th of April, 1835, purporting to convey one undivided half of the tract, which was recorded June 2d, 1835.

The defendant introduced a deed executed by Whitten to himself, of an undivided half of the tract, dated the 27th day of April, 1835, and recorded June 21, 1836. He further

* *Stevenson v. Chapman.*

offered in evidence the deposition of said Whitten, which was objected to by the plaintiff, on the ground that said Whitten was not a competent witness ; but a release being introduced, executed to Whitten, by the defendant, before the deposition was taken, discharging and releasing him from all the covenants contained in his deed to the defendant, the evidence was admitted by the court.

James Bell, & S. Emerson, for the defendant, cited 5 *N. H. Rep.* 181, *Hadduck vs. Wilmarth* ; 2 *N. H. Rep.* 212, *Bryant vs. Ritterbush* ; 5 *Mass. R.* 559, *Hill vs. Payson* ; 11 *Mass.* 498, *Loker vs. Haynes* ; 4 *Mass.* 441, *Twambly vs. Henley* ; 6 *Johns. R.* 135, *Jackson vs. Frost & a.* ; 2 *Stark. Ev.* 179, note ; *Odiorne vs. Howard*, (*Strafford, Dec.* 1839 ;) 5 *Cowen* 23, *Stafford vs. Rice* ; *Ditto* 153, *Bank of Utica vs. Hillard* ; 20 *Johns.* 285, *Tuthill vs. Davis* ; 3 *Wend. R.* 415, *Williams vs. Walbridge* ; 6 *Wend.* 415, *Jackson vs. Packard* ; 17 *Johns.* 188, *McFadden vs. Maxwell* ; 1 *Phil. Ev.* 36.

Bartlett, & Peabody, for the plaintiff.

PARKER, C. J. The objection to the admission of the witness cannot be supported.

It seems to be well settled, that a grantor may be a witness to show that his deed is invalid, even for fraud, if he have no interest in the case. 5 *N. H. Rep.* 181, *Hadduck vs. Wilmarth* ; 9 *N. H. Rep.* 347, *Marston vs. Brackett* ; 2 *Ld. Raym.* 1008, *Title vs. Grevett* ; 11 *Mass. R.* 368, *Worcester vs. Eaton* ; *Ditto* 498, *Loker vs. Haynes* ; 15 *Pick. R.* 420, *Hudson vs. Hurlburt* ; 13 *Maine* 9, *Wise vs. Tripp* ; 4 *Vermont R.* 493, *Seymour's Ad'r vs. Beach* ; 6 *Johns. R.* 135, *Jackson vs. Frost* ; 6 *Wend. R.* 415, *Jackson vs. Packard*.

The weight of his testimony, if he swear to his own turpitude, is to be considered by the jury.

 Stevenson v. Chapman. *

It is now settled in this state, in relation to negotiable paper, that a party who has given currency to it is a competent witness to show that it was void at the time. 9 *N. H. Rep.* 349, *Marston vs. Brackett*; *Odiorne vs. Howard* (10 *N. H. Rep.* 343); *Haines vs. Dennett*, (11 *N. H. Rep.* 180.)
Judgment for the defendant.

COLBY vs. JACKSON.

Selectmen and overseers of the poor have not, *ex officio*, any right to control and restrain the person of a lunatic.

If a person be so insane that it would be dangerous to suffer him to be at liberty, any person may, from the necessity of the case, without warrant, confine him for a reasonable time, until proper proceedings can be had for the appointment of a guardian. *see 108 Mass. 116.*

No one has a right to confine an insane person for an indefinite period, until he shall be restored to reason, but under the sanctions, and upon compliance with the formalities, of the law.

If it be dangerous to permit an insane person to be at liberty, and he be confined, and before measures can be taken for the appointment of a guardian, he become sane, and be released, the party confining him will not be a trespasser.

The plaintiff being insane, and it being dangerous to permit him to be at liberty, the defendant, one of the selectmen of the town, confined him. He then, with the other selectmen, applied to the judge of probate for an inquisition upon the plaintiff. A warrant was issued, and the selectmen made an inquisition, and declared their opinion to be, that the plaintiff was insane; but made no return of the inquisition to the judge of probate, and no further proceedings were had; but the defendant still kept him in confinement.—*Held*, that he was a trespasser *ab initio*.

In trespass for imprisoning the plaintiff, who was then insane, the defendant may show, in mitigation of damages, that he made inquiry, whether it would be safe to permit the plaintiff to be at liberty, and was told by the plaintiff's friends and neighbors, that it would not; and that he seemed desirous to take the best course for the plaintiff and his family.

TRESPASS, for an assault and battery, and false imprison-