

JUSTUS JONES versus E. FITZ.

A, being desirous of borrowing \$50 at bank, applied to B and C to be his sureties, when it was agreed between A and B, in the presence of C, that \$100 dollars should be borrowed, and that B should have half the sum. A note for \$100 was signed by the three and discounted at the bank. B received one half of the money and gave A his note for it.—C, having afterwards paid the note, it was held that B was, with respect to C, a principal and liable for the whole sum paid by C.

ASSUMPSIT for money paid, laid out, and expended. The cause was tried here upon the general issue at January term, 1831.

It appeared in evidence, that one Simon Ferrin was desirous to borrow, at the Derry bank, \$50, and applied to the plaintiff and defendant to be his sureties. The plaintiff informed him that the bank did not loan money in less sums than \$100; and thereupon it was agreed between Fitz and Ferrin, in presence of Jones, that \$100 should be borrowed, and that the defendant should have one half of the money, and Ferrin the other half. A note was made and signed by the three, discounted at the bank, and the money received by Ferrin, who delivered one half of it to the defendant, and took his note for it.

Fitz paid to Ferrin \$18,50, and then Ferrin failed and became insolvent. After this, Ferrin put the note which he had received of Fitz, into the hands of a third person, for Fitz's security with respect to the note given to the bank.

It also appeared, that the plaintiff had, previous to the commencement of this suit, paid the note given to the bank as aforesaid, and taken it up.

The court being of opinion that Fitz and Ferrin must both, under the circumstances, be considered as principals to the note given to the bank, and the plaintiff as their surety, directed a verdict to be taken for the whole amount paid by the plaintiff to the bank.

The verdict was, however, taken, subject to the opinion of the court upon the foregoing case.

Betton, for the plaintiff.

D. French, for the defendant.

By the court. There is no doubt that this defendant must be considered, in respect to this plaintiff, as a principal. He agreed, in the presence of the plaintiff, to take one half of the money when it should be obtained; and when it was obtained, one half was delivered to him. The money having been obtained under such an agreement made in the presence of the plaintiff, he has a right to consider both Fitz and Ferrin as principals, however they may have viewed the matter. Fitz having agreed, at the time the plaintiff put his name to the note, to take half the money, no arrangement subsequently made between Fitz and Ferrin, could change the right of the plaintiff.

Judgment on the verdict.

Jones
v.
Fitz.