

Eng. Rep.]

BROOK v. HOOK.

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KELLY, C. B.—This is an action on a promissory note payable three months after date, and purporting to bear the signatures of one Jones and the defendant. The declaration is on the note, and the defendant has pleaded that he did not make the note. Upon the trial it appeared that this signature of defendant to the note was not his own, and it was assumed by the learned judge who tried the cause and by counsel on both sides that it was a forgery; consequently, if the case had rested there, the defendant would have been entitled to the verdict. But it was proved that Jones having been indebted to the plaintiff upon a previous bill had partly paid it, leaving £20 still due; the note in question was handed by Jones to the plaintiff for that balance of £20. When the note was about to become due the plaintiff had an interview with the defendant, at which, upon the note being mentioned, the defendant at once declared that it was not his signature, and it was perfectly understood between them that it was, in truth, a forgery; whereupon the plaintiff said he should consult his solicitor with a view to proceed criminally against Jones; upon which the defendant said rather than that should be he would pay the money. Upon this the following paper was drawn up by the plaintiff, and signed by the defendant:—"Memorandum that I hold myself responsible for a bill, dated November 7, 1869, for £20, bearing my signature and Richard Jones's in favour of William Brook." Upon this evidence it has been contended, on behalf of the plaintiff that this paper was a ratification of the making of the note by the defendant, and upon the principle *omnis ratihabitio retrotrahitur et mandato priori æquiparatur* the jury were directed to find that the note was the note of the defendant, and that the plaintiff was entitled to the verdict. I am of opinion that this verdict cannot be sustained, and that the learned judge should have directed a verdict for the defendant, or at least have left a question to the jury as to the real meaning and effect of the memorandum and the conversation taken together; and this, first, upon the ground that this was no ratification at all, but an agreement upon the part of the defendant to treat the note as his own, and to become liable upon it, in consideration that the plaintiff would forbear to prosecute his brother-in-law, Jones; and that this agreement is against public policy and void, as founded upon an illegal consideration; secondly, the paper in question is no ratification, inasmuch as the act done, that is the signature to the note, is illegal and void; and that, although a voidable act may be ratified by matter subsequent, it is otherwise when an act is originally and in its inception void. Many cases were cited to show that where one sued upon a bill or note has declared or admitted that the signature is his own, and has thereby altered the condition of the holder, to whom the declaration or admission has been made, he is estopped from denying his signature upon an issue joined in an action upon the instrument. But here there was no such declaration and no such admission. On the contrary, the defendant distinctly declared and protested that his alleged signature was a forgery; and, although in the paper signed by the defendant he describes the bill as bearing

his own signature and Jones's, I am of opinion that the true effect of the paper, taken together with the previous conversation, is, that the defendant declares to the plaintiff: "If you will forbear to prosecute Jones for the forgery of my signature, I admit, and will be bound by the admission, that the signature is mine." This, therefore, was not a statement to the plaintiff that the signature was the defendant's, and which being believed by the plaintiff induced him to take the note, or in any way alter his condition; but on the contrary it amounted to the corrupt and illegal contract before mentioned, and worked no estoppel precluding the defendant from showing the truth, which was that the signature was a forgery, and the note was not his note. In all the cases cited for the plaintiff the act ratified was an act pretended to have been done for or under the authority of the party sought to be charged; and such would have been the case here if Jones had pretended to have had the authority of the defendant to put his name to the note, and that he had signed the note for the defendant accordingly, and had thus induced to the plaintiff take it. In that case although there had been no previous authority, it would have been competent to the defendant to ratify the act, and the maxim before mentioned would have applied. But here Jones had forged the name of the defendant to the note, and pretended that the signature was the defendant's signature; and there is no instance to be found in the books of such an act being held to have been ratified by a subsequent recognition or statement. Again, in the cases cited the act done, though unauthorised at the time, was a civil act and capable of being made good by a subsequent recognition or declaration; but no authority is to be found that an act, which is itself a criminal offence, is capable of ratification. The decision at *Nisi Prius* of Crompton, J., referred to in argument, is inapplicable, it being uncertain whether the plaintiff in that case knew that the alleged signature of then defendant was forged, and there being no illegal contract in that case to forbear to prosecute; the same observation may be made upon the case from Ireland cited upon the authority of Burton, J. I am, therefore, of opinion that the rule must be made absolute for a new trial, and that upon this evidence the jury ought to have been directed to find a verdict for the defendant, or at all events (which is enough for the purposes of this rule), that if any question should have been left to the jury, it ought to have been whether the paper and the conversation taken together did not amount to the illegal agreement above mentioned.

My brother Channell and my brother Pigott concur in this judgment.

*Rule absolute for a new trial.*

It is said, authoritatively, by the *Law Times*, that the Judicature Bills, in their new form, will be laid before Parliament for the purpose of discussion during the recess, but will not be further proceeded with until the next session.