

[Eng. Rep.]

BROOK v. HOOK.

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estoppel upon the defendant: *Heane v. Rogers*, 9 B. & C. 577.

*Cur. adv. vult.*

Jan. 27.—The following judgments were delivered:—

MARTIN, B.—This was an action upon a promissory note, tried before me at the last Bristol Assizes. The note was dated 7th November, 1869, whereby the defendant and one Richard Jones jointly and severally three months after date purported to promise to pay the plaintiff or his order £20 for value received. The plea traversed the making of the note. The plaintiff was called as a witness, and stated that in July, 1868, Richard Jones applied to him for a loan of £50, and told him that the defendant Hook (who was his brother-in-law) would join him in a note as surety; that a note was given to him purporting to be signed by the defendant and Jones, which was renewed and partly paid off; and that upon the 7th November, 1869, there was £20 remaining due; that upon that day he received by post the note sued upon, and believed the signatures to be those of the defendant and Jones; that upon the 17th December, 1869, whilst the note was current, he saw the defendant and showed the note to him, and said that the note purported to be signed by him; that the defendant denied the signature to be his; that the plaintiff said that if so it must be a forgery of Jones', and that he would consult a lawyer with the view of taking criminal proceedings against him; that the defendant begged him not to do so, and said he would rather pay the money than that he should do so; that the plaintiff then said he must have it in writing, and that if the defendant would sign a memorandum to that effect he would take it, and that the defendant then signed a memorandum as follows:—"Memorandum that I hold myself responsible for a bill dated November 7th, 1869, for £20 bearing my signature and Richard Jones' in favour of Mr. Brook. Richard Hook. December 17th, 1869." That when the defendant signed the document the plaintiff understood the defendant denied the signature to be his; that he only knew the defendant from what Jones had said of him, and that he had no idea the note was a forgery until he saw the defendant. This was the plaintiff's case, and the learned counsel for the defendant proposed to call the defendant to prove that the note was a forgery, and that his name was forged. I stated that, in my opinion, that was an immaterial circumstance, and that if the defendant signed the memorandum of the 17th December the plaintiff was entitled to the verdict upon the issue joined, and that it was for me, and not for the jury, to determine what was the construction of that document. Thereupon the verdict was entered for the plaintiff, and I stayed execution until the fourth day of the following term. A rule has been obtained for a new trial upon the following grounds:—First, that the verdict was against the evidence; and, secondly, for misdirection, viz. that the judge directed the jury that the only question for them was, whether the memorandum of the 17th December was signed by the defendant. The statement as to my direction is substantially correct, and if I was wrong in holding that the signing and making by

the defendant of the memorandum of the 17th December entitled the plaintiff to the verdict upon the issue joined, the defendant is entitled to have the rule made absolute, and to have a new trial. In the argument I asked the learned counsel for the defendant what he deemed to be the proper direction to the jury, and he stated it ought to have been as follows:—"That, having regard to what took place, and the circumstances under which the memorandum was given, the jury ought to have been asked whether the defendant intended to ratify and confirm what had been done by Jones in forging his name, or whether he intended to guarantee the payment of the note." Now I am of opinion that I could not lawfully have submitted this question to the jury; in the first place, I am of opinion that when the defendant signed a memorandum professing to be an entire and complete writing evidencing a transaction, the true construction of that document and not his intention other than shown by the writing, is the true test; and, further, that it is a matter of law for the judge to construe the document and its construction was not matter to be submitted to the jury. A case was cited from an Irish report, *Wilkinson v. Soney*, 1 Jebb & Symes, 509, showing that under the circumstances in that case there was a question for the jury. I have no doubt that the case was rightly decided; but there the writing was a letter, and there were other facts bearing upon the transaction; but the present was the case of a single writing made for the purpose of evidencing a transaction, and I entertain no doubt that such a writing is to be construed by the judge and not by the jury: if it were not so, there would be no certainty in the law; and, secondly, that there was no evidence that the document was a guarantee or intended to be a guarantee, but merely was intended to show that the defendant was responsible upon the note. I am therefore of opinion that I would have acted erroneously if I had submitted the above question to the jury. And I remain of opinion that under the circumstances of this case the only question for the jury was whether the memorandum of the 17th of December was the memorandum of the defendant, and that my ruling was right; that if it were, it was a ratification of the contract made in the name of the defendant, and binding upon him upon the legal principle that *omnis ratihabitio retrotrahitur et mandato æquiparatur*, Co. Litt. 207. I apprehend that the circumstance of Jones being a party to the note is immaterial, and that the question is the same as if the note were several and the defendant's name alone on it; and in my view of the case the facts may be taken to be that upon the morning of the 17th of December the defendant was not liable upon the note, because his signature was forged; that the plaintiff took and held the note believing that the signature was a genuine one, and that the contract to pay purported to be the contract of the defendant, and that the defendant, upon the statement that a lawyer would be consulted as to the criminal responsibility of Jones, signed the document of the 17th of December. In my opinion this was a ratification within the meaning of the above maxim, and rendered the defendant liable to