Court of Errors and Appeals.

CHARLOTTE ANN ADAMS

vs.

THE HACKENSACK IMPROVEMENT COMMISSION.

In Error.

POINTS OF PLAINTIFF IN ERROR.

This suit is for the recovery of the amount due on certain bonds issued by the Hackensack Improvement Commission, payable at the Bank of Bergen County, at Hackensack. The bonds were payable November 1, 1880, and at that time the Hackensack Improvement Commission had sufficient funds on deposit at said Bank to their credit to pay these bonds. The bonds were not presented for payment, and the Bank failed November 11, 1880, whereby the funds of the Commission on deposit were lost.

The defendant claims that the loss of these funds must fall on the holder of the bonds, who neglected to present them for payment before the insolvency of the Bank.

There is a remarkable paucity of adjudicated cases on this subject, and these few are not in harmony with each other. The question involved in this case is of great importance to holders of municipal and other bonds and promissory notes payable at banks, and the decision of this Court will doubtless have a far-reaching effect as

finally deciding the correct legal rule in similar cases.

We claim in behalf of the plaintiff that neither the deposit of funds in the Bank nor their loss by the failure of the Bank constitutes any ground of defense to this suit.

If this suit can be successfully defended on either of these grounds, it must be either—

(1). Because there was an obligation on the part of the holder of the bonds to present them for payment before the failure of the Bank; or

(2). Because the depositing of the money was in itself payment; or

(3). Because the Bank was the agent of the holder of the bonds.

As to these points:

1. There was no obligation requiring the holder to demand payment before the failure of the Bank.

It is true that the maker of a *check* is discharged if the check is not promptly presented for payment and loss ensues; but this grows out of the peculiar character and functions of a bank check, which is an order upon a banker to pay money out of funds of the maker in the banker's hands, and is intended for immediate use.

So in order to hold an indorser of a note there must be a prompt demand at the day and place of payment, whether loss ensues or not; but this obligation is owing to the peculiar character of the contract of indorsement as interpreted by the law merchant. Hence the law relative to checks and indorsers of notes can throw little light on this inquiry.

But aside from the cases of a check or the indorsement of a promissory note, which by the commercial law may be avoided if the instrument is not promptly presented, there is no law or legal principle which will discharge a note, bond or other instrument for the payment of money, because payment is not demanded when the instrument is payable.

It is well settled in this country and in the courts of our State that it is not necessary in case of a note or bond payable at a particular place to *aver in the declaration or*

prove presentment and demand of payment at that place or elsewhere.

Weed vs. Van Houten, 4 Hals., 189.
Wallace vs. McConnell, 13 Peters, 136.
1 Parsons' Contracts, *272.
1 Daniel's Neg. Ins., § 643.

If, then, it is not necessary either to aver or prove that the instrument was presented for payment at the designated place, it is evident that there is no obligation on the holder to present it at such place; and the failure to present it is no breach of contract, and constitutes no ground of defence to an action brought to recover the amount due on the instrument.

What, then, is the consequence of naming a place for payment in a note or bond?

Aside from serving the convenience of the party, the only consequence is that if the maker or obligor is ready with his money at the time and place designated, it will be equivalent to a *tender*.

A *tender* never discharges a debt; it only prevents the recovery of interest and costs, and to be effectual to do even this it must be pleaded, and the *money paid into Court*.

Wood vs. Merchants' Savings Co., 41 Ill., 267.

The naming of a place of payment in a note or bond is not an essential part of the contract.

Suppose note is payable at maker's house and he is ready with his money and note not presented, and he is robbed, it will certainly not discharge him.

So if note is payable at some place as e. g. the County Clerk's office, payment to the Clerk will not discharge the debt.

It is distinctly held in New York that the naming of a bank in a note as a place of payment is simply a designation of a *place* where the parties may meet.

Hills vs. Place, 48 N. Y., 520.

The failure to present the bond can put the obligor in no worse position than if the holder had been present at the time and place appointed and the money had been then tendered and refused. Such refusal to accept payment would not discharge the debt. The holder would still have a right to sue, but the readiness of the obligor to pay could be pleaded in bar of damages and costs. How, then, can the absence of the holder from the place of payment operate to discharge the debt?

2. Depositing money at the place of payment, is not

payment of the obligation or discharge of the debt.

The Commission never withdrew control over the money, but could have checked it out at any time.

If it is payment, then if the bank had not failed we would have been compelled to sue the bank for the money, which we clearly could not do, because the money was not deposited in our name, but to the credit of the Commission. It is well settled that the holder of a check cannot maintain an action against the bank on which it is drawn, much less could the holder of the bonds in suit maintain such action, the bonds not being directed to the bank or containing any order upon the bank for their payment.

Morse on Banks (2d Ed.), 528.

We never agreed that the Commission should deposit any money in the bank and leave it there. It was done for their convenience, to avoid necessity of their treasurer remaiuing in attendance to pay the bonds.

3. The Bank was not the agent of the holder of the bonds, but of the Improvement Commission.

There was no privity between the bank and the holder of the bonds. The above cited case in New York (Hills vs. Place) holds that the naming a bank in a note as the place of payment does not make the banking association an agent for the collection of the note or the receipt of the money; it is simply the designation of a place.

So in Illinois it is held that the making of a note payable at a particular place, as a bank, does not amount to an agreement that the maker may deposit the amount of the note at the bank, and thus discharge the obligation, and the money deposited there be at the holder's risk.

Wood vs. Merchants' Saving Co., 41 Ill., 267.

There is nothing in the bond in suit from which such a contract can be implied.

The rule as to agency in the collection of notes, bonds, &c., is as follows:

"Where the instrument payable at a bank is lodged at the bank for collection the bank becomes the agent of the payee. Where such instrument is not lodged with the bank, whatever the bank receives from the maker to apply on the instrument it receives as *his agent and not as the agent of the payee.*"

Ward v. Smith, 7 Wallace, 447.
1 Daniel's Negotiable Instruments, § 326.

Our bonds were not left with the bank for collection, hence the bank was not our agent.

The Supreme Court of Pennsylvania in a recent case

(decided in 1880), in a suit for the collection of a coupon payable in a bank, the bank having failed, held

"The corporation which issues a coupon bond is in the position of the maker of a promissory note, not of the drawer of a check or bill of exchange. *There is no obligation on the holder to present and demand it within a reasonable time.* The same rule applies to the coupons as to the bond. * * * The banking house at which it was made payable were the agents of the corporation and the holder would not lose in any event by their insolvency." Judgment for plaintiff.

Williamsport Gas Co. vs. Pinkerton. Reported in Legal Intelligencer, 1880, page 436, and in 22 Albany Law Journal, page 478.
Burroughs on Public Securities, 579.
Indig vs. Nat. City Bank, 80 N. Y., 100.

If the loss must fall upon the holder of bonds in such cases, it may be pertinent to ask what amount of diligence will be sufficient to relieve him of responsibility. It would seem clear that even greater diligence than that required of payees of checks must be necessary. It is enough if the check is presented the day after it is received, and if the bank fails sooner the loss falls on the maker and not on the holder of the check; but in case of a bond if payment to the bank is payment of the bond, then the fund deposited belongs to the bondholder from the moment the bond is due, and is at his risk, so that if the bank fails the very day that the bond is payable, the loss must fall upon the holder. To establish such a rule as this will greatly impair the value and security of the vast number of city, county and other municipal bonds issued in late years and held as permanent investments.

To put the holders of such securities upon the same footing as the holders of bank checks, will make it incumbent upon all who desire to invest in these securities, not only to ascertain the solvency of the bank at which the bonds are payable, but also to incur the risk of the continued solvency of the bank until the maturity of the bonds, be it five, ten or twenty years in the future. While it would be comparatively easy for the corporation issuing the bonds to guard against loss resulting from the insolvency of a bank, it would be very difficult for the holders of such bonds, scattered all over the country, to protect themselves if they must present their bonds for payment the very day they mature. We submit that the weight of authority, as well as the correct application of legal principles requires a different rule.

The authorities cited in defendant's brief are chiefly text writers who seem to have followed one another with almost the same statements, without reference to authorities, and none of them assert the absolute liability of the

holder of the instrument, but simply suggest that *probably* the holder must bear the loss (except in the Iowa case). While on the other hand the Supreme Court of Pennsylvania and Illinois and the Court of Appeals of New York have distinctly held that payment to the bank is no discharge of the obligation. In order to sustain the judgment in this cause this Court must reject the authority of the cases cited from Pennsylvania, Illinois and New York.

The Circuit Judge before whom this case was tried has given no reasons for his decision, and, in the absence of his opinion, we may assume that the judgment for defendant was merely *pro forma*, with the expectation that the law would be definitely settled in this Court.

The judgment should be reversed.

WILLIAM M. JOHNSON,

of Counsel with Pl'tff.

Court of Errors and Appeals.

Charlotte Ann Adams vs. The Hackensack Improvement Commission.	IN ERROR.

POINTS OF DEFENDANT IN ERROR.

The plaintiff is the owner of three coupon bonds, made by the defendant, dated November 1st, 1875, payable to the plaintiff or her assigns in five years (November 1, 1880,) at the Bank of Bergen County.

The bonds in suit were of a series of like date, issued to different persons and corporations, and all made payable at the same time and place, and were made to defray the costs and expenses of constructing sewers in the village of Hackensack.

Previous to November 1, 1880, the defendant placed on deposit in said Bank, to the credit of the *Sewer Bond Account*, a sum of money sufficient to pay all the bonds and coupons maturing November 1, 1880, and *authorized the officers of the Bank to pay said bonds and the coupons on presentation.*

The plaintiff neglected to present her bonds for payment at the time and place designated.

The Bank failed on November 11, 1880, and the funds on deposit were lost.

The plaintiff claims that the loss must fall upon the defendant. This, we insist, cannot be.

Because the plaintiff, in taking the bonds, assumed the obligation of presenting them for payment at the time and place named, upon the same principle that a grantee is bound by the acceptance of a deed of conveyance to the performance of its conditions.

The condition in each of the bonds is, that the principal is "to be paid to said Charlotte Ann Adams, or assigns, at the Bank of Bergen County * * * in five years from the date hereof, with interest * * * payable semi-annually, *on presentation and surrender of the coupons hereto annexed.*"

The last coupons came due at the maturity of the bonds —November 1, 1880.

The defendant obligated itself to make the payment at the time and place stated in the bond, and by accepting the bond the plaintiff was bound to present it at that time and place.

If any loss occurred through her carelessness or neglect in making that presentation, she should suffer the loss.

If there was no obligation cast upon the plaintiff to make presentment at the Bank, then the condition in the bond as to time and place of payment has no force or effect, and hereafter obligors will not feel themselves bound to regard that provision in their bonds.

Once let it be understood that the obligor is not to be relieved from responsibility by having funds at the time and place designated in the bond, and securities will soon be disastrously affected, for few persons will invest their funds in securities of this character if there is to be an uncertainty as to place of payment. One of the principal reasons for the recent

large investments in State, county, city, township, village, railroad, and other bonds, is due to the fact that there is a certainty as to time and place of payment. Better let it be understood that their is a responsibility on the part of the obligee to present his bonds and coupons promptly, and that the obligor will be relieved from loss, if on his part he performs promptly and faithfully his undertaking.

There seems to us no reason why the holder of a bond, payable at a certain time and place, should not suffer loss on account of his own negligence, the same as the holder of a check who fails to present it for payment.

The plaintiff's counsel insists that the same rule shall apply as in cases of bills of exchange, etc.

If so, then we beg to refer to the following authorities as containing the correct principles, viz.:

Lozier vs. Horan. 55 Iowa, p. 75.
1. Parsons on Contracts. Sec. 273.
1. Daniels' Negotiable Instruments. Sec. 643.
Story on Bills of Exchange, p. 356.

So far as we have been able to gather, the rule is (and, it seems to us, the fair as well as equitable one,) that if the maker of a bill of exchange, payable at a particular place, has funds at the place (and there is authority to pay the bill, etc.,) and the payee does not appear at the time and place named, and the fund is lost, the maker is relieved from responsibility.

The judgment below should be affirmed.

ACKERSON & VAN VALEN,
Att'ys of Defendants in Error.

Clerks Table

Court of Errors and Appeals.

CHARLOTTE ANN ADAMS

vs.

THE HACKENSACK IMPROVEMENT COMMISSION.

In Error to Bergen Circuit Court.

WILLIAM M. JOHNSON,
Attorney of Plaintiff.

ACKERSON & VAN VALEN,
Attorneys of Defendant.

Writ of Error to Bergen Circuit Court, sealed June 10, 1882, and duly returned into the Court of Errors and Appeals, with the following record therewith returned:

RETURN TO WRIT OF ERROR.

Pleas before the Circuit Court of the County of Bergen of the thirteenth day of March, eighteen hundred and eighty-two.

Bergen County ss.: The Hackensack Improvement

Commission, the defendant in this suit, was summoned to answer unto Charlotte Ann Adams, the plaintiff therein, of a plea that the said defendant render unto the said plaintiff the sum of fifteen hundred dollars, which it owes to and unjustly detains from her; and thereupon the said plaintiff, by William M. Johnson, her attorney, complains for that whereas the said defendant heretofore, to wit, on the first day of November, eighteen hundred and seventy five, at Hackensack, to wit, at New Barbadoes, in the said County of Bergen, and within the jurisdiction of this Court, by its certain bond or writing obligatory, sealed with its seal, and now shown to the Court here, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid (and being number 29), acknowledged itself to be indebted to the said plaintiff or her assigns in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said plaintiff, or to her assigns, at the Bank of Bergen County, at Hackensack, in five years from the date thereof, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on presentation and surrender of the coupons thereto annexed. And although the said sum of money in the said bond or writing obligatory specified hath been long since due and payable according to the tenor and effect thereof, yet the said plaintiff in fact saith that the said defendant (although often requested so to do) did not nor would pay the same or any part thereof to the said plaintiff, but hath hitherto wholly neglected and refused and still doth neglect and refuse so to do.

(Second and third counts same form as first count on other bonds of like tenor and effect.)

And whereas, also, the said defendant heretofore, to wit, on the first day of November, eighteen hundred and seventy-five, at Hackensack, to wit, at New Barbadoes, in the County of Bergen, was indebted to the plaintiff in the sum of fifteen hundred dollars for money before that time lent and advanced by the plaintiff to the de-

fendant, to be paid by the said defendant to the plaintiff when thereunto requested. Yet the said defendant (although often requested so to do) did not nor would pay the same or any part thereof to the said plaintiff, but hath hitherto wholly neglected and refused, and still doth neglect and refuse, so to do. Which said several sums of money above mentioned amount together to the said sum of fifteen hundred dollars above demanded; whereby and by reason of said sum of fifteen hundred dollars being and remaining wholly unpaid, an action hath accrued to the plaintiff to demand and have of and from the said defendant the said sum of fifteen hundred dollars above demanded. Yet the said defendant (although often requested so to do) hath not as yet paid the said sum of fifteen hundred dollars above demanded, or any part thereof, to the said plaintiff, but the said defendant to do this hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiff of five hundred dollars, and therefore she brings her suit, &c.

And the said defendant, by Ackerson and Van Valen, its attorneys, comes and defends the wrong and injury, when, &c., and says that the said several supposed writings obligatory are not the deeds of the said defendant, and of this it puts itself upon the country, &c. And the plaintiff doth the like, &c.

Notice is hereby given that upon the trial of this action the defendant will show in defense thereto that at the time when the bonds mentioned and set forth in the plaintiff's declaration became due and payable, to wit, on the first day of November, in the year eighteen hundred and eighty, the defendant had on deposit in The Bank of Bergen County, at Hackensack, New Jersey, the place specified for the payment thereof, funds sufficient to pay the same, which funds remained in said bank until its suspension and insolvency, on the eleventh day of November, in the year eighteen hundred and eighty; and the defendant will claim that by reason of the plaintiff's neglect to present said bonds to said Bank for payment previous to its suspension, the loss incurred on said bonds by reason of the failure of the Bank must

be borne by the plaintiff, and a recovery had only for the proportion of the said moneys realized from the assets of said Bank.

ACKERSON & VAN VALEN,
Defdts. Attys.

This cause being regularly on the list for trial at the April term, 1882, of this Court, and being called and both parties appearing and consenting to a trial thereof by the Court without a jury (a jury being waived), and the cause being moved, and the statement of facts agreed upon by the parties being offered in evidence, and the argument of Counsel having been heard and considered by the Court, the Court thereupon finds in favor of the defendant.

It is therefore, on this twenty-ninth day of May, eighten hundred and eighty-two, ordered that judgment be entered in favor of the defendant and against the said plaintiff, with costs. And the Clerk of this Court having taxed the aforesaid costs at eighteen dollars and forty-six cents, it is further ordered that judgment final be entered against the plaintiff and in favor of the defendants for the aforesaid costs.

Therefore it is considered that the said plaintiff take nothing by her said writ, but that she be in mercy, &c., and that the said defendant go thereof without day, &c. And it is further considered by said Court that the said defendant do recover against the plaintiff the sum of eighteen dollars and forty-six cents for its costs and charges by it about its defense in this behalf laid out and expended, here adjudged to said defendant, and with its assent, according to the form of the statute in such case made and provided, and that said defendant have execution thereof, &c.

BILL OF EXCEPTIONS.

Be it remembered, that on the twenty-seventh day of May eighteen hundred and eighty-two, at a Circuit Court holden at New Barbadoes, in and for the County of Bergen, before his Honor Jonathan Dixon, Esq., one

of the Justices of the New Jersey Supreme Court and Judge of said Circuit Court, the issue joined in the above stated cause between the said parties came on to be tried before said Judge by consent (a jury having been waived by the respective parties), upon the following statement of facts agreed upon by their attorneys of the respective parties:

STATEMENT OF FACTS.

The plaintiff, who lives at Hartford, Connecticut, is the lawful holder of three bonds issued by the defendant in the following form:

THE HACKENSACK IMPROVEMENT COMMISSION.

No. 29. $500.

Know all men by these presents that "The Hackensack Improvement Commission" acknowledges itself indebted for value received to Charlotte Ann Adams or assigns, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Charlotte Ann Adams or assigns at the Bank of Bergen County at Hackensack, N. J., in five years from the date hereof, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on presentation and surrender of the coupons hereto annexed. This bond is issued under and by virtue of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An act to Incorporate the Hackensack Improvement Commission, approved April 1st, 1868'; approved March 31st, 1869."

In witness whereof The Hackensack Improvement Commission has hereto set its Corporate Seal, and caused these presents to be signed by its President and Secretary on the first day of November, 1875.

GEO. J. ACKERMAN, Secretary. [*Seal*]

JOHN J. ANDERSON, President.

It is admitted that said bonds were regularly and legally issued, and were valid obligations of the defendant.

Previous to the first day of November, A. D. 1880, the defendant placed on deposit in the said Bank of Bergen County a sum of money sufficient to pay these bonds, as well as other bonds of the defendant maturing on that date; said money was deposited to the credit of

the Hackensack Improvement Commission, "Sewer bond account" (the bonds in suit being sewer bonds).

The officers of the Bank were authorized by the defendant to pay said bonds upon their presentation at said Bank. The plaintiff had no knowledge of this arrangement or other information as to the method of payment, except such as was contained in the bonds.

The bonds were not presented for payment until after the suspension and insolvency of the Bank, which occurred on November 11, 1880. Sufficient funds remained in said deposit for the purpose of paying said bonds until and at the time of the suspension of said Bank, at which time the Chancellor declared said Bank insolvent and appointed a Receiver thereof.

If the loss arising from the insolvency of the Bank is in law to be charged against the plaintiff, it is to be regarded, for the purposes of this suit, as a total loss.

The parties having rested the cause the plaintiff, by her counsel, requested the said Judge to find in favor of the plaintiff on the foregoing facts. His Honor, the Judge, declined to find for the plaintiff as above requested, but finds in favor of the defendant. Whereupon the counsel for the defendant conceiving that by the law of the land the said Judge should have found for the plaintiff, as above requested, and not for the defendant, excepts to said finding, and prays that this, his exception, may be sealed, and it is sealed according.

JONATHAN DIXON, [L.S.]
Judge.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLOTTE ANN ADAMS vs. THE HACKENSACK IMPROVEMENT COMMISSION.	*In Error.* *Assignment of Errors.*

Afterwards, that is to say, on the fourth Tuesday of June, eighteen hundred and eighty-two, in the Court of Errors and Appeals in the last resort in all causes, comes the said Charlotte Ann Adams, by William M. Johnson, her attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the finding and giving the judgment aforesaid, there is manifest error in this, to wit.:

1. Because the Judge before whom said cause was tried found in favor of the defendant; whereas upon the facts of the case he should have found for the plaintiff.

2. Because the facts set out in the statement of the case do not show any valid defense to said action, and therefore judgment should have been given for the plaintiff.

3. Because judgment was given for the defendant; whereas, by the law of the land, the said judgment should have been given for the plaintiff, and against the defendant.

WILLIAM M. JOHNSON,
Att'y and of Counsel with Pl'tff.

COMMON JOINDER IN ERROR.