Clarke's Executors *v.* Van Riemsdyk. (*a*)

Equity.—Effect of answer.—Insolvent discharge.

The answer of one defendant in chancery is not evidence against his co-defendant;[1] nor is his deposition, although he had been discharged under the act of assembly of Rhode Island (of 1757) from all debts and contracts prior to the date of the discharge, and although the debt in suit was a debt contracted prior to such discharge—the debt having been contracted in a foreign country.

An answer in chancery, although positive, and directly responsive to an allegation in the bill, may be outweighed by circumstances, especially, if it be respecting a fact which, in the nature of things, cannot be within the personal knowledge of the defendant.[2]

A denial by the defendant that his testator gave authority to A. to draw a bill of exchange, is not such an answer to an averment of such authority, as will deprive the complainant of his remedy; unless the defendant also deny the subsequent assent of his testator to the drawing of such bill; for a subsequent assent is equivalent to an original authority.

Semble: that a discharge under the act of assembly of Rhode Island (of 1757) from all debts, duties, contracts and demands outstanding at the time of such discharge, upon surrender of all the debtor's property, will not protect him against a debt contracted in a foreign country.

Van Reimsdyk *v.* Kane, 1 Gallis. 371, 630, reversed.

This cause was this day argued by *Burgess* and *Stockton*, for the appellants, and *Harper*, for the appellee, in the absence of the reporter.

*February 28th, 1815. (Absent, Todd, J.) Marshall, Ch. J., [*154 delivered the opinion of the court, as follows:—This is an appeal from a decree made in the Circuit Court of the United States for the district of Rhode Island. The appellee filed his bill in that court, praying that the appellants and James Munro, Samuel Snow and Benjamin Munro, late merchants, trading under the firm of Munro, Snow & Munro, might be decreed to pay him the amount of a bill of exchange, drawn in his favor, at Batavia, by Benjamin Munro, at nine months sight, on Messrs. Daniel Crommelin & Sons, merchants, Amsterdam, for the sum of 21,488 guilders, on account of advances made by the said Riemsdyk for the use of the defendants in the circuit court.

In the year 1805, John Innes Clarke and Munro, Snow & Munro, being joint-owners of the ship Patterson, in equal moieties, projected a voyage to Batavia, and appointed Benjamin Munro, one of the house of Munro, Snow & Munro, supercargo. The ship carried out some goods on account of the owners, and other goods on account of different persons, the whole to be invested in a return-cargo, on the profits of which the ship-owners were to receive 45 per cent. instead of freight. The bill charges that the supercargo was empowered verbally, in case of a deficiency of funds at Batavia, to load the ship with a return-cargo, to take up money on the joint account of the owners, and, if necessary, to draw bills of exchange therefor on Messrs. Daniel Crommelin & Sons, of Amsterdam, or on the owners. The Patterson returned in the spring of 1806, with a cargo derived from the funds taken out in the outward voyage.

In March 1806, the Patterson again sailed to Batavia, on a voyage in all

(*a*) February 22d, 1815. Absent, Todd, Justice.

[1] Leeds *v.* Marine Ins. Co., 2 Wheat. 380.

[2] But whatever the nature of the evidence, it must be equal to two witnesses, or one witness with corroborating circumstances, sufficient to turn the balance. Parker *v.* Phettyplace, 2 Cliff. 70; s. c. 1 Wall. 684.

respects similar to the first. That part of the cargo which was furnished by
*155] the owners *consisted of wines and some other inconsiderable articles. Being unable to sell the wine in Batavia, the supercargo placed it for sale in the hands of Mr. Van Riemsdyk, the defendant in error. Rather than return, without filling the vessel for the owners, he drew bills on them to the amount of $2389.89 ; and also drew on Messrs. Crommelin & Sons, merchants, of Amsterdam, the bill for which this suit was brought. The bill is drawn by Benjamin Munro, in his own name, but it contains a direction to charge the same to John Innes Clarke and Munro, Snow & Munro, merchants, of Providence, Rhode Island, North America. Of all these proceedings, the owners were regularly informed by letter from Benjamin Munro, their supercargo. The ship returned safe, in March 1807, and the proceeds of the cargo purchased by these bills were received by the owners. The bills drawn on the owners were duly paid ; but no provision was made for that drawn on Daniel Crommelin & Sons.

In May 1807, the ship proceeded on a third voyage to Batavia, with Benjamin Munro again supercargo. The owners appear to have relied on the wine placed in the hands of Van Riemsdyk, on the second voyage, for producing the funds with which to procure their part of the return-cargo. In June 1807, Munro, Snow & Munro became insolvent ; and according to the laws of Rhode Island, obtained a certificate discharging them from the claims of their creditors, so far as such discharge could be affected by a law of the state. They had previously transferred, for a valuable consideration, to John Innes Clarke, all their interest in the ship, the return-cargo and the accruing freight, the whole of which came into his possession, on the return of the vessel. In December 1807, the bill was presented to Messrs. Daniel Crommelin & Sons, and protested for non-acceptance ; and in October 1808, it was protested for non-payment. Neither Clarke, nor Munro, Snow & Munro, had any funds in the hands of Messrs. Daniel Crommelin & Sons. John Innes Clarke departed this life, in November 1808, having first made his last will and testament, of which the plaintiffs in error are executors,
*156] who have *assets in their hands more than sufficient to satisfy the claim of Van Riemsdyk.

The defendants, Munro, Snow & Munro, in their answer, acknowledge all the material allegations of the bill, and expressly admit the authority of Benjamin Munro to draw the bill of exchange for which this suit was instituted. But they state their insolvency ; and claim the benefit of the certificate of discharge granted them in pursuance of the laws of the state of Rhode Island.

Clarke's executors deny that Benjamin Munro had any authority to take up money on credit, for any purpose whatever, or to draw bills of exchange; and assert that both the complainant and Benjamin Munro knew that he had no such authority. They admit, that if the money was taken up, it was for the joint use of the ship-owners, but not on their credit. It was, they say, on the sole credit of Benjamin Munro.

At the hearing, the bill was dismissed as to Munro, Snow & Munro, and a decree was made against Clarke's executors for the sum of $11,526.14, being the amount of the sum specified in the bill of exchange in the complainant's bill specified, together with ten per cent. damages for the non-payment thereof, and interest upon both these sums, from the time when

the said bill of exchange became due, to the time of rendering the decree. From this decree, the executors of the said John Innes Clarke prayed an appeal to this court.

In determining the extent of Clarke's liability, the authority of Benjamin Munro to draw this bill becomes a question of material importance. If the answer of Munro, Snow & Munro, or their depositions taken in the cause, be admissible evidence against Clarke's executors, this question is decided. But the admissibility of their answer, for this purpose depends on the establishment of such a partnership as would authorize the draft of Munro, as one of the partners; and the admissibility of their depositions depends on their being rendered disinterested witnesses by the certificate of discharge stated *in the proceedings. The court, being satisfied on neither of [*157 these points, will exclude both the answer and depositions, and consider the cause independently of them.

The letter of Benjamin Munro, written at Batavia, on the 3d of November 1806, the day on which the bill in favor of Van Riemsdyk was drawn, and addressed to John Innes Clarke, esquire, and to Messrs. Munro, Snow & Munro, contains these passages: "I have shipped on board the Patterson, on your account and risk, 505 peculs Jacatia coffee, agreeably to invoice and bill of lading inclosed. I have drawn on you for the amount of $2389.89, at ninety days sight, in favor of the several officers, &c., on board the Patterson, being the amount of money they had remaining over their privileges, and which I have allowed them fifteen per cent. advance thereon, and which drafts you will please to honor. A statement thereof, I annex. I have also drawn on Messrs. Daniel Crommelin & Sons, merchants, Amsterdam, at nine months sight, in favor of the honorable William V. H. Van Riemsdyk, of this place, for the amount of 21,488 guilders, on account of the Patterson, and which bills you will, no doubt, prepare for timely, as I have written those gentlemen." "I leave all the Maderia wine in the hands of the honorable Mr. Reimsdyk, as it will not sell at all, I transmit his receipt for the same. I have received no advance on the wine."

To this letter was annexed a statement of the cargo of the Patterson, containing this item: "For owners of Patterson, 505 peculs coffee." There was, also, the following memorandum: "Memorandum of bills payable by you at ninety days sight, viz: Captain James Shaw, 1st, 2d, 3d exchange, $748.75, &c., amounting in the whole to $2389.89. Amount of bills drawn on Messrs. Daniel Crommelin & Sons, merchants, Amsterdam, payable by them *at nine months sight, in favor of the honorable [*158 William V. H. Van Riemsdyk, viz: Four bills of exchange, 1st, 2d, 3d, 4th, for the amount of 21,488 guilders, equal to $8595. I have allowed Mr. Riemsdyk on the money, twenty per cent. advance."

It is impossible to read this letter, and these *memoranda*, without feeling a conviction that Benjamin Munro believed himself to be acting within the scope of his authority, and supposed that neither his bills on the owners, nor that on Crommelin & Sons, would be considered by them as an extraordinary or unexpected transaction. He makes no apology for what had been done; gives no description of his difficulties and embarrassments at being disappointed in Batavia by not receiving the funds on which he relied for their return-cargo, and of his doubts whether the measure to which he had resorted in consequence of that disappointment, would be approved by

them. His language is the language of an agent acting within his powers, on a contingency which had been foreseen and provided for. Having stated the bills drawn on them, he adds, in the usual style of letters of notice, "which drafts you will please to honor." After stating the drafts on Crommelin & Sons, he adds, "which bills you will, no doubt, prepare for timely, as I have written those gentlemen." This is not the language of an agent conscious of having transcended his powers.

But it will be admitted, that the opinion of the agent on the extent of his powers, will not bind his principals. Let us, then, inquire, so far as the testimony will inform us, into the opinion entertained on this point by the principals themselves. On the 1st of November 1806, at Batavia, Benjamin Munro stated an account-current between himself and the owners of the ship Patterson, according to which the executors of John Innes Clarke, admit the settlement to have been made, on the arrival of the vessel. That account debits the owners with $9090, the amount of invoice of 505 peculs of coffee, shipped on board the Patterson, on their account and risk, and with
*159] the fifteen per *cent. advance on the bills drawn on them, and the twenty per cent. advanced on the bills drawn on Crommelin & Sons, and credits them with the amount of those bills. The entry of the last-mentioned bills is thus expressed, "bills drawn on Messrs. Daniel Crommelin & Sons, payable by you, at nine months sight."

This account charges the owners with the disbursements of the vessel, which exceed the funds in the hands of Munro, other than those produced by the bills of exchange, so that the whole return-cargo was purchased by these bills. Not a sentence escapes either of the owners, disapproving the conduct of Munro, or expressing surprise at it. With that full knowledge of the whole transaction which is given by the letter of Munro, by the statement annexed to it, and by the account; with full information that the whole cargo was purchased with bills drawn on them and on a house in Amsterdam, to be paid by them, they receive the cargo and dispose of it to a very considerable profit. Can they now be permitted, in a court of conscience, to question the authority by which the bills were drawn.

The circumstances which prove their acquiescence in this authority are not yet exhausted. The Patterson sails on a third voyage to Batavia, and Benjamin Munro is again supercargo. His conduct in drawing bills on the second voyage is not censured. He is not informed, that this is a power not confided to him; that he has mistaken the extent of his authority; that his principals are not bound by his drafts. He goes again to India, in the full belief that his conduct has met with perfect approbation, and that no intention existed to throw upon him the bills he had drawn on Amsterdam, for moneys with which he had purchased the second cargo. In this belief, the proceeds of the wines, placed in the hands of Van Riemsdyk, are drawn out of his hands and invested in another return-cargo for the owners of the Patterson.

Had there not been an entire acquiescence in the bill drawn by him on Crommelin & Sons, a full admission on the part of his principals that they were responsible for that bill, and that no attempt would be made to throw
*160] it on him, can it be believed, that the proceeds of these *wines would have been invested in a return-cargo for the owners of the ship? Had Van Riemsdyk suspected that the owners would disclaim the authority

of their supercargo to draw bills, and would fail to place funds in Amsterdam to meet them, and would endeavor to turn him over to that supercargo for payment, is it credible, that he would have permitted the proceeds of this wine to pass out of his hands, without an attempt to secure himself? These circumstances strengthen the conviction growing out of the whole conduct of the owners, that in drawing the bill for which this suit was instituted, Benjamin Munro acted within his authority.

This testimony is opposed by the answer of Clarke's executors; and the rule that an answer must prevail, unless contradicted by one witness as well as by circumstances, is said to be so inflexible, that the strongest circumstances will not themselves be sufficient to outweigh an answer.

The general rule that either two witnesses or one witness, with probable circumstances, will be required to outweigh an answer asserting a fact responsively to a bill, is admitted. The reason upon which the rule stands, is this. The plaintiff calls upon the defendant to answer an allegation he makes, and thereby admits the answer to be evidence. If it is testimony, it is equal to the testimony of any other witness; and as the plaintiff cannot prevail, if the balance of proof be not in his favor, he must have circumstances, in addition to his single witness, in order to turn the balance. But, certainly, there may be evidence arising from circumstances, stronger than the testimony of any single witness.

The weight of an answer must also, from the nature of evidence, depend, in some degree, on the fact stated. If a defendant asserts a fact which is not and cannot be within his own knowledge, the nature of his testimony cannot be changed by the positiveness of his assertion. The strength of his belief may have betrayed him into a mode of expression of which he was not fully apprised. When he intended to utter only a strong conviction of the existence of a particular fact, or what he deemed an *infallible deduction from facts which were known to him, he may assert that [*161 belief, or that deduction, in terms which convey the idea of his knowing the fact itself. Thus, when the executors say that John Innes Clarke never gave Benjamin Munro authority to take up money, or to draw bills, when they assert that Riemsdyk, who was in Batavia, did not take this bill on the credit of the owners of the Patterson, but on the sole credit of Benjamin Munro, they assert facts which cannot be within their own knowledge. In the first instance, they speak from belief; in the last, they swear to a deduction which they make from the admitted fact that Munro could show no written authority. These traits in the character of testimony must be perceived by the court, and must be allowed their due weight, whether the evidence be given in the form of an answer or a deposition. The respondents could found their assertions only on belief; they ought so to have expressed themselves; and their having, perhaps incautiously, used terms indicating a knowledge of what, in the nature of things, they could not know, cannot give to their answer more effect than it would have been entitled to, had they been more circumspect in their language.

But were the court to allow to this answer all the weight which is claimed for it by counsel, it would not avail his clients. It asserts, that Munro drew bills, without authority from his owners, but does not assert that his owners never confirmed his acts. It will not be denied, that the acts of an agent, done without authority, may be so ratified and confirmed

by his principals, as to bind them in like manner as if an original authority had existed. The application of this principle to the case at bar is as little to be denied as the principle itself. The transactions which have been urged to show an original authority to draw the bill in question, will be recollected, without being recapitulated. The court is of opinion, that they amount to a full confirmation of those proceedings of their agent, which had been communicated to his principals, and to an undertaking to perform the engagements he had made for them.

It is urged, on the part of the appellees, that this undertaking is not joint, but several, and binds each party to the extent of his interest, and no
*162] further. *The court does not so understand the transaction. The undertaking not being express, its extent must be determined by the character of their acts of confirmation, and by the character of the act confirmed.

The bill is to be charged, as expressed upon its face, to John Innes Clarke, and to Munro, Snow & Munro. In his letter of the 3d of November, 1806, addressed to his owners, Benjamin Munro, after mentioning the bills, says, "which bills you" (that is, John Innes Clarke and Munro, Snow & Munro) "will, no doubt, prepare for, timely." In the account with his owners, rendered by Benjamin Munro, and dated the 1st of November 1806, he charges them jointly with the coffee purchased by these bills, jointly with the premium advanced, and credits them jointly with the amount of the bills. This account is afterwards referred to by John Innes Clarke himself as a settled account. The court cannot understand the undertaking, proved by these papers, and by the conduct of the parties, to be other than a joint undertaking of the owners to put themselves in the place of Benjamin Munro, and to provide funds to take up the bill.

It is said, that even on this principle, the decree is for too large a sum, because the premium and the damages cannot be recovered in a court of chancery. It is the unanimous opinion of the court, that the liability of the owners of the ship Patterson for the bill drawn by Benjamin Munro in favor of Riemsdyk is precisely the same as if it had been drawn by themselves. They have made his act their act. There is no evidence that the contract is not allowable by the laws of Batavia; nor did the owners, when informed of it, complain of its terms. This court cannot presume that it is illegal. The damages form no part of the contract, and certainly cannot be decreed
*163] by a court of chancery, unless, *by the laws of the place where the bill was drawn, they become a part of the debt. Upon this point, the court has no information; and for this reason, the decree must be reversed.

It is also the opinion of the court, that the dismissal of the bill of the complainants as to James Munro and Samuel Snow, the surviving partners of Munro, Snow & Munro, was irregular;(*a*) and that a decree ought to have been made against them also. For these causes, the decree must be in part reversed, and the cause remanded to the circuit court, with directions to reform the decree according to this opinion.

The Decree of this Court is as follows:—This cause came on to be heard,

(*a*) It is probable, that the court did not observe that the dismissal of the bill as to Munro, Snow & Munro, was with the assent of the complainant.

on the transcript of the record of the circuit court of the United States for the district of Rhode Island, and was argued by counsel; which being considered, the court is of opinion, that John Innes Clarke, in his lifetime, and Munro, Snow & Munro, the owners of the ship Patterson, were jointly liable for the bill of exchange in the complainant's bill mentioned, to the same extent as if the said bill had been drawn by them; and that the estate of the said John Innes Clarke, in the hands of his executors, is, in equity, chargeable with the said debt, as far as the said John Innes Clarke in his lifetime was chargeable therewith. This court is, therefore, of opinion, that there is no error in so much of the said decree of the circuit court for the district of Rhode Island as directs the respondents, the executors of the said John Innes Clarke, deceased, to pay to the complainant the amount of the said bill, with interest thereon, from the time when the same became payable, to the day on which the said decree was made, and the same as to so much thereof is affirmed. And this court is further of opinion, that the defendants ought not to have been ordered to pay damages on the said bill, without proof that, by the law of the place where the same was drawn, damages were made payable: in which case, the persons bound to pay the said bill are liable in a court of equity, as well as in a court of law, to pay such damages. This court *is also of opinion, that so much of the said decree as dismisses the bill of the complainants as to James Munro and Samuel Snow, [*164 the surviving partners of Munro, Snow & Munro, is irregular, and that a decree ought to have been made against them likewise. It is, therefore, the opinion of this court, that so much of the said decree of the circuit court for the district of Rhode Island, made in this case, as directs the appellants to pay to the complainant in that court, damages at the rate of ten per centum on the amount thereof, with interest thereon; and so much of the said decree as dismisses the bill of the complainant as to James Munro and Samuel Snow, the surviving partners of Munro, Snow & Munro, is erroneous and ought to be reversed, and the same is reversed accordingly. And this court doth further order and decree, that the said cause be remanded to the said circuit court for the district of Rhode Island, with directions to receive proof of the law of Batavia respecting protested bills of exchange, to conform its decree to this opinion, and to make the same against the surviving partner or partners of the late commercial house of Munro, Snow & Munro as well as against the appellants; all which is ordered and decreed accordingly.