



Court of Appeals of the State of New York
Manhattan Savings Institution v. N.Y. National Exchange Bank
170 N.Y. 58 (N.Y. 1902)
Case Brief Summary

Facts

The plaintiff in this action brought an action in replevin to recover ten bonds which it claimed to own, and which it alleged the defendant wrongfully detained. The defendant's answer put in issue the ownership of the bonds, and set up as an affirmative defense, the following:

- That they were negotiable securities;
- That they were pledged to the defendant by a person named Pell;
- That nine of the bonds were pledged as collateral to a loan of \$7,500 and delivered to the defendant at the time the loan was made;
- That the tenth was given as additional security some time after the loan was actually made; and
- That \$7,000 of the money loaned had not been repaid, causing the defendant to claim the right to retain the securities.

The sheriff took the bonds, and delivered them to the plaintiff.

It is uncontested that plaintiff is entitled to the tenth bond, and indeed no claim to the contrary is made by the defendant.

The material facts are the following:

The securities in suit were part of an issue of bonds made by the city of Yonkers under authority of an act of the Legislature (Chap. 297, Laws of 1875), in which, among other things, it was provided (§ 1) that "said bonds shall be signed by the mayor and city clerk and the corporate seal of the city shall be attached thereto, and they shall be registered in the city clerk's office in a book to be kept for that purpose."

The bonds were executed in the manner required, and some time thereafter, and apparently about the 16th of February, 1896, they were delivered by the authorities of the city of Yonkers to, and they became the property of, the plaintiff.

A record was made in a book kept by the financial officer of the city of Yonkers, of the numbers of the bonds issued to the plaintiff, and in one of the columns of that book in connection with the bonds is an entry "Bonds Nos. 531 to 550 inclusive, owned by Manhattan Savings Bank."

The ten instruments in suit bear numbers within that series.

In none of the bonds issued by the municipality was there inserted the name of the payee, but there was left in each a blank space for the insertion of such name.

They all recited that the city of Yonkers "is justly indebted to or in the sum of one thousand dollars lawful money," etc. They were all coupon bonds and had attached to them warrants or coupons payable to bearer for semi-annual interest as it accrued.

They further seem to have remained in the possession of the plaintiff, with the blank spaces unfilled until October 27, 1878, when they were stolen by burglars, who broke into a vault in which the plaintiff kept its valuables, and rifled it of these and several millions of dollars of other securities.

No trace of the stolen property was found for some sixteen years, and nothing is disclosed concerning the bonds during that interval or until they were given in pledge by Pell to the defendant, with the blank spaces still remaining unfilled.

As a result, the defendant's title is derived mediately from the thief.

The defendant, notwithstanding the theft of the bonds, is a *bona fide* holder.

Defendant parted with value for the instruments before their maturity, and it is not denied that a good title to them was acquired if they are negotiable instruments.

Issue:

Are bonds issued by a municipal corporation, under its seal, negotiable instruments, that must be honored when held by a bona fide holder.

Holding and Rule:

Yes. The defendant obtained a good title as pledgee to nine of the bonds in suit. The exceptions must be sustained and a new trial ordered, with costs to defendant to abide the event.

Discussion:

The original intention, by issuing the bonds in blank, must have been, obviously, to make them negotiable and payable to any holder in good faith, as the bearer.

The character of negotiability having once been, voluntarily, conferred upon the instrument by the maker, cannot be destroyed, except by the act of a holder in limiting its payment, by proper insertion, to himself, or to some other person.

The bonds were delivered for use by any one, into whose hands they might come, and the right of the holder cannot be disputed, except upon grounds which relate to the manner of his acquiring its possession and not to the form of the obligation.

The principle of liability, however variously stated, is the same.

By sending the instrument into the world, in its imperfect form, the maker is estopped from urging, as against a *bona fide* holder, who has received it of any one having it in possession, a defect of title; and the holder, though without title, has capacity to give a title, because he is the apparent owner of the instrument.

As every person possessing himself of the instrument may fill in its blank space, and make it payable to himself, through the voluntary act of the maker, the holder is presumed to be the owner.

In such a case, the title and the possession are inseparable, and the legal presumption attaches that the party in possession holds the instrument for value, until the contrary be made to appear.

The principle of negotiability is in the instrument having a circulating credit and in its being transferable by indorsement and delivery, or by delivery merely.

To import into the general rule a term, or an element of duty, which requires of a purchaser, taking in good faith and for value, that he investigate the *bona fides*, or the title, of previous holders in the chain of title, would be inconsistent with the feature, or quality, of negotiability.

There is no middle term between negotiability and non-negotiability and if, before acquiring a good title to negotiable instruments, it would be necessary for a person to make inquiry of every one "in the regular chain of *bona fide* holders," in order to be assured of his having an undisturbed current of authority to fill in the name of a payee, where would be no negotiability.

The theory of negotiable instruments, and of their currency from hand to hand, like bank notes, rests upon the proposition that they appear to belong to the person having them in possession and to no one else.

In this case, the bonds were payable to any one, who took them in good faith; because his authority to fill in the name of a payee was derived, not from Pell who presented them, but from the city of Yonkers, which, as maker, sent them forth with a general warrant to any *bona fide* holder, to make themselves their payee.