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)

Decided Feb 25, 1902

Argued January 16, 1902

59 Decided February 25, 1902 *59

Edward S. Rapallo for appellant.

62 *Percy S. Dudley* and *George C. De Lacy* for respondent. *62

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GRAY, J.

Very elaborate and careful opinions were delivered at the Appellate Division, upon the affirmance of the judgment below and upon the previous hearing of the defendant's exceptions, after the direction of a verdict for the plaintiff, when the new trial was ordered. (42 App. Div. 147.) Any extended discussion becomes, therefore, unnecessary. Whether the plaintiff, or the defendant, must sustain a loss is, very plainly, a question which turns upon the character of these bonds and upon the circumstances under which the defendant acquired their possession. The plaintiff lost them, as the result of a theft, and the defendant loaned its moneys upon the security of their pledge, in the most absolute good faith, as it claims. If the bonds were of that negotiable
63 character, *63 that title passed with the possession and the defendant parted with its moneys, upon their pledge, without any circumstances which, in the eye of the law, imposed some duty of inquiry, then it obtained, and is entitled to assert, a special property in them, to the extent that they stand as security for the moneys loaned. It is insisted by the appellant that the bonds appear upon their face to be, and were, in reality, non-negotiable instruments; because, (1), no payee was named and because, (2), they were registered in the books of the city of Yonkers, which issued them, and they so stated. These bonds were under the seal of the municipality and what peculiar features may have distinguished them are those stated, and commented upon, by the appellant.

That bonds, whether issued by a municipal corporation under its seal, or issued by any other corporation, may be negotiable instruments, must be regarded as not open to discussion. (*Bank of Rome* v. *Village of Rome,* 19 N.Y. 20; *Brainerd* v. *N.Y. H.R.R. Co.,* 25 ib. 496; *Chase Nat. Bank* v. *Faurot,* 149 ib. 532.) That the omission to insert the name of a payee is not a feature, or a defect, which affects their negotiability, seems to be, also, well settled by authority. These bonds were issued, and delivered for use, in their present form, intentionally, and, therefore, their incompleteness, in no wise, constitutes any defense to their payment, nor could prevent the character of negotiability from attaching. Their inception as commercial instruments was valid and the effect of the omission to name a payee was to invest any *bona fide* holder with the authority to fill the blank left for that purpose by the obligor. They were payable to the bearer, until restricted in their currency as negotiable instruments by the insertion of the name of some particular payee. (*Ledwich* v. *McKim,* 53 N.Y. 307; *Dinsmore* v. *Duncan,* 57 ib. 573; *White* v. *Vermont M.R.R. Co.,* 21 How. [U.S.] 575; *Angle* v. *N.W.M. Life Ins. Co.,* 92

U.S. 330; *Cruchley* v. *Clarance,* 2 M. S. 90; Daniel on Negot. Instruments, § 145.) Indeed, this rule of law is
64 not disputed by the appellant; but it is contended, in its behalf, that the authorities, *64 upon which the general rule rests, go no further than to hold that any *bona fide* holder "in the regular chain of *bona fide* holders" has the implied authority to fill the blanks left in the instrument by the makers. The authority, it is said, to fill the blanks runs, primarily, to the person to whom the instrument is delivered and he, in turn, when transferring in that condition, is held likewise to authorize his transferee and the authority thus passes to the last *bona fide* holder; but, if the instrument is stolen from its owner in that condition, no subsequent *bona fide* holder can derive authority from the thief to fill in the blanks. The reasoning is ingenious; but I think it disregards the fundamental principle of the negotiability of instruments. 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, it cannot be destroyed, except by the act of a holder in limiting its payment, by proper insertion, to himself, or to some other person. It was delivered for use by any one, into whose hands it 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 valne, until the contrary
65 be made to appear. (*Cruchley* v. *Clarance, supra;* *65 *Van Duzer* v. *Howe,* 21 N.Y. 531; *Ledwich* v. *McKim, supra; Colson* v. *Arnot,* 57 N.Y. 253; *Goodman* v. *Simonds,* 20 How. [U.S.] 365.) 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," as the appellant would have it, in order to be assured of his having an undisturbed current of authority to fill in the name of a payee, where would be the 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 the present 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 himself their payee.

But it is, further, contended, in behalf of the appellant, that the bonds were intended to be issued as registered; that they were so, in fact, and that it was so stated upon their face. I think this is a misapprehension of the legislative intent. The language of the act is not that the bonds should be issued by the city to registered payees; nor, when read with ordinary apprehension, that they should be issued as registered bonds, in contradistinction to coupon bonds, and be non-negotiable in character. The requirement of registration was rather in the nature of
66 a measure for the protection of the city and for a record, showing the amount of each issue and *66 its due date. The issue was not to exceed $40,000, in any one year and the date of maturity was at such times, as the common council should determine. The act then provides that "such 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 provision for registration appears to be designed to exhibit the regularity and the authority of the issue, and not to prescribe the form of the obligation. A legislative intent to prevent an issue of negotiable bonds, at the pleasure of the municipality, is not, at all, clear. The statement upon the face of the bond, that it was registered in the city clerk's office, simply, showed compliance with the act, authorizing its issue. Had inquiry been made of the city clerk and had the inquirer ascertained that the bonds were, originally, delivered to this plaintiff, he would have found the issue to be regular; but he would have been no further put upon his inquiry. As nothing in the act precluded the city from making its bonds negotiable in form and from leaving the name of the payee blank, he would have the right to assume that the plaintiff, though having the implied authority to make the bonds payable to it, and thus to limit their negotiability, had, for reasons satisfactory to itself, elected not to do so. It was in the plaintiff's power to prevent a loss by theft, or by dishonest use, by making the bonds payable to itself; but it chose not to limit their negotiability and this consideration is not without its bearing upon the question of where this loss should fall.

The only other question, which I deem at all useful to discuss, is whether there was anything in the facts and circumstances, as disclosed upon the trial, which required the learned trial judge to submit to the jury the question of the right of the plaintiff to the bonds, or the question of the defendant's good faith. This ground is well covered, in the opinion delivered below at the Appellate Division. The appellant enumerates the facts, that
67 the payee was blank; that the bonds declared that they were registered; that Pell borrowed upon *67 them as trustee; that the corners were burned and, lastly, that Pell was, in fact, an ex-convict and a notorious person. Nothing in the evidence tended to show that the defendant had any knowledge of Pell's previous conviction, or that he was a notorious person. Its dealings with him had extended over some time and had been commenced, and were continued, in ordinary and legitimate ways. He was well connected and introduced, and no fact is shown, which should have induced the defendant to look upon him with any suspicion. His account was opened in the name of "George H. Pell, trustee," in June, 1895, and down to April, 1896, when this transaction occurred, all of his monetary transactions were through that account. Coupling the word "trustee" with his name as a depositor was not an unusual, or peculiar, circumstance; nor, necessarily, imported that he was acting as trustee for others. It simply distinguished, or described, the account, which he opened, in a particular way, satisfactory to himself, and did not call for any investigation on the part of the bank into his authority as trustee. At no time, so far as the record shows, was there any transaction through that account, or otherwise, with the bank, in the interest of persons, for whom he was acting as their trustee. The bank had every right to assume, as to the bonds offered to it as collateral security by a customer, who had the account with it, that he was acting in good faith and within his lawful rights, and the fact that he was borrowing upon city bonds, in no wise, affected the bank's right to indulge in the assumption. (*Am. Ex. Nat. Bank* v. *N.Y. Belting P. Co.,* 148 N.Y. 698.)

No other of the facts pointed out by the appellant need be further referred to; except, perhaps, the fact that the corners of these bonds appeared to be burned. They had been outstanding for some twenty years and such a fact was no more notice of any defect, or irregularity, in the seller's title to them, than if they had been torn, or mutilated by long use. A purchaser was not bound, in order to escape the imputation of bad faith, to make an
68 investigation for such reasons. The rights of the purchaser of a negotiable instrument are not to *68 be affected by constructive notice; unless it appears that the circumstances suggested an inquiry at the time of the purchase, which, if fairly pursued, would have resulted in the discovery of the defect in the title. There must appear to be, in the nature of the case, such a connection between the facts appearing, and the further facts to be discovered, that the former may be said to furnish a reasonable and natural clue to the latter. (*Birdsall* v. *Russell,* 29 N.Y. 220; *Dutchess Co. Mut. Ins. Co*. v. *Hachfield,* 73 ib. 226.)

There was no natural, nor logical, connection between the facts pointed out by the appellant and the fact of a defective title in Pell and I find no evidence in the case that devolved any duty of inquiry upon the defendant, or cast suspicion upon its part in the transaction. The direction of a verdict, therefore, constituted no error, in my opinion.

After a careful consideration of this case, in the light of the very able argument which was made by the appellant's counsel, I am unable to conclude that any error was committed by the trial court which would warrant a new trial, and I, therefore, advise the affirmance of the judgment appealed from, with costs.

PARKER, Ch. J., O'BRIEN, BARTLETT, HAIGHT, MARTIN and VANN, JJ., concur.

Judgment affirmed.