Wheeler Vs. Hughes

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Court : US Supreme Court

Decided On : 1776

Appeal No. : 1 U.S. 23

Appellant : Wheeler

Respondent : Hughes

Judgement :

WHEELER v. HUGHES - 1 U.S. 23 (1776)
U.S. Supreme Court WHEELER v. HUGHES, 1 U.S. 23 (1776)

1 U.S. 23 (Dall.)

Wheeler Assignee of Baynton
v.
Hughes Ex.

Supreme Court of Pennsylvania

April Term, 1776

John Hughes, the 16th of February 1763, gave his bond to John Baynton, conditioned for the payment of one thousand pounds. On the 3rd September, 1764, John Baynton and Samuel Wharton, became bound jointly and severally, to John Hughes in a bond conditioned for the payment of six hundred and eight pounds fifteen shillings. On the 8th of May 1765, John Baynton, assigned the one thousand pound bond to the plaintiff, Ann Wheeler, for a just debt, she being ignorant of any dealing, between Hughes and Baynton. This action was brought on the assigned bond; the defendant pleaded payment, and offered in evidence the bond dated in September, in bar of the plaintiff's recovery. To this the council for the plaintiff objected, and this day, viz. 23rd April, the cause came on to be argued. [Wheeler v. Hughes 1 U.S. 23 (1776)

The Council for the Plaintiff contended, that by the * act of assembly, bonds, bills and notes were negotiable, as promissory notes in England under the 3 and 4 Ann. cap. 9; that negotiability imported a currency from hand to hand; that this act of assembly was formed on the plan of the statute, in many places using the same words, and being made for the same purpose, viz. to encourage trade and commerce, which could only be effected by such a construction, as that an assigned bond should have a currency, from hand to hand, and that the possessor should recover, independent of any contracts or dealings between the obligor and obligee; that the clause in the act of assembly, 'Should commence and prosecute his, her, or their actions at law, for the recovery of the money mentioned in such bonds or notes, or so much thereof, as shall appear to be due at the time of such assignment,' meant as shall appear on the face of the instrument itself. That, for this reason, the obligor should either guard, in making the contract, by leaving out the negotiable words, or should get his payments indorsed on the bonds; that the words, 'To recover as the person or persons to whom the same was or were made payable,' only referred to the mode of recovery, where the assignee

brought his action in his own name, as he might under this act; that any other construction would defeat the intention of the act, which was to encourage trade and commerce; but if the assignee was to take the bond subject to the dealing between the obligor and obligee, there was an end of this species of traffic, as no one would ever take an assigned bond in the course of trade, or in any other case, but of a doubtful or desperate debt. To show that a third person, coming in bona fide, and for a valuable consideration, would be in a better situation than his vendor, the

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following cases were cited: 1 Siderfin. 134. A made a feoffment to B. by covin. B. makes a feoffment to D. for a valuable consideration and bona fide. The first feoffor enters and makes a feoffment for a valuable consideration. The feoffee of the first feoffee shall retain the land. Cro Fac. 32. Debt on obligation for two hundred pounds; Defendant pleads the statute of usury, and shows that he was indebted to one Alder in one hundred pounds, and agreed with him that the should forbear him for a year in consideration of thirty pounds, and that he should make a bond to Alder for the payment of thirty pounds, and for payment of one hundred pounds. That then he and Alder entered into the bond for two hundred pounds. The plaintiff replied that Alder was justly indebted to him in one hundred pounds, and for payment thereof entered into this bond, that he was not knowing to any corrupt agreement between the defendant and Alder. The Court determined in favour of the plaintiff upon his being a fair and innocent creditor. To show that promissory notes in England, are not subject to any discount or sett off, between the promissor and promisee, the following cases were quoted. 1 Salk, 126. Bill lost; finder transfers it to C. for a valuable consideration the original owner cannot bring trover against C. 1 Burrow. 459. S. P. 1 L. Raymond 738. 2 Burr. 675.6. 1224. 1227. 2 Freeman 257. Bill payable to A. or bearer, is like so much money paid to whomsoever the note is given; that let what discount, or conditions, soever, be between the party who gives the note, and he to whom it is given, yet it shall not affect the bearer. 3 Bacon. title. Merchant. Comyns 43. Marius 72. 3 Burrows 1523.27.29. It was contended farther by the plaintiff, that the act of assembly had changed the nature of these contracts; that they were not to be construed on commercial principles only; that the doctrine of the defendant established this principle, that it was nudum pactum, there was no consideration at the time of the bond being given or assigned. To which it was answered, that, judging on commercial principles, a want of consideration was no objection, for there is no such thing as nudum Pactum in mercantile transactions. 3 Burr. 1669. Plaintiff also denied defendant to be within the defalcation a&c.;

The council for the defendant contended, that it was not the intention of the Legislature to make bonds negotiable here as promissory notes in England. They allowed the law as laid down in the above cases, but denied the application; insisting that they stood upon quite a different footing. That nothing more was meant by the act, than to give assignees the benefit of suing in their own names and preventing any release, or other dealings, affecting the assignee after assignment once made; that in England, a bond passes into the hands of an assignee subject to all the equity it had in the hands of the assignor, for which they quoted 6 Vern. 692. 675. 10 Mod. 445. 1 P. Wms. 383. 452. 459. That the construction, contended for by plaintiff, would open a door to numberless frauds; that a satisfied bond might be passed away, and the obligor compelled to pay it twice; that even a forged bond might pass in the same

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manner; that the preamble has little weight in the construction of a law, being often made by the clerks in Parliament; that trade and commerce would be best promoted by their construction, as it would only impose a duty on a person taking a bond, to enquire in what state it stood.

That in case of bonds mislaid, or lost, no money could be paid on them; that the intention of the Legislature was to make these bonds, bills , &c.; subject to a common law remedy, and substitute the doctrine of the courts of equity in England in this Province, and no farther. That it was evident, that a general negotiability was not intended; if it had, the Legislature would not have varied the expression in those parts of the statutes,

expressly refering to inland bills of exchange, and making promissory notes negotiable as bills of exchange; the act of assembly, on the other hand, expressing such a recovery by assignee as the assignor could have had, and confining the recovery to such money as was due at the time of the assignment. That this was further confirmed by the last clause of the act, which prohibits the assignee releasing any money actually, or really, due. That custom and practice, which are good expositors of laws, are with them; and that the statute of 4 and 5 Ann. being declared on, shows it was the sense of the Practitioners, that promissory notes are not negotiable here as in England. That as to the defalcation act, it is a remedial law, and to be extended by equity to all cases within the same mischief; that though that part of it, which gives a seire facias, does not apply to this case, yet the other part does; and the defendant is fairly within the reason of it.

The council for the plaintiff, in reply, admitted the law in England as laid down by the defendant in the case of bonds; and, that before the statute, promissory notes were only evidence of a debt; there was no property transfered; but that the act of assembly and act of parliament, being made parimateria, are to receive the like construction. That the construction made by the defendant, would render the act nugatory. That merely to give the assignee a right of suing in his own name, unless some solid advantage attended it, was trifling, nor would it at all encourage trade and commerce. That a limited negotiability was an absurdity; it must be negotiable, or not; if negotiable, it was so in all cases when honestly come by, or not at all. That the intention of the act must wholly fail, if assignee is only to stand in the place of assignor, and his recovery made to depend on circumstances and proofs, which, in the nature of things, are not in his power. That to say the assignee must make inquiry before he meddles with the bond, is begging the question. We contend, that this act of assembly meant something, and that was, for the sake of trade and commerce, to annex a property in the debt, and a currency to the paper, and to improve vigilance in the debtor, to take care either to guard his contract in the first instance, or in case of payment, or other satisfaction, to fee his payments indorsed, or his bond cancelled.

That there is no ground for supposing the intention of the law was only to give a chancery jurisdiction; because there was a chancery in this Province until the year 1718; since this act passed, and as soon as ever the chancery powers ceased to be exercised, the Courts of Law took them, and have exercised them to the great satisfaction of the Province. That, if they were competent in one case, they were also in another; and they have in many instances gone much farther than in this. That, in construing this law, we are to regard the state of the Province at that time. There was little Specie; no Paper Currency; a medium of trade was wanted; the act of Parliament had shown how promissory notes had been made a medium of commerce; they took it for their guide, and extended it to bonds and penal bills. That the variance in wording the act is easily accounted for. Foreign bills of exchange were not in much use, Inland Bills not known; to have used the language of the act of Parliament, would have been penning laws in a language not understood, and it would be absurd to refer to a species of contracts known and understood by very few in the Province. That custom and practice is with the plaintiff, as there is scarcely a news-paper which does not forewarn persons from taking assignments of bonds, bills, notes, &c.; a practice peculiar to this Province, and, therefore, most plainly demonstrating, that this law made such a change in these alignments, as to put an obligor in a worse situation in case his bond was assigned, then while it continued in the hands of the obligee. That the practice of declarers in this Province on promissory notes under the statute, may with more propriety be resolved into the convenience and ease of the lawyers, than flowing from any principle of law. That the defalcation act is expressly confined to persons having dealings together; and as a seire facias is admitted not to ly, it must be a new construction of statutes, which makes a person a subject of a statute in one part, and not in another; that he may be prejudiced under the law, but can receive no benefit from it. The Plaintiff's council closed with a case from Lancaster determinded by Messieurs Lawrence and Willing. It was that of Bausman assignee of Henry Bough, assignee of Jacob Stily, assignee of Henry Waggoner. The action was brought on a note of hand for one hundred and four pounds. Plea, payment. Defendant offered to show in evidence an agreement, signed by Waggoner, the original promissee, made at the time the note was given, tending to show a want of

consideration. Plaintiff objected. The court held it could not be offered, as it would effectually destroy the negotiability of notes; and said it would be attended with the most dangerous consequences, if the claim of an honest assignee of a bond, or note, should be defeated by any bargains, or agreements, made at the giving such notes, or bonds, and not expressed therein. The evidence was accordingly over-ruled.

The court took time, till the 25th April, to consider, and this day gave judgment.

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Chew, Chief Justice. The question in this case is, whether Hughes can have the same defalcation against Wheeler, which he could have had against Baynton, if this had not been assigned? It was contended for the Plaintiff, that bonds were negotiable as inland bills of exchange. It was also contended, that defalcation by the act, is only where there are dealings between the parties. For the defendant it was contended, that the act does not make them negotiable, as bills and notes are by the statute of 3 and 4 Ann. c. 9. It is plain however that the act was drawn from the statute, for in many places it follows it, totidem verbis, though in others it varies. This shows the legislature intended in those instances, to vary the law. Bills in England were negotiable before the statute; notes were only evidence of a debt; the statute was made to put them on the same footing with bills. The question is whether the act of assembly has done the same as the statute. He then compared the act with the statute, to show that it was drawn from the statute. The act however says, 'for the encouragement of trade, commerce and credit;' the statute adds, 'and to make notes negotiable in the same manner as bills.' This is a material variance, and is carried through the act. The Defendant relied on the words in the act entitling assignee to recover the money, that should appear to be due, in like manner as obligee could. Here is the same variance as before; for, by the statute, the assignee is to recover what shall be due, 'in like manner as indorsee of a bill of exchange.' Had the act pursued the statute in these respects, or expressed the same meaning in other words, the plaintiff would be right. What shall appear to be due at the time of the assignment, has been differently applied by the opposite council; The Plaintiff's council contended, that it meant what appeared to be due on the bond; so that, if the bond should be paid, yet if payment was not indorsed, the assignee might recover the whole. The Defendant contended, that the clause related only to the manner of proceeding, enabling the assignee to sue in his own name. We have considered this matter very deliberately, and are clearly of opinion, that the variance between the act and the statute, was intentional, not accidental. An argument of force with us, not mentioned by the defendant, arises from the wording of the act. The words 'so much as shall appear to be due,' relate to the time of trial, and not to the time of the assignment; they are in the future tense.

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It has been said, that it is the obligor's fault not to have the payment indorsed on the bond; but it is not in his power, for the money must be paid before he is entitled to a receipt; and then, if the obligee is a bad man, he may refuse to indorse it.

We are, therefore, clearly of opinion, that an assignee takes the bond at his own peril; and that he stands in the same place as the obligee, so as to let in every defalcation which the obligor had against the obligee, at the time of the assignment, or notice of the assignment. The only intent of the act being to enable the assignee to sue in his own name, and prevent the obligee from releasing after assignment.

Judgment for the Defendant. Footnotes

[Footnote *] 1 Gte. 1. e. 8. See 1 State Laws. 77.