BaldwIn Vs. Ely

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Appeal No. : 50 U.S. 580

Appellant : Baldwin

Respondent : Ely

Judgement :

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Baldwin v. Ely

50 U.S. (9 How.) 580

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Certificates were issued by the Treasury Department under a treaty with Mexico which were payable to a claimant or his assigns upon presentation at the department.

These certificates being legally assignable under an act of Congress, an endorsement in blank by the original payee was always considered sufficient evidence of title in the holder to enable him to receive the amount of the certificate when presented to the Treasury Department for payment.

The possession of them with a blank endorsement is *prima facie* evidence of ownership.

Where a complainant in chancery alleged that they had been purloined from him, and the defendant alleged that he had received them from a third person in the regular course of business, the claim of the complainant, who furnished no proof that they had been purloined, to have them restored to him unconditionally could not be maintained.

The bill was one of discovery, and the defendant, in his answer, alleged that he had received them from the third person as security for money loaned.

The complainant was entitled to have them restored to him upon his refunding to the holder the amount of the loan for which they had been deposited as security. It was error, therefore, in the court below to dismiss his bill.

But as the complainant did not offer to redeem the certificates, but insisted upon their unconditional restoration, the defendant below is entitled to costs in the circuit court. But the plaintiff below, who was the appellant here, is entitled to his costs in this Court.

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The facts were these.

The matters in controversy arose out of three certificates, No. 989, No. 990, No. 991, for $1,000 each, bearing interest at the rate of eight percent per year, issued from the Department of the Treasury of the United States to the appellant in pursuance of the convention of 11 April, 1839, between the United States and the Mexican Republic, and two Acts of the Congress of the United States to carry into effect that convention, passed June 12, 1840, and September 1, 1841.

Articles 1, 2, 3, 4, and 5 of that convention, 8 Stat. 526 to 533, provided for a commission to hear and determine the claims of the citizens of the United States upon the Mexican government.

By article sixth, it was agreed that if it should not be convenient for the Mexican government to pay at once in money the amount found due by the board of commissioners, it should be at liberty to pay in Treasury notes, to bear interest at the rate of eight percent per annum from the date of the award, receivable at the maritime custom houses of the republic.

By the seventh section of the Act of June 12, 1840 5 Stat. 383, the Secretary of the Treasury was required to issue certificates

"showing the amount or proportion of compensation to which each person, in whose favor award shall have been made by said commissioners or umpire, may be entitled as against the Mexican government, on account of the claims provided for by said convention."

By sections eighth, ninth, and tenth, the Secretary of the Treasury was required, if the Mexican government should pay any moneys towards satisfying the said awards, to distribute the same ratably among the claimants; or, if the Mexican government should see fit to issue Treasury notes, then to cause the same to be delivered

"to the persons who shall be respectively entitled thereto in virtue of the awards, and the certificates issued, first deduction such sums of money, if any, as may be due the United States from persons in whose favor awards shall have been made under said convention."

By the Act of 1 September, 1841 5 Stat. 452, the Secretary of the Treasury was required to issue certificates to the persons authorized to receive the sums awarded, "their legal representatives and assigns," in the manner directed by the seventh section of the Act of Congress of June 12, 1840, for such portions of the sums awarded as may be convenient for the claimants, and to be subject to the deductions provided for by the tenth section of said act,

"provided that nothing in this act shall be construed to give any rights to the

claimants that are not conferred by said convention, and the act of June 12, 1840, and that the substance of this proviso be inserted in the certificates may be issued."

The appellant, John Baldwin obtained two awards from said commission for large sums of money, the one award bearing date 18 December, 1841, the other, 25 February, 1842, and therefor obtained various certificates from the Treasury Department for $1,000 each, bearing interest at the rate of eight percent per year from the respective dates of said awards, whereof the aforesaid certificates, No. 989, No. 990, and No. 991, are parts and parcels.

Subsequent to the date of these certificates, another convention was signed at the City of Mexico on 30 January, 1843, and finally ratified on 29 March and promulgated on 30 March, 1843, 8 Stat. 578, by which it was agreed that the Mexican government should pay, on 30 April, 1843, all the interest which should be then due on the awards in favor of claimants and that the principal, and the interest thereof accruing thereon, should be paid "in five years, in equal installments every three months," the said term of five years to commence on 30 April, 1843, the payments to be made in the city of Mexico, in gold or silver, to such person as the United States should authorize to receive them.

Such were the effects, conditions, and obligations arising against the United States out of the aforementioned certificates.

In March, 1844, the appellant exhibited his bill in equity against the appellee, stating in substance, that, being the lawful proprietor of said three certificates, No. 989, No. 990, and No. 991, to him issued in pursuance of the awards in his favor, he wrote his name on the back thereof, "without any words of transfer or assignment, and still continued to hold the same as the lawful owner thereof, and that, while the same were thus held by him, the said three certificates, No. 989, No. 990, and No. 991, each for the sum of $1,000, were either casually lost by him, or, as he verily believes, clandestinely stolen from his rightful possession."

That upon the discovery of said abduction, the complainant immediately gave notice to the Treasury Department, by letter of 12 February, 1843, with a request that payment of those certificates might be stopped.

That the complainant was unable to find where those certificates were, until, by letter of 29 January, 1844, from the Secretary of the Treasury, he was notified they were held

and claimed by the defendant, and had been presented at the Treasury Department in the defendant's name. He sought a discovery of Ely's right to them, and prayed that Ely should be required to prove how the said certificates were procured from the complainant, and for what consideration, and when and where; that he be decreed to deliver up the same, and to desist from all demand of payment on account of the same, or to assign or transfer them to any other person or party; for an injunction to restrain him for demanding payment of them until the further order of the court, and for such other and further relief in the premises as might be agreeable to equity and good conscience.

The injunction was granted. Ely answered. He admits that the said certificates were issued and made payable to complainant or his assigns, and were his sole and exclusive property. He states that in the month of April, 1842, one Perry G. Gardiner, of the City of New York, applied to him for a loan of money, and offered as security three certificates of the Mexican indemnity, similar to those referred to in the bill, issued to complainant, and endorsed by him, but he does not recollect the numbers, and upon these certificates he advanced to Gardiner at different times various sums of money, to 8 August, 1842, amounting to $1,220, Gardiner promising to place further securities in his hand. On 13 August, 1842, Gardiner brought to him three other certificates for $1,000 each, payable to Baldwin and endorsed by him, the numbers of which he does not recollect, to be held as security for the sums already advanced, and such new loans as he might thereafter make. And he did afterwards, to 16 December, 1842, lend him other sums amounting to $857, making in the whole $2,077. That as to the first three certificates, they were, as he believes, the property of Gardiner, and as to the last, Gardiner, at the time of the deposit, informed him he had full control and right to sell, pledge, or hypothecate them, and he did verily believe that Gardiner was the true *bona fide* owner thereof, by regular assignment from Baldwin and he took the same as he had taken the three previously given him, without any knowledge or suspicion of any fact or circumstance that could affect or invalidate the title of Gardiner to them. He further states on information and belief that Baldwin did in fact endorse the said three last-mentioned certificates in the presence of Gardiner, and hand them to Gardiner, with the express purpose and design that Gardiner should go into the market and negotiate the same, and apply the proceeds to his own use, in payment of moneys due and payable by Baldwin to him, and

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he charges the fact to be that Baldwin endorsed them with the express design and intention of passing, by such endorsement, a perfect title to Gardiner or to any person to whom Gardiner might transfer them, and thus he gave this defendant the legal right to write over Baldwin's endorsement any words of assignment necessary to give him a perfect title to them; that sometime in the month of December, 1842, Gardiner represented to him that the certificates had greatly increased in value and that three of them would be sufficient security for him, and requested him to give up three of the six. He did so without observing how they were numbered, and sometime after Gardiner again applied to him to exchange the three certificates which he had so given up to him for the other three, and he, knowing no difference therein, received them back, and these three last are now in his possession and are numbered 989, 990, 991. He denies all fraud, and claims them as his own.

To this answer the plaintiff filed a general replication.

A commission was issued to take testimony, and under it the evidence of James Bolton and George W. Riggs was taken for the complainant, and that of Perry G. Gardiner for the defendant.

The depositions of Bolton and Riggs need not be further mentioned, as they related chiefly to the exchange of certificates.

Gardiner states that Baldwin had passed to him in payment of a debt several certificates similar to these, three of which he had hypothecated with the defendant, for a loan of money made by defendant to him. And in August, 1842, Baldwin gave him the three certificates mentioned in the bill for the express purpose of raising money, or by hypothecation to pay him Gardiner for services rendered by him to Baldwin; that Baldwin took them out of his portfolio and endorsed them in his presence, and delivered them to him, and told him to get the money as soon as possible; that he took them directly to Mr. Ely, got some money on them, and he agreed to advance further sums, which he afterwards did advance; that he told Mr. Baldwin he had raised the money on these certificates. He states further that in the month of December, 1842, he obtained from Mr. Ely the first three certificates, leaving the three mentioned in the bill in the hands of Mr. Ely, and sold them to Perkins Nicholls, a broker, and afterwards, 14 June, 1843, got them from E. Riggs, to whom Nicholls had sold them, and returned them to Ely. That Baldwin had advertised these three certificates as having been stolen from him, and witness called on him and asked him the meaning of it. He said it was to

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frighten Mr. Sayre and Mr. Allen, who held the five other certificates mentioned in the advertisement; that he would, as soon as he could raise the money, pay off Ely's advances and take up the three certificates in controversy. Ely never has been paid.

The cause was set for hearing by consent on the bill, answer, exhibits, depositions, and general replication, and on 25 May, 1846, the circuit court passed the following decree:

"This cause coming on to be heard on the bill, answer, and exhibits filed therein, and the complainant, by his counsel, objecting to the admissibility of the evidence of Perry G. Gardiner, whose deposition was taken in the said cause, and this Court having heard the argument of counsel, and considered the said cause, the said objection to the admissibility of the said evidence is hereby overruled, and it is this 25 May, 1846, ordered, adjudged, and decreed by the court that the said bill be, and the same is hereby, dismissed, and that the complainant do pay to the said defendant his costs herein, to be taxed by the clerk of this Court."

From this decree the complainant appealed to this Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case is brought here by appeal from the decision of the Circuit Court for the District of Columbia for the County of Washington, sitting as a court of chancery.

The appellant filed his bill in that court, stating that large sums of money were awarded to him under the convention with Mexico, for which he obtained certificates, payable to him or his assigns, from the Treasury Department, according to the Act of Congress of September 1, 1841. That among these certificates were three for one thousand dollars each, numbered 989, 990, and 991; that upon the back of these certificates, among others, he wrote his name, but without any words of transfer or assignment, and continued to hold them as the lawful owner; and that while he thus held them, the said three certificates were either casually lost by him, or, as he verily believed, purloined or stolen. He states further, that upon discovering their loss he gave notice of it to the Secretary of the Treasury, who agreed to suspend payment in case they should be presented, until an opportunity should be afforded him to regain possession of them, or to assert his right by some legal proceeding, but that he had been unable to discover where these certificates were, or who held them, until a short time before the bill was filed, when he received notice from the department, that they had been presented for payment on behalf of the appellee, and would be paid accordingly, unless sufficient grounds for refusing should be furnished by the appellant; and that as the appellee resided out of the District of Columbia, and his agent was a member of Congress, and therefore not liable to arrest, he was without remedy except by the aid of the court to obtain a discovery of the right and title which Ely, the appellee, possessed, or under which he claimed, and prayed that he might be required to prove and show how the certificates were procured from the appellant, and for what consideration, and when and where, and to produce them before the court, and be compelled by its decree to deliver them to the complainant.

The appellee appeared and put in his answer, in which he states that these certificates, endorsed in blank by the appellant, were delivered to him by a certain Perry G. Gardiner, to be held as security for loans and advances previously made by the appellee to the said Gardiner, and also for such further loans and advances as he might thereafter make. He further states, that he afterwards made sundry advances, which he particularly

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mentions, and that he has altogether advanced to Gardiner two thousand and seventy-seven dollars, for which he holds these certificates. He further states that at the time he took them, he believed, from Gardiner's representations, that he was the owner, and had no knowledge or suspicion of any circumstance that could invalidate his title. And further, that he is informed, and believes, and charges, that they were endorsed with the express intention of passing by such endorsement a perfect title to Gardiner, and handed by the appellant to him, that he might go into the market and negotiate them, and apply the proceeds in payment of a debt due from Baldwin to him.

The transactions between the appellee and Gardiner are set out in the answer much more particularly and in detail than is here stated, and a great portion of it is taken up in stating a transaction between him and Gardiner concerning a pledge of other certificates, upon which a large portion of the advances now due were originally made, and explaining how these three certificates became finally pledged for the whole amount loaned by the respondent, and the others released. But it is unnecessary to state these particulars here, because we see nothing in the case to impeach the fairness and good faith of the appellee, and the summary above given is sufficient to show the issues upon which this controversy must be decided.

Gardiner was examined as a witness on the part of the appellee, and sustains in every respect the statement in the answer. But his testimony is objected to by the appellant, first, upon the ground that he is interested, and therefore incompetent, and secondly, that if he is competent he is not worthy of credit. It is not necessary to express an opinion upon the validity of either of these objections, for the admission or rejection of his testimony would not change the equity of the case.

Putting aside, therefore, the testimony of Gardiner, it appears from the bill and answer that the appellee is in possession of these certificates, claiming title to them as assignee. The act of Congress directs that such certificates shall be made payable to the person entitled under the award of the commissioners, his legal representatives or assigns, and the certificates in question were issued in conformity to the law, and made payable to the party, his legal representatives or assigns, upon the surrender of the certificates at the department. They are therefore legally transferable by assignment, and no particular form of assignment is prescribed. The certificates in question were endorsed in blank by the appellant, and that endorsement would be altogether useless and unmeaning unless made for the purpose of transferring the property to an assignee and authorizing

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any person entitled to it in that character to write over his name a formal and regular assignment, if it should become necessary or he should deem it his interest to do so. The holders of certificates of this description thus endorsed in blank have always been recognized at the Treasury Department as assignees without any formal assignment, and the money due on the certificate paid to them except only when doubts were entertained of the genuineness of the endorsement or notice given that the title of the holder was disputed. Neither the law nor the usages of the department require that the endorsement or assignment should be attested by a witness.

There is nothing, therefore, in the form and character of the endorsement calculated to awaken suspicion that the appellee had obtained them unfairly. The handwriting of the appellant is admitted, and the endorsement is according to the usage sanctioned by the department at which they are to be paid. His possession, therefore, upon established principles of law, is *prima facie* evidence that he is entitled to the property until the contrary appears. A different rule would put in jeopardy the title to a great portion of this scrip, which has been fairly purchased for a valuable consideration. For it has been a common article of traffic, and much of it has passed through a variety of hands, with no other evidence of an assignment to the holder but the endorsement in blank of the original payee. We do not mean to say that these certificates are to be regarded as commercial instruments, to be regulated by the commercial law, and that the holder is entitled to all the rights which belong to a *bona fide* endorsee of a promissory note. He certainly is not. They are, however, property, and the legal right to them may, under the act of Congress, be transferred to another, like the right to any other property. And the possession of them by the appellee, with the customary form of assignment endorsed upon them, in the handwriting of the party to whom they were originally issued, entitles him to the benefit of the legal presumptions in favor of his right which always arise from possession, until proof is offered to the contrary.

Now the appellant offers no proof that the certificates were lost or stolen, as charged in his bill, nor any proof that they remained in the his possession after he endorsed them, nor any evidence that the endorsement was made for any other purpose than that which it imports -- that is, for the purpose of transferring it to another person.

It is true that it appears from the testimony of witnesses to whom there can be no objection that these certificates were advertised by the appellant, as having been improperly obtained

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from him, and that his advertisement appeared in some newspaper before they were pledged the second time to Ely. But the advertisement is no evidence of the fact stated in it, and there is no reason to believe that it came to the knowledge of the appellee before the last transaction between him and Gardiner. And if Gardiner's testimony is rejected, there is no evidence in the case to support the allegations in the appellant's bill, nor any ground upon which he can entitle himself to the relief he asks for.

Besides, the object of the appellant's bill is for discovery as well as relief, and to obtain from the appellee a discovery of the right and title which he possesses or under which he claims. The answer, therefore, is responsive to the bill when it states the transactions with Gardiner and the circumstances under which he received the certificates and the advances he made upon them. And it is entitled to all the weight which the rules of equity give to an answer when it is responsive to the bill and speaks of facts within the personal knowledge of the respondent.

The case of *Williamson v. Thomson,* 16 Ves. 442, relied on by the appellant, depended on different principles. The East India certificate in dispute in that case was not by law assignable, and the order endorsed upon it by the party to whom it was issued, to pay the amount to another, did not transfer the legal right to the money. It might pass the equitable title, if so intended, but nothing more. The decision turned upon the meaning and intention of the endorsement. The court of chancery was called upon to expound it and to determine from the evidence whether it was intended as a transfer of the equitable right, or as an authority merely to receive the money as the agent of the original payee and for his use. The court determined that he took it in the latter character, but upon evidence which presented a case altogether unlike the one now before us.

The decree of the circuit court dismissing the bill cannot, however, be sustained. The appellee admits that he did not purchase the certificates from Gardiner, but took them as security for the money loaned. Consequently, the appellant is entitled to redeem, upon payment of the advances stated in the answer, with interest upon the several sums from the time they were respectively loaned. The decree of the court below must therefore be

Reversed, with the costs in this Court, and the case remanded with directions to cause an account to be stated in conformity to this opinion and to pass a decree requiring the certificates to be delivered to the appellant upon his paying

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or tendering to the appellee the amount found to be due, and in case the money is not paid or tendered by a day to be fixed by the circuit court, then the certificates to be sold, and the proceeds apportioned between the parties in the manner herein directed.

In taking the account, the appellee is to be allowed the whole amount of the loans and advances to Gardiner, for which these three certificates were ultimately left in pledge. And as the appellant did not offer to redeem them, and insisted on their absolute redelivery to him, the court think that, under the circumstances as they appear in the record, the appellee is equitably entitled to his costs in the circuit court, and they are accordingly in the account to be charged against the appellant. But as regards the costs in this Court, the appellant, by the established rules and practice of the court, is entitled to recover them, and they must be charged against the appellee.

A mandate will be issued to the circuit court in conformity with this opinion.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed with costs for the appellant in this Court, and that this cause be and the same is hereby remanded to the said circuit court with directions to that court to proceed therein in conformity to the opinion of this Court and as to law and justice shall appertain.