

Goodman Vs. Dimonds

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Appeal No. : 61 U.S. 343

Appellant : Goodman

Respondent : Dimonds

Judgement :

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Goodman v. Dimonds

61 U.S. (20 How.) 343

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

Where an accepted and endorsed bill of exchange was placed by the drawer as collateral security for his own debt in the hands of his creditor, and when the creditor came to sue the acceptor, the court instructed the jury

"That if such facts and circumstances were known to the plaintiff as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that the drawer had no interest in the bill and no authority to use the same for his own benefit, and by ordinary, diligence he could have ascertained these facts,"

then the jury would find for the defendant -- this instruction was erroneous.

The facts of the case examined to ascertain whether or not there was sufficient evidence to go to the jury upon these points.

This Court again says that a *bona fide* holder of a negotiable instrument for a valuable consideration, without notice of facts which impeach its validity between the antecedent parties, if he takes it under an endorsement made before the same becomes due, holds the title unaffected by these facts and may recover thereon although, as between the antecedent parties, the transaction may be without any legal validity.

Where a party is in possession of a negotiable instrument, the presumption is that he holds it for value, and the burden of proof is upon him who disputes it, an exception being where the defect appears on the face of the instrument.

It is a question of fact for the jury whether or not the holder had knowledge of defects existing antecedently to the transfer to him.

The English and American cases examined.

Surrendering collateral securities previously given and affording increased indulgence as to time furnish a sufficient consideration for the transfer of new collaterals.

Goodman was a citizen of Ohio, and Simonds of Missouri.

The suit was brought by Goodman, upon the following bill of exchange:

" *EXCHANGE FOR \$5,000*"

"CINCINNATI, O., Sept. 12, 1847"

"Four months after date of this, my first of exchange, second unpaid, pay to the order of John Sigerson five thousand dollars, value received, and charge the same to account."

"Your ob't serv't,"

"WALLACE SIGERSON"

" *Mr. John Simonds, St. Louis, Mo.* "

Upon the face of the bill was written, "Accepted, John Simonds," and endorsed upon the same was the following:

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"Pay to T. S. Goodman & Co., or order; John Sigerson."

"Pay W. Nesbit & Co., or order; T. S. Goodman & Co."

"Pay Timothy S. Goodman, without recourse to W. Nesbit & Co."

Two of these parties, *viz.*, John Sigerson and Simonds, lived in St. Louis, and the other two, *viz.*, Goodman and Wallace Sigerson, in Cincinnati. The bill of exchange was sent from St. Louis to Wallace Sigerson, at Cincinnati, endorsed by John Sigerson, and accepted by Simonds, but without date, and without the signature of the drawer.

The narrative of the transactions which led to the possession of the bill by Goodman is given in the opinion of the Court.

Upon the trial, there were several rulings of the court, but the one upon which the case came up to this Court was the following, *viz.*:

The defendant asked the court to give the following instruction to the jury:

"The defendant moves the court to instruct:"

" If the jury find from the evidence in the cause that Wallace Sigerson never had any interest in the bill sued on, nor in the proceeds thereof, nor any authority to use the same for his own benefit, and did dispose of the same for his own benefit to T. S. Goodman & Co., and the plaintiff was at the time one of said firm, and when the bill was so transferred to said firm such facts and circumstances were known to the said Goodman as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that said Wallace had no interest in the bill, and no authority to use the same for his own benefit."

To the giving of which by the court the plaintiff objected, and the court gave to the jury that instruction amended so as to read as follows:

Same instruction, as amended by the court:

"And by ordinary diligence he could have ascertained that said Wallace Sigerson had no interest in said bill, and no authority to use the same for his own benefit, then they will find for the defendant."

To the giving of which, as thus amended, the plaintiff objected, and excepted then and there to the giving of the same to the jury.

Under this instruction, the jury found a verdict for the defendant, and the plaintiff brought the case up to this Court.

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Mr. justice CLIFFORD delivered the opinion of the Court.

Timothy S. Goodman, a citizen of the State of Ohio, complained in the court below of John Simonds, a citizen of the State of Missouri, in a plea of trespass on the case upon promises. The declaration was filed on the first day of March, 1854. It contained two counts -- one upon a bill of exchange and the other upon an account stated. At the April term following, the defendant appeared and pleaded the general issue, which was joined, and several special pleas in bar of the action. The special pleas were held bad on demurrer, and at the October term, 1855, the

parties went to trial on the general issue. Robert M. Nesbit, a witness called for the plaintiff, testified that he was a notary public of the County of St. Louis and that, as such, on the fifteenth day of January, 1848, he presented the bill in suit for payment to John Simonds, the acceptor, who refused to pay it, and that he afterwards gave due notice of the presentment and refusal to both endorsers. And the witness further testified, that he was well acquainted with the signatures of all the parties to the bill except that of the drawer, and that they were genuine. Whereupon the plaintiff read in evidence the bill of exchange described in the first count of the declaration, together with the endorsements thereon, as they appear in the record. W. Nesbit & Co. were merely nominal holders

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of the bill, never having had any interest in it, and only endorsed it to the plaintiff for the greater convenience in bringing the suit. Evidence was then introduced on the part of the defendant, exhibiting substantially the following state of facts:

On the twenty-first day of June, 1847, the defendant addressed a letter to Wallace Sigerson, who resided at Cincinnati, informing him that he wished to avail himself of banking facilities in that place to carry on certain business, in which he and John Sigerson had determined to engage, and asking his assistance, as a correspondent, to negotiate discounts, enclosing at the same time his letter of credit for ten thousand dollars, and two bills of exchange, each for the sum of five thousand dollars, and suggesting in the same letter that they should require some twenty to twenty-five thousand dollars during the next four or five months, in sums of about five thousand dollars, as the same could be used from time to time. In the same letter also he instructed his correspondent to negotiate five thousand dollars immediately, authorizing him to use for that purpose either the letter of credit or the bills of exchange. When those bills were transmitted to Cincinnati, they were in all respects perfect bills of exchange except that the name of the drawer was wanting, and they were without date. They were both made payable to the order of John Sigerson, and by him endorsed in blank, and were accepted by the defendant. Soon after their receipt, Wallace Sigerson, as drawer, procured one of the bills to be discounted according to his instructions, and remitted the proceeds,

or a part thereof, to the defendant, and it also appeared that, during that season, he procured other bills of the same kind, to be discounted for the same parties to the amount of twenty-five thousand dollars. The other bill forwarded at that time is the one now in suit. Wallace Sigerson had also large transactions of his own, the same season, amounting to four hundred thousand dollars. Many of his own transactions were with his brother, John Sigerson, who was the payee and endorser of this bill and was jointly engaged in the same business with the defendant. He and his brother interchanged accommodation paper, and some of their acceptances were regularly discounted in bank, and it did not appear that any complaint was made, either by the acceptor or endorser, that this bill had not been accounted for or returned. There were dealings also the same season between T. S. Goodman & Co. and Wallace Sigerson. They made a settlement on the twelfth day of October, 1847, when it was ascertained that the amount due to T. S. Goodman & Co. was about five thousand six hundred dollars, arising principally from notes discounted, secured by bills of exchange as collaterals, on which nothing

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had been realized. At the settlement, the debt was divided into two notes, one having sixty and the other seventy-five days to run, and Wallace Sigerson testified that he gave his two notes in payment of the debt, and left this bill as collateral security to the notes, fixing the dates so that the notes would mature twelve or fifteen days before the bill.

Two drafts on Ravisess, Bullock & Co., previously held as collaterals, were embraced in the settlement, and formed a part of the indebtedness for which the notes were given, and McDonald, who was the bookkeeper of the plaintiff's firm, and a witness for the defendant, testified he knew of no other collateral security than this bill, which the firm held for those notes. It would seem, therefore, that all the prior collaterals were surrendered to the defendant at the settlement. There is some confusion, and perhaps uncertainty, in the evidence reported respecting the history of the bill from the time it went into the possession of Wallace Sigerson till it was thus placed in the hands of T. S. Goodman & Co. as collateral security to the

above-mentioned notes. It may, however, be gathered from the testimony of Wallace Sigerson that he first offered it for discount to the Ohio Life and Trust Company, and shortly afterward to the plaintiff for the same purpose, and that the plaintiff declined to discount it, but soon after took it as collateral security for temporary loans. How long the bill remained in the possession of the plaintiff as collateral security for temporary loans does not appear, nor for whose benefit the money was obtained. When the settlement took place, Wallace Sigerson told the plaintiff that he had a right to use the bill, and the plaintiff agreed that it should not be sent to St. Louis for collection till after the maturity of the notes to which it was collateral. Nothing of the kind was agreed when it was left as collateral security for temporary loans. Wallace Sigerson became the drawer of this bill, as he had previously done with respect to the other, which was sent him at the same time, and filled up the date, but whether at the time of the settlement, or previously, was not entirely certain. He failed in business in November, 1847, and on the twentieth day of the same month, T. S. Goodman & Co. addressed a letter to C. W. Clark & Brothers, enclosing this bill and requesting them to pass it at the least rate, not exceeding twelve percent interest, saying, "We do not endorse it, as we are selling it for another;" and when L. C. Clark, one of that firm, a few days afterward offered the bill for sale to the defendant, "he said it was a forgery of his name; that Wallace Sigerson had no authority to use it." At the trial, the court, on the prayer of the plaintiff, instructed the jury to the effect that if the plaintiff acquired the bill of Wallace Sigerson as

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collateral security without notice of his want of authority to transfer it, that the plaintiff was unaffected by such abuse of trust, and that the defendant was precluded from setting it up as a defense in this suit, to which no exceptions were taken.

We pass over the first instruction given to the jury on the prayer of the defendant for the same reason that it was not excepted to, and proceed to examine the second, as amended by the court, which presents the principal subject of controversy at the present time. It was to the effect that

"If such facts and circumstances were known to the plaintiff as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that Wallace Sigerson had no interest in the bill and no authority to use the same for his own benefit, and by ordinary diligence he could have ascertained these facts, then the jury will find for the defendant."

I. The general question which the bill of exceptions presents, arising upon that instruction, is certainly one of very considerable importance, especially to the mercantile community, as it affects the transfer and free circulation of bills of exchange and promissory notes, which, by virtue of their negotiable quality, constitute the principal medium for the transaction of their business affairs. There is, however, some reason to doubt whether the evidence at the trial furnished any proper basis for the application of the instruction in this case, even supposing the principle announced to be correct as an abstract proposition, and this gives rise to a preliminary question, which will be first considered, whether the instruction ought not to be regarded as objectionable on that account. When a prayer for instruction is presented to the court and there is no evidence in the case for the consideration of the jury, it ought always to be withheld, and as a general rule, if it is given under such circumstances, it will be error in the court for the reason that its tendency may be and often is to mislead the jury by withdrawing their attention from the legitimate points of inquiry involved in the issue. All that was shown at the trial, in addition to the description of the bill, was the refusal of the plaintiff to discount it when it was offered for that purpose, his possession and control of it shortly after, as a pledge for temporary loans, and the subsequent transfer of the bill to him as collateral security at the settlement, together with the circumstances of that transaction and what appeared in the letter of T. S. Goodman & Co. transmitting the bill to St. Louis for sale. Other circumstances are adverted to in the printed argument for the defendant, but as they do not appear to be sustained by the evidence in the case, they are omitted.

Nothing transpired when the bill was offered for discount more than

what occurs on similar occasions in the daily transactions among businessmen. It was offered and declined, and that was the whole transaction so far as it was disclosed in the evidence. No reasons were assigned by the plaintiff for declining, and none was asked for by the holder, who offered the bill. Mere speculative inferences are never allowable and cannot be regarded as evidence. The refusal to discount the bill might have been for the reason supposed in the instruction, and so also it might have been for a very different reason, such as a prior obligation to other customers, want of available funds, or from a desire for farther information as to the pecuniary standing of the parties to this bill, and whether it was for any one of the reasons suggested or some other, in the absence of any explanation, was a mere naked conjecture. Another answer may also be given to this suggestion which is equally decisive, and that is the subsequent conduct of the plaintiff in taking the bill as a pledge for temporary loans, which seems to negative the supposition altogether that the previous refusal to discount it was on account of any suspicion he entertained, either as to the genuineness of the paper or of the authority the authority of the holder to pass it. Some time elapsed, after the bill was offered for discount before it was finally transferred to the plaintiff, and that fact undoubtedly was well known to the plaintiff at the time of the transfer, and so also was the more important one in this investigation, that during all that time the bill remained in the custody or under the control of Wallace Sigerson as the ostensible owner, and that he claimed and exercised over it all the rights of a holder for value. If these circumstances are taken in connection with each other, as they unquestionably should be, there can be no doubt they were far better suited to inspire confidence in the title of the holder than to excite suspicion in regard to his authority to pass the bill, and if they had that effect, it was plainly the fault of the defendant in executing and forwarding the bill to his correspondent, and in entrusting it to his control, and suffering it to remain in his custody without inquiry or complaint.

The want of date to the bill at the time it was offered for discount, under the circumstances disclosed in the evidence, was entirely an immaterial consideration. When the defendant sent the bill to Wallace Sigerson, endorsed in blank and without date, and entrusted it to his care and discretion, to be used for his own

benefit, he thereby empowered him to fill the blank, as a necessary incident to the trust conferred, just as effectually as if the authority had been expressly delegated by the terms of the letter in which it was sent. Nor was it of any consequence that it was antedated as compared with the time

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when it was passed to the plaintiff, inasmuch as it was filled up by his own correspondent, before he parted with its possession and control, and was actually made to bear date subsequent to the time when it was received from the defendant. In filling it up, he but carried into effect one of the purposes for which it had been forwarded, as is plainly indicated from the general scope and design of the letter. He was authorized to use the bill to raise money for the benefit of the defendant, and in order to use the bill for that purpose, it must have been expected that he would become the drawer, and fill up the date at his discretion. Independently, however, of the terms of the letter, it may be asserted as a general principle that where a party to a negotiable bill of exchange or promissory note entrusts it to the custody of another when it is without date, whether it be for the purpose to accommodate the person to whom it was entrusted or to be used for his own benefit, such bill or note carries on its face an implied authority to fill up the blank, and as between such party to the bill or note and innocent third parties, the person to whom it was so entrusted must be deemed the agent of the party who committed such bill or note to his custody, and as acting under his authority, and with his approbation. *Mitchel v. Carver*, 10 Wend. 336, and note

The general doctrine on this subject, and the reasons on which it is founded, are stated by Shaw, C.J., in *Androscoggin Bank v. Kimball*, 10 Cush. 373, as follows:

"The rule is very clear that if one party, intending to accommodate another, signs his name to a blank paper, he authorizes the other to whom he delivers it and for whose accommodation it was made to fill up the blank, and the filling up, being done by his authority, is his act, and he is bound by it; and we concur in the principle and think it applies with even more force when it was done for his own benefit, as in this case."

Violet v. Patton, 5 Cranch 142; *Russell v. Langstaffe*, 2 Doug. 514; *Collis v. Emmet*, 1 H. Back 313; *Montague v. Perkins*, 22 Eng. L. & Eq. 516.

The circumstances thus far considered, we think, afforded no ground of inference whatever to support the theory of fact assumed in the instruction. But it is more difficult to dispose of those that follow in the same way, on account of the extremely indefinite nature of the inquiry arising under the instruction. One man is more readily influenced to suspect fraud in matters of business than another, and the same individual may be differently impressed by similar transactions occurring at different times under precisely similar circumstances, so that in some cases, where the evidences to excite suspicion were

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slight, it might be impossible to determine whether they were or were not of a character to be regarded as tending to support an issue like the one presented under the first branch of the instruction, without first ascertaining the general characteristics of the mind of the individual who was the subject of the inquiry, and his usual habit in conducting his business affairs.

A striking illustration of the difficulty attending the investigation is to be found in the instruction itself, assuming for the present that it must be understood according to the usual import of the language employed. Under its first branch it was necessary, in order to relieve the defendant, that the jury should find that such facts and circumstances were known to the plaintiff as caused him to suspect the title or authority of the holder to transfer the bill. But the jury might come to the conclusion that the plaintiff was thoughtless, confiding, or inattentive on the occasion, and that he in fact took the bill without any such suspicion, and to guard against the effect of such a finding, the second branch of the instruction was framed, and under that it was of no consequence whether the plaintiff himself suspected the title of the holder or not, as the defendant was nevertheless to be fully exonerated if the jury found that such facts and circumstances were known to him as would have caused one of ordinary prudence to suspect, and by ordinary diligence he could have ascertained, the true state of the title.

Here was an attempt to prescribe a standard in the investigation, by which the degree of suspicion intended to be required to defeat the claim of the plaintiff could be ascertained and measured by the jury; but under the first branch of the instruction no such attempt was made, and no other criterion was furnished to guide the jury in their deliberations, than mere naked suspicion, and consequently, if the jury believed from the evidence in the case that the plaintiff at the time of the transfer suspected the title or authority of the holder to pass the bill, no matter how slight his suspicions were, they were directed to return their verdict for the defendant. With this explanation as to the nature of the present inquiry, we will proceed to notice the remaining circumstances relied on as evidence in the case to support the instruction. They consist of the knowledge that the plaintiff is supposed to have acquired at the settlement, that Wallace Sigerson was embarrassed in his business affairs, and of the subsequent conduct of his firm, in forwarding the bill to St. Louis before the maturity of the notes, and the remark in their letter that they did not endorse the bill, as they were selling it for another. These circumstances are consistent with the proposition of fact assumed in the instruction, and though they are susceptible of an entirely

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different explanation, yet perhaps it would be going too far to say as matter of law that they afforded no ground of inference in the direction supposed by the defendant.

We think therefore that the judgment ought not to be reversed on the ground that there was no evidence in the case to authorize the instruction. We say so, however, in reference to the peculiar issue arising under that instruction and the form of the questions submitted to the jury, and not in respect to any different issue which may properly arise hereafter in cases of this description. There is a wide difference between suspicion and knowledge in respect to the subject matter under consideration, and even as between the evidences of suspicion, and such as would show gross negligence on the part of a banker or businessman when discounting or purchasing negotiable paper transferable by delivery. A person may often suspect in matters of business what in fact he does not believe, and

experience teaches that he will sometimes suspect what he has no reason to believe, and that too when the evidences to excite suspicion are so slight that he himself would scorn to acknowledge them as the basis of his action in the premises. Evidence merely tending to show, as in this case, that a party, in acquiring a negotiable bill of exchange or promissory note, suspected the title of the holder at the time of the delivery, would clearly be insufficient to authorize the conclusion that he was guilty of gross negligence when the transfer was made, and it would hardly constitute an approach towards proof that he had knowledge that such holder, who was known to be dealing in such paper, and claimed the right to use it, was guilty of any breach of trust in passing it.

II. The more important question whether the instruction was correct remains to be considered, and in approaching that question it becomes necessary in the first place to ascertain what the instruction was and to deduce from it the principle of commercial law which was applied to the case. It was somewhat peculiar in its language, and in fact contained two distinct propositions, differing essentially in certain aspects and not entirely reconcilable with each other, and yet we cannot doubt that the circuit court, in giving the instruction to the jury, intended to apply the doctrine to the case that the title of the holder of a negotiable bill of exchange acquired before maturity is not protected against prior equities of the antecedent parties to the bill, where it was taken without inquiry and under circumstances which ought to have excited the suspicions of a prudent and careful man. Such was certainly the general scope of the instruction, especially its second proposition, and such, it may be presumed, was the general

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principle intended to be embodied in the questions submitted to the jury. They have been so treated here in the oral argument for the plaintiff, and were treated in the same way in the printed argument filed for the defendant. Whether either or both of the questions, in the form in which they were submitted, were objectionable as involving a departure from the doctrine intended to be applied it will not become necessary to inquire. One thing is certain -- if the general principle cannot be sustained, there is nothing in the features of the departure from it or the particular

phraseology of the questions submitted, to benefit the defendant. Undoubtedly the same general idea pervaded the instruction, though the questions were submitted to the jury in different forms, in order to meet the different aspects of the evidence in the case. It was to the effect that if the plaintiff had acquired the bill under the circumstances described in either branch of the instruction, then he had acted without due caution, and was not entitled to recover. All the other grounds of defense had been provided for in other prayers for instruction. This one was obviously prepared to raise the single question, whether the plaintiff had acted with due caution in acquiring the bill, and consequently assumed all the other requisites of a good title in favor of the plaintiff. The only question, therefore, arising under the instruction, is whether the rule of commercial law applied to the case was correct. Bills of exchange are commercial paper in the strictest sense, and must ever be regarded as favored instruments, as well on account of their negotiable quality as their universal convenience in mercantile affairs. They may be transferred by endorsement; or when endorsed in blank, or made payable to bearer, they are transferable by mere delivery. The law encourages their use as a safe and convenient medium for the settlement of balances among mercantile men; and any course of judicial decision calculated to restrain or impede their free and unembarrassed circulation, would be contrary to the soundest principles of public policy. Mercantile law is a system of jurisprudence acknowledged by all commercial nations; and upon no subject is it of more importance that there should be, as far as practicable, uniformity of decision throughout the world.

A well defined and correct exposition of the rights of a *bona fide* holder of a negotiable instrument was given by this Court in [Swift v. Tyson](#), 16 Pet. 1, as long ago as 1842, and we adopt that exposition relative to the point under consideration on the present occasion as one accurately defining the nature and character of the title to those instruments which such holder acquires when they are transferred to him for a valuable consideration. This Court then said, and we

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now repeat, that a *bona fide* holder of a negotiable instrument for a valuable consideration, without notice of facts which impeach its validity between the

antecedent parties, if he takes it under an endorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon although, as between the antecedent parties, the transaction may be without any legal validity.

That question was not one of new impression at the date of that decision, nor was it so regarded either by the Court or the learned judge who gave the opinion; on the contrary, it was declared to be a doctrine so long and so well established, and so essential to the security of negotiable paper, that it was laid up among the fundamentals of the law, and required no authority or reasoning to be brought out in its support, and the opinion on that point was fully approved by every member of the Court, and we see no reason to qualify or change it in any respect.

Such being the settled law in this Court, it would seem to follow as a necessary consequence from the proposition as stated that if a bill of exchange endorsed in blank, so as to be transferable by delivery, be misappropriated by one to whom it was entrusted, or even if it be lost or stolen and afterwards negotiated to one having no knowledge of these facts, for a valuable consideration and in the usual course of business, his title would be good, and that he would be entitled to recover the amount. The law was thus framed and has been so administered in order to encourage the free circulation of negotiable paper by giving confidence and security to those who receive it for value, and this principle is so comprehensive in respect to bills of exchange and promissory notes, which pass by delivery, that the title and possession are considered as one and inseparable, and in the absence of any explanation, the law presumes that a party in possession holds the instrument for value until the contrary is made to appear, and the burden of proof is on the party attempting to impeach the title.

These principles are certainly in accordance with the general current of authorities, and are believed to correspond with the general understanding of those engaged in mercantile pursuits. The word "notice," as used by this Court on the occasion referred to, we think must be understood in the same sense as "knowledge," and indeed that is one of its usual and appropriate significations. Where the supposed defect or infirmity in the title of the instrument appears on its face at the time of the

transfer, the question whether a party who took it had notice or not is in general a question of construction, and must be determined by the court as matter of law, and so it was understood by this Court in *Andrews v. Pond*, 13 Pet. 65, where it is said that:

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"A person who takes a bill which upon the face of it was dishonored cannot be allowed to claim the privileges which belong to a *bona fide* holder. If he chooses to receive it under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it."

And the same doctrine was adopted and enforced in *Fowler v. Brantly*, 14 Pet. 318, where, in speaking of a promissory note, so marked as to show for whose benefit it was to be discounted, this Court held that all those dealing in paper "with such marks on its face, must be *presumed* to have *knowledge* of what it imported." See *Brown v. Davis*, 3 Term. 80.

Other cases of like character, where the defect appears on the face of the instrument, are referred to in the printed argument for the defendant as affording a support to the instruction under consideration, but it is so obvious that they can have no such tendency that we forbear to pursue the subject. *Ayer v. Hutchins*, 4 Mass. 270; *Wiggin v. Bush*, 12 John. 305; *Cone v. Baldwin*, 12 Pick. 545; *Borwn v. Tabor*, 5 Wend. 566.

But it is a very different matter when it is proposed to impeach the title of a holder for value by proof of any facts and circumstances outside of the instrument itself. He is then to be affected, if at all, by what has occurred between other parties, and he may well claim an exemption from any consequences flowing from their acts, unless it be first shown that he had knowledge of such facts and circumstances at the time the transfer was made. Nothing less than proof of knowledge of such facts and circumstances can meet the exigencies of such a defense, else the proposition as stated is not true that a party who acquires commercial paper in the usual course of business, for value and without notice of any defect in the title,

may hold it free of all equities between the antecedent parties to the instrument. Admit the proposition and the conclusion follows. And the question whether the party had such knowledge or not is a question of fact for the jury, and, like other disputed questions of *scienter*, must be submitted to their determination under the instructions of the court, and the proper inquiry is did the party seeking to enforce the payment have knowledge at the time of the transfer of the facts and circumstances which impeach the title, as between the antecedent parties to the instrument?, and if the jury find that he did not, then he is entitled to recover unless the transaction was attended by bad faith, even though the instrument had been lost or stolen. Everyone must conduct himself honestly in respect to the antecedent parties when he takes negotiable

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paper in order to acquire a title which will shield him against prior equities. While he is not obliged to make inquiries, he must not willfully shut his eyes to the means of knowledge which he knows are at hand, as was plainly intimated by Baron Parke in *May v. Chapman*, 16 Mee. & Wels. 355, for the reason that such conduct, whether equivalent to notice or not, would be plenary evidence of bad faith. Mere want of care and caution, which was the criterion assumed in the instruction, falls so far below the true standard required by law -- which is knowledge of the facts and circumstances that impeach the title -- that we feel indisposed to pursue the general discussion, and proceed to confirm the views we have advanced as to what the law is by referring to some of the decisions in the English courts, from which, as an important source of commercial law, most of our own rules upon the subject have been derived.

The leading case, among the more modern decisions in that country, is that of *Goodman v. Harvey*, 4 Ad. & Ell. 870. That was a case in bank on a rule *nisi* which was made absolute. Lord Denman, in delivering judgment, said:

"We are all of opinion that gross negligence only would not be a sufficient answer where a party has given consideration for the bill; gross negligence may be evidence of *mala fides*, but it is not the same thing. Where the bill has passed to

the plaintiff without any proof of bad faith in him, there is no objection to his title."

That case was followed by *Uther v. Rich*, 10 Ad. & Ell. 784, which was also argued before a full court, and the same learned judge held that the only proper mode of implicating the plaintiff in the alleged fraud by pleading was to aver that *he had notice of it*, leaving the circumstances by which that notice was to be proved, directly or indirectly, to be established in evidence, and he further held that an averment that the plaintiff was not a *bona fide* holder was not equivalent. According to the rule laid down in *Goodman v. Harvey*, which indubitably is the settled law in all the English courts, proof that the plaintiff had been guilty of gross negligence in acquiring the bill ought not to defeat his right to recover, and if not it serves to exemplify the magnitude of the error assumed in the instruction that any facts and circumstances which would excite the suspicion of a careful and prudent man were sufficient to destroy the title. It is clear that one or the other of these rules must be incorrect; both cannot be upheld. Gross negligence is defined to consist of the omission of that care which even inattentive and thoughtless men never fail to take of their own property, and if such neglect would not defeat the right to recover -- and clearly it would

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not, unless attended by bad faith -- it cannot require any farther reasoning to demonstrate that the instruction was erroneous. Several cases have been decided in England upon the same subject and to the same effect, and the rule laid down in *Goodman v. Harvey* is now adopted and sanctioned by the most approved elementary treatises upon commercial law. *Raphael v. Bank of England*, 33 Eng.L. & Eq. 276; *Stephens v. Foster*, 1 Crompt., Mee. & Wels. 849; *Palmer v. Richards*, 1 Eng.L. & Eq. 529; *Arbouin v. Anderson*, 1 Ad. & Ell.N.S. 498; *May v. Chapman*, 16 Mee. & Wels. 355; Chitty on Bills, 12th ed., 257; Story on Bills, 3d ed., sec. 416; Byles on Bills, 4th Am. ed., 121 to 126; Smith's Mer.Law, ed. 1857, 255; Edwards on Bills 309; 1 Saun.Plea. & Ev. 591; *Wheeler v. Guild*, 20 Pick. 545; *Brush v. Scribner*, 11 Conn. 368; *Backhouse v. Harrison*, 5 Barn. & Ad. 1098; *Gwynn v. Lee*, 9 Gill. 138

These cases, beyond controversy, confirm the rule laid down by this Court in *Swift v. Tyson*, and they also furnish the fullest evidence, by their harmony each with the other as well as by their entire consistency with the principal case, that the law has been uniform since the decision in *Goodman v. Harvey*, which was decided in 1836, and we think it will appear, upon an examination, that it has always been the same, at least from a very early period in the history of English jurisprudence down to the present time, except for an interval of about twelve years, while the doctrine prevailed which is now invoked in support of the instruction in this case. That doctrine had its origin in *Gill v. Cubitt*, 3 Barn. & Cress. 466, and it was followed by the other cases referred to in the printed argument for defendant. It was decided in 1824, and it is true, as the cases cited abundantly show, that it was acquiesced in for a time as a correct exposition of the commercial law upon the subject under consideration. At the same time it is proper to remark that there is not wanting respectable authority that it had been much disapproved of before it was directly questioned. and it is certain, that nearly two years before it was finally overruled, Parke, Baron, in delivering judgment in *Foster v. Pearson*, regarded it as mere " *dicta*, rather than the decision of the judges of the King's Bench." See *Raphael v. Bank of England*, per Cresswell. The reasons assigned for that departure from the long established rule upon the subject are as remarkable and unsatisfactory as the change was sudden and radical, and yet their particular examination at this time is unnecessary. It is a sufficient answer to the case to say that it has been distinctly overruled in the tribunal where it was decided, and has not been considered an authority in that court

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for more than twenty years. The doctrine, says Mr. Chitty in his treatise on bills, is now completely exploded, and the old rule of law that the holder of bills of exchange, endorsed in blank and transferable by delivery, can give a title which he does not possess to a person taking them *bona fide* for value, is again reestablished in its fullest extent. It was not, however, accomplished at a single blow, but the error, so to speak, was literally broken up and destroyed by installments. The foundation of the superstructure was severely shaken in *Crook*

v. Jadis, 5 Barn. & Ad. 909, when the full bench first came to the conclusion that want of due care and caution were insufficient to constitute a defense, and that gross negligence, *at least*, must be shown, to defeat a recovery. But it was left to the case of *Goodman v. Harvey* to announce a complete correction of the error, when Lord Denman declared, we have shaken off the last remnant of the contrary doctrine.

A brief reference to some of the earlier cases will be sufficient to show that the decision in *Gill v. Cubitt* was a departure from the well known and long established rule upon the subject under consideration. One of the earliest cases usually referred to is that of *Hinton's Case*, reported in 2 Show 247. It was an action of the case against the drawer upon a bill of exchange payable to bearer. The court ruled that the holder must entitle himself to it on a consideration, "for if he come to be bearer by *casualty* or *knavery*, he shall not have the benefit of it," and so, in *Anonymous*, 1 Salk. 126, where a bank note payable to A or bearer was lost, and found by a stranger, and by him transferred to C, for value. Holt, Ch.J., held that "A might have trover against the stranger, for he had no title to it, but not against C, by reason of the course of trade, which creates a property in the bearer." And again in *Miller v. Race*, 1 Burr, 462, where an inn-keeper received a bank note from his lodger in the course of business and paid the balance, Lord Mansfield held he might retain it, as he came by it *fairly* and *bona fide*, and for value, and *without knowledge* that it had been stolen. And on a second occasion, in *Grant v. Vaughan*, 3 Burr 1516, where a bill payable to bearer was lost, and the finder passed it to the plaintiff, the same court left it to the jury to find whether he came to the possession *fairly* and *bona fide*. But a still stronger case is that of *Peacock v. Rhodes*, 2 Doug. 633, where a bill of exchange, endorsed in blank, was stolen and passed to the plaintiff by a man not known. It was argued for the defendant that a holder should not *in prudence* take a bill unless he knew the person. Lord Mansfield answered

"that the law is well settled that a holder coming *fairly* by a bill has nothing to do with the transaction between

the original parties. . . . The question of *mala fides* was for the consideration of the jury."

And lastly, and to the same effect, is *Lawson v. Weston*, 4 Esp. 56, where a bill of exchange for 500 was lost or stolen, and was discounted by plaintiff for a stranger. It was insisted for the defendant, that "a banker or any other person should not discount a bill for one unknown, without *using diligence* to inquire into the circumstances." Lord Kenyon replied, that

"to adopt the principles of the defense would be to paralyze the circulation of all the paper in the country, and with it all its commerce; that the circumstance of the bill having been lost, might have been material *if they could bring knowledge of that fact home to the plaintiff.* "

The cases cited, commencing in 1694 and ending in 1801, are sufficient to show what the state of the law was in 1824, when *Gill v. Cubitt* was decided, especially as the judges of the King's Bench, in giving their opinions on that occasion, did not pretend that there were any later decisions in which it had been modified.

III. But assuming that the instruction was erroneous, it is still insisted by the course of the argument for the defendant that it was immaterial, and the argument proceeds upon the ground that the case, as made in the bill of exceptions, shows that the plaintiff was not the holder of the bill for a valuable consideration in the usual course of business. On the contrary, it is insisted that he held it merely as a collateral security for a preexisting debt, without any present consideration at the time of the transfer, and that a party who takes negotiable paper under such circumstances does not acquire it in the usual course of business, and consequently takes it subject to prior equities. Whatever may be our impressions in a case like the one supposed, we think the question does not arise in the present record, assuming the facts to be as they are exhibited in the bill of exceptions, and the answer to the argument will be based entirely upon that assumption, without prejudice to what may hereafter appear. When the settlement was made, the new notes were given in payment of the prior indebtedness, and the collaterals previously held were surrendered to the defendant, and the time of

payment was extended and definitively fixed by the terms of the notes, showing an agreement to give time for the payment of a debt already overdue, and a forbearance to enforce remedies for its recovery; and the implication is very strong, that the delay secured by the arrangement constituted the principal inducement to the transfer of the bill. Such a suspension of an existing demand is frequently of the utmost importance to a debtor, and it constitutes one of the oldest titles of the law under the head of forbearance, and

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has always been considered a sufficient and valid consideration. *Elting v. Vanderlyn*, 4 John. 237; *Morton v. Burn*, 7 Ad. & El. 19; *Baker v. Walker*, 14 Mee. & Wels. 465; *Jennison v. Stafford*, 1 Cush. 168; *Walton v. Mascall*, 13 Mee. & Wels. 453; Com.Dig., action assumpsit, B. 1; *Wheeler v. Slocum*, 16 Pick. 62; Story on Prom.Notes, sec. 186, and cases cited. The surrender of other instruments, although held as collateral security is also a good consideration, and this as well as the former proposition is now generally admitted, and is not open to dispute. *Dupeau v. Waddington*, 6 Whar. 220; *Hornblower v. Proud*, 2 Barn. & Ald. 327; *Rideout v. Bristow*, 1 Crompt. & Jer. 231; *Bank of Salina v. Babcock*, 21 Wend. 499; *Youngs v. Lee*, 2 Ker. 551. It seems now to be agreed that if there was a present consideration at the time of the transfer, independent of the previous indebtedness, that a party acquiring a negotiable instrument before its maturity as a collateral security to a preexisting debt, without knowledge of the facts which impeach the title as between the antecedent parties, thereby becomes a holder in the usual course of business, and that his title is complete, so that it will be unaffected by any prior equities between other parties, at least to the extent of the previous debt, for which it is held as collateral. *White v. Springfield Bank*, 3 Sand.S.C. 222; *New York M. Iron Works v. Smith*, 4 Duer 362. And the better opinion seems to be in respect to parol contracts, as a general rule, that there is but one measure of the sufficiency of a consideration, and consequently whatever would have given validity to the bill as between the original parties is sufficient to uphold a transfer like the one in this case. We are not aware that the principle, as thus limited and qualified, is now the subject of serious dispute anywhere, and that

is amply sufficient for the decision of this cause. Whether the same conclusion ought to follow where the transfer was without any other consideration than what flows from the nature of the contract at the time of the delivery, and such as may be inferred from the relation of debtor and creditor in respect to the preexisting debt, is still the subject of earnest discussion, and has given rise to no small diversity of judicial decision. It seems it is regarded as sufficient in England according to a recent case. *Poirier v. Morris*, 20 Eng.L. & Eq. 103; Byles on Bills 96 and 127. A contrary rule prevails in New York, as appears by several decisions. *Coddington v. Bay*, 20 John. 637; *Stalker v. McDonald*, 6 Hill 93; and also in Tennessee, *Napier v. Elam*, 5 Yerg. 108. It is settled that it is a sufficient consideration in Massachusetts, Vermont, and New Jersey, and such was the opinion of the late Justice Story, as appears from his remarks

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in *Swift v. Tyson* and in his valuable treatise on Bills of Exchange. *Stoddard v. Kimball*, 6 Cush. 469; Story on Bills, sec. 192; *Chicopee Bank v. Chapin*, 8 Met. 40; *Blanchard v. Stevens*, 3 Cush. 162; *Atkinson v. Brooks*, 26 Vt. 569; *Allaire v. Hartshorne*, 1 Zab. 665. We think, however, that the point does not arise in this case for the reasons before stated, and consequently forbear to express any opinion upon the subject.

The judgment of the circuit court is reversed and the cause remanded for further proceedings with directions to issue a new venire.