Combs Vs. Hodge

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Decided On : 1858

Appeal No. : 62 U.S. 397

Appellant : Combs

Respondent : Hodge

Judgement :

Combs v. Hodge - 62 U.S. 397 (1858)
U.S. Supreme Court Combs v. Hodge, 62 U.S. 21 How. 397 397 (1858)

Combs v. Hodge

62 U.S. (21 How.) 397

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

The pleadings in another suit, where the parties were different, and the petition and answer signed by counsel cannot be resorted to for admissions of the respective parties.

Where certificates of the public debt of Texas were transferable only by the owner or his legal representative or attorney, and there is no sufficient evidence of the existence of a power of attorney, a mere endorsement in blank by the owner is not sufficient to justify a purchaser in drawing a conclusion that the holder is entitled to sell or discount it.

The difference between this and negotiable instruments explained, and the authorities examined.

But as the circumstances attending the purchase are not well disclosed in the record, the court will remand the case to the circuit court with directions to allow the parties to amend the pleadings, and to take testimony if they should be so advised.

The chronological history of the case was this:

In 1839, Combs was the proprietor of a large amount of bonds issued by the State of Texas for various sums, which certificates concluded in this way:

"This certificate is transferable by the said Leslie Combs

Page 62 U. S. 398

or his legal attorney or representative on the books of the stock commissioner only."

Two of these certificates -- *viz.,* No. 5219, for five thousand dollars, and No. 5229, for one thousand dollars -- were the subjects of the present suit. No notice will be taken in this report of the other bonds.

In 1840, Combs endorsed these certificates in blank and placed them in the hands of James Love, of Galveston, Texas, for the purpose, as he alleged, of enabling Love to receive payment, which was then expected but which was not made.

In 1846, one Josiah Lee brought a suit in the Commercial Court of New Orleans against William L. Hodge to recover back money which he had paid to Hodge for

the purchase of Texas bonds. Hodge took defense upon two grounds, *viz.,* 1. that it was supposed that there was a power to transfer in the hands of a Mr. Love, of Galveston, which plaintiff was bound to refer to; 2. that the blank endorsement of the owner authorized plaintiff to write over it the necessary authority. The court, however, gave judgment for Lee against Hodge.

By subsequent legislation of Congress and of Texas, the bonds became payable at the Treasury of the United States, where payment of them was claimed by J. Ledgear Hodge, a resident of Pennsylvania, administrator with the will annexed of Andrew Hodge, deceased, in whose name the bonds had been deposited at the Treasury. Whereupon Combs filed a bill against J. L. Hodge, the administrator as aforesaid, William L. Hodge, and James Love. An injunction was obtained to stay the payment of the money until the determination of the suit. The record of the suit in New Orleans and copies of letters were attached to the bill as exhibits.

Page 62 U. S. 403

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

The plaintiff filed his bill to establish his claim to two certificates for a portion of the public debt of the Republic of Texas, which had been issued to him in the year 1839, and which were transferable by him, or his attorney, or his representative, only, on the books of the stock commissioner of that state. He avers that these certificates with others were endorsed in blank by him, and sent to the defendant, Love, in Texas, during the year 1840, with authority to receive an anticipated

Page 62 U. S. 404

partial payment and to obtain other certificates of the same description for the residue. That he did not give to his agent any authority to sell them or to dispose of them for his own use, and has done no act to defeat his own legal title to them. That Love did not collect any part of the debt, and has failed to return the two certificates in question. That for fifteen years he has been unable to discover who was in possession of them, and has but recently ascertained that they were held

by one of the defendants under a claim of title from Love.

He attached to his bill a number of letters of Love containing admissions of his receipt of the certificates and of his agency for the plaintiff, and subsequently to the conversion by him of these he wrote to the plaintiff in extenuation of his conduct, affirming that he had a power of attorney and letters from the plaintiff authorizing him to sell. That he would endeavor to replace the stock, or would give other stock of the same description, and insisted that the liberty he had taken was excusable.

The defendant (Hodge) answered to the bill that these certificates were claimed as the property of the decedent, Andrew Hodge. That he purchased them from Love fairly and for their full value, and with a firm conviction that he was authorized by a power of attorney and the blank endorsement of the plaintiff to dispose of them. The cause was heard upon the pleadings and a decree *pro confesso* against Love.

The record in the District Court at New Orleans in the suit between Love and Hodge, appended to the bill, does not contain evidence applicable to this cause. The parties to that suit were different, and the petition and answer are signed by counsel, and not by the parties, and cannot be resorted to for admissions of the respective parties. *Boileau v. Ruttlin,* 2 Ex. 665. There is no evidence of the existence of a power of attorney from the plaintiff to Love except that contained in the letter of Love before referred to. If that statement is at all admissible, it is insufficient to establish the fact. The letter was written in 1844, after Love had violated his obligation as a faithful agent, and in reply to reproaches of the plaintiff. In

that letter he promises to restore to the plaintiff these or other certificates. There is no evidence of any fulfillment of this promise. He has failed to produce a power of attorney or any letters which authorize his sale to his co-defendant. The witnesses of the contract between him and the decedent Andrew Hodge have not been

examined. These circumstances raise a strong presumption against the verity of his statement and deprive his letter of any probative force. The title of the defendant therefore depends upon the effect to be given to the endorsement of the certificates in blank by the plaintiff, and their deposit with Love. The question is was he invested with such a title that a *bona fide* purchaser, having no notice of its infirmity, will be protected against a latent defect? The law merchant accords such protection to a holder of a bill of exchange taken in the course of business for value and without notice, and legislation in Great Britain and some of the states of the Union has extended to the same class of persons a similar protection in other contracts.

But this concession is made for the security and convenience, if not to the necessities and wants, of commerce, and is not to be extended beyond them. It is a departure from the fundamental principle of property which secures the title of the original owner against a wrongful disposition by another person and which does not permit one to transfer a better title than he has. The party who claims the benefit of the exception to this principle must come within all the conditions on which it depends. In the case of bills of exchange that have originated in fraud or illegality, the holder is bound to establish that he is not an accessory to the illegal or fraudulent design, but a holder for value. If the bill is taken out of the course of trade as overdue or with notice, the rights of the holder are subjected to the operation of the general rule. In *Ashurst v. Manager of Bank of Australia,* 37 L. & Eq. 195, justice Erle says:

"It seems to me extremely important to draw the line clearly between negotiable instruments, properly so called, and ordinary chattels which are transferable by delivery, though the transferred can only pass such title as he had. As to negotiable instruments, during their currency, delivery

Page 62 U. S. 406

to a *bona fide* holder for value gives a title even though the transferor should have acquired the instrument by theft, but after maturity, the instrument becomes in effect a chattel only in the sense I have mentioned."

When the instrument is one which by law is not negotiable, or when the negotiability has been restricted by the parties, the rule of the law merchant has no application. The loss of the instrument with the name of the payee upon it, or its transfer by a faithless agent, does not impair the title of the owner. Nor can a purchaser safely draw any conclusion from the existence of an endorsement on such a paper that the holder is entitled to sell or to discount it. *Birdeback v. Wilkins,* 10 Harris 26; *Ames v. Drew,* 11 Foster 475; *Symonds v. Atkinson,* 37 L. & Eq. 585; 25 L. & Eq. 318. Nor can the holder write an assignment or guarantee not authorized by the endorser. 4 Duer 45; 25 L. & Eq. 19; 6 Harris 434 This doctrine has been applied to determine conflicting claims to public securities which were not negotiable on their face, though the subject of frequent transfers.

The suit of *Toukin v. Fuller,* 3 Doug. 300 was for four victualling bills drawn by commissioners of the victualling office on their treasurer in favor of their creditor. These were sent to an agent with a power of attorney "to receive money and give receipts and discharges," and who pledged them for an advance of money. Lord Mansfield said the only question is who has the right of property in this bill. It must be the plaintiff's unless he has done something to entitle another. It is deposited with the defendant by one who had it under a limited power of attorney. If the plaintiff had ever consented to the disposal of the bill, he would not be allowed to object, nor would he if the money had ever come to his use. But here there is no such pretense.

Glynn v. Baker, 13 East. 509, was a suit for bonds of the East India Company, payable to their treasurer and sold with his endorsement. Le Blanc, Justice, said:

"Here are persons entrusted with the securities of A and B, who part with the securities of A, and, when called on for them, give the securities of B. That difficulty can only be

Page 62 U. S. 407

met by assimilating such securities to cash, which, whether it has an earmark set upon it or not, if passed by the person entrusted with it to a *bona fide* holder for

valuable consideration without notice, cannot be recovered by the rightful owner; but how does the similitude hold?"

And Lord Ellenborough said, "and individual might as well make his bond negotiable."

The case of *Dunn v. Commercial Bank of Buffalo,* 11 Barb. 580, originated in the refusal of that bank to allow a transfer of stock on the books of the bank which was transferable by the holder of the certificate or his representative.

The plaintiff had the certificate and a blank assignment, and a blank power of attorney, and claimed to make the transfer. The court denied that certificates of stock in reference to negotiability are placed on the same ground as bills of exchange, and declared that it is incumbent on a party claiming under such a transfer to prove the contract or consideration. In *Menard v. Shaw,* 5 Tex. 334, the supreme court of the state decide that the agency of the payee named in certificates like the present is indispensable to a legal transfer on the books of the state, and that a forced sale was therefore inoperative. The decision of *Baldwin v. Ely,* 9 How. 580 does not sanction the claim of the defendants.

The certificates which were the subject of controversy were issued, under an act of Congress, to a person or his assigns.

The ordinary form of assignment was a blank endorsement, and this had been recognized as sufficient at the Treasury of the United States and in the ordinary traffic in the community.

The defendant proved that he had paid value for them. In the cases cited from Douglas and East, the judges stated that the existence of similar facts might give another aspect to the claims of the defendants in these cases. In the case before us, the certificates were transferable, in terms only, in a single mode.

There was no evidence that a transfer in any other form than that prescribed had ever been recognized.

We have considered this cause upon the assumption that the defendant was a holder for value.

Page 62 U. S. 408

There is no statement in the answer of the consideration paid to Love for these certificates, nor of the time, place, and circumstances, of the contract between him and the defendant's testator. It appears that the plaintiff did not direct their sale or transfer, and that they were not disposed of on his account, and if there had been a power of attorney containing an authority to sell, the circumstances would have imposed upon the defendant the necessity of showing there was no collusion with Love. Upon the case as presented, the Court is constrained to reverse the decree of the circuit court dismissing the plaintiff's bill. But the case is presented in an unsatisfactory manner.

The transaction between Love and the decedent Hodge has not been exhibited to the Court, although parties fully cognizant of it are before the Court.

We have concluded to

Remand the cause to the circuit court with directions to allow the parties to amend the pleadings, and to take testimony, if they should be so advised.