Murray Vs. Lardner

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Decided On : 1864

Appeal No. : 69 U.S. 110

Appellant : Murray

Respondent : Lardner

Judgement :

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Murray v. Lardner

69 U.S. (2 Wall.) 110

ERROR TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Coupon bonds, of the ordinary kind, payable to bearer, pass by delivery, and a purchaser of them, in good faith, is unaffected by want of title in the vendor. The burden of proof on a question of such faith lies on the party who assails the

possession. *Gill v. Cubit,* 3 Barnewall & Cresswell 466, denied; *Goodman v. Harvey,* 4 Adolphus & Ellis' 870, approved; *Goodman v. Simonds,* 20 How. 343, affirmed.

Lardner was the owner of three bonds of the Camden & Amboy Railroad Company, for $1,000 each. They were coupon bonds of the ordinary kind, and *payable to bearer.* He resided in the country about nine miles from Philadelphia, but had an office in that city where he went to transact business two days in the week, Wednesdays and Saturdays. He kept the bonds in a fireproof in this office.

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Murray was a broker of character engaged in the negotiation of such bonds in New York.

On the night of Wednesday, the 23d February, 1859, Lardner's fireproof was broken open and the three bonds stolen. The theft was not discovered till Saturday, the 26th. Notices of the robbery appeared in the Philadelphia Ledger (the newspaper of Philadelphia having the largest circulation there) and in leading New York papers on Monday, the 28th. In the meantime, however, *on the morning after the theft,* to-wit, on Thursday, the 24th, two days before the discovery of it (Saturday, the 26th), and four days before the first notices in New York (Monday, the 28th), these bonds were negotiated to Murray at his office in Wall Street, New York, for full value. The testimony of Parker -- a broker in that city for the negotiation of loans, and a person, like Murray, of unquestionable character -- presented the history of the transaction, in substance, thus:

"On the 24th of February, 1859, a man came into my office and proposed to borrow $2,000 on the three bonds in question. I did not know him. He was quite gentlemanly in appearance; very well dressed; manners unexceptionable; quite intelligent; answered questions without hesitation. Applications of this sort -- applications, I mean, from strangers -- are not unusual; they occur often, though not every day. I asked the person who he was, and he said that he was Dr. A. D. Bates, of Milford, Sussex County, New Jersey. After some conversation with him, I

took the bonds to effect a loan, and went to Mr. Murray, who I knew dealt in this particular species of security, and proposed to borrow from him $2,000 on the three bonds for Bates. Mr. Murray and I had some conversation as to the terms of the loan and as to his charge for brokerage. At this interview, I said to Mr. Murray that Bates was a stranger to me. Murray said to this that he would have to satisfy himself how Bates came by the bonds before he could make the loan, and asked me whether Bates had any city references. I told him that I had already asked Bates that same question; that he had no city references, but knew only physicians. I stated to Murray that Bates had told me that he had bought the bonds for investment, and now wanted the money to pay for some

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lands which he had purchased. After a while, Bates came to my office again. I then went with him to Mr. Murray's office, where I introduced him to Murray. This was towards three o'clock. Murray asked him of whom he got the bonds. He said of Mr. Lardner, of Philadelphia; nothing else. Neither Murray nor I knew Mr. Lardner. Murray asked him if he was acquainted in the city. He replied that he supposed, if he had time, that he could find a dozen people in the city that knew him; ladies and gentlemen. Murray asked him if he knew any physicians. He said that he knew Dr. Mott and Dr. Parker, very well known men in New York; he may have mentioned others. In reply to a question from Murray whether he knew Dr. Hosack, the family physician of Murray, he answered that he did not; that Dr. Hosack was of the old school, and he, Bates, was of the new. Murray asked him if he knew Dr. Riggs, a physician of New Jersey, with whom he, Murray, had had some dealings. Bates said that he did by reputation. He told Murray what he wanted the money for. Murray told him he would lend him the money on the terms which he had named to me. The loan was accordingly made without further inquiry, Murray taking the bonds and paying the money, and Bates executing what is called a stock note."

The testimony of Murray was in the main corroborative of this so far as it related to himself, particularly as to the inquiries which he, Murray, had made of Bates as to his acquaintance with medical men, Drs. Hosack, Riggs &c.; He stated, however,

that he had no remembrance of Parker's telling him that he did not know Bates, which, if it had been said, Murray thought would have awakened his suspicion. Murray admitted, however, *that it was always his custom to know from whom securities came before dealing, and that it was the custom of brokers generally,* but he added that he did not think it necessary to inquire about Bates, "he being introduced by Parker."

"Dr. A. D. Bates, of Milford, Sussex County, New Jersey," was never seen nor could be heard of after the interviews above described. Neither could any such place as "Milford, Sussex County, New Jersey," from which place he stated that he came, be found on the maps of that state.

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On detinue brought by Lardner for the three bonds in the Circuit Court for the Southern District of New York, the defendant's counsel asked the court to charge

"That there were no such suspicious circumstances attending the transaction between Bates and Murray as to put Murray on inquiry, and that Murray was not chargeable with bad faith by any omission on his part to inform himself in regard to the bonds and Bates' title to them further than he did."

The court refused so to charge, and charged as follows:

"It will be for you, gentlemen of the jury, to say whether the defendant has made out -- as the burden lies upon the defendant -- whether he has made out that he received the paper in good faith, without any notice of the defect of the title -- in other words, of the theft from the plaintiff -- or whether there were such circumstances of the character which I have described to you as would warrant the inference that there was ground of suspicion and that he should have made further inquiry as to the character of the paper."

The instruction was excepted to, and the jury having found for the plaintiff, Lardner, the correctness of the law, as thus given to them in charge, was the question before this Court in error.

MR. JUSTICE SWAYNE delivered the opinion of the Court.

The question presented by the instruction excepted to is not a new one either in commercial jurisprudence or in this Court.

The general rule of the common law is that, except by a sale in market overt, no one can give a better title to personal property than he has himself. The exemption from this principle of securities, transferable by delivery, was established at an early period. It is founded upon principles of commercial policy, and is now as firmly fixed as the rule to which it is an exception. It was applied by Lord Holt to a bank bill in *Anon,* 1 Salkeld 126. This is the earliest reported case upon the subject. He held that the action must fail "by reason of the course of trade, which creates a property in the assignee or bearer."

The leading case upon the subject is *Miller v. Race,* [Footnote 1] decided by Lord Mansfield. The question in that case also related to a bank note. The right of the *bona fide* holder for a valuable consideration was held to be paramount against the loser. He put the decision upon the grounds of the course of business, the interests of trade, and especially that bank notes pass from hand to hand in all respects like coin. The same principle was applied by that distinguished judge in *Grant v. Vaughan* [Footnote 2] to a merchant's draft upon his banker. He there said: in

" *Miller v. Race,* 31 Geo. II B.R., the holder of a bank note recovered against the cashier of a bank though the mail had been robbed of it, and payment had been stopped, it appearing that he came by it fairly and *bona fide,* and upon a valuable consideration, and there is no distinction between a bank note and such a note as this is."

In *Peacock v. Rhodes,* [Footnote 3] he said:

"The law is settled that a holder coming fairly by a bill or note has nothing to do with the transaction between the original parties, unless perhaps, in the single

case, which is a hard one, but has been determined, of a note for money won at play."

The question has since been considered no longer an open one in the

English law as to any class of securities within the category mentioned.

What state of facts should be deemed inconsistent with the good faith required was not settled by the earlier cases. In *Lawson v. Weston,* [Footnote 4] Lord Kenyon said:

"If there was any fraud in the transaction or if a *bona fide* consideration had not been paid for the bill by the plaintiffs, to be sure they could not recover, but to adopt the principle of the defense to the full extent stated would be at once to paralyze the circulation of all the paper in the country, and with it all its commerce. The circumstance of the bill's having been lost might have been material if they could bring knowledge of that fact home to the plaintiffs. The plaintiffs might or might not have seen the advertisement, and it would be going a great length to say that a banker was bound to make inquiry concerning every bill brought to him to discount; it would apply as well to a bill for 10 as for 10,000."

In the later case of *Gill v. Cubitt,* [Footnote 5] Abbott, Chief Justice, upon the trial, instructed the jury

"That there were two questions for their consideration: first, whether the plaintiff had given value for the bill, of which there could be no doubt, and secondly whether he took it under circumstances which ought to have excited the suspicion of a prudent and careful man. If they thought he had taken the bill under such circumstances, then, notwithstanding he had given the full value for it, they ought to find a verdict for the defendant."

The jury found for the defendant and a rule *nisi* for a new trial was granted. The question presented was fully argued. The instruction given was unanimously approved by the court. The rule was discharged and judgment was entered upon

the verdict. This case clearly overruled the prior case of *Lawson v. Weston,* and it controlled a large series of later cases.

In *Crook v. Jadis,* [Footnote 6] the action was brought by the endorsee

of a bill against the drawer. It was held that it was

"no defense that the plaintiff took the bill under circumstances which ought to have excited the suspicion of a prudent man that it had not been fairly obtained; the defendant must show that the plaintiff was guilty of gross negligence."

In *Backhouse v. Harrison,* [Footnote 7] the same doctrine was affirmed, and *Gill v. Cubitt* was earnestly assailed by one of the judges. Patterson, Justice, said:

"I have no hesitation in saying that the doctrine laid down in *Gill v. Cubitt* and acted upon in other cases that a party who takes a bill under circumstances which ought to have excited the suspicion of a prudent man cannot recover has gone too far, and ought to be restricted. I can perfectly understand that a party who takes a bill fraudulently, or under such circumstances that he must know that the person offering it to him has no right to it, will acquire no title, but I never could understand that a party who takes a bill *bona fide,* but under the circumstances mentioned in *Gill v. Cubitt,* does not acquire a property in it. I think the fact found by the jury here that the plaintiff took the bills *bona fide,* but under circumstances that a reasonably cautious man would not have taken them, was no defense."

In *Goodman v. Harvey,* [Footnote 8] the subject again came under consideration. Lord Denman, speaking for the court, held this language:

"I believe we are all of opinion that gross negligence only would not be a sufficient answer where the party has given a consideration for the bill. Gross negligence may be evidence of *mala fides,* but is not the same thing. We have shaken off the last remnant of the contrary doctrine. Where the bill has passed to the plaintiff without any proof of bad faith in him, there is no objection to his title."

A final blow was thus given to the doctrine of *Gill v. Cubitt.* The rule established in this case has ever since obtained in the English courts, and may now be considered as fundamental in the commercial jurisprudence of that country.

In this country, there has been the same contrariety of

decisions as in the English courts, but there is a large and constantly increasing preponderance on the side of the rule laid down in *Goodman v. Harvey.*

The question first came before this Court in *Swift v. Tyson.* [Footnote 9] *Goodman v. Harvey* and the class of cases to which it belongs were followed. The Court assumed the proposition which they maintain to be too clear to require argument or authority to support it. The ruling in that case was followed in *Goodman v. Simonds* [Footnote 10] and again in the *Bank of Pittsburgh v. Neal.* [Footnote 11] the subject was elaborately and exhaustively examined both upon principle and authority. That case affirmed the following propositions:

The possession of such paper carries the title with it to the holder: "The possession and title are one and inseparable."

The party who takes it before due for a valuable consideration, without knowledge of any defect of title and in good faith holds it by a title valid against all the world.

Suspicion of defect of title or the knowledge or circumstances which would excite such suspicion in the mind of a prudent man or gross negligence on the part of the taker, at the time of the transfer will not defeat his title. That result can be produced only by bad faith on his part.

The burden of proof lies on the person who assails the right claimed by the party in possession.

Such is the settled law of this Court, and we feel no disposition to depart from it. The rule may perhaps be said to resolve itself into a question of honesty or dishonesty, for guilty knowledge and willful ignorance alike involve the result of

bad faith. They are the same in effect. Where there is no fraud, there can be no question. The circumstances mentioned and others of a kindred character, while inconclusive in themselves, are admissible in evidence, and fraud established, whether by direct or circumstantial evidence, is fatal to the title of the holder.

The rule laid down in the class of cases of which *Gill v.*

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Cubitt is the antetype, is hard to comprehend and difficult to apply. One innocent holder may be more or less suspicious under similar circumstances at one time than at another, and the same remark applies to prudent men. One prudent man may also suspect where another would not, and the standard of the jury may be higher or lower than that of other men equally prudent in the management of their affairs. The rule established by the other line of decisions has the advantage of greater clearness and directness. A careful judge may readily so submit a case under it to the jury that they can hardly fail to reach the right conclusion.

We are well aware of the importance of the principle involved in this inquiry. These securities are found in the channels of commerce everywhere, and their volume is constantly increasing. They represent a large part of the wealth of the commercial word. The interest of the community at large in the subject is deep-rooted and wide-branching. It ramifies in every direction, and its fruits enter daily into the affairs of persons in all conditions of life. While courts should be careful not so to shape or apply the rule as to invite aggression or give an easy triumph to fraud, they should not forget the considerations of equal importance which lie in the other direction. In *Miller v. Race,* Lord Mansfield placed his judgment mainly on the ground that there was no difference in principle between bank notes and money. In *Grant v. Vaughan,* he held that there was no distinction between bank notes and any other commercial paper. At that early period, his far-reaching sagacity saw the importance and the bearings of the subject.

The instruction under consideration in the case before us is in conflict with the settled adjudications of this Court.

Judgment reversed and the case remanded for further proceedings in conformity to this opinion.

[Footnote 1]

1 Burrow 452.

[Footnote 2]

3 *id.* 1516.

[Footnote 3]

2 Douglass 633.

[Footnote 4]

4 Espinasse 56.

[Footnote 5]

Barnewall & Cresswell 466.

[Footnote 6]

5 Barnewall & Adolphus 909.

[Footnote 7]

5 Barnewall & Adolphus 1098.

[Footnote 8]

4 Adolphus & Ellis 870

[Footnote 9]

41 U. S. 16 Pet. 1.

[Footnote 10]

61 U. S. 20 How. 343.

[Footnote 11]

63 U. S. 22 How. 96.