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SooperKanoon Citation : sooperkanoon.com/81792

Court : US Supreme Court

Decided On : 1869

Appeal No. : 76 U.S. 477

Appellant : The City

Respondent : Lamson

Judgement :

The City v. Lamson - 76 U.S. 477 (1869)
U.S. Supreme Court The City v. Lamson, 76 U.S. 9 Wall. 477 477 (1869)

The City v. Lamson

76 U.S. (9 Wall.) 477

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF WISCONSIN

SYLLABUS

1. A holder of coupons which have been cut off from the bond to which they were originally attached may bring suit on them if they represent interest already due, notwithstanding he be no longer holder of the bond to which they belonged. He

need not, if he declares properly, produce the bond.

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2. In suing on the coupons in such case, it is proper enough to recite the bonds in such general way as explains and brings into view the relation which the coupons originally held to the bonds, and in some respects still hold.

3. The suit does not by such recital-that is to say, by one in the nature of inducement and by way of preamble only -- become a suit upon the bond. It is still a suit on the coupons.

4. A coupon, if of the ordinary sort, being but a repetition, as respects each six months or other stated term, of the contract which the bond itself makes on that subject and but a device for the convenience of the holder, a suit upon it is not barred by the statute of limitations unless the time prescribed in the statute be sufficient to bar also suit upon the bond.

5. A debt for a specific sum contracted by a city, and invalid because a statute which authorized the city to contract a debt did not also limit the extent of it, is made valid by a subsequent statute recognizing the validity of the debt as contracted.

6. Where bonds issued to *bona fide* holders for value are valid by the judicial decisions of a state when issued, subsequent decisions in the same state cannot destroy their validity in such hands. *Gelpcke v. City of Dubuque,* 1 Wall. 175, affirmed.

The 3d section of the 11th article of the Constitution of Wisconsin ordains that

"It shall be the duty of the legislature to provide for the organization of cities and incorporated villages *and to restrict their power of borrowing money, contracting debts, and loaning their credit* so as to prevent abuses in contracting debts by such municipal corporations."

With this provision in force as fundamental law, the legislature of the state, on the 2d March, 1857, by an act [Footnote 1] which amended and consolidated the several acts relating to the city charter, authorized the common council of the City of Kenosha to

"borrow on the corporate credit of the city *any* sum of money, for *any* term of time, at *any rate of interest,* and payable at *any* place deemed expedient, issuing bonds or scrip therefor."

The city accordingly did borrow $100,000 to aid

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in the construction of the Kenosha & Rockford Railroad, and it issued bonds in sums of $500 and $1,000 each for payment. T hey were headed,

" *Issued according to law to the Kenosha & Rockford Railroad Company, to aid in the construction of their railroad,* "

and were made payable twenty years from date at the People's Bank in the City of New York, with interest at the rate of ten percent per annum, to be paid semiannually upon the presentation of the proper coupons for said interest. For the payment of the bonds and interest the faith of the city was declared to be pledged. The bonds were certified by the mayor and city clerk to have been issued under an act of the legislature, passed March 2, 1857, giving authority to the city to lend its credit for the sum specified, and also in pursuance of a vote of the freeholders of the city taken for the purpose of the loan of the $100,000 to the railroad company.

Attached to each bond were a series of coupons, like those now usually attached to railroad bonds, for the semiannual interest as it should become due in each year. The following was the form of those on the bonds for $500:

"$25. The City of Kenosha, Wis., will pay to the bearer twenty-five dollars on the 1st day of September, 1860, at the People's Bank, in the City of New York, on presentation of this coupon, being the interest due on the day on the bond of said

city, numbered 1, dated this 1st day of September, 1857."

"G. H. PAUL, Mayor"

"H. T. WEST, Clerk"

Subsequent to the issue of the bonds, the name of "The Kenosha & Rockford Railroad Company" was changed to "The Kenosha, Rockford & Rock Island Railroad Company," and a statute of 1859 provided that

"the common council of the City of Kenosha should have generally the charge and control of all interest the City of Kenosha *now has, or may hereafter have* in that railroad."

The act then provided that the common council should appoint a railroad

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commissioner, that when duly appointed, he should be *ex officio* a member of the board of directors of the railroad, and a statute of 1862 authorized the city

"to issue new bonds in exchange for the bonds and scrip *heretofore* issued by said city on railroad account now outstanding and unredeemed for the purpose of compromising *the indebtedness* of said city on such terms as may be agreed upon between the city and its *creditors.* "

One Lamson, having one hundred and seventy-two coupons for the interest due on the bonds in 1860 and 1861 and unpaid, brought suit against the city to recover it. The declaration recited in very general terms the several bonds to which the coupons that the plaintiff held had been originally annexed, setting forth that these bonds themselves had been sold and disposed of to *bona fide* purchasers, and had since passed from hand to hand in the stock market like other negotiable securities, so that the plaintiff could not produce them to the court; that the interest had accrued on the same; that the city had neglected and refused to pay it at the time and place designated; and that the interest and coupons were owned by the plaintiff, and that he brought the coupons into court to be cancelled.

The defendant pleaded 1st, *nil debet;* 2d, that the several supposed causes of action had not accrued to the plaintiff within six years from the commencement of the suit; the statute of limitations. The plaintiff took issue on the first plea and demurred to the second, which demurrer was sustained.

From the bill of exceptions it appeared that the plaintiff gave in evidence the one hundred and seventy-two coupons, his doing which was objected to, but that the objection was overruled. It was admitted that all the coupons with the exception of four, which were annexed to a bond produced, were coupons of different bonds of the same issue, but the bonds were not given in evidence. It was admitted also that more than six years had elapsed since the interest accrued on them.

After the plaintiff rested, the counsel for the defendant

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prayed the court to charge the jury 1st that the bonds declared on, as well as the coupons, should have been produced in order to sustain the declaration under the issue, and 2d that the City of Kenosha had no authority to issue the bonds. Both prayers were refused.

The jury found a verdict for the plaintiff on the first issue to the amount of the several coupons, and judgment having been given accordingly, the city brought the case here.

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MR. JUSTICE NELSON delivered the opinion of the Court.

We agree that if this were an action upon the bonds to recover installments of interest that had accrued thereon, although such installments had been duly assigned to the plaintiff, there would be great difficulty in maintaining it in his name, as well as without producing the bonds as the proper evidence that interest was due. The plaintiff, under such circumstances, doubtless would have a remedy for withholding the interest, but it is not necessary or material to stop and point it

out in the present case, for we do not regard the action as founded upon the bonds, but upon the coupons. The bonds are recited in very general terms, it is true, in the declaration, but it is by way of explaining and bringing into view the relation which the coupons originally held to the bonds, and which in an important sense they still hold, though distinct as it respects ownership, as they represent the interest that had become due upon them. The relation we refer to is that these coupons are not received or intended to have the effect of extinguishing the interest due on the bonds, as this collateral security -- or rather this evidence of the interest -- upon well settled principles cannot have that effect without an express agreement between the parties. Besides, the coupons are given simply as a convenient mode of obtaining payment of the interest as it becomes due upon the bonds. There is no extinguishment till payment.

The recital is by way of inducement, as is familiar to special pleaders at common law, which Mr. Chitty says is in the nature of a preamble, stating the circumstances under which the contract was made, or to which the consideration has reference. [Footnote 2] The office of an inducement is explanatory, and does not in general require exact certainty. Thus, says Mr. Chitty, when an agreement with a third person is stated only as an inducement to the defendant's promise, which is the principal cause of action, it is considered in general sufficient to state such agreement without certainty of name,

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place, or person, [Footnote 3] and where the matter is unnecessarily stated by way of inducement and might be struck out as surplusage, and, as we shall show hereafter may be said of that in the present case, the failure to make proof of the statement is not material.

The action, then, being founded upon the coupons, the material question arising on this branch of the case is whether or not the plea of the statute of limitations constitutes a good defense. It is admitted that more than six years have elapsed since the interest accrued on the coupons, and if barred by this lapse of time, the defense is complete and the court below erred in sustaining the demurrer.

As we have seen, the coupons were made contemporaneously by the city with the bonds for the accruing interest thereon. This appears on their face. The City of Kenosha, on the first September &c.;, will pay twenty-five dollars at the People's Bank &c.;, on presentation of this coupon, being the interest due that day on the bond of said city, numbered one, dated 1st September, 1857, which bond itself contains a covenant for the same interest. The coupon is not an independent instrument, like a promissory note for a sum of money, but is given for interest thereafter to become due upon the bond, which interest is parcel of the bond and partakes of its nature, and the bond, being of a higher security than a simple contract debt, is not barred by lapse of time short of twenty years, and, as we have seen, this contemporaneous coupon does not operate as an extinguishment of the interest unless there has been an express agreement to that effect. These coupons are substantially but copies from the body of the bond in respect to the interest, and, as is well known, are given to the holder of the bond for the purpose first of enabling him to collect the interest at the time and place mentioned without the trouble of presenting the bond every time it becomes due, and second to enable the holder to realize the interest due, or to become due, by negotiating the coupons to the bearer in business transactions,

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on whom the duty of collecting them devolves. This device affords great convenience to all persons dealing in these securities, especially to the holders in foreign countries who otherwise would be obliged to forward the bond to the place of payment of the interest each time it became due or trust them to the hands of their correspondents in the country where the payment is made.

This convenience in the collection by the use of coupons, as is apparent, very much facilitates the negotiation of these securities abroad, and enhances their value in the foreign market. And any decision that would have the effect to lessen or impair the higher security for the interest as found in the bond, by the use of these coupons, would necessarily, to that extent, defeat the purpose for which they were designed. As we have seen, there is nothing in the contract between the parties that would lead to the conclusion the nature or character of the security by

the bond for the interest was to be changed or lessened by the issue of the coupons, but the contrary, for if any such change had been intended, it should have been in some way indicated in the body of them. There was but one contract, and that evidenced by the bond, which covenanted to pay the bearer five hundred dollars in twenty years, with semiannual interest at the rate of ten percent per annum. The bearer has the same security for the interest that he has for the principal. The coupon is simply a mode agreed on between the parties for the convenience of the holder in collecting the interest as it becomes due. Their great convenience and use in the interests of business and commerce should commend them to the most favorable view of the court; but even without this consideration, looking at their terms, and in connection with the bond, of which they are a part and which is referred to on their face, in our judgment it would be a departure from the purpose for which they were issued and from the intent of the parties to hold, when they are cut off from the bond for collection, that the nature and character of the security changes and becomes a simple contract debt, instead of partaking of the nature of the higher security of

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the bond, which exists for the same indebtedness. Our conclusion is that the cause of action is not barred by lapse of time short of twenty years. Recurring again to the declaration, we have said that the preamble, or inducement, was unnecessary and might well be rejected as surplusage. As we have seen, it recites in very general terms the bonds to which the several coupons in suit were annexed. Now each coupon itself contains substantially, on its face, all this information. It is issued for interest due at a certain day and place on a bond, giving its number and date. Another form adds the amount, but this is unimportant, as the bond is sufficiently identified without it. The production of the coupon, therefore, at the trial, will show the relation it bears to the bond, and if our opinion is sound that in this connection it cannot be legally severed from it till the interest is paid, a count upon the coupon is all that can be material.

The only remaining question in the case is as to the authority of the City of Kenosha to issue bonds to which the coupons were annexed.

The act of 1857 of the legislature which amends and consolidates the several acts relating to the charter of the city confers full authority upon the common council to borrow on the corporate credit of the city any sum of money for any term of time, at any rate of interest, and payable at any place deemed expedient, issuing bonds or scrip therefor. It is admitted this authority would be sufficient, but it is insisted that the statute exceeds the authority of the legislature under the third section of the eleventh article of the state constitution, which, it is asserted, requires the legislature to limit or restrict the amount of money to be raised by the city. Without inquiry into this question, it is sufficient to say that after the city had passed the ordinance lending its credit to the railroad company to the amount of $100,000, the legislature ratified it. This was equivalent to an original limit of this amount.

It is urged also that the Supreme Court of Wisconsin has held that the act of the legislature conferring authority upon

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the city to lend its credit and issue the bonds in question was in violation of the provision of the constitution above referred to. But at the time this loan was made and these bonds were issued, the decisions of the court of the state favored the validity of the law. [Footnote 4] The last decision, cannot, therefore, be followed. [Footnote 5]

Judgment affirmed.

Dissenting, MR. JUSTICE MILLER.

[Footnote 1]

Chap. 133, Private Laws.

[Footnote 2]

1 Chitty on Pleading 290.

[Footnote 3]

1 Chitty on Pleading 291.

[Footnote 4]

See Dean v. Madison, 7 Wis. 688; *Clark v. Janesville,* 10 *id.* 136 -- REP.

[Footnote 5]

Gelpcke v. Dubuque, 1 Wall. 175.

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