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Court : US Supreme Court

Decided On : 1871

Appeal No. : 80 U.S. 297

Appellant : Pendleton County

Respondent : Amy

Judgement :

Pendleton County v. Amy - 80 U.S. 297 (1871)
U.S. Supreme Court Pendleton County v. Amy, 80 U.S. 13 Wall. 297 297 (1871)

Pendleton County v. Amy

80 U.S. (13 Wall.) 297

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

1. On suit upon the coupons of railroad bonds payable, both bonds and coupons, by their terms, to the bearer -- the declaration alleging the plaintiff to be owner, holder, and bearer of the coupons -- a plea that the plaintiff was not, either at the

time when the declaration or when the plea was filed, the owner, holder, or bearer, is a traverse of a material allegation of the declaration, and though faulty as argumentative, must, on general demurrer, be held good.

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2. So, on like sort of demurrer, a plea that at the times named, the bonds and coupons were all the property of one A. R., a citizen of B. (the same state of which the defendant was a citizen), and not of any other person.

3. So, on like sort of demurrer, when the declaration alleged that the coupons sued on were for interest on bonds that had been issued by a county and delivered by it to a certain railroad company in payment by the county of a subscription to stock of the road under an authority given by acts of the legislature, a plea that the county did not sign, seal, or deliver the bonds and coupons to the company as in the declaration alleged, and "so that the alleged acts and coupons are not its acts and deeds."

4. A county issuing bonds to a railroad company in payment of stock in the road, which subscription the county was authorized by legislative enactment to make and to pay for by the issue of the bonds only after certain things directed had been performed, may be estopped against asserting that the conditions attached to a grant of the power were not fulfilled. Where the issue of the bonds without such previous fulfillment would be a misdemeanor, by the county officers, it is to be presumed, though perhaps not conclusively, that the conditions were fulfilled. And an estoppel would take place where the county had received the proper amount of stock for which the bonds were issued, had held it for seventeen years, and was actually enjoying it at the time when pleading want of authority to subscribe.

Amy brought suit in April, 1869, against the County of Pendleton, in Kentucky, to recover the aggregate amount of certain coupons or interest warrants attached to fifty bonds of $1,000 each. The bonds were dated October 15, 1853, payable thirty years after date, and were alleged in the declaration to have been made and issued by the county of Pendleton in virtue of authority conferred by the legislature

of the state. The declaration averred the execution of the bonds with interest warrants attached to each, payable to the bearer semiannually on the 15th days of April and October of every year, and also that they had been delivered to the Covington and Lexington Railroad Company in payment of a subscription made by the county to the capital stock of the company, under authority given by acts of the legislature. It further averred that the bonds were received by the railroad company, and *that a certificate for the shares of stock subscribed, as aforesaid, was issued to the county,*

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and was received by it, and that it was still owned by the county, and further that the bonds were afterwards sold by the railroad company for $50,000 and delivered to the purchasers with the coupons attached; that the *plaintiff* subsequently became the *owner, holder, and bearer* of them all, and that from the 15th day of October, 1864, inclusive, until the commencement of the suit, the county had neglected and refused to pay the coupons, though often requested to pay them.

To the cause of action thus set forth the defendant pleaded four pleas:

1st. That the plaintiff was not, at the time of filing his declaration, or at the time of entering the plea, the owner, holder, or bearer of the said alleged bonds and coupons or of any or either of them, as in the declaration mentioned.

2d. That at the time of filing the declaration and plea, the bonds and coupons were all the property of one Augustus Robins, a citizen of the State of Kentucky, and not then or now the property of any other person.

3d. That although the legislature, by one act, empowered the county to subscribe to the stock of the company, and to borrow money to pay the subscription, yet the authority was coupled with a proviso that the real estate holders residing in the county should so vote, by a majority, at such times as the county court might appoint, and that

"the question of subscribing stock, or of borrowing money to pay the same, never was submitted to the real estate holders residing in the County of Pendleton, to be determined by vote of a majority of them, as authorized and required by the act, before any stock had been subscribed to or for said county, or any money borrowed to pay the same."

The plea then averred that subsequent acts of the legislature (enacted before the subscription was made) which authorized the levy of a tax for the purpose of paying the subscriptions to the stock of the said company, also provided that before a subscription should be made and a tax levied, the question of levying the tax should be submitted to the voters of the county, and if a majority of the votes cast should be in favor of the tax, it should be levied, and the subscription should be made; and

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the plea denied that the question whether the tax or the subscription authorized by these acts, or whether any tax for payment of a subscription of stock in said company should be imposed in the county, had ever been submitted to, or voted upon, by the voters of Pendleton County in conformity with said acts. The plea further averred that no other acts of the legislature authorized the county, or anyone for it, to subscribe stock for it in said company, or to levy a tax for payment, or to borrow money, or to issue bonds and coupons for the payment of any subscriptions of stock therein.

4th. That the county did not sign, seal, or deliver the bonds and coupons to the railroad company or to any person or corporation as in the declaration alleged, nor authorize anyone to do so; "and so the defendant says that the alleged acts and coupons are not its acts and deeds."

To all these pleas there were general demurrers, and these demurrers being sustained and judgment given for the plaintiff, the county brought the case here.

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MR. JUSTICE STRONG delivered the opinion of the Court.

It must be admitted that the pleas interposed by the defendant in the court below were inartistically framed, that they were argumentative, and that they set up nothing which could not have been taken advantage of, for what it was worth, under the general issue. They might have been stricken from the record on motion or, if special demurrers were allowable in that circuit, they would have been condemned had the plaintiff so demurred. But the demurrers were general, and the question before us is whether any of the pleas set up a substantial defense to the action.

Now in regard to the first plea, while it is true that the defense which it sets up was only inferentially an answer to the plaintiff's complaint, and while it might as well have been set up under the general issue, it was nevertheless a traverse of a material averment of the declaration. The coupons were made payable to bearer, but if the plaintiff was neither the owner nor the holder nor the bearer, they were not promises to pay him, and the county was not indebted to him. Hence it was material to his case to aver, as he did,

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that he was the bearer, and the plea took issue with this averment. It denied the title of the plaintiff, or his right of action, and, though faulty in form, in substance it amounted to a defense. It was therefore error to overrule it upon a general demurrer.

Similar observations might be made respecting the demurrers to the second and fourth pleas.

The third plea was in effect a denial of any legislative authority to the county to subscribe to the stock of the railroad company, and to issue bonds for the payment of such subscription. The general demurrer to it raises the question whether it presented a substantial defense to the action.

It is to be noticed at the outset that the plea concedes legislative authority to the county to make a subscription, and to issue bonds in payment, though the exercise of the authority was required to be preceded by a popular vote. It concedes that the bonds were in fact made and issued. We say it concedes this because such making and issue are alleged in the declaration, and the plea does not traverse the allegation. It concedes that the subscription was made; that the bonds were delivered to the company in payment; that they were sold for $50,000; that the plaintiff subsequently became the owner, and hence that he stands in the position of a purchaser for value, and it concedes that the county obtained for the bonds a certificate of stock in the railroad company which it now holds.

Without legislative authority, a municipal corporation, like a county, may not subscribe to the capital stock of a railroad company and bind itself to pay its subscription or issue its bonds in payment, and if it does the purchase of such bonds is affected by the want of authority to make them. But it does not follow from this that when the legislature has given its sanction to the issue of bonds, provided that before their issue certain things shall be done by the officers or the people of the county, the bonds can always be avoided in the hands of an innocent purchaser by proof that the county officers or the people have not done or have insufficiently done the things which the legislature required

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to be done before the authority to subscribe or to issue bonds should be exercised. A purchaser is not always bound to look farther than to discover that the power has been conferred, even though it be coupled with conditions precedent. If the right to subscribe be made dependent upon the result of a popular vote, the officers of the county must first determine whether the vote has been taken as directed by law and what the vote was. When, therefore, they make a subscription and issue county bonds in payment, it may fairly be presumed, in favor of an innocent purchaser of the bonds, that the condition which the law attached to the exercise of the power has been fulfilled. To issue the bonds without the fulfillment of the precedent conditions would be a misdemeanor, and it is to be presumed that public officers act rightly. We do not say this is a conclusive

presumption in all cases, but it has more than once been decided that a county may be estopped against asserting that the conditions attached to a grant of power were not fulfilled. * The estoppel in these cases was either by recitals in the bonds that the conditions precedent had been complied with or by the fact that the county had subsequently levied taxes to pay interest on the bonds. In the present case, it does not appear in the pleadings whether or not the bonds contained any such recitals nor whether the officers of the county have levied taxes to pay interest on them or whether any interest has been paid. These grounds of estoppel do not exist. But if such acts and such recitals are sufficient to protect *bona fide* purchasers against an attempt to set up noncompliance with the conditions attached to the grant of power to issue the bonds, it is not easy to see why the pleadings do not show an estoppel in this case. The county received in exchange for the bonds a certificate for the stock of the railroad company, which it held about seventeen years before the present suit was

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brought, and which it still holds. Having exchanged the bonds for the stock, can it retain the proceeds of the exchange, and assert against a purchaser of the bonds for value that though the legislature empowered it to make them, and put them upon the market, upon certain conditions, they were issued is disregard of the conditions? We think they cannot, and therefore that the third plea cannot be sustained.

But for the reasons given above, the case must be sent back for another trial, when doubtless the pleadings will be changed.

Judgment reversed and the cause remitted for further proceedings.

THE CHIEF JUSTICE, with MILLER and FIELD, JJ., concurred in a judgment of reversal, but said that they did not assent to all the views expressed in the preceding opinion.

* *Commissioners of Knox County v. Aspinwall,* 21 How. 539; *Bissell v. City of Jeffersonville,* 24 How. 287; *Moran v. Commissioners,* 2 Black 722; *Meyer v.*

Muscatine, 1 Wall. 384; *Van Hostrup v. Madison City,* 1 Wall. 291; *Supervisors v. Schenck,* 5 Wall. 772.

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