

Kitchen Vs. Bedford

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Court : US Supreme Court

Decided On : 1871

Appeal No. : 80 U.S. 413

Appellant : Kitchen

Respondent : Bedford

Judgement :

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80 U.S. (13 Wall.) 413

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KANSAS

SYLLABUS

1. Where a person acknowledged the receipt of "the *sum* of \$119,000 in *bonds*" of a railroad company, and of "50,405 *dollars* of coupons," amounting in the aggregate to "the *sum* of \$169,405," "which said sum he promised to expend in

the purchase of lands" of that same railroad company, "at or near the average price of \$5 per acre," *held* that this was a trust to buy the lands with the bonds at or near the price of \$5 an acre, and not to buy them with the proceeds of the bonds after they were sold at a nominal price.

2. Purchasers who fraudulently purchased, in breach of the trust, *held* liable in trover.

3. The statute law of Arkansas has not changed the common law rule that a husband cannot legally make a gift to his wife during coverture. Where a husband has not parted with the legal title to bonds of which he may have made an equitable gift for his wife's benefit, he can call any person to account who unlawfully converts them.

Kitchen, a citizen of Arkansas, brought trover in the court below against a certain Bedford and one Webber for the conversion of one hundred and nineteen bonds of the Cairo & Fulton Railroad Company for \$1,000 each, dated October 1, 1857, and payable in New York in 1882, with semiannual interest represented by interest warrants annexed to the bonds. The conversion was laid as on the 1st of December, 1866. Plea, "Not guilty." A jury being waived, the cause was tried by the court in May, 1870, and

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judgment rendered for the defendants. A bill of exceptions was taken, however, from which it appeared that on the trial evidence was given tending to establish the following facts, to-wit:

The plaintiff, on the 16th of March, 1866, being owner of the bonds described in the declaration, gave them to his wife and put them in the hands of one W. C. Rayburn on the terms and for the purposes set out in the following writing, which Rayburn executed under seal, to-wit:

"WALCOT, ARKANSAS, March 16, 1866"

"Received from *Martha* Kitchen, the *sum* of one hundred and nineteen thousand dollars *in bonds* of the Cairo & Fulton Railroad Company of Missouri, and I also received fifty thousand four hundred and five *dollars* of coupons or interest warrants, due and owing by said company, amounting in the aggregate to *the sum* of one hundred and sixty-nine thousand four hundred and five dollars, *which said sum* I promise to expend in the purchase of lands from John Moore, John Wilson, and Albert G. Waterman, trustees of the said railroad company of Missouri, at or near the average price of five dollars per acre, taking the deeds in my own name, and I further promise to sell all the lands purchased as aforesaid as soon as possible at such prices as the said Kitchen may direct, and if I should fail to sell all said lands as soon as said Kitchen may desire, then I promise to sell the same at public auction whenever so directed by the said Kitchen, and after deducting the expenses of stamps and necessary traveling expenses, to pay unto the said Martha Kitchen, or her legal representatives, seven-eighths of all the money that I may sell the said lands for. Given under my hand and seal the date above written."

"[SEAL] W. C. RAYBURN"

Rayburn having received the bonds for the purpose thus indicated, in December, 1866, sold and delivered them to the defendant Bedford for \$10,000, and he sold and delivered them to defendant Webber, who afterwards sold them for \$26,340, each knowing, when purchasing, the purposes for which Rayburn held them, as expressed in the writing.

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A demand for the bonds and coupons was made by the plaintiff of the defendants before the suit was brought.

The court declared that on this evidence the plaintiff could not recover, and the plaintiff having excepted, now brought the case here accordingly.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

Supposing the facts upon the evidence of which the court

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below declared that the plaintiff could not recover to have been sufficiently proven, it seems to us that the court erred in taking the view of the case which it did. Rayburn had possession of the bonds for the purpose of purchasing therewith, for the benefit of Mrs. Kitchen, lands of the railroad company which had issued them, "at or near the average price of five dollars per acre." Instead of doing this, as he was bound, he sold them to Bedford for six cents on the dollar, and Bedford sold them to Webber at a hundred and fifty percent advance, both knowing the object for which Rayburn held the bonds. A clearer case of fraudulent breach of trust it is difficult to conceive, and the defendants, being *participes criminis*, were bound to deliver the bonds and coupons to the plaintiff when he demanded them.

It is contended that by the fair construction of the paper, Rayburn was to sell the bonds for what he could get and invest the proceeds in lands, and *non constat* that he has not done so, or at all events the defendants, as purchasers from Rayburn, have good title to the bonds because he was invested with a trust to sell them. But the paper does not so read. It declares that Rayburn had received

"the *sum* of one hundred and nineteen thousand dollars *in bonds* of the Cairo & Fulton Railroad Company, and fifty thousand four hundred and five *dollars* of coupons &c.;, amounting in the aggregate to *the sum* of one hundred and sixty-nine thousand four hundred and five dollars, *which said sum* I promise to expend in the purchase of lands &c.;, at or near the average price of five dollars per acre."

In other words, he was to purchase lands with the bonds and coupons at five dollars per acre, not with the proceeds of them after being sold at a nominal price. He was to procure an acre for every five dollars of the bonds and coupons. That was the trust which he assumed. If he was unable to perform it, he should have returned the bonds, and not have sold them at six cents on the dollar. The defendants, when they bought them under these circumstances, did so at their

peril, and were bound to restore the bonds to the plaintiff.

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Having refused to do this, they were liable to him for the fair value of the bonds at the time of the demand

Mrs. Kitchen was not a necessary party to the suit. The bonds were never hers in law. By the laws of Arkansas, a husband cannot legally make a gift to his wife during the marriage. He could not do so at the common law, and the statute of Arkansas which enables a married woman to take and hold property in her own right expressly provides that no conveyance from a man to his wife, directly or indirectly, shall entitle her to any benefits or privileges of the act. *

Perhaps he might have made an equitable gift for her benefit. But in this case, the husband had not parted with the legal title to the bonds, and had a right to call any person to account who unlawfully converted them.

Judgment reversed with directions to award a venire de novo.

MR. JUSTICE STRONG stated that he was unable to construe the contract upon which the plaintiff relied as it was construed by a majority of the Court, and for that reason, among others, he dissented from the judgment.

* Digest of Statutes of Arkansas, p. 765, tit. Married Women.