Hooper Vs. Robinson

Hooper Vs. Robinson

SooperKanoon Citation : sooperkanoon.com/83551

Court : US Supreme Court

Decided On : 1878

Appeal No. : 98 U.S. 528

Appellant : Hooper

Respondent : Robinson

Judgement :

Hooper v. Robinson - 98 U.S. 528 (1878)
U.S. Supreme Court Hooper v. Robinson, 98 U.S. 528 (1878)

Hooper v. Robinson

98 U.S. 528

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

1. A policy upon a cargo in the name of A., "on account of whom it may concern," or with other equivalent terms, will inure to the interest of the party for whom it was intended by A., provided he at the time of effecting the insurance had the requisite

authority from such party, or the latter subsequently adopted it.

2. No proof is necessary that the assured had an insurable interest at that time. It is sufficient if such interest subsisted during the risk and when the loss occurred.

3. A policy "lost or not lost" is a valid stipulation for indemnity against past as well as future losses. A contingent interest may be the subject of such a policy.

4. In an action against A. to recover the amount paid to him by the underwriters, who allege that neither he nor his principal had an insurable interest in such cargo, the burden of proof is on the plaintiffs to show that fact.

5. A. having received the money as agent, and promptly paid it over to his principal, without notice of any adverse claim, or reason to suspect it, the plaintiffs, having been guilty of laches, must look to that principal.

The British steamer *Carolina* came to Baltimore, consigned to James Hooper & Co. They were also her agents while she remained in that port. The plaintiff in error was a member of the firm. Having taken on board her return cargo, the steamer proceeded on her homeward voyage. While in the Chesapeake Bay she was injured by a collision with another vessel, and put back to Baltimore for repairs. She was repaired, and Hooper & Co. paid all the bills and made other disbursements for her. McGarr, the captain, drew on Good

Page 98 U. S. 529

Brothers & Co., of Hull, England, for the amount in favor of Hooper & Co., and at the same time directed them to protect the drawees by insurance, which was intended to be done by the policy here in question. The draft bore date Oct. 20, 1872; was for 1,611 18 *s* . 7 *d* .; was payable in London thirty days after sight; and directed that the amount should be charged "to account for advances for repairs and disbursements of steamship *Carolina* and her freight, to enable the ship to proceed on her voyage."

The policy of insurance was dated on the 26th of October, 1872, and was to "James Hooper & Co., on account of whom it may concern, in case of loss to be

paid to their order." The insurance was "lost or not lost, . . . on merchandise, to cover such risks as are approved and endorsed on the policy." The endorsement set forth the date of the insurance, the name of the vessel, the course of the voyage, the rate of the premium, the amount insured ($8,000), and the remark, "paid advance to cover disbursements and repairs." The names of the agents of the underwriters were affixed. The instrument was a cargo policy. No inquiry was made of Hooper as to whom he was insuring for, and no representation was made by him except as is disclosed in the memorandum endorsed upon the policy. The draft of McGarr was bought by Brown & Sons, bankers, of Baltimore. They transmitted it to their correspondents in London. On the 11th of November, 1872, it was accepted by Good Brothers & Co., and on the 14th of December following they paid it. On the 14th of November, 1872, the steamer foundered at sea. On the 28th of that month notice of the loss was given to the underwriters. On the 6th of December, in answer to a call for proof of loss and interest, Hooper & Co. furnished the Baltimore agent of the underwriters with the protest and a full account of the items of "outfit and disbursements of the British steamer *Carolina.* " In the statement was the charge, "to cash paid insurance on advances $117.33." On the 15th of January, 1873, the agent in Baltimore drew on the defendants in error, his principals in New York, for $8,012, at five days' sight. The draft was paid on the 24th of that month, and on the 31st Hooper & Co. remitted the amount to Good Brothers & Co. in England. When Hooper & Co. received

Page 98 U. S. 530

the draft of the 15th of January, they gave a receipt setting forth that when the draft was paid it would be

"in full for claim for total loss of advancements for disbursements and repairs per steamer *Carolina,* . . . insured 26th of October, 1872, under policy No. 22,706."

The receipt concluded with a promise, upon the payment of the draft, "to assign all our right, title, and interest in the above advances for disbursements and repairs to the underwriters." Hooper said at the time to the agent "that he had nothing to assign." On the 10th of February, 1873, Hooper & Co. executed to Robinson &

Cox, the attorneys of the underwriters, the promised assignment, which was a printed form filled up by the agent, "such as is taken in all cases of abandonment for total loss." Hooper then again told the agent "that he had no interest in the matter, but as it was customary, he would sign the paper."

During all these transactions Hooper & Co. were not asked whether they had insured for themselves or for others; whether they had been or expected to be repaid their disbursements; whether any one else was interested in the policy, or for whom they were collecting the insurance. More than a month after the loss had been paid and the money remitted to England, a marine adjuster came from New York to Baltimore "to ascertain who owed Mr. Hooper for advances." A full disclosure was thereupon made by Hooper. The adjuster suggested to him "to write his friends on the other side to return the money." Hooper asked if the underwriters did not get the premium for insurance, and if the vessel was not lost. Being answered in the affirmative, he said he "would not have the face to write to the parties to return the money." No offer has been made to return to Hooper & Co., or to Good Brothers & Co., the premium for insurance. This suit was brought by the underwriters on the 30th of October, 1873, more than nine months after the loss had been paid and the money remitted to Good Brothers & Co., and more than seven months after Hooper's disclosure to the adjuster.

When the testimony was closed on both sides in the court below, the defendant, Hooper, asked the court to charge the jury, in effect, that if they believed the advances and the insurance were made; that the draft on Good Brothers & Co. was

Page 98 U. S. 531

drawn, accepted, and paid; that the steamer was lost; proof of loss and payment demanded; that Hooper then furnished the plaintiffs with the account of his disbursements; that the plaintiffs thereupon paid him and took the assignment without having made any inquiry as to whether he was collecting for himself or for others, and that within a few days thereafter he remitted the money to Good Brothers & Co. -- all as stated in the evidence, the plaintiffs were not entitled to

recover. This instruction the court refused to give, and instructed, in substance, that if the jury believed that when Hooper made his claim for indemnity under the policy he produced the account and subsequently gave the receipt and executed the assignment, and that when he received payment and delivered the assignment he had received notice of the payment of the draft upon Good Brothers & Co., given to him to recover his advances, which fact he did not communicate to the underwriters, then the plaintiffs were entitled to recover the amount of the insurance money which he had received. Hooper excepted to the refusal to instruct and to the instruction given. The jury found for the plaintiffs, and judgment was entered accordingly. The defendant then brought the case here for review.

Page 98 U. S. 536

MR. JUSTICE SWAYNE, after stating the facts, delivered the opinion of the Court.

As the facts of which the instruction given was predicated were all indisputable and undisputed, that instruction was equivalent to a direction to find for the plaintiffs. The same remarks apply *mutatis mutandis* to the instruction asked by the defendant. The case, then, resolves itself into this: were the plaintiffs entitled to recover upon the case as presented in the record?

A policy like the one here in question, in the name of a specified part, "on account of whom it may concern," or with other equivalent terms, will be applied to the interest of the persons for whom it was intended by the person who ordered it, provided the latter had the requisite authority from the

Page 98 U. S. 537

former, or they subsequently adopted it. 1 Phillips, Ins., sec. 383.

This is the result, though those so intended are not known to the broker who procures the policy, or to the underwriters who are bound by it. *Id.,* sec. 384.

One may become a party to an insurance effected in terms applicable to his interest, without previous authority from him, by adopting it either before or after

the loss has taken place, though the loss may have happened before the insurance was made. *Id.,* sec. 388.

The adoption of the policy need not be in any particular form. Anything which clearly evinces such purpose is sufficient.

"It is now clearly established that an insurable interest, subsisting during the risk and at the time of loss, is sufficient, and that the assured need not also allege or prove that he was interested at the time of effecting the policy; indeed, it is every day's practice to effect insurance in which the allegation could not be made with any degree of truth, as, for instance, where goods are insured on a return voyage long before they are bought."

1 Perkin's Arnould 238.

This is consistent with reason and justice, and is supported by analogies of the law in other cases. We will name a few of them.

A deed voidable under certain circumstances may be made valid for all purposes by a sufficient after-consideration. A devise to a charitable use may be made to a grantee not *in esse,* and vest and take effect when the grantee shall exist. The doctrine of springing and shifting uses is familiar to every real property lawyer. They always depend for their efficacy upon events occurring subsequently to the conveyance under which they arise.

Where the insurance is "lost or not lost," the thing insured may be irrecoverably lost when the contract is entered into, and yet the contract be valid. It is a stipulation for indemnity against past as well as future losses, and the law upholds it.

Where a vessel insured for a stated time was sold and transferred, and was repurchased and transferred back within that time, it has been held that the insurance was suspended while

the title was out of the assured, "and was revived again on the reconveyance of the assured during the term specified in the policy." *Worthington v. Bearse,* 12 Allen (Mass.) 382.

A right of property in a thing is not always indispensable to an insurable interest. Injury from its loss or benefit from its preservation to accrue to the assured may be sufficient, and a contingent interest thus arising may be made the subject of a policy. *Lucena v. Craufurd,* 3 Bos. & Pul. 75; *S.C.* 5 *id.* 269; *Buck & Hedrick v. Chesapeake Insurance Co.,* 1 Pet. 151; *Hancock v. Fishing Insurance Company,* 3 Sumn. 132.

In the law of marine insurance, insurable interests are multiform and very numerous.

The agent, factor, bailee, carrier, trustee, consignee, mortgagee, and every other lienholder, may insure to the extent of his own interest in that to which such interest relates; and by the clause, "on account of whom it may concern," for all others to the extent of their respective interests, where there is previous authority or subsequent ratification.

Numerous as are the parties of the classes named, they are but a small portion of those who have the right to insure.

Where money is advanced, as in this case, for repairs and supplies to enable a vessel to proceed on her voyage, the lender has a lien not on the cargo, but upon the vessel, and the amount of the debt may be protected by insurance upon the latter. *Insurance Company v. Barings,* 20 Wall. 163, and the authorities there cited. If the owner of a vessel, being also the owner of the cargo, or the owner of the cargo, not being the owner of the vessel, procures a third person to make such advances upon an agreement that he shall be repaid from the cargo, and a bill of lading is furnished to him, he has a lien on the cargo for the amount of his advances, and may insure accordingly. *Clark v. Mauran and Others,* 3 Paige (N.Y.), 373; *Dows v. Greene,* 24 N.Y. 638; *Holbrook v. Wight,* 24 Wend. (N.Y.) 169. The assignment of a bill of lading passes the legal title to the goods. Chandler

v. Belden, 18 Johns. (N.Y.) 157. The assignment of a debt, *ipso facto,* carries with it a lien and all other securities held by the assignor for the discharge of such debt. *The Hull of a New Ship,* 2 Ware,

Page 98 U. S. 539

203; *Pattison v. Hull,* 9 Cow. (N.Y.) 747; *Langdon v. Buel,* 9 Wend. (N.Y.) 80.

Where a lien subsists either on the vessel or cargo, a third party may pay the debt, and, with the consent of the debtor and creditor, be substituted to all the rights of the latter. Dixon on Subrogation, 163; *Garrison v. Memphis Insurance Co.,* 19 How. 312; *The Cabot,* 1 Abb. (U.S.) 150. Where there is neither an agreement nor an assignment, there can be no subrogation, unless there has been a compulsory payment by the party claiming to be substituted. *Sanford v. McLean,* 3 Paige (N.Y.) 117.

Recurring to the facts, there are two points upon which we deem it proper particularly to remark:

First, we find no ground for any imputation of bad faith upon Hooper. We think there was no indirection and no purpose of concealment on his part. Before the insurance was effected, the underwriters had a clear right, if they so desired, to know for whom they were asked to insure. *Buck & Hedrick v. Chesapeake Insurance Co., supra.* They made no inquiry. This excused Hooper from making any communication upon the subject. When the insurance money was paid, although the face of the policy and other facts, patent and notorious, which must have been known to the underwriters, showed clearly that the advances were made, and that the insurance was effected by Hooper, not for himself, but for others, the underwriters were again silent. The draft on Good Brothers & Co. had then been sold, and Hooper had received the money. Thereafter he had nothing at stake but the solvency of the drawees. When the adjuster, more than a month later, made the inquiry, which should have been made before, Hooper had paid over the money. He then made a frank and full disclosure. We see no reason to doubt that if the inquiry had been made earlier it would have been answered in the

same way. In this respect the underwriters have themselves to blame, rather than Hooper. The record discloses no ground upon which, *ex aequo et bono,* he can be called upon to pay back the fund in controversy.

Second, it does not appear in the record to whom the vessel and cargo belonged. There is not a ray of light upon the subject. In that respect the case is left wholly in the dark.

Page 98 U. S. 540

The proof as to who were intended to be insured is that they were Good Brothers & Co., and no one else, though, according to the terms of the policy, payment in the event of loss was to be made to Hooper & Co. The former fact is established by the testimony of Hooper, and there is none other upon the subject. He is unimpeached, and his testimony is conclusive. The inquiry then arises whether Good Brothers & Co. had any insurable interest in the cargo. It does not appear whether they had or had not. We have suggested several ways in which such an interest may have arisen, and have shown that under the policy in question it would have been sufficient if it had subsisted at any time before the loss was known to them. It may possibly have arisen in other modes. This brings us to the question of the burden of proof. Did it rest upon the plaintiffs or upon the defendant? In order to maintain the plaintiffs' case it was necessary to be made to appear that Good Brothers & Co., the assured, had no insurable interest in the cargo, the cargo being the thing insured. Upon both reason and authority, we think the *onus probandi* was upon the plaintiffs.

It was for them to make out their case. The premium had been paid, the loss had occurred, and the indemnity money had been received by the agents of the assured and paid over to their principals. The plaintiffs claim the right to go behind all this, and to reclaim from Hooper the fund thus received and parted with. It was incumbent upon them to establish every thing necessary to entitle them to recover, and they have no right to throw upon the defendant any part of the burden that belonged to themselves. For authorities upon this subject, *see* 1 Greenl.Evid.,

secs. 34, 35, 80, 81, and the notes. Such is the legal result, notwithstanding the negative form of the averment, to be established.

But suppose the case were made out as against Good Brothers & Co., and that a recovery could be had if the action were against them, still it by no means follows that the plaintiff in error was liable.

There was laches on the part of the underwriters, or their agents, which is the same thing. Nothing in the record is clearer than that Hooper received the money as the agent of

Page 98 U. S. 541

the assured. It was his duty immediately to advise his principals and promptly to pay them. 1 Waite, Actions and Defenses 252, 255. This latter duty it appears he performed. He had then received no notice of the adverse claim subsequently made, and had no reason to expect it. His parting with the money is proof of his sincerity and honesty.

Under all the circumstances, we think he is entitled to the benefit of the principle which in such cases gives immunity to the agent and refers the party complaining for satisfaction to the principals who have received and hold the money.

There was error in the instruction given by the court to the jury.

The counsel on neither side referred to the state of the pleadings. We have therefore not adverted to that subject, but have considered the case as it was argued -- entirely upon the merits.

The judgment of the circuit court will be reversed, and the cause remanded for further proceedings in conformity to this opinion, and it is

So ordered.