

Lloyd Vs. Preston

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Appellant : Lloyd

Respondent : Preston

Judgement :

Lloyd v. Preston - 146 U.S. 630 (1892)

U.S. Supreme Court Lloyd v. Preston, 146 U.S. 630 (1892)

Lloyd v. Preston

No. 59

Argued November 29-30, 1892

Decided December 19, 1892

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF OHIO

SYLLABUS

In 1881, H., a citizen of Ohio, through P., M. and others of Chicago, speculated in grain in the markets of the latter city, lost money, and settled with his Chicago creditors by agreeing to convert a narrow gauge railroad in Ohio, which he owned, into a standard gauge, and to extend the same to places named in the agreement, and to organize a new company to take the property thus altered and extended, and to cause the new company to issue bonds which the creditors were to take in satisfaction of their respective debts. The company was organized; the stock and bonds were issued and delivered to H., except a small amount of stock which was issued to sundry persons to enable them to become directors, and H. passed over the property to the company. The value of the property so conveyed was very much less than the face value of the stock and bonds so issued for it. No money payments of subscription to the stock were made by H. to the company. The railway company soon became insolvent, and in 1855, after recovery of judgments against it for amounts due and payable on its bonds, P., M. and the other creditors filed a bill in equity to compel H. to pay his subscriptions in cash. A part of the stock of H. having been passed over to L., the bill set forth that that transfer had been made for the benefit of H., and sought to make H. liable in like manner for that stock. H. answered to

the bill. Afterwards he became insolvent, and made an assignment of his estate for the benefit of his creditors. The assignee then appeared, and set up that the only consideration for the original debts of P., M. and others was an illegal gambling transaction, by betting upon future

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values of wheat; that the claims which formed the sole consideration for the transfer of the bonds was a pretended balance of said winnings, and that the judgments were founded on the bonds so transferred and on no other consideration. There were other pleadings which need not be detailed. The allegations respecting the character of the grain transactions were, on motion,

stricken out by the court below.

HELD

(1) That the organization was grossly fraudulent from first to last, without a single honest incident or redeeming feature;

(2) That P., M. and the other Chicago creditors had not only no knowledge or complicity in the company's illegal organization, but that they understood that the stockholders were to be subject to the liability imposed by the law of Ohio, namely, full payment in money or its equivalent, and, in addition, 100 percent.

(3) That the evidence, if taken to be true, did not establish a gambling transaction between E. and P., M, and the other creditors;

(4) That therefore the defendant was not injured by the action of the court in striking out allegations regarding these transactions, and in afterwards passing upon them.

(5) That the same measure of liability applied to the stock of H. standing in L.'s name which applied to that standing in his own name.

(6) That as the attention of the court below was not called to the question of the allowance of interest, this Court would not disturb the decree in that respect.

On October 12, 1881, Edward L. Harper was the owner of what was then known as the Columbus, Washington & Cincinnati Railroad, a narrow gauge road extending from Allentown to New Burlington in the State of Ohio. Prior to that time, Harper had been engaged in the purchase and sale of grain in the City of Chicago, Illinois, through J. W. Preston & Co., W. E. McHenry, Preston & McHenry, and H. Eckert & Co., agents for W. E. McHenry and Preston & McHenry, and on account of such grain transactions the said persons made claims against Harper, which he disputed. By way of settlement and compromise of these claims, Harper entered into an agreement October 12, 1881, with the said Preston & McHenry, and their agents, which agreement, after naming the parties thereto, and setting out

Harper's ownership of the said railroad, proceeds as follows:

"First. That the said Harper shall cause the gauge of said road to be changed to the standard gauge, and shall extend the same from its present terminus at Allentown, Ohio, on the

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Dayton and Southwestern Railroad, to the Town of Jeffersonville, on the Southern Ohio Railroad, and make the connection with the last-named road; also shall extend it from its present western terminus at New Burlington to the present line of the Little Miami Railroad at or near the Town of Corwin, and make connection therewith."

"Second. And the said Harper agrees to make said gauge and said extensions and connections with said roads within four months from the date of this contract."

"Third. And the said Harper further agrees within the same period of four months to cause to be organized under the laws of Ohio a railway company, to be named the Cincinnati, Columbus and Hocking Valley Railway Company, and to convey or cause to be conveyed and transferred to said company said railroad and extensions, and all the privileges, appurtenances, and plant thereunto belonging, an unencumbered title therefor, except the mortgage bonds herein provided for."

"Fourth. And the said Harper further agrees to cause said company to issue its coupon bonds of one hundred, five hundred, and one thousand dollars each, payable in four years, with interest at six percent per annum, payable semiannually, which shall be secured by a first mortgage upon the said railroad and its extensions and the real and personal property and franchises of said company then owned or thereafter acquired by it, said first mortgage bonds not to exceed in the aggregate an amount equal to the rate of twenty thousand dollars per mile of the length of said road and extensions, and said Harper likewise agrees to cause said company to issue income bonds of one hundred, five hundred, and one thousand dollars each, payable in forty years, properly secured, which shall not exceed in the aggregate twenty thousand dollars per mile, interest

and principal of said bonds to be made payable in New York city."

"Fifth. And the said Harper further agrees to deliver to the said other parties hereto, in payment of their respective claims, said first mortgage bonds at the par value thereof, as follows: "

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"To the said J. W. Preston & Co., seventy-five thousand five hundred and thirty-four dollars."

"To the said W. E. McHenry, twelve hundred and fifty dollars."

"To the said Preston & McHenry, one hundred and thirty-seven thousand and six hundred and twenty-two dollars."

"To the said H. Eckert & Co., agents for W. E. McHenry and Preston & McHenry, five hundred dollars, and likewise to deliver as a bonus at the par value thereof fifty per centum of the above amount respectively in said income bonds."

"Said deliveries to be made within four months from the date hereof at the Third National Bank of Cincinnati."

"And the said Howard Eckert & Co., J. W. Preston & Co., W. E. McHenry, and Preston & McHenry, each for himself and themselves, agree to accept said first mortgage and income bonds in full payment of the indebtedness of said Harper to each of them respectively."

On November 7, 1881, a corporation was organized under the laws of the State of Ohio, under the name of the Cincinnati, Columbus & Hocking Valley Railway Company, the said Harper and five other persons being the incorporators, and the capital stock being fixed at \$2,500,000, divided into 25,000 shares of the par value of \$100 each. Of this stock Harper subscribed for 2,500 shares at the par value, and John L. Pfau, E. Snowden, J. H. Matthews, W. H. Harper, J. F. Gimperling, D. P. Hyatt, and William C. Herron, of the State of Ohio, and George E. Clymer, of the State of Kentucky, subscribed for one share each. After the subscriptions were

made, the stockholders met and elected a board of seven directors, composed of all the stockholders of the company, except E. L. Harper and W. C. Herron. Immediately upon their election, on December 13, 1881, the board of directors met, all the members being present, and chose officers and adopted bylaws. At this meeting the following proposition was made to the directors by the said Harper:

"I hereby propose to broaden the gauge of the road now owned by me to a standard gauge, and extend the same on the west to near Corwin, on the Little Miami Road, and also

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to extend the east end to Jeffersonville, on the Springfield Southern Road, say about thirty miles of railroad, and hereby agree to sell the same to your company for eighteen hundred thousand dollars of the par value of the securities of your company, as follows, *viz.:* six hundred thousand dollars of the first mortgage, forty years, six percent bonds, issued at the rate of twenty thousand dollars per mile of constructed road; six hundred thousand dollars of the income bonds, issued at the rate of twenty thousand dollars per mile of constructed road, and six hundred thousand dollars of the capital stock, including subscriptions already subscribed."

A motion to accept this proposition was carried by a unanimous vote of the directors.

At a meeting of the stockholders of the company held on January 2, 1881, all the stockholders being present either in person or by proxy, the action of the directors in accepting the above proposition was ratified.

On June 20, 1882, a called meeting of the board of directors was held at the office of the company in Cincinnati, Ohio, at which the following motion was unanimously carried:

" *Whereas* the president, Mr. Gimperling, reports that E. L. Harper has complied with his contract made with the company for the construction of twenty-eight miles of railroad from Claysville Junction to Jeffersonville, Ohio, and that the chief engineer, H. Phillips, has certified to the Union Trust Co., of New York, that the twenty-eight miles have been constructed in accordance with the terms of the contract: therefore,"

" *Resolved*, that the road be accepted from said E. L. Harper, and he be paid any balance in bonds, stock, or money which may be due him on said contract, taking his receipt for the same."

There appears to have been no other meeting of the directors or stockholders except a meeting of the directors, held on February 20, 1883, when B. D. Hyatt was elected president and general manager, and W. C. Herron was elected a director, to fill vacancies caused by the resignation of J. E. Gimperling.

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On February 11, 1882, Preston & McHenry and their agents gave to the said Harper a receipt for \$214,000 in first mortgage bonds and \$107,200 in income bonds of the said Cincinnati, Columbus & Hocking Valley Railway Company, in full satisfaction of their claims against him under the above agreement of October 12, 1881.

On June 5, 1885, Josiah W. Preston, Eugene H. Lahee, William E. McHenry, Charles J. Gilbert, William T. Baker, Murray Nelson, Abram Poole, Almore A. Kent, Selah Young, Jr., and James S. Sherman, of the State of Illinois, filed their bill in equity in the Circuit Court of the United States for the Southern District of Ohio, Western Division, against the Cincinnati, Columbus & Hocking Valley Railroad Company, E. L. Harper, John L. Pfau, E. Snowden, J. H. Matthews, D. P. Hyatt, W. H. Harper, W. C. Herron, Lewis Seasingood, W. D. Lee, and John E. Gimperling, of the State of Ohio, and George E. Clymer, of the State of Kentucky, alleging that in a previous action in the same court certain of the individual complainants, or certain of the complainants jointly, had recovered judgments for

divers amounts respectively against the said railway company; that thereupon writs of *feri facias* had been issued against the property of the company and returned unsatisfied, and that, the company having become insolvent, and having abandoned all action under its charter, nothing could be accomplished through it or its officers by way of collecting unpaid stock subscriptions, or other credits due to said corporation.

The bill also alleges that no part of said subscriptions for the capital stock of the company by E. L. Harper and others has been paid; that the company was duly organized and incorporated under and by virtue of the laws of the State of Ohio, and that the capital stock of \$2,500,000 was subscribed for as stated above. Also that W. D. Lee, of the State of Ohio, became and is the holder of certain certificates representing 3,000 shares, of the par value of \$100 each, of the stock of the corporation; that said certificates were issued and delivered by the said company to the said W. D. Lee on or about June 1, 1882 at the special instance and request and

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for the use and benefit of the said E. L. Harper; that nothing has been paid to the said company for the said stock, and that all of the amount due for the same is necessary to discharge the indebtedness of the corporation upon the said several judgment claims in the bill described.

The answer states the said Harper's ownership of the said narrow gauge railroad; that some claim was made by the said Preston & McHenry and their agents against Harper, which he disputed, and that a settlement and compromise of this claim was effected by the article of agreement of October 12, 1881, above recited. The answer also sets out the incorporation and organization of the said company, and alleges that a proposition was made to the company by Harper to convey to it the narrow gauge railroad property, upon the terms specified in the said agreement, and that the said proposition was accepted by the company, and bonds upon the property issued to Harper; that at the time Harper agreed to convey and did convey said road to the company, and it agreed to issue to him

said bonds and stock in full satisfaction therefor, said company had not incurred any debt or obligation whatever, and that the obligation to issue said bonds was not incurred until said agreement was made by which Harper subscribed and paid for stock as above stated, and as part of the same transaction, and that the company did not issue nor become liable on said bonds on which said judgments were taken until June 2, 1882. Further answering, the defendant alleges that, pursuant to said agreement, he caused the company to execute and issue said bonds to the Union Trust Company, of New York, and made said bonds payable to bearer, and thereupon caused to be delivered to Preston & Co. and others said bonds called for in the above-stated contract, and that they, with full knowledge of the history of the said transaction, as above appears, accepted said bonds, and received the same in full satisfaction of the said agreement; that said judgments were rendered on said identical bonds so issued to Preston & Co. and others, and that no other stock of the company is owned or held by

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any person, nor has any ever been subscribed, held, or owned by any person or persons, except the said stock paid for by Harper by the transfer of the said road to the company.

To the answer a formal replication was filed, which was afterwards withdrawn, and an amended bill filed by the complainants on July 7, 1887, alleging that at the time the said proposition was submitted to the company each one of the said directors was either in the employment and under the pay of Harper, or otherwise under his direction and control; that the pretended acceptance by the directors of the said proposition was in fact the act of Harper, and was for the sole purpose of enabling Harper and other subscribers for the stock of the company, who are defendants in this cause, to escape their liability to complainants herein, and to defraud and defeat them and others in their rights as creditors of the corporation, and that such act was done without complainants' knowledge or consent. Also that the railroad property transferred by Harper to the company was not worth one-fiftieth part of the amount of said bonds issued by the company to Harper in pretended payment therefor; that this fact was well known by Harper, and by said directors and

stockholders who voted on said proposition, and that in considering and acting on said proposition, no regard whatever was paid by the directors or any stockholder voting thereon to the actual value of the property so conveyed; but that, on the contrary, the directors and stockholders acted in this behalf solely at the dictation of Harper, and in disregard of the rights and interests of the corporation, and for the purpose of shielding and protecting Harper and themselves from their liability to complainants and others on account of their subscriptions for said stock. This amended bill prays that the said agreement between Harper and the company and its directors may be set aside and declared to be void as against the rights of claimants as creditors of the corporation.

To the amended bill Harper filed an answer admitting that the said directors were either employed by or related to him, but he denies that their acceptance of his said proposition was the act of himself, and avers that it was just what it purported to be, the action of the company. He alleges that

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the object of the organization of the company was well known to the complainants, and that they knew there was no money to be paid on any subscription for the stock, and that such subscription was a mere matter of form, adopted simply for the purpose of creating an organization having power to issue bonds; that Preston & Co. and others agreed with Harper at the time of the making of the said contract, that he should become the owner of all the stock of the company, as well as the said bonds, as the consideration for the transfer to the company of the said narrow gauge road, and that the said contract was made in pursuance of the wishes and understanding of Preston and others, and that it was not made with any fraudulent purpose. All the allegations of the amended bill not admitted are denied. A replication to this answer was filed July 30, 1887.

On March 28, 1888, a supplemental bill was filed by complainants, in which Emma O. Preston appears as executrix of the estate of J. W. Preston, deceased. This supplemental bill alleges that since the filing of the original bill and the amended bill, E. L. Harper became insolvent, and made an assignment for the benefit of his

creditors under the insolvent laws of the State of Ohio, and that Harlan P. Lloyd was duly appointed and is now acting as the sole trustee of all the property so transferred. Complainants therefore pray that said Lloyd, trustee, may be made a party defendant in the case, and be required to answer the premises and show cause.

On the same day, the said Harlan P. Lloyd filed an answer and cross-bill to the original bill, amended bill, and supplemental bill, and to intervening bills filed by other claimants. In this answer, the said trustee alleges that the only consideration on which the said claim or claims upon which the said agreement of October 12, 1881, was based was a gaming transaction in the form of a deal in options in wheat in the market of the City of Chicago, in which transaction there was no wheat actually owned or bought or sold, but that the transaction was only a betting on the future prices of wheat in said market, in which the said complainants won from Harper, between January 1, 1881, and October 1, 1881, an amount

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of money aggregating more than \$600,000, of which Harper paid not less than \$400,000; that the said claim was for the pretended balance of said winnings, and that said winnings formed the sole consideration for the transfer of the bonds of the said company to the complainants, and that the said judgments were founded on said bonds so transferred, and on no other consideration whatever. This answer prays that all of said petitions of complainants be dismissed. In his cross-bill, the said trustee asks for a decree against Emma C. Preston, executrix, William E. McHenry, and Eugene H. Lahee in the sum of \$400,000, the amount alleged to have been won by said complainants as aforesaid.

Complainants excepted to this answer for its insufficiency, and moved to strike out that portion thereof referring to the character of the grain transactions of Harper with Preston & Co. and others prior to October 12, 1881. To the cross-bill complainants demurred.

The court granted said exceptions and motion and sustained said demurrer, to which action of the court the defendant Lloyd, trustee, excepted.

A final decree was entered in the cause in the said circuit court of the United States on March 15, 1889, providing for the recovery by complainants of the sum of \$322,531.67 from E. L. Harper, being the aggregate amount of complainants' said judgments entered in the previous action, with interest, and for the recovery of the same amount from W. D. Lee. By this decree, judgment was also entered against all the other defendants except George E. Clymer, who was not found, and Lewis Seasingood, who was not shown to have been a stockholder of the company, for the amount of their respective subscriptions.

The court further decreed that complainants are entitled to have the entire claim of said company against Harper, to-wit, \$300,000, with interest from January 5, 1885, allowed as against said Lloyd, trustee, for the purpose of securing to complainants their full proportion of the value of the credit of the company against Harper's estate, and to have the total sum obtainable upon said credit distributed between and paid to the complainants *pro rata*. 36 F. 54.

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Exceptions were taken by the defendants E. L. Harper and H. P. Lloyd, trustee, to each and every part of the findings, order, judgment, and decree of the court, and said defendants prayed an appeal, which was granted.

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MR. JUSTICE SHIRAS, after stating the facts in the foregoing language, delivered the opinion of the Court.

This was a bill filed by judgment creditors of the Cincinnati, Columbus and Hocking Valley Railway Company to compel E. L. Harper and others to pay their respective unpaid subscriptions to the capital stock of said company in order that the same might be applied to the payment of complainants' judgments, which remained

unsatisfied after proceedings at law.

The bare statement of the facts attending the organization of the railway company fully justifies the opinion of the court below "that the entire organization was grossly fraudulent from first to last, without a single honest incident or redeeming feature."

It having been found, on convincing evidence, that the overvaluation of the property transferred to the railway company by Harper, in pretended payment of the subscriptions to the capital stock, was so gross and obvious as, in connection with the other facts in the case, to clearly establish a case of fraud and to entitle *bona fide* creditors to enforce actual payment by the subscribers, it only remains to consider the effect of the defenses set up.

The first is set up by Harper himself, in his answer to the bill of complaint; the other by Lloyd, assignee for the benefit of creditors of Harper, and who filed an answer, and likewise a cross-bill.

Harper's defense, beyond the allegation that the stock subscriptions had been fully paid up by a transfer of property to the railway company, consisted in the assertion that Preston & McHenry were estopped from alleging, as judgment creditors of the railway company, that the capital stock was not adequately and actually paid up, because they were cognizant of the proceedings by which the company was organized, and privy to the arrangement whereby the property referred to was taken in full payment of this stock, and that the other complainants claimed under and through Preston & McHenry, and were therefore affected by their knowledge and complicity in the transaction.

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Issues were taken on this allegation of Harper, and it was found by the court below that Preston & McHenry did not agree or understand that the subscriptions to the capital stock of the railway company, whose bonds they agreed to take in payment of Harper's indebtedness to them, were to be paid by the simple transfer of the

property to the railway company, but that they understood that the stockholders of the company were to be subject to the liabilities imposed by the law of Ohio -- namely, full payment in money or its equivalent, and, in addition, 100 percent individual liability -- and that they were in no wise chargeable with knowledge of or complicity in the company's illegal organization.

An examination of the evidence contained in the record satisfies us of the correctness of this conclusion of the court below.

This brings us to a consideration of the second ground of defense, which is the one advanced by Lloyd, the assignee. He alleges that the original indebtedness of Harper to Preston & McHenry, in payment of which they took the bonds of the railway company, arose out of gambling transactions in wheat deals at the Chicago board of trade, and he claimed accordingly that not only were the bonds void in their hands, but likewise the judgments obtained thereon against the railway company, and he further claimed in his cross-bill the recovery of a large sum of money paid by Harper to Preston & McHenry on account of these alleged gambling transactions, before the settlement between the parties which resulted in their taking the railway bonds in payment of the balance due them.

It was the opinion of the court below that there was absolutely no testimony in support of either the answer or the cross-bill of the assignee.

The only evidence disclosed by the record on this issue appears at 46 and 47, and we fully concur with the court below that neither this evidence nor any offer of evidence made on behalf of the defense, if taken to be true, established the case of a gambling transaction.

Complaint is made by the assignee of the course of the court

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below in striking out of his answer, on motion, the allegations pertaining to the supposed gambling transactions and in sustaining the demurrer to his cross-bill.

This action of the court was probably based on the view urged on behalf of the complainants that Lloyd, as assignee, could not be heard in this suit to impeach the validity of the judgments obtained against the railway company by going into an investigation of the nature of the original transaction out of which had arisen the indebtedness of Harper to Preston & McHenry, and in a settlement of which the bonds had been received by the latter.

But it does not appear to be necessary to inquire into the reasons of the action of the court below in this respect, nor to consider whether the legal position implied in that action was sound, because, as we have seen and as the court below held, there was no evidence admitted or offered which sufficed to sustain the allegation that the transactions between Harper and Preston & McHenry were of a gambling character.

Hence, if those allegations had been permitted to stand in Lloyd's answer, there was no evidence to support them, and he was not injured by the order of the court in striking them out. But it is plain that the court treated those allegations as before it, applied the evidence to them, and held that they were not sustained; so that, even if the course of the court was somewhat irregular in striking out the allegations, and in afterwards passing upon them and the evidence offered to support them, the defendants were not thereby injured.

This view of the case renders it unnecessary to consider the question whether Harper, as the owner of the capital stock of the railway company, was concluded by the judgments obtained by the complainants against the railway company, and whether he or his assignee can go behind them, to disclose the nature of the business transactions between Harper and Preston & McHenry.

There is an assignment of error to the decree wherein it subjects the estate of Harper, in the hands of his assignee, to liability on account of stock standing in the name of W. D. Lee. But the court below found from the evidence that Lee

took and held this stock for the use and benefit of Harper, and, though served, he permitted the bill, with its allegations to that effect, to go unanswered. The Ohio statute applicable to railway companies provides that

"the term 'stockholders' shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another."

It does not appear, therefore, that the court erred in holding the same measure of liability to apply to Harper's stock standing in the name of Lee as to that standing in his own name. Nor does the objection that the decree was for an unnecessarily large amount, thus forming a basis for an inequitable division of the proceeds of the assets of Harper's estate, appear to be well founded. The amount of the decree is not, as suggested by the assignee, the joint and aggregate amount of the Harper and Lee stock, but is restricted to the aggregate amount of the judgments owned by the complainants.

Error is likewise assigned to the allowance of interest on the judgments after the date of Harper's assignment. It is claimed that, as against the estate in the hands of the assignee, interest ceased from the date of the assignment.

There is nothing before us to show that there are not funds in the hands of the assignee sufficient to pay Harper's debts in full, with interest to the date of payment; and, as it does not appear that this matter was brought to the attention of the court below when framing the decree, or at any time, we do not feel disposed to disturb the decree.

Finding no error in the record, the decree of the court below is

Affirmed.

THE CHIEF JUSTICE, not having heard the argument, did not take part in the decision of this case.

