CASES

ON

BAILMENTS, CARRIERS AND PUBLIC CALLINGS

HUGH EVANDER WILLIS
Professor of Law in University of Minnesota

MINNEAPOLIS
THE H. W. WILSON COMPANY
1913

Digitized by Google

security, we think the principle of equity jurisdiction so fully established elsewhere in regard to instruments much more formally executed ought to be adopted, admitting oral proof as to the consideration and purpose of the transfer, and that, upon the discharge of the debt or duty secured by it, the pledger should be permitted to redeem.

Decree for the plaintiffs.

BREWSTER ET AL. v. HARTLEY ET AL., 37 Cal. 15.

(1869)

An election was held February 4th, 1868, at Placerville, in said county, being the time and place appointed by the by-laws for the election of Directors, at which, of the whole number of votes cast, each of the defendants, namely: H. H. Hartley, Geo. W. Swan, John Blair, James Blair, Truman Wilcox, F. A. Bishop, G. G. Clark, Wm. C. Wilkinson, and S. D. Brewster received ten thousand five hundred and twelve, ten thousand of which were cast by Louis McLane, by his proxy, Charles E. McLane. And three thousand and ninety-eight votes were cast for each of the plaintiffs, namely: C. W. Brewster, W. S. Burns, F. A. Bee, A. T. Melvin, L. Landecker, R. B. McBride, J. G. McCallum, W. H. Cooper, and O. H. Burnham.

All of the votes cast were admitted to be legal and correct votes, except the ten thousand votes so cast by said Louis McLane, which are claimed to be illegal by plaintiffs, but which is denied by defendants.

At the time and before said ten thousand votes were cast, the right to cast them was denied and objected to, and a protest was made against their being cast by all the stockholders who voted for the plaintiffs.

The Chairman of said meeting having overruled said objection, an appeal was thereupon taken to said stockholders' meeting, who voted three thousand and ninety-eight shares against sustaining the same, and ten thousand five hundred and twelve shares to sustain it—ten thousand shares thereof being cast in manner aforesaid, against the objection and protest of all those voting against sustaining said decision—and the same was thereupon declared to be sustained, and said ten thousand shares were voted accordingly.

Digitized by Google

Said defendants were thereupon declared to be elected, against which declaration the plaintiffs then and there protested. Defendants are now, and have since said election, been acting as such Directors, and in the possession of said offices, together with the books and property appertaining thereto. Plaintiffs, before the commencement of this action and proceeding, and after said election, demanded the possession of said offices, books, and other property appertaining to said offices, which defendants refused to deliver. The whole number of shares of the capital stock was fifteen thousand, at one hundred dollars each; of which fourteen thousand six hundred and seventy-four shares have been issued, if said ten thousand shares are counted, or four thousand six hundred and seventy-four, if said disputed shares are not counted.

RHODES, J. The power of electing the Directors of a railroad corporation is lodged by the statute in the hands of the stockholders. The exercise of this power having been regulated by the statute, the corporation cannot, by its by-laws, resolutions, or contracts, either give or take it away. Were the statute silent in this respect, the election of the Directors, like the election or appointment of subordinate officers, would be subject to the regulation and control of the corporation, but the statute having expressly declared who shall be entitled to vote for Directors, its provisions are imperative upon the corporation, constituting a part of the law of its being; and the corporation has no authority to extend or limit the right, as regulated by the statute. The first section of the Act of 1861 (Stats. 1861, p. 607) provides that the first Board of Directors shall be elected by the subscribers to the stock, and subsequent sections provide that after the first election the Directors shall be elected by the stockholders—each stockholder being entitled to one vote for each share of stock which he owned for ten days next preceding such election. The clause, therefore, of the resolution of the Board of Directors giving Louis McLane authority to vote the stock transferred to him by the corporation, as well as the clause to the same effect in the agreement entered into by him with the corporation, was void.

It becomes necessary to ascertain the ownership of the stock voted upon by McLane. For this purpose the resolution of the Board of Directors, the receipt given for the stock and the agreement executed by McLane are to be construed together as constituting one transaction. The substance of the transaction is

Digitized by Google

that Wells, Fargo & Co. advanced to the Placerville and Sacramento Valley Railroad Company the sum of two hundred and sixty-eight thousand dollars, and the railroad company, as security for the money so advanced, issued to Louis McLane, as the trustee for Wells, Fargo & Co., ten thousand shares of the capital stock of the railroad company, to be retransferred to the company upon payment of the indebtedness for the money so advanced, and in proportional amounts as said payments should be made. The time of payment is not specified. The respondents contend that the transaction is neither a mortgage nor a pledge of the stock, but only amounts to a trust; and the appellants claim that the transaction constitutes a pledge. We are of the opinion that it is a pledge.

A pledge is a bailment of personal property as a security for some debt or engagement. (Story on Bailm., Sec. 268.) The general property in the thing pledged remains in the pledgor, and only a special property vests in the pledgee. A delivery to the pledgee of the thing pledged is essential to the contract, and until that act is performed the special property that the bailee is entitled to hold does not vest in him. In respect to most kinds of property, a delivery of the property to the pledgee, without any written transfer of the title, is sufficient to pass the requisite special property. Incorporeal property being incapable of manual delivery, cannot be pledged without a written transfer of the title. Debts, negotiable instruments, stocks in incorporated companies, and choses in action generally are pledged in that mode. Such transfer of the title performs the same office that the delivery of possession does in case of a pledge of corporeal property. The transfer of the title, like the delivery of possession, constitutes the evidence of the pledgee's right of property in the thing pledged. The transfer in writing of shares of stock not only does not prove that the transaction is not a pledge, but the stock, unless it is expressly made assignable by the delivery of the certificates, cannot be pledged in any other manner. In Wilson v. Little, 2 N. Y. 443, the stock was transferred to the defendants, but the Court held that the contract amounted to a pledge of the stock. (See, also, Jewitt v. Warren, 12 Mass. 300; Bowman v. Wood, 15 Mass. 534; Dewey v. Bowman, 8 Cal. 145; Story on Bailm., Sec. 290, and following; Parsons on Cont. 595.) In Dewey v. Bowman it is said that the pledgee has not the legal

Digitized by Google

title to the property, and language of the same import is found in many cases. It was not intended to say in that case that the pledgee never receives the apparent legal title, but only that, as between him and the pledgor, the title, or more accurately, the general property, remained in the pledgor, for the subject matter of the contract was a lease which was assigned to secure the payment of a certain promissory note, and it was held that the contract was a pledge and not a mortgage. In Wilson v. Little, in speaking of the pledge of certain shares of stock, the Court say: "The general property which the pledgor is said to retain is nothing more than a legal right to the restoration of the thing pledged, or payment of the debt." A corporation, in pledging shares of its stock, which had not been issued at the time of making the contract, must, of necessity, issue them to the pledgee, or to some one for him.

The circumstance that the stock was issued to Louis McLane, as Trustee for Wells, Fargo & Co., instead of being issued in the name of the latter, does not alter the real nature of the transaction. McLane is described as the trustee of Wells, Fargo & Co., but his position and duties in respect to the stock, so far as either of the parties to the contract are concerned, is that of agent of the creditors. He is none the less a mere agent in the transaction because he is described as trustee. The transfer of the stock to him was in law a transfer to his principal, Wells, Fargo & Co. Had he been named as the agent of the creditors, there would be no room for doubt on this point. His true position in the transaction is to be determined, not by the title given to him, but by the acts and duties he is to perform; and these show that he bears the relation of agent to the creditors of the corporation.

The transaction lacks one essential element of a mortgage. A mortgage passes the title to the mortgagee, the mortgagor reserving the right to defeat the transfer and invest the title in himself by the performance of an express condition subsequent. Here no time was mentioned for the repayment of the money advanced, and the contract looked to the retransfer of the stock to the corporation. It is not claimed, on the part of the respondents, that McLane had any right to sell the stock, but it is admitted that he is to hold it until the money, or some part of it, is paid, and thereupon to retransfer the stock, or a proportional part of it, to the company. No other right in the stock is asserted for Wells,

Digitized by Google

Fargo & Co. than that claimed for McLane. This evidently is not such a title as is held by a mortgagee of personal property. We are satisfied that the contract is a bailment of the stock, and we are unable to give it any place among the different kinds of bailment except that of a pledge.

It results from this view of the contract that, as between the parties, the general property in the stock is in the pledgor—that the railroad company is its owner.

The question here is not whether the pledgee or a trustee to whom stock has been pledged or transferred by a stockholder, and who appears upon the books of the corporation to be the owner, is entitled to vote; but it is whether the agent or trustee of the pledgee, who is described in the Certificate Book of the corporation as a trustee, and who holds as such trustee or agent certain shares of stock which were pledged by the corporation to its creditor, is entitled to vote such stock. The designation of McLane as trustee was sufficient to show that he did not hold the stock in his own right, and as the corporation was one of the parties to the contract, its officers are chargeable with notice of the manner in which he held the stock. The case falls within the principle of Ex parte Holmes, 5 Cow. 426, in which it was held that there could be no vote upon stock owned by the company, though held by trustees; that it was not stock to be voted upon by anyone within the meaning of the charter or the general Act relating to that subject. Subsequent cases, like Ex parte Barker, 6 Wend. 510, though qualifying and restricting the broad language of Ex parte Holmes so as not to exclude the vote of a trustee upon the stock held in trust for a stockholder, have not questioned the doctrine that the stock belonging to the corporation, though held in the name of trustees, was not entitled to be voted upon. This doctrine must command the assent of everyone, unless it can be shown that a corporation can become a stockholder in the sense of the statute of its own stock, receiving from itself dividends, and responding to itself for calls for assessments, and being responsible for the debts of the corporation, first as a corporation, and second, as a stockholder. * * *

There is another view of the matter which appears to us to be equally decisive of the case. The whole Act proceeds on the theory that the certificates of stock are to be issued only upon the payment in full for the stock. * * *

Digitized by Google

We are of the opinion that the shares of stock issued to McLane to secure the payment of the money advanced to the corporation, were illegally issued, and were not entitled to be voted upon at the election for Directors, and that the plaintiffs received a ma- of business at said Green Bay. Prior to the transactions, in re- jority of the legal votes cast at the election.

Judgment reversed; and it is further ordered and adjudged that, at the election held on the 5th day of February, A. D. 1868, by the stockholders of the Placerville and Sacramento Valley Railroad Company, for the election of Directors of said corporation, C. W. Brewster, W. S. Burns, F. A. Bee, A. T. Melvin, R. Landecker, R. B. McBride, J. G. McCallum, W. H. Cooper, and O. H. Burnham, were duly elected Directors of said corporation.

FIRST NATIONAL BANK OF GREEN BAY v. DEARBORN, 115 Mass. 219.

(1874)

Replevin of one hundred barrels of flour.

At the trial the following facts appeared: R. G. Parks, residing and doing business in Green Bay, Wisconsin, under the name of R. G. Parks & Co., was engaged in the manufacture of flour at a mill in Neenah, in the State of Wisconsin, about thirty or forty miles from Green Bay. The plaintiff bank had its place gard to the flour in question, Parks had forwarded flour to Harvey Scudder & Co., at Boston, and drawn drafts upon them, only a part of which had been accepted and paid. On October 17, 1870, Parks applied to the plaintiff in Green Bay to advance $400 upon the one hundred barrels in controversy, which the plaintiff agreed to do. Parks then left with the plaintiff the following draft, addressed to Harvey Scudder & Co. of Boston: "$400. Office of R. G. Parks & Co., Green Bay, Wisconsin, October 17, 1870. At sight, pay to the order of M. D. Peak, cash, four hundred dollars, value received, and charge the same to the account of R. G. Parks & Co." Written in pencil across the face of the draft were these words: "Hold this till to-morrow when I will give you B. L."

On the following day Parks delivered to the plaintiff the following written instrument: "Chicago and Northwestern Railway

Digitized by Google