

Stoner and Another v. Brown.

"And the Court finds, as a conclusion of law on the above mentioned facts, that the legal title to said note became and was vested in said *Brown* by the said purchase from said *Henry C. Justice*, and that the plaintiff is entitled to recover against said *David Stoner* the amount thereof. Whereupon the Court finds for the plaintiff, and assesses his damages at the sum of 1,217 dollars and 50 cents."

And, having refused a new trial, rendered judgment, &c.

Did the assignment to the plaintiff vest in him the title to the note? This is the only question to settle. The finding of the Court establishes these facts: *Henry C. Justice* owned the note as its payee. He pledged and delivered it to *Hannah Justice*, to secure the payment of a debt. While the note was thus pledged, she, *Hannah*, was induced, by his fraudulent representations, to re-deliver it to him for a pretended temporary purpose; and, instead of returning the note to her, he sold, and for a valuable consideration, assigned it to the plaintiff, who had no notice whatever of the fact that it had been so pledged. The books say, that "as possession is necessary to complete the title by pledge, so, by the common law, the positive loss, or the delivery back of the thing, with the consent of the pledgee, terminates his title. However, if the thing is delivered back to the owner for a temporary purpose only, and it is agreed to be re-delivered by him, the pledgee may recover it against the owner, if he refuses to restore it after the purpose is fulfilled." Story on Bailments, sec. 299, and cases there cited.

This exposition is doubtless correct. But in view of the case made by the record, it must be conceded that the note never was assigned to *Hannah Justice*; that its legal title still remained in *Henry Justice*; and the result is, she had a mere equitable right to possess the note, and control its proceeds. As between her and him, her equity would no doubt be protected against his fraud; but is she entitled to such protection

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against the plaintiff, who is a *bona fide* purchaser without notice of her equitable rights? We think she is not. The endorsement and delivery of the note, by *Henry C. Justice*, to the plaintiff, invested him with the legal title, and having purchased and paid for it in *good faith*, his equity, independent of his legal title, is at least equal to that of *Hannah Justice*, and the rule is, "where there is equal equity, the law must prevail." 1 Story Eq. Jur. sec. 64. "As between a person who has an equitable lien, and a third person who has purchased a thing for a valuable consideration, and without notice, the prior equitable lien shall not overreach the title of the vendee." *Lickbarrow v. Mason*, 6 East. 22. The principles thus stated obviously apply to the case at bar, and are decisive in favor of an affirmance of the judgment.

Per Curiam.—The judgment is affirmed, with 3 per cent. damages and costs.

John B. Niles, for the appellants.

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REYNOLDS v. THE BANK OF THE STATE OF INDIANA.

The act of Congress making treasury notes a legal tender, is constitutional and valid, and the banks of *Indiana*, by redeeming their paper in treasury notes, do not expose their franchises to forfeiture *Hanna*, J. dissenting.

APPEAL from the *St. Joseph* Circuit Court.

PERKINS, J.—On the 1st day of *April*, 1862, *John Reynolds* presented to the Branch, at *South Bend*, of the *Bank of the State of Indiana*, certain notes or bills issued by that Branch, in the exercise of power conferred by the charter of the bank,