

1953

Mary F. Linder v. Utah Southern Oil Company : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Linder v. Utah Southern Oil Co.*, No. 8045 (Utah Supreme Court, 1953).
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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

MARY. F. LINDER,
Plaintiff and Respondent,

VS.

UTAH SOUTHERN OIL COMPANY,
a Corporation,
Defendant and Appellant.

Case No.
8045

BRIEF OF RESPONDENT

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STATEMENT OF FACTS

The facts are not in dispute. They are stipulated (2 Stipulations Tr. 5, 10). The statement contained in appellant's brief is substantially correct.

ARGUMENT

The ultimate question for determination is: Did respondent become the owner of the dividends immediately when they were declared? If respondent

was the owner of the 800 shares of stock, even though she had not had them transferred to her name on the books of the company, and if the ownership of the shares carried with it the ownership of the dividends declared thereon, then appellant was not justified in paying them to Leary.

(a) RESPONDENT OWNED THE 800 SHARES WHEN THE DIVIDENDS WERE DECLARED.

It was stipulated and the Findings recite:

“* * * That on or about the 10th day of June, 1931, * * * Margaret T. Donovan was, and for a long time prior thereto had been, residing with the plaintiff in the city of Pittsburgh, and that on or about said date said Margaret T. Donovan had in her possession certain certificates of stock in several oil and mining companies, among which certificates were certificates numbered 2011 to 2018 aggregating 800 shares of stock issued by the defendant company in the name of James H. Dalziel and endorsed by him. * * * That on or about the 10th day of June, 1931, * * * Margaret T. Donovan made actual delivery of all of said stock certificates to respondent with the remark in substance and effect: ‘Mary, I want you to have these certificates. They are yours. I understand that they are of no value now, but they may be of value to you some day.’ That the plaintiff accepted said certificates and kept them with other of her personal papers until on or about the 15th day of June, 1951,”
* * * (Tr. 6-7.)

The dividends, (including the payment of the

interest-bearing notes), were declared as follows:

Dec. 18, 1948—\$2.50 per share (interest-bearing notes).

Dec. 18, 1948—\$1.00 per share.

Dec. 10, 1949—\$0.25 per share.

Sept. 15, 1950—\$0.25 per share.

A total of \$4.00 per share on 800 shares—\$3,200.00. (Tr. 6.)

It was further stipulated and found that the said shares of stock were at all times in the exclusive possession of respondent under claim of ownership by her from about the 10th day of June, 1931, until they were delivered to the brokerage firm of Merrill Lynch, Pierce, Fenner & Beane, at their St. Petersburg, Florida, office on or about the 15th day of June, 1951, and on or about the 27th day of June, 1951, said stock certificates were sold by said brokerage firm and respondent received the full proceeds of the sale thereof, less the brokerage commission. After the sale, said certificates were presented to the appellant by the purchasers thereof and were transferred to said purchasers on the books and records of the appellant company and new certificates issued in lieu thereof. (Tr. 7.)

From Mrs. Donovan's possession of the endorsed certificates a presumption of ownership attached, and a determination of the question of ownership must be according to the presumption unless controverted by competent evidence. *United States Supply Company v. Gillespie* (Okla.), 166 Pacific. 139; *Park v. Grady* (Mont.), 204 Pac. 382; *Tracy v. Juanto* (Ore.),

205 Pac. 822; *Hogg v. Eckhardt* (Ill.), 175 N. E. 382; *Williams v. Gray* (Mont.), 203 Pac. 524; *Coffin v. Hyde* (Idaho), 205 Pac. 736; *Feehan v. Kendrick* (Idaho), 179 Pac. 507; and *Tobias v. Mining Company* (Idaho), 17 Pac. (2d) 338.

Mrs. Donovan accompanied the actual delivery of the certificates to respondent with the words: "Mary, I want you to have these certificates. They are yours. I understand that they are of no value now, but they may be of value to you some day." (Tr. 7.)

Mrs. Donovan had been living with her daughter for some time previous to this transaction, and whether there was some consideration (such as services rendered) for the delivery of the stock does not appear. However, the transaction constituted a valid gift.

In *Vandor v. Roach* (Cal.), 15 Pac. 354, the words, "These bonds are for you," were held sufficient evidence of a gift. Said the court:

"It is argued that what was done did not show sufficient intention of giving. The Counsel says that 'the operative words of a gift are: "I give" or "I have given" '; and that these words are wanting. But we do not think that any formula or set phrase is necessary. It is sufficient if there was delivery, and any words importing an intention to give. The only evidence on the subject was that of the physician, who testified that the dying man took a package from under his pillow, and handed it to the plaintiff, saying: 'These bonds are for you.'

The witness did not pretend to give the precise words uttered, but stated that this was the substance of what was said. This, we think, was sufficient manifestation of intention to give.”

In *Coffin v. Hyde*, supra, the court uses this language:

“It has been held that the test of an effectual gift is that the transfer was such that, in conjunction with the donative intention, it completely stripped the donor of his dominion of the thing given (*Cook v. Lum*, 55 N. J. Law, 373, 26 Atl. 803), and, in the absence of explanatory or contradictory evidence, the possession by the donee of an instrument transferring the title to the property to him is sufficient to raise the intent that it should take effect according to its terms. It is apparent, therefore, in this case, that the decedent intended to confer on respondent ownership of the property here involved, that he proceeded to do so by executing and delivering to respondent a bill of sale to the property, and that the gift was therefore complete. As is said in *Sharpe v. Sharpe*, supra:

“ ‘Gifts causa mortis are older than the republic; and, if they be satisfactorily proven, it is the duty of the court to give effect to them.’ ”

From her possession of the certificates it is presumed that respondent was a bona fide holder. As stated in *Feehan v. Kendrick*, supra:

“Possessors of certificates of stock are, prima facie, presumed to be bona fide holders,

and it was incumbent upon appellant to allege that respondent was not a holder, in good faith, without notice of the fraud charged."

And in *Tobias v. Mining Company*, supra, it is said:

"It is clear from C. S. 4730, that the shares of stock in question were subject to be transferred by indorsement of the certificates by the signature of the proprietor and delivery thereof. The certificates in question were indorsed by the signature of McConnell, the proprietor, properly witnessed, in favor of respondent, her name being written in the indorsements, and the same were in her possession, which at least raised a presumption of delivery and rightful possession and that the instruments of transfer should take effect according to their terms."

Our statute, section 16-3-1, provides:

"Exclusive manner of transfer.—Title to a certificate and to the shares represented thereby can be transferred only:

"(1) By delivery of the certificate indorsed *either in blank* or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby. (*Italics ours*).

* * * *

"The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares rep-

resented thereby shall be transferrable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent."

This court has held that there is no longer any question as to the validity of transfer by mere endorsement and delivery of the certificate even before the adoption of the Uniform Stock Transfer Act. *Brown v. Wright*, 48 Utah 633, 161 Pac. 448.

Appellant is in no better position to question respondent's title to the shares than if she, at any time, after receiving them, had presented the same to the appellant for transfer. As a matter of fact, appellant did recognize her title by transferring the shares upon presentation thereof by the purchasers. Title to the shares became vested in plaintiff by one of the exclusive methods prescribed by the statute, and the argument of counsel that, according to the by-laws of appellant:

"transfers of stock shall be made on the books of the corporation only by the person named in the certificate or by an attorney lawfully constituted in writing, and upon surrender and cancellation of the certificate therefor." (See appellant's Brief, pp. 5 and 9).

has no weight as affecting respondent's title to the stock, in face of the statute.

In *First National Bank v. Stribling* (Okla.) 86 Pac. 512, it is held that shares of stock in a corporation organized under the laws of the territory of Oklahoma are personal property, and may be trans-

ferred by indorsement and delivery of the certificate; and where such shares of stock, when issued, provide that they are transferable on the books of the corporation only on surrender of the certificate, such provision is binding upon the corporation, and it cannot reissue such stock without the surrender of the original certificate to any person other than the person in whose name they stand on the books of the company, and thereby escape liability to a person who holds such stock by assignment and delivery of the same. Such reissued stock is fraudulent and void as against the rights of the bona fide holder of the original.

Mrs. Donovan made delivery to respondent under such circumstances as to constitute a gift, and the transfer was made in accordance with the statute and in accordance with the authorities that an indorsed certificate passes title by delivery.

Secs. 16-3-5, Utah Code Ann., 1953, provides:

“The delivery of a certificate to transfer title in accordance with the provisions of Section 16-3-1 is effectual, except as provided in Section 16-3-7, *though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.*” (Italics ours.)

I therefore, even if Mrs. Donovan had no right of possession, her delivery of the certificates was sufficient to transfer the title to respondent, for it was not within the exceptions specified in Sec. 16-3-7.

Appellant at all times knew, of course, that said certificates were outstanding, and when Leary claimed ownership, appellant was so apprehensive that the certificates might, at any time, be presented by someone who had succeeded to Dalziel's title that it required from Leary a bond indemnifying appellant against all loss, damage or expense which it might suffer or sustain in the event these certificates should be presented; and Leary furnished such a bond. (Tr. 10.)

In *First National Bank v. Stribling* (Okla.) 86 Pac. 516, it is said:

"It is true that the holder could not assert, as against the corporation, any right under it except the right to have the transfer noted on the books of the corporation until it was so noted. But the holder is the only person who can demand such notation of transfer, and this he may do upon surrender of the certificate, and is not limited in time to do so. Any attempt on the part of the transferrer, in this case Stribling, to secure a transfer of the stock on the books of the company in any name but that of the transferee, is an attempted fraud, if successful is a fraud, and the corporation acting in violation of its agreement not to transfer, except on surrender of the certificate, must be held to be a party to it. The bond required and taken by the company before it would consent to a reissue of the stock in no way relieves it from the consequences of its fraudulent act; but is, on the other hand, a confession that it was violating its obligation not to transfer its stock except on surrender of the certificate. * * *"

It further appears from the stipulated facts that after appellant had recognized the validity of the old certificates, and the validity of the claim of ownership by the purchasers from respondent, and had issued to said purchasers new certificates, appellant made demand upon Leary for the return of the new certificates which had been issued to him. Upon his refusal to make return thereof, appellant went into the market and bought 800 shares for cancelation so as to remedy an over-issue, and then sued the bond company for reimbursement, and the bond company responded by the payment to appellant of \$11,240.00. (Tr. 11.) Appellant then issued to the surety company a partial release, but expressly provided that it would not be released or discharged from liability on any claim which might thereafter be made on account of the payment of the dividends to Leary after the new certificates had been issued to him, but which had been declared while respondent was the owner and in possssion of the original certificates. (Tr. 11.)

(b) RIGHT TO DIVIDEND FOLLOWED OWNERSHIP OF STOCK.

In view of the fact that respondent owned the certificates when the dividends were declared; that appellant recognized her ownership by recognizing the validity of her sale of the certificates, why should it not recognize her claim to the dividends? Counsel argues that the company is protected by paying the dividends to stockholders of record, but these dividends were not declared on the stock which was issued to Leary. They were declared on the particu-

lar certificates in the possession of, and owned by, respondent. Immediately when these dividends were declared, respondent, as owner of the certificates, became vested with title to the dividends.

In *Clarke v. Campbell*, 23 Utah 569, 65 Pac. 496, defendant deposited in escrow certain shares of stock to be delivered to Clarke upon payment of \$75,000.00. While said shares were in escrow, certain dividends amounting to \$19,000.00 were declared thereon. Clarke paid for the stock as agreed, and then claimed the dividends. The court held:

“Dividends declared on corporation stock belong to the persons owning the stock at the time the dividends were declared.”

In *Western Securities Co. v. Mining Company*, 57 Utah 88, 192 Pac. 664, the court declares:

“The general rule, so far as we know, in the absence of a statute to the contrary, which is enforced by the courts, is that the dividends belong to the stockholder who owns the stock at the time the dividend is declared, and, although he parts with his stock after the dividend is declared and before it is paid, he nevertheless is entitled thereto unless he has assigned or disposed of the dividend with the stock or independently thereof. The mere sale and transfer of the certificates of stock after a dividend is declared does not carry with it the dividend. One of the cases to which frequent references is made in the decisions is the case of *Hopper v. Sage*, 112 N. Y. 530, 20 N. E.

350, 8 Am. St. Rep. 771. In the course of the opinion it is said:

“ ‘The declaration of the dividend is in legal contemplation a separation of the amount thereof from the assets of the corporation, which holds such amount thereafter as the trustee of the stockholder at the time of the declaration of the dividend. In the absence, therefore, of any provision in a contract of sale and purchase of stock, outside of and not subject to the rules of the Stock Exchange, the law declares that such a contract gives the dividends to the owner of the shares when the dividends were declared.’ ”

In *First National Bank v. Glenn*, 36 Fed. Sup. 552, it is held:

“ ‘The declaration of a dividend by a corporation creates between the corporation and the stockholder a ‘debtor and creditor relationship’ instanter regardless of the fact that payment is not to be made until a later date.’ ”

In *Fletcher on Corporations*, Vol. II, pages 65-66, it is said:

“ ‘In preceding sections it is pointed out that a stockholder is one who owns stock in a corporation, and that a certificate of stock is not the stock itself, but merely the written evidence of the stockholder’s rights as such. It is a necessary conclusion therefrom that issuance of a certificate of stock is not necessary to make one a stockholder * * * and although he may have no certificate, he is entitled to all the rights and is subject to all the liabilities of a stockholder.’ ”

In support of this statement are cited cases from 32 states.

Counsel refers to the fact that respondent abandoned her claim to dividends declared and paid to Hallinan on the 200 shares standing in his name. Of course, a corporation is protected in the payment of dividends to those who are stockholders of record at the time the dividend is declared if it has no knowledge of any endorsement or transfer of the shares, and if payment had been made to Dalziel without notice to the company of his indorsement of the stock and its possession by the respondent, respondent's remedy would have been against Dalziel; but no payment was made of respondent's money to Dalziel as had been done in the case of Hallinan. Why should appellant be permitted to escape liability to respondent for wrongfully giving her money away when it protected itself by bond against its wrongful act, and when it knew that it would be obligated to answer to the owner of the original certificates if, as was the case, Leary's claim that he was the owner and that the certificates were lost, was false?

The case of *Mahoning Railroad Co. v. Robbins, et al.*, 35 Ohio State Rep. 483, upon which counsel relies, is, so far as the question of dividends is concerned, directly at variance with the decisions of this and other courts which hold that the right to dividends follows the ownership of the stock.

(c) SUMMARY.

1. Mrs. Donovan was prima facie the owner

of the shares in June, 1931; the certificates being endorsed by Dalziel and in her possession.

2. Respondent became owner by gift and delivery from her mother, Mrs. Donovan.

3. Respondent had sole possession of and owned the certificates from June, 1931 until June, 1951.

4. The dividends sued for were declared, while respondent owned the shares, and when declared, instantaneously became the property of respondent.

5. Appellant could not relieve itself of liability from respondent by paying her money to Leary simply because he claimed to be owner of the shares, when his claim was without foundation.

6. The dividends were declared on respondent's shares, not on the shares which were erroneously issued to Leary.

7. The assignment to Leary by Mrs. Dalziel gave him no right to the shares or the dividends, because Mrs. Dalziel had no interest therein which could be transferred.

8. Under Utah Statute, no provision of appellant's by-laws requiring shares to be transferred on the books of the company could affect or impair respondent's title to the shares and her right to the dividends.

The judgment should be affirmed.

Respectfully submitted,

JESSE R. S. BUDGE,

Attorney for Respondent.