CASTLE v. HUTCHINSON.

(*Circuit Court, D. Indiana.* November 10, 1885.)

1. CROSS-COMPLAINT—ACTION AT LAW.
   A cross-complaint is not permissible in a common-law action.
2. CONSTITUTIONAL LAW—STATUTE REGULATING FORM OF NOTE GIVEN FOR PATENT-RIGHT.
   A state statute providing that any person who may take any obligation in writing for which any patent-right, or right claimed to be a patent-right, shall form the whole or any part of the consideration, shall, before it is signed by the maker, insert in the body thereof, above his signature, the words "given for a patent-right," is unconstitutional.

At Law. Motion to strike out cross-complaint and parts of answer.

Byfield & Howland and *Ward & Davis*, for plaintiff.

T. H. Nelson, for defendant.

WOODS, J. A cross-complaint is not permissible in a common-law action. The second paragraph of answer contains a clause to the effect that the notes in suit were made in Indiana, were given for a patent-right, and do not contain in their body the words "given for a patent-right," as required by law. The statute referred to is section 6055, Rev. St. Ind., 1881, which reads as follows:

"Any person who may take any obligation in writing for which any patent-right, or right claimed by him or her to be a patent-right, shall form the whole or any part of the consideration, shall, before it is signed by the maker or makers, insert in the body of said written obligation, above the signature of said maker or makers, in legible writing or print, the words 'given for a patent-right.'"

This law is, I think, clearly unconstitutional. It was so held, in respect to similar laws, in *Helm* v. *First Nat. Bank*, 43 Ind. 167, following the decision in *Ex parte Robinson*, 2 Biss. 309. See, also, *Grover & Baker S. M. Co.* v. *Butler*, 53 Ind. 454; *Fry* v. *State*, 63 Ind. 552; *Toledo Agr. Works* v. *Work*, 70 Ind. 253.

It is claimed that these cases are inconsistent with the opinion of the supreme court of the United States in *Patterson* v. *Kentucky*, 97 U. S. 501. But that case has reference to local restrictions upon the sale or use of tangible property; and, notwithstanding the property was manufactured or produced under letters patent, it was held that the enforcement of the statute of the state interfered with no right conferred by the letters patent. The case manifestly has no application here; the notes in suit having been given, not for tangible property, but for a right in letters patent, in respect to which the states can impose no restrictions. Motion sustained.

HILL *v.* SCOTLAND CO.[1]

MELLEN *v.* SAME.

FIRST NAT. BANK OF WARSAW *v.* SAME.

(*Circuit Court, E. D. Missouri.* October 14, 1885.)

COUNTY BONDS—NEGOTIABLE INSTRUMENTS—NOTICE.

Where negotiable county bonds authorized to be issued and delivered to A., upon the performance by A. of a condition precedent, were unlawfully issued, duly signed and sealed by the presiding justice of the county court and the county clerk, to B., as trustee, and were unlawfully delivered by B. before the performance of said condition in order to avoid the effect of a suit then about to be brought, and which was thereafter brought, against him to restrain the delivery of the bonds, and have them declared void; and where said bonds were placed upon the market and sold: *held*, (1) that they could not be enforced against the county by an original purchaser with notice either of their infirmity or of said suit, or of their delivery in anticipation of said suit; (2) that they could be enforced by purchasers for value and without notice even where purchased from a party who had purchased with notice; (3) that after passing through the hands of one or more innocent purchasers for value, and without notice, they could be enforced by a subsequent purchaser for value with notice.

At Law.

Suits upon coupons detached from bonds of Scotland county, Missouri. The answer states that the bonds to which the coupons in suit were originally attached were authorized to be issued to the Missouri, Iowa & Nebraska Railway Company conditionally; that the condition has never been complied with; and that they were unlawfully issued by the presiding justice of the county court and the clerk of said county to one Mety, as trustee, and were by him unlawfully delivered to said company. The case was tried by a jury. The defendant asked the court to give the following among other instructions, viz.:

"The court declares the law to be that, under the pleadings herein, plaintiff cannot recover upon any coupon declared upon in the second count of his petition, unless he has first established affirmatively to the satisfaction of the jury that such coupon was the act and deed of Scotland county, Missouri. It is not sufficient that plaintiff may have shown that the signatures of the persons purporting to have executed the several bonds are those of the presiding judge of the county court of Scotland county, and of the clerk of said court, and that said bonds are sealed with the seal of said county court. It is incumbent upon plaintiff further to show that the county court, by an order upon its records made, empowered said persons to execute said bonds; that the county court of Scotland county aforesaid had authority to make such order; and that the coupons aforesaid were detached from said bonds of the county court aforesaid. Plaintiff has nevertheless failed to offer competent evidence of such fact, and the jury must find for the defendant."

The court refused to charge as requested, and charged the jury as follows:

Baker & Hughes and *Hough, Overall & Judson*, for plaintiffs.

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.