

course of a lawful employment, and the terms of the bond are adequate, and a breach has been shown.

It may be conceded, as is asserted for the plaintiff in error, that, when the bond was given, there was no such office under the government as that described in the bond; in other words, that no such office had been specifically created by act of congress, and no act had been passed authorizing the president or the head of a department to appoint an incumbent, and, therefore, within the decision of *U. S. v. Germaine*, 99 U. S. 508, Howgate was not an "officer," and did not hold an office while the bond was in force. Assuming this, the bond must be treated as a contract to secure the government against loss from the unfaithfulness of an employe in the signal service, who was about to be intrusted with public money in the course of his employment. The obligor, as well as the obligee, is presumed to have known the law. He knew that Howgate could not have been appointed to an office, and that what was termed an "office" in the bond described merely an employment. The recitals and the condition evince unequivocally an intention on the part of the government to exact, and of the obligor to give, indemnity, whereby the obligor was to pay not exceeding the penalty of the bond in case Howgate should not faithfully expend and account for the money coming into his hands while discharging the duties to which he had been assigned. As is said by the court in *U. S. v. Germaine*, nine-tenths of the persons rendering service are agents or employes working for the government, and paid by it without thereby becoming its officers. When the plaintiff in error undertook to become responsible for the fidelity of one of these employes, "during his holding and remaining in said office," he must have understood that his responsibility extended to a miscarriage of the employe while exercising the duties to which he had been assigned. These duties were characterized with sufficient accuracy, for practical purposes, in the bond as those of a property and disbursing officer.

There is no error, and the judgment of the district court is affirmed, with costs.

BUTTERFIELD v. TOWN OF ONTARIO.

(*Circuit Court, N. D. New York. November 16, 1887*)

NEGOTIABLE INSTRUMENTS—PURCHASE FROM BONA FIDE HOLDER—KNOWLEDGE OF EQUITIES.

The purchaser of negotiable paper with knowledge of the equities existing against it, can recover the full amount of the face value thereof, and is not limited to a recovery of the amount paid or advanced by him for the paper, when he purchases of one who acquired it before maturity, for value, and without notice of any infirmity or defense.¹

¹ The purchaser of a negotiable instrument from a bona fide holder for value, acquires as good a title as the innocent holder had, and may recover thereon, although he may have had notice of infirmities in the note when he took it. *Bodley v. Bank*, (Kan.) 24 Pac. Rep. —.

Rhodes, Coon & Higgins, for plaintiff.
S. D. Bentley, for defendant.

WALLACE, J. The defendant insists that, because, when the plaintiff bought the negotiable paper in suit, he was aware that the defendant claimed that it had been made and put into circulation without authority, by persons who assumed to be its agent, the plaintiff can only recover what he paid for the paper, although he purchased it from a holder who acquired it before maturity, for value, without notice of any infirmity, or ground of defense, and under circumstances that estopped the defendant from asserting that there was any defense. The law of commercial paper does not recognize any principle upon which this contention can be maintained. The rule is familiar and elementary, that a purchaser of such paper acquires the title of his vendor, and all the right of his vendor, to enforce it for the full amount of the promise, against the maker; and although the purchaser has knowledge of equities existing between the original parties to the paper, which his vendor did not have when he became the owner, the purchaser is not affected by such equities, but stands upon the title of the prior owner, and his title is intact. It is entirely clear that if any previous owner of the bonds and coupons in suit was a *bona fide* holder for value, the plaintiff, upon showing that he himself paid value, can avail himself of the position of such previous holder.

There is a class of cases in which a purchaser of negotiable paper before maturity, who acquires knowledge that his vendor was not a *bona fide* holder of the paper, and that the paper was subject to a defense in his hands, is permitted to recover only what he has advanced upon purchasing the paper, before he acquired such knowledge. These are cases in which there was no *bona fide* holder previous to the plaintiff. The principle is that the plaintiff was only a *bona fide* purchaser *pro tanto*, and, therefore, entitled to recover to that extent only. *Dresser v. Construction Co.*, 98 U. S. 92; *Harger v. Wilson*, 63 Barb. 237; *Holcomb v. Wyckoff*, 35 N. J. Law, 38; *Allaire v. Hartshorn*, 21 N. J. Law, 665; *Campbell v. Nichols*, 33 N. J. Law, 88. These cases have no application to the present case.

The motion for a new trial is denied.

EASTON and others v. HOUSTON & T. C. RY. Co. and others,¹ (MARTIN, Intervenor.)

(*Circuit Court, E. D. Texas. November, 1837.*)

1. MASTER AND SERVANT—NEGLIGENCE—FELLOW-SERVANT.

The petitioner was a section hand in the employ of a receiver of a railroad, and, while returning to a section-house on a hand-car, it was run into by a train in charge of an engineer in the employ of the receiver, and petitioner was injured. *Held*, that as the petitioner at the time of the injury was running a car on the track, he was brought into direct relations with the employes running the train, and they were fellow-servants, respectively charged with the ordinary risks of each other's negligent acts.²

2. NEGLIGENCE—ACTION IN FEDERAL COURT—LAW GOVERNING.

Petitioner sought to recover damages for injuries in the United States court against a receiver of a railroad appointed by the court. *Held*, that the laws of the state where the action arose would govern as to defendant's liability. SABIN, J., dissents.

On Exceptions to Master's Report.

Henry Martin was allowed to intervene in this case to claim damages from the receivers for injuries inflicted by a collision upon their railway. The receivers demur and deny, and the matter was referred to a master, who reported that he found that petitioner at the time of the accident was in the employ of the receivers as a day-laborer or section hand; that between 7 and 8 o'clock on the morning of the fourteenth of July, 1886, the petitioner, with three other section hands and the master in charge of his section, in due course of employment, were traveling on a hand car over said section, returning to the section-house of said section from the city of Austin; that when about 200 yards distant from said section-house, approaching it, the hand car upon which they were traveling collided with a locomotive running in the opposite direction, and on its way to said Austin, and then being operated by the employes of said receivers, likewise in due course of employment; that the point where said collision occurred was in a curve of said railway; that the view of the track between the hand car and the locomotive was obstructed by a growth of trees near the track, and upon the inner side of the curve, so that those upon the hand car could not see the approaching locomotive until it was within 400 or 480 feet of them, and those operating the locomotive could not see the hand car until within a distance of about 100 yards; that the section master saw the smoke-stack of the approaching locomotive when distant 400 or 480 feet from it, and when the hand car was moving down grade at a speed of between six and eight miles an hour, when he called to and signaled the hands who were operating the car to stop; that the car was struck by the locomotive before it was

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

² Upon the question of who are fellow-servants within the meaning of the rule exempting the master from liability for injuries resulting to an employe through the negligence of a co-servant, see *Reddon v. Railroad Co.*, (Utah,) 15 Pac. Rep. 262, and note. *Theleman v. Moeller*, (Iowa,) 34 N. W. Rep. 765; *Railroad Co. v. De Armond*, (Tenn.) 5 S. W. Rep. 600.