

was not a probable result of the saturation of his clothes with oils and gases. It seems to me that this contention is unfounded. The danger of the ignition of clothes, when saturated with oils and gases as alleged, by exposure to fire, is obvious, and is one which the defendant was bound to take notice of. It is equally obvious that the decedent, in the cold days of winter and spring, would be likely to be about fires, and in dangerous proximity to them, while his clothes were impregnated with oils and gases, especially if he was told by his employer that there was no danger in so doing, and he believed what he was told. The decedent was guilty of no negligence in acting on the direction of the representative of the defendant in going dangerously near to the hot stove in question. He went where he had a lawful right to be. His danger in so acting arose from conditions incident to the service, which conditions continued to be present with him, and caused the burning of his clothes and subsequent death. This ignition of his clothes, and injury therefrom, were the direct result of the condition of his clothes incident to his employment. While the boy was sent to warm himself by his employer, he did not cease to be in its service, and he was, it seems to me, as much entitled, under the circumstances, to charge the defendant for its failure of duty to instruct, as though, at the time of the accident, he had been actually at work in the room. His clothes, saturated with the dangerous and inflammable substances mentioned, continued to be a source of danger, while unremoved, after, as well as during, his hours of actual service; and, in my opinion, it was actionable negligence to direct the decedent to go into the room containing the hot stove, even if the direction were only permissive, without instructing him in regard to the danger from a too near approach to it. The demurrer will be overruled.

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CLARK v. EVANS et al.

(Circuit Court of Appeals, Eighth Circuit. January 2, 1895.)

No. 471.

NEGOTIABLE INSTRUMENTS—CONSTRUCTIVE KNOWLEDGE.

Knowledge of such facts as would put a prudent man on inquiry in reference to negotiable paper is, in the absence of bad faith, not sufficient knowledge to affect the rights of a purchaser for value and before maturity.

In Error to the United States Court in the Indian Territory.

This was an action by Mary T. Clark against R. A. Evans and N. P. Blackstone, as partners, under the name of R. A. Evans & Co., on a promissory note. Defendants had judgment, and plaintiff sues out this writ of error.

Francis M. Wolf, R. V. Bowden, and J. H. Koogler, filed brief for plaintiff in error.

William T. Hutchings, filed brief for defendants in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This action was commenced in the United States court in the Indian Territory by Mary T. Clark, the plaintiff in error, against R. A. Evans and N. P. Blackstone, as partners, under the name and style of R. A. Evans & Co., to recover the contents of a promissory note for the sum of \$416.67, dated May 1, 1891, made by R. A. Evans & Co., payable to the order of T. A. Kyle, 12 months after the date thereof, and by Kyle indorsed to the plaintiff. The defense was that the note was obtained from the makers by fraud, and was without consideration, and that the plaintiff had knowledge of these facts before she purchased the same. The plaintiff claimed to have purchased the note in good faith and for value before maturity. There was evidence tending to support the contention of each party. The defendants had the verdict and judgment, and the plaintiff sued out this writ of error.

In the course of its charge the court told the jury:

"But if you believe that this note had its inception in fraud,—that is, that a fraudulent representation was made to the makers of the note by which the note was acquired,—and if you further believe that the plaintiff knew that this note, at the time she purchased it, had been acquired through fraud, or had knowledge of such facts as would put a prudent man on inquiry, and that inquiry, if prosecuted, would have led to a knowledge of the fraud, then you will find for the defendants."

Exception was taken to this paragraph of the charge, and error has been assigned thereon. The charge was erroneous. "Knowledge of such facts as would put a prudent man on inquiry" would not affect the right of the plaintiff to recover if she was otherwise a bona fide holder for value. One who purchases a negotiable note for value before maturity does not owe the maker the duty of making active inquiry into the origin or consideration of the note, before purchasing the same. His right to recover can only be defeated by showing that he had actual notice of the facts which impeach the validity of the paper. "Knowledge of such facts as would put a prudent man on inquiry" will not suffice.

In *Murray v. Lardner*, 2 Wall. 110, 121, the court say:

"Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part. The burden of proof lies on the person who assails the right claimed by the party in possession. Such is the settled law of this court, and we feel no disposition to depart from it. The rule may perhaps be said to resolve itself into a question of honesty or dishonesty, for guilty knowledge and willful ignorance alike involve the result of bad faith."

And in *Hotchkiss v. Banks*, 21 Wall. 354, 359, the same court said:

"The law is well settled that a party who takes negotiable paper before due for valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite such suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. That result can be produced only by bad faith, which implies guilty knowledge or willful ignorance, and the burden of proof lies on the assailant of the title."

See, to same effect, *King v. Doane*, 139 U. S. 166, 11 Sup. Ct. 465; *Kneeland v. Lawrence*, 140 U. S. 209, 11 Sup. Ct. 786. The

rule announced by the supreme court in these cases is now the settled doctrine. The cases sustaining it are too numerous for citation. For cases in point, and for citations to the authorities generally, see *Hopkins v. Withrow*, 42 Ill. App. 584; *Wilson v. Denton*, 82 Tex. 531, 18 S. W. 622; *Bank v. Stanley*, 46 Mo. App. 440; *Richardson v. Monroe* (Iowa) 52 N. W. 340.

The judgment of the United States court in the Indian Territory is reversed, and the cause remanded, with directions to grant a new trial.

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DEXTER HORTON & CO. v. SAYWARD.

(Circuit Court, D. Washington. June 7, 1894.)

1. CONTRACTS—INTERPRETATION.

In 1880 one M. owned a sawmill, a large quantity of timber land, and several vessels in which the lumber manufactured at the mill was shipped. This property was subject to numerous liens, by way of mortgage, judgment, and otherwise, some of which were in process of foreclosure or about to be foreclosed. M. sold the property to one S. Shortly after acquiring the property, S. went to C. & H., dealers in supplies, who had previously been furnishing supplies to the mill, and, after a conference with them and their attorney, gave them a written authority to furnish such supplies and money as were needed for the mill, and charge the same to the account of S. S. also appointed M. his agent, giving him general authority to protect his interests in the property. C. & H. furnished supplies to the mill, and also, from time to time, furnished money to pay off or buy up sundry liens upon the property, rendering monthly statements of account to M., as S.'s agent, showing such advances, which statements were entered in S.'s books at the mill, which were open to his inspection on frequent visits to the mill. This course of dealing continued for a long time. C. & H. assigned their claim to D., who brought an action against S. to recover the advances. It appeared that the written authority to S. had been lost, and its exact terms could not be proved. *Held*, that it was established by the evidence that such an authority to advance moneys needed for the mill had been given, and that, under the circumstances of the property at the time, such authority included advances for the purpose of paying off or avoiding foreclosure of liens.

2. PRINCIPAL AND SURETY—JUDGMENT AGAINST SURETY AS EVIDENCE.

A judgment against a surety is at least prima facie evidence against the principal, though he was not notified of the action.

This was an action by Dexter Horton & Co. against W. P. Sayward upon an alleged contract of guaranty. Heard on defendant's exceptions to the report of a referee.

E. C. Hughes and E. F. Blaine, for plaintiff.  
Battle & Shipley, for defendant.

**BELLINGER**, District Judge. On the 7th day of February, 1880, George A. Meigs was the owner of a tract of land at Port Madison, Wash., and sawmill and plant, of a capacity of from one to two hundred thousand feet of lumber daily, situate thereon. Prior to that date, the Meigs Lumber & Shipbuilding Company, a corporation, was organized by Meigs and others, he being the owner of a great majority of the stock, and the president, general manager, and agent of the corporation. The corporation owned large tracts of