No. 13505

Supreme Court of Illinois

Stone.

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vs.

Pratt, et al.

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 269.

1861

13505

H. O. Stone
v
J. Pratt et al } Petition for Rehearing

I would respectfully submit to the Court, that a rehearing ought to be allowed in this case, for the following reasons, amongst others:—

1. The decision is not based upon the merits of the case— is not upon the points raised and discussed by counsel— and is not decisive of, nor does it adjust or settle the controversy between the parties. There is a bare allusion made in defendants printed brief to the doctrine of apportioning a cause of action— citing Crosby v Loop 14 Ills 330. (See Sec 34 of Defts's brief)

There was no discussion of the point— nor was it argued or insisted on

Putting the decision entirely upon that ground, and declining to express any opinion upon the

2 validity of the sale, until the sufficiency of Stone's equity as a purchaser to entitle him to a decree for conveyance, has taken plaintiff's counsel by surprise

2. The counsel begs leave to suggest, that while it is true as a principle at law, that a <u>cause</u> of action cannot be divided, nor apportioned - yet this principle has no application to <u>restrain</u> & <u>prevent</u> courts of equity from doing justice & protecting the interests of every man either to the whole, or a part of any real, or personal property, or chose in action. I know of no elementary writer and no case where such a limitation upon the powers of a court of equity are laid down. And all my notions of the powers of the court, are at war with such a restriction. Yet the court would not enforce a division of interests made for the wanton

3. purpose of vexation.

It is one of the very grounds of the jurisdiction of Courts of Equity that equitable rights and interests cannot be protected at law. Equity can & will interfere to preserve an equitable interest to a part of a tract or to a joint interest, acquired by a contract common to all the parties, or by separate subsequent contracts.

A distinctive difference between the two jurisdictions of law & equity, is, that in equity the Court will follow the interest into the hands of a different set of parties, and will compel all who may have acquired any such interest to be brought before it — so that each may have justice done him. This the law cannot do — but will simply adjudicate on a single contract, & between the parties to it — and will not notice other interests derived from it & belonging to others

4

The power of Courts of Equity to make parties - new parties - until every one having an interest is brought before the court, is not limited to those who have contracted for, and acquired the whole of the subject matter. So on the other hand - those who have bargained for a part only of the original subject matter, or a part interest in it, may maintain a bill to recover that part or that interest, against the original contracting party to compel him to deliver, or secure it to such subsequent purchaser.

Suppose A sells B. 10 tracts of land - and B sells C. one of them - ~~and~~ 9 others one each - B taking a bond or contract for title only. If B afterwards sell these tracts severally to 10 other persons - and A convey to each - may not each one have his separate bill against A. B. & the purchaser for that tract purchased by him. It is true, that but one suit could be brought at law upon A's bond or contract to B. But it is not true that but one bill will lie. Equity will protect each purchaser — and while all might possibly be joined — yet surely each may file his bill for that tract purchased by him, making A & B. & B's second vendee, to whom A has conveyed parties. So if A. instead of making a conveyance to B, or to B's grantee, should convey one tract to a third person — Can it be possible that the purchaser of that tract from B. cannot maintain his bill against A & his second grantee?

3. The last illustration above is the case at bar. A Pratt sold to C. DeWolf 2 lots & two tracts of land & gave a contract for deed. DeWolf sold one of the tracts to Stone — Afterwards A Pratt sold & conveyed the same tract to J Pratt, which Stone had bought. DeWolf conveyed it to Stone. Now here neither Stone nor J Pratt have any sort of interest in the other tract, nor the two lots in A. Pratt's sale to C. DeWolf.

6. Neither has Dewolf in this tract be-
cause he has already conveyed
it, & all title in him to Stone

Here new interests & new parties
are made by the acts of the two original
contracting parties

By the agreement between A Pratt &
Dewolf, the latter has an equitable in-
terest in or title to this tract. His sale
& conveyance of it to Stone invests Stone
with that equitable title & interest.
If the matter stopped here I should
certainly believe that Stone could
maintain his bill against A Pratt
to secure & protect his rights.
But A Pratt has sold & conveyed
that tract alone to J. Pratt
Now if Dewolf or Stone are entitled
to this tract at all under this a-
greement, A Pratt held the legal
title as a trustee – and when
he conveyed it to J. Pratt, he
took it, & holds it as a trustee
Stone surely can then file this
bill against J. Pratt, who took
the same tract & no more – and
can hold him as trustee of the
title. The doctrine then of dividing
causes of action – if even ap-

7 plicable to a court of Equity, would still be inapplicable to the facts & circumstances of this case.

The equities in litigation here arise mostly out of the subsequent contracts & conveyances, & circumstances & not the original agreement alone

It is not very apparent to me how Stone can maintain a bill at all, or have his complaint heard & investigated unless he can do so against J. Pratt, who has invested himself as we say with the legal title, which equitably belongs to Stone - and which he holds as a trustee

Dewolf could not maintain a bill against J. Pratt for the two Lots & the other tract of land in the original agreement - because J Pratt never had anything to do with them, and he is in no sense liable for them; nor a proper party in a proceeding for them

8.

4 The court expressly said, "With ~~the~~ view we take of the case, it is unnecessary to advert to the sale of the premises by A Pratt to J. Pratt. It is a well settled rule of law that an entire contract cannot be divided so as to compel a party to perform it in parcels, either to different persons, or at different times" &c

Now I think I have shown that this principle does not apply to courts of equity — and if it did, would still not apply to this case, where A Pratt had parted with the title to this tract, & thus forced ~~no~~ Stone to follow it into the defendant J Pratt.

The court admits however that there may be "exceptional cases" where the court will "protect the right of an innocent fair, & bona fide purchaser against a contemplated fraud."

The court then proceed to say that this is a "bill for the specific performance of an agreement by

9 one, who at law has no claims whatever upon the defendant, at least in his own name" and then proceeds to assert that granting relief on bills for specific performance lies in the sound discretion of the court, and must be founded in a good consideration, & must be reasonable fair & just. &c.

The Court then proceeds to criticise the contract — and the purchase of the contract under the forced sale And that A Pratt had received nothing by reason of this contract having been sold. And then the Court proceeds to condemn the transaction because of A. Pratt's losses by reason of the sale

I must beg leave to remind the Court that Stone enforced no forfeiture against A Pratt He was an innocent purchaser of the obligation, at a sale at auction, fairly & fully advertised made of a contract hypothecated as collateral security for his contract. If there was any wrong, it was that of Parker, not of Stone

10. Is this Court prepared to lay down a rule that it will assist no man in equity to a specific enforcement of a contract, who has not paid the full value of property bought, although purchased fairly at public sale made according to the party's agreement?

Will this Court refuse any equitable relief to one who purchases at public auction, articles placed as collateral security, upon the ground, either, -1- that the same were sold for less than their value; or, -2- that the proceeds of the sale were to be applied to pay damages agreed to be due for a breach of a contract?

Let us go one step farther back. Parker made a fair bona fide contract to sell Pratt certain lands for a sum named - and they agree that if Pratt shall afterwards violate the contract, that Parker's damages will be $1000. & Pratt gives security to pay that. Now this is no forfeiture. Will this Court say that it is no damage to rescind or back down from a purchase

11 of this kind? We know that damages are frequently recovered on such breaches. Will your Honor say that Parker did not lose that amount or more, by Pratt's breach of this very contract? Why should this Court doubt the damages, or attempt to undo the contract? — or what is infinitely worse, to throw the loss of this breach off of A Pratt's shoulders, on to Stone's, simply because he purchased the Collateral Security placed by Pratt to pay these damages. Is it right, & just & fair to protect A Pratt from the breach of his own contract, and condemn Stone in effect to pay $1000 on ~~his~~ account of Pratt's breach — simply because he purchased at the Sale that Pratt had authorized Parker in writing to make?

It is surely assuming a great deal to say that it can be no damage to any man to have his sale of real estate rescinded — for which he ought to recover — and that equity will look upon any such recovery of damages as "oppressive ~~and~~ or unconscionable advantage;" &

12 and will treat any one who will buy property sold to pay such damages, as not entitled to any regard, or assistance in a court of equity— And the court here even go further, & say, that a contract or property which has been paid for by property purchased at such a sale, becomes contaminated so far with iniquity that no relief or assistance will be given to the purchaser

I submit that this is a harsh and unjust criticism upon the facts, as applicable to Parker, and is a positive iniquity instead of a measure of justice to Mr Stone, whose only fault was in becoming a purchaser for $1000 of what would answer his own obligations in payment to the amount of $4050-

This surely was no fault in Stone. The court should not, wink so hard at Pratt's conduct, as wholly to cover up his own bad faith in violating his agreement with Parker — and throw a total loss of the $1000 — and of the whole benefit of his purchase upon Stone, for the purpose of protecting Ratt from his own breach of contract. For without the aid of this Court, Stone not only loses the $1050 paid for this contract, but must lose his purchase of the 15 acres of land also.

And while Stone is thus heavily visited by the Court, for no other fault than having bid for & purchased this contract at that sale — A Ratt is Shielded & protected from any damages for breach of the one contract — and is excused from performing another contract, which he violated as far as he could in ~~one month~~ 17 days after ~~receiving~~ assigning all that was due after the first instalment of the consideration paid under it.

A Ratt purchased of Parker 23 Sept 1853 — & was to pay 1st instalment on 10 Oct after — 17 days — This was when property was rising at the rate of 10 per cent per month or more

14 Parker could not avail himself of any other offer, however advantageous, while the contract with Pratt was in force. How much he might lose by this state of things, we do not know, and have had, & can have no opportunity to show. But the Court should not assume that it was no damage to lose the benefit of his sale, after waiting a month for its fulfilment. To secure its fulfilment Pratt gives this contract in Collateral security on the same 23 Sept. 1853. He was to pay the money to Parker on 10 Oct 1853. On that very day, he violates his contract with DeWolf, by conveying the 15 acres part of the amount sold him, to J Pratt his brother and then leaves the country. At the time the first instalment had been paid A Pratt by DeWolf, & the second was not due to him. He had assigned & transferred the obligation, & could not have received or receipted for the money. He first makes & violates his contract with Parker — and then violates

15 his contract with DeWolf. & Pratt is fully notified by the recording of these contracts — and knows all about it. Now this is the conduct that the Court seems to justify and commend, and casts all its censure & strictures upon Mr Stone who had done nothing but purchase at a public sale

In all the great commercial cities these collaterals are sold, as common as other property No sort of doubt ever has rested upon the legal or equitable title of the purchaser of them

It is not true as the court has assumed that the only merit of plaintiff's case, is in his having purchased a contract worth $4050 for one thousand dollars. The plaintiff had just as good, a legal & equitable right to buy at that sale as any one. He did not owe Pratt one dollar. He owed DeWolf, with the privilege of paying it to Pratt Finding DeWolf's obligation for $4050 — not to Pratt — but to Parker to whom it had been legally assigned.

in the market, at public sale, he bid for it, & bought it. There was no privity between Stone & Pratt — there was nothing in their relation, nor in the nature or character of the transaction that made it unfair, oppressive, unjust, or unconscionable in Stone, to forbid his becoming a purchaser. It is an every day's distinction we take between the payee of a money obligation, and an innocent purchaser or indorsee. We might admit even, that Parker ought not to be assisted, & yet contend for assistance to Stone.

It is matter of surprise that the Court should indulge in such harsh strictures towards a sale of a collateral — towards the application of the proceeds of such sale to pay <u>agreed damages</u> for breach of a fair <u>bona fide</u> contract — & towards an innocent, simple purchaser at such sale, who had no privity or relationship to either party or the subject of the sale that forbade his purchasing.

It ~~would~~ will go a great way to shake commercial confidence

17. when it becomes known, that this Court so far condemns all sales & purchases of Collaterals, as to refuse any equitable assistance to purchasers in perfecting or enforcing their rights, because the purchase money may be applied to objects that the Court may call hard bargains — or forfeiture — or because the Court may think that the Collateral was worth more than was paid for it. Who will buy Collaterals, if he is to answer for the general justice of the transaction between the vendor & his debtor. Possession with an assignment, & a power of attorney to sell a money obligation, ought to protect a fair purchaser at public sale — unless fraud is shown — and notice brought home to him

There is not a scintilla of evidence of any fraud, or improper conduct on the part of Stone

Now these are some of the ~~same~~ considerations that ought to entitle Plaintiff to be heard again, and to have an opportunity to present ~~the~~ merits. It is cal-

18. culated to give more satisfaction to allow another argument on matters involving so much value as these fifteen acres. It is hoped the Court will award us a rehearing.

All which is respectfully submitted

Walter B. Scates
of Counsel for Pff

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Horatio O. Stone
v
J. Pratt et al

Petition for
a Rehearing

Petition
Denied

N. B. Scates
for Plff