No. 14207

Supreme Court of Illinois

Lanterman et al

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vs.

Abernathy

IN THE SUPREME COURT.

State of Illinois---First Grand Division.

JUNE TERM, A. D. 1867.

DAVID D. LANTERMAN and HUGH K. LANTERMAN, Adm'rs of JAMES LANTERMAN, deceased,
vs.
GEORGE A. ABERNATHY.
} Appeal from Lawrence.

BRIEF OF DEF'TS IN ERROR.

The answer of the defendants below, admits all the material allegations of the complainants bill, except that James Lanterman held the note in trust for the heirs of his wife. About this they do not profess to have any knowledge. They only say they *believe* that it is not true, and state no fact whatever as a foundation for their belief. Even though the defendants in express terms negative the allegations of the bill; the corroborating testimony of an additional witness, or of circumstances may give a turn either way to the balance, and even the evidence arising from circumstances alone may suffice. 1st Greenleaf's Evidence, sec. 260. Story's Equity Jurisprudence, sec. 1523. In this case all the facts stated in the bill, and admitted in the answer, coroborate the statement in the bill, that James Lanterman held the note in trust for appellants. It is further corroborated by the testimony of Turner who says he understood from them, (referring to James Lanterman and his wife) that his children were to have his property, and her children were to have her property. It is submitted that this refers to some arrangement to that effect, made prior to that time, rather than to an existing intention voluntarily formed in his own mind, and which he had a right to abandon. The declaration of Lanterman that he never expected to use the principal of the note, is perfectly consistent with the case made by appellees bill.

Again the equities of the case are all on the side of appellees. The consideration of the note was the land of their ancestor to which appellants had no right or title whatever,

The case of Seely vs. Gaines, referred to in the appellants brief, is not in point. In that case it was sought to vary the conditions of a mortgage on lands, and the facts alledged in complainants bill were always disputed by the defendant. The evidence was conflicting and contradictory. In the case at bar the evidence all points in the same direction. While it may not be as convincing as might be desired, there is nothing contradictory in it. All that can be said, is, the appellants have no knowledge of, and disbelieve a single allegation of the bill filed by appellee in the Circuit Court.

Appellees insist that substantial justice having been done to the parties, by the decree of the Circuit Court, that decree ought not to be disturbed but should be affirmed by this court.

E. CALLAHAN,
Att'y for Appellees.

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Fontaineau
vs
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Brief of appellees

Filed June 4th 1867
Noah Johnston Clk

IN THE SUPREME COURT.

State of Illinois---First Grand Division.

JUNE TERM, A. D. 1867.

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vs.
GEORGE A. ABERNATHY.
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Appellees insist that substantial justice having been done to the parties, by the decree of the Circuit Court, that decree ought not to be disturbed but should be affirmed by this court.

E. CALLAHAN,
Att'y for Appelles.

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Lanham

vs

Abernathy

Appellees Brief

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Filed June 7th 1867
Noah Johnston Clk