No. 14415

Supreme Court of Illinois

Casey

vs.

Laflin

71641

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

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No. 31.

Oast

vs

Lapelton

No

263

Printed by Beach & Barnard, 14 Clark Street, Chicago.

SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1860.

JOHN W. CASEY AND
EDWIN A. CASEY
USE OF WILLIAM JONES,
ADS.
MATTHEW LAFLIN.

APPEAL FROM
SUPERIOR COURT
OF CHICAGO.

ARGUMENT FOR DEFENDANTS.

Walter Laflin, by his agent, Matthew Laflin, sold an undivided one-sixth part of lots 16, 17 and 18, in block 9, Fort Dearborn addition to Chicago, to defendants, Caseys, for $8,800, and gave an agreement for title upon payment of purchase money, bearing date March 1st, 1856.

Matthew Laflin executed his bond on same day as a collateral guarranty of Walter Laflin's title in penalty of $17,600. In this bond he covenants as follows:

"That the premises, as described in and by said contract, intended to be sold them by the said Walter Laflin, are *free* and *clear* of any and all former grants, sales, taxes, assessments and liens of judgments, or of any kind and nature of lien whatsoever, and that the said Walter Laflin *has a complete and perfect title to the same, in fee simple, at the time of the date hereof.*"

The suit is upon this covenant, and the assignments of breaches and the issues tried, were—

FIRST ISSUE.

1. That the premises were not free and clear of all former grants, sales, taxes, assessments and liens of judgments, and of every other kind and nature of lien, whatsoever; and—

SECOND ISSUE.

2. That Walter Laflin had not a perfect title to the premises on the 1st March 1856.

These issues were found for defendants, and damages being the consideration paid, and 6 per cent. interest were assessed at the sum of $11,231.46.

The question is, should a new trial be granted upon the evidence. The facts involved all relate to matters affecting the title, though they are numerous and a little complicated. There can be no great controversy about the principles of law applicable.

To understand the question of title I must be indulged in a historical and chronological repetition of the facts set out in the record.

The lots were patented by United States on November 1st, 1839, to Charles K. Bingham and John Frink—though M. O. Walker alleged that they were paid for with his money, and that a trust resulted to him. Of this there was no proof, but it is the substance of a bill filed by him and set out in the proof. The lots were purchased with partnership funds and for partnership purposes by Frink and Bingham.

Bingham and Frink sold each two-thirds of the undivided fee in these lots to M. O. Walker, and Bingham's deed therefor bore date May 28th, 1840, and Frink's the 1st June, 1840.

I need not further note the phraseology of Bingham's deed, because of a certain judgment in ejectment recovered by W. Laflin, deriving title under Bingham, against Walker. But the deed from Frink thus describes the interest or estate sold and conveyed :

"All those certain lots and parcels of land lying and being in the city of Chicago described and known as lots No. 16, 17 and 18 in Block 9, in Fort Dearborn addition, to Chicago, reference being had to the certificate of purchase from Matthew Burchard, Esq., No. 171, as agent for United States, and to the plat and subsequent title or patent issued therefor by the President of the United States and Secretary of War, dated the 1st day of November, A. D. 1839, as may appear.

The true intent and meaning of this instrument is to convey to the said party of the second part all the right, title and interest of the said party of the first part, in and unto the premises herein described, excepting and reserving one equal undivided third part of the original whole thereof." (Page Record 90).

I present in one connected view a further evidence of title as against Frink.

By the 14th article of an award made between Frink and Walker the following provision is made :

"We find, from the statements of said Frink and said Walker, that there is a controversy pending between Williams Fowler and said firm of Frink and Walker on account of a claim made by said Fowler to a certain interest in property and effects in the possession of said firm, and that the same is in litigation in suits instituted by said Fowler and his assigns and grantees, in relation to the property and effects that constitute the subject of said controversy and litigation, and having in this award allowed said Martin O. Walker the sum of $4,000 as an indemnification in this matter as between said John Frink and Martin O. Walker. We do direct, determine and award as follows : That what ever amount has been or shall be decreed or adjudged against the said Frink and Walker in favor of the said Williams Fowler, and whatever property or money may be recovered by said Fowler, his assigns or grantees, of said Frink and Walker, or either of them, growing out of said claim of said Fowler, shall be paid and borne by said Walker individually together with all costs and expenses that may now remain unpaid, and that may hereafter be incurred by the said Frink and Walker, incident thereto and growing out of the same, and said Walker shall save and keep said Frink harmless from all payments and costs growing out of the same; and said Martin O. Walker *shall be entitled to all benefit and advantage* that has accrued, or may hereafter accrue, to said Frink and Walker from said litigation *and to the particular property and effects constituting the subject of said controversy* and *litigation;* and said Frink shall execute instruments of release and deeds of conveyance of any interest he may have in or to the said property and effects within ten days after the confirmation and acceptance of this award, and which said instruments and deeds shall be acknowledged and shall contain a relinquishment of dower to any and all lands and tenements in controversy as aforesaid." See Record p. 206.

Frink released, in accordance with the provisions of the award, (record p. 217) and, also, executed a quit-claim deed for all his interest in said subject matter of said litigation.

This was all the evidence on the part of Walker's title.

In relation to the other branch of the title derived through Bingham, the following were the facts in evidence :

Williams Fowler claimed to be a partner in the firm of Frink & Walker, and entitled to one-sixth interest. He accordingly filed his bill on 21st of November, 1840, and asked an account to be taken between them as such partners.

Six-years afterwards, and pending this bill, and with full notice and knowledge of it and its objects, these lots were conveyed by Bingham to Fowler, and the same, namely, 2d of June, 1846, by Fowler to Walter Laflin. This deed to Laflin was, in form, an absolute conveyance, but was, in fact, a mortgage only, for securing an old debt of $2037.25 due to M. & L. Laflin, and the additional sum of $260 awarded to Walter Laflin at the time of the mortgage, making a total of $2297.25, for which Fowler executed his note to Walter Laflin, dated the same day, June 2d, 1846, payable on demand. (Record page 222).

The deposition of Walter Laflin (on pages 221–2 of record) and the agreement or bond of Laflin to account for any excess above the note and interest, (pages 282–3 of record) and Fowler's assignment to Laflin of all his claim and interest in the Frink & Walker partnership—all bearing date with the deed of conveyance, 2d of June, 1846—show most conclusively that the land was conveyed merely as a security. Such were the interests in Fowler on 2d June, 1846, and such were the rights acquired by Walter Laflin on that day.

Laflin attempted to acquire the equity of redemption of Fowler by a cancellation of the bond of Laflin to Fowler, and of Fowler's assignment of his interest in the partnership to Laflin. These cancellations are as follows, on the back of each instrument, to-wit:

" The within bond of Walter Laflin is this day surrendered to Matthew Laflin, his attorney, in full satisfaction of the covenants herein contained.

WILLIAMS FOWLER."

Chicago, October 21, 1856.

" Chicago, October 21, 1856. The within instrument cancelled this day.

WALTER LAFLIN,

(See record pp. 282–3). By his Attorney, MATTHEW LAFLIN."

Whatever rights were acquired by the foregoing conveyance, defeasance and and cancellations, were so acquired pending Fowler's bill to establish his interest in this very property, as a partner, and for an account of it as such.

The bill was filed November 11, 1840 (record p. 96). Answers were filed July 9th, 1841 (record pp. 109 to 130). The decretal order establishing the partnership in Fowler and decreeing an account, was made in Nov. 1848, (record 143) and a Special Master was appointed to state the account.

The Master's report was filed in the spring of 1850 (record page 91).

The report of the Master shows these lots as part of the partnership property. (Record p. 153.

On the 16th July, 1857, the Court made a final decree in this cause, in which a money decree was made in favor of Fowler, in *lieu* of his interest, and that he convey his interest in the personal and real estate of the firm, as it existed in him, on the 21st November, 1840 (record pp. 162 to 173).

This decree was executed, on Walker's part, by payment of the money; and on Fowler's part, by a conveyance by the Master (record pp. 177 to 188.)

Such was the evidence of the other chain of title to the one-sixth part now claimed by W. Laflin. Whatever rights were acquired by Walter Laflin, either as a security for a debt, or in fee, if any, were so acquired *pendente lite.*

That he had notice of the pendency of the suit, the law presumes. The evidence is perfectly convincing and conclusive that he also had notice of, and knew the subject matter of the suit, and that this property, so conveyed to W. Laflin, was claimed in the bill as belonging to the partnership, and that Fowler derived his title wholly, if any he had, through that partnership.

The bill alledged that *several lots of land had been purchased with the funds of the company* and *conveyances taken in the names of Frink and Bingham generally.*

While the answers denied Fowler's interest, they did not deny that the lands and lots had been purchased for and as partnership property, and Walter Laflin had seen and read Frink's answer in 1845, when in Chicago. He had been acquainted with Fowler for many years, and when in Chicago, in 1845, he was made acquainted, by Charles K. Bingham, with the pendency of Fowler's suit and was told it was for the recovery of his interest in the business of Frink and Bingham. Fowler showed him Frink's answer, and Matthew Laflin and others *pointed out to him the real estate belonging to the partnership*, and that his knowledge of the value of these same lots was derived from his own observation and from information of others (doubtless M. Laflin, Bingham, Fowler and others, at the time they told him of the pendency of the suit, showed him Frink's answer and pointed out the real estate of the partnership to him.) See for all this, Record pp. 226 to 228.

In addition to all this evidence Matthew Laflin resided in Chicago and was active in assisting Fowler in the assertion and maintenance of his claim to these lots as partnership property. (See abstract p. 17.) He owned half of the claim on Fowler of $2,037.25, secured by the mortgage to W. Laflin—had previously taken an assignment on the same partnership interest to secure the same claim, and had cancelled it, in order to take the new mortgage of 2nd June, 1846, to W. Laflin. (See Record pp. 299 and 300.)

Matthew, therefore, knew all about Fowler's claim, his bill and the subjet-matter of the bill and the property claimed to be partnership, and that these lots were part of it. Matthew Laflin was, also, Walter Laflin's agent in all his business in Chicago, and showed this very property to Walter when he was in Chicago in 1845 (see record pp. 228 to 230).

With this array of facts, no one can doubt of actual notice to Walter, and his agent Matthew, of the suit, and that these lots constituted a part of the partnership property he was seeking to recover.

And this is strengthened and confirmed by the fact, that Bingham conveyed to him the identical sixth part claimed in his bill as belonging to him as a partner, on the *same* day—June 2d, 1846—that *he* conveyed it to W. Laflin, and he, W. Laflin, having failed to secure his claim on other property, was induced to ask the mortgage of these pieces to him by what Fowler and Bingham told him of Fowler's interest of one-sixth *of the real estate held by Frink and Bingham while they were in business in* Illinois. Nothing could be more explicit as to the exact and particular character of the information given, and all corresponding with the deed of conveyance of it made at the same time. See Laflin's deposition, Record pp. 220 to 222.

There was also a bill filed by Frink and a decree for partition, but Walker never conveyed under it.

Having thus given the substance of the main facts showing the different claims of title and the manner, objects and circumstances under which W. Laflin acquired the title, I propose submitting some remarks upon the following points, in the absence of the plaintiff's points, not yet submitted.

I.

Charles K. Bingham, one of the joint patentees, and also one of the partners, having sold out all his interest in the partnership property, if any part of the title in fee remained in him at law, it so remained in him in trust for the equitable owner of that interest in the partnership.

Equity converted him into a trustee for the true equitable owner.

Now, that owner was either Walker or Fowler; no one else has ever pretended to claim it. The legal title being held thus in trust, whoever may take it with a knowledge of the trust, will take it subject to the trust.

II.

On 21st November, 1840, Fowler filed his bill claiming to be the true equitable owner, as one of the partners of Frink & Co., to whom this property belonged, entitled to one-sixth interest. It is true that the bill did not set out a description of the real estate belonging to the firm by metes and bounds, but it did alledge that *several lots of land had been purchased with the funds of the company and conveyances taken in the name of Frink and Bingham generally*, and that various barns, houses, shops, stables, &c., had been built and other improvements made by the company.

The bill became a *lis pendens* on that day, and W. Laflin had ample and full notice in fact that the property in these lots was a part of the controversy in that bill.

A purchaser *pendente lite* is bound by the decree.

Osborn vs. United States Bank, 9 Wheat. 733.
Garbel vs. Durdin, 2 Ball & Beat. 167.

" He who purchases during the pendency of a suit is held bound by the decree that may be made against the person from whom he derives title. The litigating parties are exempted from *taking any notice* of the *title* so acquired; and such purchaser need not be made a party to the suit. Where there is a real and fair purchaser without notice the rule may operate very hardly."

1 Story Eq. Jurisp. sec. 406.
Newland on cont. 507.
Murray vs. Ballou, 1 John. C. R. 573.—11 Ves. Jr. R. 194.
Green vs. Flagler, 4 John. C. R. 42.
White vs. Carpenter, 2 Paige R. 253.

"No case has gone so far, and it would be very inconvenient where money is secured upon an estate, and there is a question depending in this Court upon the right of or about *that* money, *but no question relating to the estate upon which it is secured, but it is wholly a collateral matter, that a purchaser of the estate, pending* that suit, should be affected with notice by such implication as the law creates by the pendency of the suit."

3 Atk. R. 392.
Moore vs. McNamara, 2 Ball & Beat. 186.
3 Ves. Jr. R. 314.
11 Ves. Jr. R. 104.
2 Atk. R. 174.

The rule is one of policy, and not one of actual notice, and it operates, whether the purchaser had actual knowledge of the pendency of the suit or not.

It is intended to operate and to give full effect to the judgment or decree which may be rendered in the case pending at the time of the purchase.

Newman vs. Chapman, 2 Rand. R. 102–3.

In Green vs. Stephen, 4 Jon. C. R. 42, a very general description of the subject matter of the suit was held sufficient. But here there is actual knowledge shown, both of the pendency of the suit, and of the subject matter being in part, a claim to one-sixth part of these lots.

By the final decree, in that case, the title was awarded to Walker, and under the decree, conveyed to him by the Master, as of the 21st November, 1840.

If the decree and conveyance did not convey the title absolutely—regardless of the intermediate conveyance, *pendente lite*—they had, at least, the effect to convert Laflin into a trustee of the legal title for Walker's benefit.

In either point of view, W. Laflin had no right to these lots, and plaintiff's covenant is broken.

This title can be followed into W. Laflin's hands, and he be, in equity, compelled to convey it to Walker.

King vs. Hamilton, 16 Ill. R. 196–7.
Coates vs. Woodworth, 13 Ill. R. 654.
Williams vs. Brown et al, 14 Ill. R. 203.
See also, 2 Story Eq. Jurisp. sects. 1207, 1210–11.
Foubl. Eq. Book 2, marg. p. 119 note.
Phillips et al vs. Crammond, 2 Wash. C. C. R. 442.
Wallace et al vs. Duffield et al, 2 Serg. & Rawl. 529.
Dey vs. Dey, 2 P. Williams, R. 414.
Lane et al vs. Dighton et al, Ambl. 413.

III.

For the principles applicable to the construction of the deeds from Frink and Bingham to Walker, I refer to the points and authorities in the case of *Walker vs. Laflin and Frink's Heirs*, submitted at this term.

Laflin's purchase was *pendente lite* and is therefore *champertous* and void.

Gough et al vs. Greenlaws et al, Ms. April Term Supreme C. 1859.
7 Am. L. Register, 1859, No. 10, pp. 599, 600.
2 Bacon Abrid. "Champerty."

V.

The plaintiff insists upon a limitation of some sort as a bar or defence to this suit.

It is not in the power of the Court to administer any kind of equitable bar to cut us off from maintaining an action at law for a breach of our covenant.

So far as he would apply it as an answer to the outstanding paramount title in Walker, this covenant will not allow a purchaser *pendente lite* to set up such a defence to defeat the very title in fraud of which, he made his purchase.

The doctrine as laid down in 2 Leading Cases, top p. 125, does not apply to such a case as this — nor to a party standing in the relation to the suit, that Laflin stood in to this controversy. Dilatoriness in the prosecution cannot help a purchaser *pendente lite*. He may not purchase the subject-matter of a pending controversy, and then plead delay, as a cover in bar, or in protection as against the defects in the title.

VI.

Finally, the defendants insist that the plaintiff broke his covenant the moment it was delivered, by reason that Walter Laflin had no title at the time :—and has acquired no title since.

He did not take anything more than a mere mortgage security upon such an interest as may have been in Fowler. That was a mere claim to have an interest of one-sixth of the partnership property upon settlement of the partnership affairs. He was not entitled to have one-sixth conveyed to him—nor to hold it in severalty or in common.

If the land belonged to the partnership, equity would convert the partner in whom the title might be, into a trustee for the firm. There needed not a conveyance to secure his interest — nor would a court of equity have entertained a bill for a conveyance, to him, of one undivided, or several sixth. He filed the only bill that would lie in such a case, as a means of asserting his rights as a partner, and that was a bill to declare him a partner, and to ascertain what interest he claimed and owned. The bill, not only gave the Court jurisdiction over the persons of the partners — but in case it found a partnership to exist, it gave it jurisdiction over all the partnership property. The Court having found the existence of the partnership, acquired then full jurisdiction over, both the persons of the partnership — and over the property of the partnership in whosoever hands the same was at the filing of the bill.

If title to any part of the premises remained in Bingham, after the conveyance to Walker — and which we deny — it was held by him, in trust for such of the partners as might own that interest. By filing the bill, this interest became the subject-matter of a *lis pendens* — and subject to such disposition as the Court might make of it by the decree to be rendered. Fowler, complainant in that bill, and Walker, one of the defendants, each claimed this identical interest. If the title was in Bingham, he held it in trust and subject to the right of the true owner. By the deeds from Bingham to Fowler, and Fowler to Laflin that title passed at law before Fowler was adjudged to be the owner, by the interlocutory decree, which was not made until 1848. (See abstract, page 6.)

Thus, if any title remained in Bingham it remained in trust for Fowler, as ascertained by the interlocutory decree — and it passed by this conveyance to Fowler, into him — and because subject to such disposition as the Court should afterwards make of it.

The Court did dispose of it in adjusting the partnership effects as Fowler's interest — and these partners as litigants were "exempted from taking any notice of the title so acquired," by Walter Laflin, pending the suit — "and such purchaser need not be made a party to the suit."

Story Eq. Jurisp. sec. 406.
1 John. C. R. 573.
11 Ves. Jr. R. 194.
4 John. C. R. 42.
2 Paige R. 253.
Newland on Cont. 507.

Nothing is clearer than this, that this rule, as a rule of policy, enables the Court to give a full and complete decree and relief without regard to such intervening purchase.

I have thus presented all the points that have suggested themselves to my mind, and have argued the merits of the case as shown by the record — and in connection also with the case of *Walker vs. Laflin and Frink's heirs* — both of which, by agreement, are to be considered together.

I have called upon the counsel of plaintiff repeatedly for his argument — and have given him due and timely notice that the Court would still consider and decide this case. I delayed the printing of my own argument as long as I could, to be able to furnish it at this meeting of the Court — in order to review plaintiff's argument when furnished. Not having been furnished with it, I now submit my own argument, and insist that the Court proceed to consider and decide the cause, upon the case as presented. I have done all I could do in the most liberal spirit by way of indulgence and delay, and in waving any and all form and advantage. To do more would be to waive my client's right to a hearing at this term— upon which his instructions and interests are most peremptory.

I do, therefore, most earnestly but respectfully insist, that fair dealing, right and justice demands a decision at this time; and the facts and merits as imperiously demands that decision in our favor, not only in this case, but, also, in the other case to be considered upon the same facts.

WALTER B. SCATES,

Of Counsel for Defendants.

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McLaflin

Defts' Argmt

Scates for Defts