No. 14907

Supreme Court of Illinois

Mo[T]t et al

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vs.

Danville Seminary

STATE OF ILLI

SUPREME C

CENTRAL GRAND DI

OF THE JANUARY TER

LAURA D. MOTT, et al.
Appellants,

vs.

THE DANVILLE SEMINARY, et al.
Appellees.

ARGUMENT OF APPELLA

W. R. LAWR

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STATE OF ILLINOIS.

SUPREME COURT.

CENTRAL GRAND DIVISION.

OF THE JANUARY TERM, A. D. 1889.

LAURA D. MOTT, et al. *Appellants,*
vs.
THE DANVILLE SEMINARY, et al. *Appellees.*

ARGUMENT OF APPELLANTS IN REPLY.

The point made by appellee, that the court has not jurisdiction, we think is not well taken. Since the amendment of 1861 to the statute relating to partition, parties out of possession may bring a suit of partition against parties in possession, and holding adversely, and clouds upon the title may be removed and the title quited.

Sec. 39, Cap. 106, Rev. 1874.

The case of Iberg vs. Webb, 96 Ill., 415, was for partition and to remove cloud from title. The complainants claimed title by inheritance, and were out of possession. The defendants were in possession and claiming title adversely under a tax deed, and seven years payment of taxes. The court sustained the bill and say: "This was a

proceeding in equity for partition, and to remove a cloud upon the title, in which the statute provides, that any one, or more, of the parties interested may compel partition, and that there shall be partition, according to the respective rights of the parties interested; that every person having any interest, and who is not a petitioner, shall be made a defendant to the partition; that the court may investigate and determine all questions of conflicting and controverted titles, and clouds upon the titles to any of the premises sought to be partitioned, and invest a title by its decrees."

To the same effect are:

Gage vs. Bissell, 119 Ill, 298.
Hurrichsen vs. Hodgen, 67 Ill. 179.
Gage vs. Lightburn, 93 Ill., 531.

We think it hardly accurate to say that the estate of Melissa B. Lamon was "a conditional estate, which is named a possibility of reverter," but on the other hand, that the corporation had a base or conditional fee in the land, and Mrs. Lamon "a possibility of reverter." And had this land been donated without the qualification, "for the building and maintaining thereon, an institution of learning, as provided by said act;" we must admit that the corporation could have granted an absolute title; have converted it into money to be used for the purposes of the institution, because a court of equity would treat such gift as a gift of money. A corporation, under the law can only hold such land as may be necessary to carry on its affairs, and all in excess must be converted into money by the corporation. Otherwise a gift of land could not directly be made to a corporation. If one should see fit to give a tract of land to a corporation of the kind in question, instead of giving the value of the land in money, a court of equity would treat it as money, for to the gift the law annexes the condition that it shall be converted into money.

We think it may be further conceded for the sake of argument

without endangering our position, that, notwithstanding the condition of this conveyance, had the corporation found the land unfitted for the purpose of maintaining thereon an institution of learning, and had desired to change its location, it could have sold and conveyed it, in fee simple absolute, and devoted the proceeds to the purposes of the corporation. This for the reason that Mrs. Lamon's conveyance contained the condition subsequent that it "should be used for the maintaining thereon an institution of learning" without express words of forfeiture; the law construing such conditions strictly against the grantor.

But such circumstances do not exist in this case. It is admitted that the pretended conveyance to appellee was made for purposes alien to those prescribed by the charter, and after the proceedings for dissolution had been commenced, which resulted in a judgment of forfeiture, and, if we are correct in our application of the doctrine of relation, (which appellee has omitted to answer) the conveyance was a nullity, and the citations of counsel from the various text books do not apply. And, we, believe that all of these citations, as well as the case of Aurora Agr. Soc. v. Paddock, 80 Ill., 263, concern corporations for profit, or with stock-holders.

The execution of the deed by the president and secretary, without authority from the Board of Trustees, was void for want of power to execute, hence any one interested in the lands may object to it as a cloud upon the title.

We call attention to the court to mistake in citing 13 Elizabeth, on page 9 of our brief, first line. It should be Chap. 10.

W. R. LAWRENCE,

Of Counsel.