

No. 14735

Supreme Court of Illinois

Reeves et al

vs.

Ayers, et al, Opinion
Walker, C.J.

Mr. Chief Justice Walker delivered the opinion of the Court:

~~Walker Ch. J.~~ This was a bill in Chancery + filed to set aside certain mortgages, and deeds of conveyances of real estate, and to have judgments reversed by complainants against defendants, satisfied by a sale of the property. It appears, that Mason, in his lifetime, for the purpose of assisting his son in law, Mark Ayres, in commencing business, loaned him about \$5000, which he had procured by borrowing and mortgaging his own property to secure its payment. No security was given by Mark at the time, but it was agreed that so soon as he acquired lands in Illinois he would secure the money by thus loaning to him by mortgage on it. It seems that Mark invested the money in goods, and took his brother Hiram into the firm as a partner. ^{Hiram} He had but little capital, ^{and} it being ^{entirely} the money loaned Mark by Mason. Out of the proceeds of the business of the firm the Hollingsworth and the near farms, as well as other lands, were purchased.

According to their previous agree-

ment, Mark mortgaged to Mason, the Hollingsworth farm and some lots in the town of Concord. Subsequently, Mason released his mortgage on the town lots, and took a mortgage on the Sherman farm. At this time the firm was doing business as usual. Mason resided at Cincinnati, and it does not appear that he was informed that Theodore was a partner of Mark. The deeds for these lands, to Mason were duly recorded, as well as the mortgages to Mason. Creditors recovered their judgments subsequently to the execution and record of these mortgages, so that the only ground which they rely upon for a recovery is that the mortgages to Mason and the deeds to Jesse Ayres are fraudulent and void and made to hinder and delay creditors.

It is insisted, that as the lands were purchased with ~~part~~ joint funds of the firm, they were partnership property, and the creditors of the firm, have a superior equity over the individual creditors of the individual members of the partnership. It is undoubtedly true, as a general proposition, that when a partnership and its members are insolvent,

- vent, and the firm has been dissolved, ~~that~~
 such an equity does exist. But the rea-
 - son of the rule seems to be that the con-
 - tributors of the firm, having furnished or con-
 tributed to the fund, natural equity gives
 them a superior claim to that of persons
 who have not contributed to, or created
 the fund. Cases may, and do arise, where
 an equal or superior equity may be created
 of a creditor of a member of the firm.
 As in this case, by furnishing the capi-
 - tal upon which the business was con-
 - menced, Mason's money contributed largely
 - to the means by which these
 farms were purchased. For aught that
 appears Mason's money contributed alone
 to their purchase, and if so, natural jus-
 - tice would say that his claim was super-
 - ior to that of plaintiffs in error.

If Mason's money purchased these
 lands, and plaintiffs' money in error of-
 - fered to give out it to the firm, we are
 unable to see that they should be pre-
 - ferred in payment out of this fund. Hav-
 - ing furnished a large portion of the
 capital of the firm, Mason certainly ac-
 - quires an equal equity ~~as~~ to that
 of plaintiffs in error. And it is a maxim
 that the equities being equal, the party

Who unites the legal title with his equity must prevail. The legal title to these lands was in Mark Ayres, and when Mason obtained these mortgages he thus united a legal lien to his prior equity, which is superior to the mere legal equity of plaintiffs in error, as he did this before they took any steps to enforce their equity. If, however, Mason knew that Theodore had an equitable title ^{to} an undivided half of the property, it would be different as to that half, unless it was with his consent.

As to the Dr. man farm there is no evidence that he had any notice, as it is in any way chargeable with no vice. Upon that farm, then, there seems to be no doubt that his lien is complete, prior and superior to that of plaintiffs in error. But as to the Hallingworth farm, Theodore was in possession at the time the mortgage was executed. And this court has repeatedly held, that possession by a purchaser, or person having an interest in the land, is sufficient to charge all persons with notice of his rights, whether legal or equitable. Mason must, therefore, be held to have received his mortgage with no

vice that in equity Theodore held the title to an undivided half of the property. And without Theodore's consent, no conveyance which Mark could make to a person having notice, could divest him of title. Had it appeared that Mark made the mortgage to Mason ~~with~~ the consent of Theodore, then the lien would have been complete to the whole property, but in the absence of such consent he only acquired a lien on Mark's half.

There is no evidence that this firm was insolvent at the time this mortgage was executed, and we are aware of no rule of law which will prevent a solvent firm from conveying or mortgaging ~~the~~ property of the partnership, ^{or} from paying the debts of the partnership with the joint property of the firm. And unless it is done for fraudulent purposes and the creditor participates in the fraud, he will acquire title. Joint creditors of a ^{solvent} firm have no lien upon the partnership property for the payment of their debts. Otherwise every person trading with a partnership would be liable to loss by its subsequent insolvency. No rule is more familiar

that
 then, the interest of a partner may
 be sold on execution to satisfy an in-
 =dividual debt.

It is urged, that when the partners
 themselves have a lien upon the joint
 property, for the discharge of the firm
 debts, that lien may be made available
 for the benefit of creditors of the firm.
 It is held, that partners have such a lien
 in all cases, unless they have parted with
 it. In such a case, the equities of credi-
 =tors attach to, or unite with, the lien of
 the partner, and are thus rendered avail-
 =ing. But they have no lien, but some-
 =thing approaching to it, of which, with
 the assent of the partner, entitled to the lien
 they may avail themselves in a court of
 equity, against the partnership ~~assets~~
 effects. Story on Part. Sec. 360. It is, however,
 to be observed, that this only relates to
 the rights of creditors after a dissolution,
 and to property undisposed of, and to
 which prior liens have not attached.
 If Messrs. ~~parties~~ consents to the ~~use~~
 =lien of the mortgage on the Hollingsworth
 =the farm, the partnership parties with his equi-
 =table title, and has no lien upon this prop-
 =erty for the payment of the firm debts
 after the dissolution occurred, and a prior

lien not attached in favor of Mason, and there could in that case be nothing to which the equities of the firm creditors could attach.

A conveyance from Theadore to Mark, is spoken of in the record but there was no evidence produced of its existence. If there is such a deed, and it was made before the mortgage to Mason was executed, or if afterwards, and before liens of creditors attached, ~~it would then~~ Mason's ~~title would~~ lien would be complete to the whole of the Hollingsworth farm. Or if his consent to the execution of the mortgage was shown, the result would be the same. But in the absence of such a deed or such ^{equitable} consent, the title to an undivided half of that farm is still in Theadore, and liable to sale for the payment of the firm debts. For the error in dismissing the bill as to this half of the Hollingsworth farm, the decree of the court below must be reversed and the cause remanded.

Decree reversed.

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Opinion by
Walter Ch. J.

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