No. 13591

Supreme Court of Illinois

Taylor

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vs.

Coffing et al

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Taylor
vs
Coffin

1860

409

409

Taylor
vs
Coffing et al } 409.
Petition for rehearing

T. Lyle Dickey being duly sworn says on oath that - Some two weeks ago affiant advised Mr Fuller of Chicago the attorney for E. D. Taylor pltff in error - that a petition for a rehearing would be presented at this term & requested said Fuller to waive a written notice - & Mr Fuller replied that affiant might consider the notice as served - that affiant need not write it - He however requested to be furnished with a copy of the petition when prepared - & to this affiant assented

Affiant further says the he caused a copy of the petition herein filed to be sent by yesterday's mail - to Mr Fuller at Chicago

T. Lyle Dickey

May 23 - 1860

Subscribed & sworn to before me May 23 1860.

C. Leland Clk.

Supreme Court of Ill. April Term 1860

E D Taylor
vs
C Coffing & John H Coffing } Error to the Circuit Court of La Salle County

The decree in this cause was entered at this term & is founded on the opinion by Justice Walker which was filed in January last ——

Immediately after the opinion was recorded & before the attorneys for the defendants in error saw the opinion - the record in the case and the only abstracts which the clerk had, were sent to Chicago, for the use of the reporter — It was supposed by the attorneys for the defendant in error - that at this term of the court - the record and abstract would be returned to the files of this court - and they accordingly waited before preparing this petition for a rehearing - until they could have access to the materials in the record & abstract necessary for that purpose - The record and abstract however have not been returned, and although the attorney for the defendants in error have not - Even a copy of the abstract of the record - yet the materials have been found in memoranda thereof

and the defendants in error therefore without farther delay have prepared & present this their petition for a rehearing in the cause - and ask that the decree entered herein at this term may be opened and that the cause may be again heard - and present the following reasons in support of the petition

We come not now to wrestle further with the court upon the construction which is given by the Court to the deed of sale by Coffing to Taylor of April 27 - 1852 - which has been the chief subject of discussion in the cause, but to show the court that, (adopting the principles laid down in his opinion by Justice Walker) errors have accrued in making ~~up~~ up the account

In this opinion it is laid down as the true construction of the deed of sale from Coffing to Taylor - that it passed to Taylor, not only Coffings interest in the then property of the firm & his interest in the debts due from third persons to the firm - but all claims & interests of every kind, which Coffing had as a partner in the concern - either in the assetts of the firm or against his partner on account of past transactions touching the business of the firm except his interest in this Mortgage debt

and that that mortgage debt was by the stipulation reserved from the sale — And by this construction Coffing by this deed transferred to Taylor all his claims for capital advanced ——————————

that it was "intended by the parties that by "this sale every thing pertaining to the firm & its "affairs as between themselves was settled, Except "the mortgage debt" — that "this ~~mortgage~~ debt was reserved from the operation of this sale" — "the mortgage debt was reserved" — "All else was settled and conveyed to Taylor" —

that this mortgage debt after the sale "remained the joint property" of Taylor & Coffing "precisely as if it had been a debt due from "another person" to the firm "& reserved from this sale" —

"All other affairs were settled & they" (Taylor & Coffing) "held this debt in equal parts & "had it been paid by Coffing, nothing would have "remained but to divide the money equally be- "tween themselves & closed the entire concern" —

We do not come now to gainsay or call in question the correctness of any part of these views — but we come to show that in the application of these views to the details in the voluminous record — the court has

fallen into two material errors ——

If these views expressed in this opinion (on which the decree is ~~based~~ based) be correct - it only remained to ~~be asce~~ ascertain ~~tained~~ the amount of the mortgage debt at the time of the sale — and then see what payments had since been made upon it by Coffing — & thus determine whether it had since been paid — over paid - or whether a part remained unpaid - & in either event to what extent ——

II

The mortgage debt originally was $18.340 payable on or before the 17th of May 1854 —

After the giving of the mortgage & up to the time of the sale by Coffing to Taylor Apl 27-1852 Coffing had been gradually reducing the amount of the mortgage debt, by permitting the firm to recieve the rents of the mortgaged property - and rents in that way had, at the time of the sale, been recieved by the ~~sale~~ firm to the amount of $2.360 (See depositions of Day, Paul, Coates, Hannon pages 39. 40. 41. 19. & 83 of record) so that when Coffing sold out to Taylor (reserving only this mortgage debt from the sale) the original mort=gage debt had been reduced from $ 18.340 to $15.980 - (18.340 — 2.360 = 15.980) so that on the day of this sale the true amount of this mortgage,

debt was $15.980 instead of $18.340 —

Justice Walker in his opinion says "All else was settled or conveyed to Taylor" "but the mortgage debt which remained as" "it then was" — We ask how did it then stand? Originally it was $18.340 — which Coffing had owed to the firm — but the debt had been gradually reduced by the rents of the mortgaged property recieved by the firm until at that date its true amount was $15.980 —

The Court in making up the account assume, without remark, that the amount of the mortgage debt — at the time of the sale (& which was reserved as joint property) was $18.340 — as it would seem having entirely overlooked this payment of $2.360 in rents by which the debt had been reduced —

It will be observed that the amount of this mortgage debt at that time — is not any where stated in papers pertaining to that sale — and a part having been paid — as a matter of course — a reservation of the mortgage debt from the sale, meant "the mortgage debt" "as it then stood" — that is, so much of the original debt as remained unpaid — Justice Walker says "by this stipulation it (the mortgage debt) remained this joint property precisely as

That is to say – if Coffing had then paid in the amount of the mortgage debt – he would have been entitled to withdraw one half of the same money – So if the whole mortgage debt had been $18.340 – & Coffing had paid it – his share on division would have been $9.170 – which he would have been entitled to withdraw & leave in Taylors hands the same amount – or if the whole amount of the mortgage debt was at the time of the reservation only $15.980 & Coffing had paid it all in – he would have been entitled to withdraw half that amount viz: $7.990 & leave that much in Taylors hands — but by another part of this contract Taylor agreed that Coffing might pay $5.000 of this debt – in Coffings bank property – which was done and Taylor got the property – & he has since paid in rents $4.000 & Taylor has got it all – that is $9.000 ———

Now according to the principles of this decision – this mortgage debt if paid fully – was to be divided & only one half to remain in Taylors hands –

If then the mortgage debt was $18.340 – Taylor was entitled to $9.170 – & having

rec.d $9.000 - his balance on the 17th of May 1854 - when the mortgage fell due was $170 - + in no event could a decree in this case by a correct compen= =cation exceed that amount + interest =

And if as we think is beyond debate the mortgage debt reserved was only $15.980 + Coffing had paid $9.000 — ($5.000 in bank property + $4.000 in rents) Taylors share of that reserved debt, being $7.990 + he having rec.d $9.000 - he has (of Coffings share) $1.010 more than he was entitled to + Coffing is entitled to a decree for the $1.010 + interest on it for six years - since May 1854 —

To recapitulate -

The mortgage debt reserved was at the time of the settlement $15.980 —

If Coffing had paid this all over to Taylor - Taylor would have been bound to divide and refund to Coffing one half - that is $7.990 - Taylor agreed that $5.000 of this mortgage debt could be paid by deeding Coffings bank prop= =erty to Taylor - + this was done —

Coffing then paid over to Taylor for their joint benefit - $4.000 - in rents -

making in all $9.000 - leaving unpaid
of ($15.980-) the mortgage debt - a balance $6.980-

Now had Coffing on the 17th of May
1854 - when the mortgage fell due -
paid over to Taylor that balance $6.980 - the
whole mortgage debt $15.980 - would
have been paid to Taylor - But this mort=
-gage debt was joint property & Coffing
would have been entitled to have Taylor
divide equally & pay him over a back at once
his half $7.990 - Equity does not require
this circumlocution - As soon as Taylor
after the sale had collected $2.990 of rents - & rec'd
the bank $5.000 he was paid his share
of that mortgage debt - but he persisted
in collecting rents till he had $4.000 -
of rents, which was $1.010 more than paid his
share of the mortgage debt & we are
by the views of the court & a correct
computation entitled to that $1.010
& interest for six years -

The error in computation in
this regard - in making up the decree
consists - in deducting the bank pay=
ment before dividing the mortgage
debt to see how much each man's
share thereof was - According to
the computation in the decree - the whole

of the mortgage debt is assumed to have been at the time of the sale $18,340 – of which Coffing by the views of the Court in the opinion was entitled to one half – as his share thereof – that is $9,170 – & Taylor was entitled to one half – which was $9,170 – but by the computation adopted by the Court – before proceeding to divide the fund which was reserved for division – $5000 – of this joint fund, is set apart to Taylor (by deducting the credit of the bank property the whole of which Taylor got) & then ~~divide~~ the balance of the mortgage debt is divided – to ascertain Coffings share – & by this process – instead of giving each an equal portion of the $18,340 (assumed to have been the amount of the mortgage debt) which would have been $9170 a piece – the decree gives Taylor $11,670 & Coffing but $6,670 –

We cannot see how this can be called an equal division of the debt reserved –

We insist that the true mode of computation – according to the views in the opinion of Justice Walker is

1st find the true amount of the mortgage debt at the time of the sale – & set that

down as a common fund ~~to be divided when paid~~ — reserved for division —

2nd Divide that sum equally to find the am't of each partners share of that fund —

3d. Thereafter ~~1st 4th~~ Compare the amount of payments ~~thereon made thereon since the sale to~~ Taylor has rec'd from Coffing as payments on that debt & which he has appropriated to his own use — with the amount ~~of~~ he was entitled to — & strike the balance & count interest — or which will produce the same result

3d Compare the amount of Coffings share of the reserved fund — with the that part ~~amount of the~~ whole mortgage debt reserved, which he has not paid to ~~Taylor~~ & the and see whether there is more than enough or less than enough left in Coffings hands & not paid over to Taylor ~~unpaid~~ to give Coffing his share of the fund — & strike the balance ~~he was entitled~~ & count interest —

This mode — (disregarding the reduction of the mortgage debt by rents before the sale and) taking the whole $18.340 — as the fund to be divided — would give Taylor a balance May 17 - 1854 in his favor of —— $170 —

—— & taking the amount of the mortgage debt on the day of sale to have been but $15,980 — as the fund to be divided — would give Coffing a balance in his favor of $1.010

~~& we insist that the true decree~~

in May 1854 - & this would give Coffing
a decree in his favor for $2,370 - instead
of ~~against~~ $3,576 against him -

Chinchill Coffing &
John H. Coffing — by
T. Lyle Dickey their
Solicitor —

409

Taylor
vs
Coffing et al

Petition for rehearing

Filed April 22, 1860
L. Leland
Clerk

D. Lyle Dickey Sol
for petitioners

Justice Wattles in his opinion (from which the above is taken) says: Coffing by that deed, sold to Taylor his interest, as a partner in the firm by this language "Has sold, transfered &c ——— as affected by this deed of sale" and Taylor by his covenant bound himself to pay all the debts owing by the firm, and also, to credit the indenture given by Coffing by the sum of five thousand Dollars the amount allowed him by Taylor for his interest in the Illinois River Bank — &

This deed passed to Taylor all of his (Coffings) interest, of every description in the firm except in the indenture, which was on its face absolute, but was in effect a mortgage — This was the only interest in the firm, whether between the firm and other parties or between the members of the firm in which Coffing had an interest, which was reserved.

He transfered his interest in the books of the firm, and if kept in this instance, according to commercial

there was opened in them a Stock account in the name of each member of the firm, in which he was credited by the Capital stock advanced by him and charged with any portion of it, which he may afterwards have withdrawn ——

In the absence of evidence the presumption is that the books were kept in this way — If such accounts were opened they were accounts that every accountant would say must be taken into consideration in making up a balance sheet on a final settlement of the firm affairs between the partners, and on such settlement Coffing would have had the right to recieve the excess of his capital over Taylors with interest upon one half of that excess out of the firm effects before Taylor recieved any thing — Coffing would be a creditor of the firm on a final settlement of its affairs by the partners to that extent — He and Taylor after he had recieved that amount, would be equal in capital — which would have

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to be paid out of the effects of the firm and than each would be entitled to one half of the profits, if any realized ——

They were each creditors of the firm, and had an interest in the firm property, accounts, notes, books & papers to that extent —— And when Coffing granted all his interest in the effects of the firm I am at a loss to percieve how this interest did not also pass. He by this deed transfered to Taylor all right to reciene from the firm any portion of the Capital Stock advanced by him. If it was not intended to pass why was it not reserved in the deed as was the mortgage

It is believed the Commercial world understand that when a partner sells his interest in a Co-partnership without reservation to a person not a member of the firm, that the Capital advanced by him passes to the purchaser .....

It must have been intended by the parties that every thing pertaining to the firm and its affairs, as between

themselves should be settled, except this mortgage debt due from Coffing to Taylor & Coffing. It seems to me that there must have then been, a full complete, and final settlement of all the affairs of the firm, except this debt reserved from its operation —

If this had not been their intention, why was not such unsettled portion reserved as was the mortgage —

If the stock accounts were not settled or did not pass by the sale why was it that these accounts were not then adjusted, and the excess that would have been found to be in Coffing's favor not credited on the mortgage debt —? —

If all else was then settled but the stock accounts and this mortgage, there was not then enough remaining to refund the ~~amount~~ capital advanced by the partners —

The mortgage debt after receiving the credit of five thousand dollars would have been inadequate to reimburse the Capital of both partners.

And it seems to me that they would then have settled these accounts

and after allowing Coffing his excess of Capital with interest on one half of that amount, to which he would have been first entitled as a creditor on the mortgage, and whatever then recieved would have belonged to them equally — And Coffing would then have recieved a further credit of one half of that remainder, and the balance would have been due from Coffing to Taylor —

Such an adjustment was so simple that it would seem that business men, would have certainly availed themselves of it, or have made some reservation of their stock in the sale, as they did in regard to the mortgage debt ———

The construction it seems to me is ~~not~~ not warranted that any thing else remains unadjusted ++++ When two mortgage debt was reserved by express language from the operation of the sale, that express reservation, excluded all other things from its operation — All else was settled or conveyed to Taylor but the mortgage debt which remained as it then was, unaffected by the sale — How was it then situated ? — It was owing from Coffing to the firm,

payable to the firm, and was the joint property of the firm, every thing besides, being then settled and conveyed to Taylor, it remained unaffected by the sale, as it then was, a debt owing from Coffing to the firm, payable to the firm, and owned by them as firm property, just as it did before this transaction occurred — If it became the property of either party by the transaction, it did not remain unaffected by the sale, which the deed had expressly provided that it should — If it passed to Taylor by that sale, it thereby became individual and not firm property which would have certainly affected it — But by this stipulation it remained their joint property precisely as if it had been a debt due from another person and reserved by this sale, and all of the other affairs being settled, they held this debt in equal parts, and had it then been paid by Coffing, nothing would have remained but to divide the money equally between themselves and closed the entire concern —

If this conclusion be correct, this debt belonged to the firm, subject to division between them, after

deducting the credit of $5.000 there remained the sum of $13.341 one half of which was $6.670 the amount each were entitled to recieve on its division-

Taylor afterwards recieved of rents arising from the mortgaged property $4.000 which when deducted from his half left still coming to him of the debt $2.670— Add to this last sum the interest which has accrued since it became due, the sum of $.906- and it will make the sum of $3.576 due from Coffing to Taylor on the 17th day of January 1860 the date of stating this account- And for which the last mentioned sum a decree will be rendered in Taylors favor in conformity with this opinion, and the former decree rendered by this court in this case reversed, and that complainant Taylor recover his costs

409

Taylor

vs

Coffing et al

Extracts from the written opinion of Justice P. H. Walker