ingles Vs. Bringhurst

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Appeal No. : 1 U.S. 341

Appellant : ingles

Respondent : Bringhurst

Judgement :

INGLES v. BRINGHURST - 1 U.S. 341 (1788)
U.S. Supreme Court INGLES v. BRINGHURST, 1 U.S. 341 (1788)

1 U.S. 341 (Dall.)

Ingles
v.
Bringhurst

Court of Common Pleas of Philadelphia County

September Term, 1788

Indebitatus Assumpsit for money laid out and expended &c.; The case was this. The Plaintiff, Ingles, had a house in the district of Southwark, against the wall of which one Waters had erected another house. Waters becoming insolvent, his house, on

the 1st of August, 1774, was sold under a Venditioni Exponas to one Ridley; but he, also, falling into distress, the house, by virtue of a similar process against him, was again sold, on the 7th of March, 1776, to the Defendant, Bringhurst, for a full and valuable consideration. In the advertisements published on the occasion of these successive sales, no other incumberance was mentioned, than a ground-rent of L 6; and the Defendant had remained in quiet possession of the premisses until about two or three years ago, when the Plaintiff demanded of him one half of the cost of the party wall between the above mentioned houses; and, the demand being refused, he brought this action to recover the amount. The question, therefore, agitated on the trial, was, whether the claim for a reimbursement of a moiety of the cost of a party wall, under the Act of Assembly, (see 1 State Laws 293.) was a lien upon the land, or only a personal charge against the builder of the second house? The Plaintiff called several witnesses (who had been Regulators of considerable experience) in hopes of establishing a custom favorable to his pretensions. They only proved, however, that the valuation of a party wall was never made untill the second house was built; and that, even afterwards, it was frequently postponed for four or five years. One of the witnesses, indeed, said that he remembered an instance where the purchaser paid the moiety of the cost of the party wall, and not the original builder of the second house; but he could not ascertain whether this was the effect of any agreement of the parties, or not. The argument was conducted by Levy for the Plaintiff, and by Tilghman and Hallowell for the Defendant. For the Plaintiff, it was urged that, in a variety of cases, the law favored and supported a usage in particular matters, even before it had attained all the characteristic qualities of a custom. Thus, the general rule of law entitles a Lessee pur auter vie to emblements, but not a Tenant for years; and yet, on the usage of a particular place, it was determined, that where there was a lease for one year from the 25th of March, the Lessee might (after the expiration of the term on the succeeding 25th of March) enter at the October harvest, upon the arrable lands, and remove the crop, notwithstanding the positive limitation of his contract. Doug. 361. A warrant of attorney to confess a judgment is, by the course of the Court (which is the law of the Court) made irrevocable; and yet it is the nature of

all letters of attorney to be revocable. Farresl. 95. In Pennsylvania, likewise, several striking precedents have been established upon this point. On proof that it was a usage among Lanners to work in and out for three vatches, it was lately decided in this Court, that, for that purpose, the lessee of a Tan-yard was entitled to hold over the possession, although his agreement was for a fixed and determinate time. So, in the case of a Feme Couvert, who could not at common law convey her maiden lands but by Fine, yet, as it had been the constant usage of the province to make such conveyances

by deeds of bargain and sale, the usage was recognized by the Court, and the deeds adjudged to be obligatory. Lloyd's Lessee versus Taylor ant. 17. In the case at bar, it is proved to have been the general usage, not to value the party wall till the second house is built; and, even then, it is frequently delayed for several years; so that it must necessarily be inferred, that the usage extends to make the purchasor of the second house, as liable as the person who built it, for the moiety of the partition; of which, indeed, all the positive evidence has been given, that the nature of the case affords.

For the Defendant two points were made. 1st. That the action could not be maintained at common law. And 2nd. That it was not authorized by the Act of Assembly.

1. On the first point, it was observed, that bona fide purchasors for a valuable consideration are highly favored in law; 2 Black. Com. 247. and of these, purchasors under an execution are the most esteemed; insomuch that if the execution is afterwards set aside for irregularity, they shall nevertheless hold the lands. 2 Bac. Abr. 370. 1 State Laws 52. Pursuing this regard for honest purchasors, if a Trustee sells trusts lands for a valuable consideration, without giving notice of the trust, the law declares that the buyer shall hold the ands discharged. Cas. temp. Talb 260. and even if a man purchases for a valuable consideration with notice of a settlement, from one who bought without notice, he shall shelter himself under the first purchasor. 1 Atk. 571. The Defendant is a bona

fide purchasor under an execution, for a valuable consideration, without notice of the Plaintiff's demand: He is, therefore, in all respects, within the benefit of these authorities, and ought not to be made responsible for the negligence of the Plaintiff, who had it in his power to recover from the original owner of the house, who knew of the sales, who never gave notice of his claim at the times of sale, and who has suffered so long a period to elapse before he made a demand, as to justify a presumption, that, whatever was due, has been paid. Cowp. 109. If, indeed, a man will stand by at the time of sale, and not disclose his lien, the law deems him guilty of a fraud, and postpones his right to that of the purchasor. 2 Atk. 83. Gilb. Eq. Rep. 85. 1 Ves. 94. In the present case particularly, it would be highly dangerous, if the rule were otherwise; for, there is no record, as in the cases of mortgages and judgments, to which a man can refer in order to ascertain the incumberances that will thus affect his purchase; nor is there any means by which a remote purchasor can show that the lien has been discharged by his predecessors.

It is evident, then, that a lien of this kind can only be created by the operation of law, or the act of the parties. It is not pretended that the Defendant is liable from his own act; for, he neither built the house, nor assumed to pay the money; and, when the Plaintiff would avail himself of a usage, it is incumbent upon him to make strict proof of its existence; which he has failed in doing upon this

occasion, whatever might be the effect of the testimony, as between Ingles and Waters, the original builders of the houses, to whom alone it has any relation. 2. Nor, on the second point, is the action authorized by the Act of Assembly. The words relating to this controversy are, that the first builder shall be reimbursed one moiety of the charge of the party wall, or for so much as the next builder shall have occasion to make use of, before he shall in any wise use or break into the said wall, &c.; Here then is the remedy which by operation of law is given to the first builder; and when a statute gives a new remedy the party must take it on the terms of the Act. 2 Burr. Fitzg. 47. 3 Lev. 48. Fitz. 85. 1 Vent. 104. Stra. The Plaintiff was empowered to compel a reimbursement of the moiety of his expenses before

Waters could use the wall; and if he has neglected to do so, although it would perhaps be unjust in Waters himself to refuse the payment, yet there is no legal or moral obligation that can bind a subsequent purchasor; for, on the spirit and words of the Act, he had a right to presume that the claim was already satisfied; or, if he had known that it was not, he might have insisted on some abatement in the price. The first builder, indeed, could have no greater lien than the carpenter, or mason, who built the house. In England, where real estate is not liable for the payment of single contract debts, if a house descends to the heir he is not bound to pay the carpenter that repaired it, who can only resort to the personal estate for satisfaction. 1 Ves. 155. So here; as the Plaintiff allowed the second builder to use the party wall before he exacted the contribution which the law allows; it became a matter of mere personal confidence; and, however the person of Waters might be liable, his house and lot were effectually discharged. For the Plaintiff, in reply. As the Defendant has not relied on the statute of limitations in his plea, no argument from the lapse of time can apply. Nor is it any reason that the Plaintiff should lose his claim, because the Sheriff omitted, or neglected, to make it known at the time of sale; and there is no ground to presume (nor ought fraud ever to be presumed, 2 Atk. 83.) that the Plaintiff knew when the sale was. Incumberances in law or equity are not altered or affected by a Sheriff's sale. The Sheriff has no authority to bind a stranger to the process under which he sells: and this distinguishes the case from that of the Trustee, whose acts are binding upon the cestuy que trust. It is clear that a mortgage shall divest the title of a purchasor, though the mortgage was not mentioned at the sale; for, the Sheriff only sells the right which the Defendant had in the premisses. The Defendant ought to have enquired whether the Plaintiff's claim was satisfied; and the law does not help those who sleep, but only those who are active and vigilant. The right given by the Act of Assembly to be paid before is a new and extraordinary one; for, the common law admits of no compensation until value received. There is not any remedy, however, pointed out for the recovery of this new right; and it will

hardly be pretended that an action would lie before the second house was begun; until which time it is impossible to say how much of the wall is wanted, nor, consequently, how much contribution is due. But the Plaintiff does not insist on this new right; he does not ask for payment before, but long after, his wall has been used; and, surely, the Legislature that gave a right in the former case, must have admitted a much stronger right to recover in the latter; for, he who uses another's property is liable, at all times, to pay for it. This, indeed, is a principle of natural justice paramount to all Acts of Assembly; and, as every continuance of a nuisance is as culpable as the original offence, the Defendant's continuing to occupy and use the Plaintiff's wall, is, in itself, sufficient to make him liable to the present demand.

Shippen, President. The principal point in this case is, whether under our Act of Assembly, the moiety of the cost of a party wall, is a personal charge against the builder of the second house, or such a lien upon the house itself, as shall render it liable to the reimbursement of the first builder, into whose hands soever it may come? Lien is a technical term, that means a charge upon lands, running with them, and incumbering them in every change of ownership; as mortgages, judgments, ground rents &c.; There are some liens, also, created by statute; as, in the very act in question, where a perpetual lien is clearly given to the first builder of a party wall, for so much of his neighbour's land, as one half of the breadth of the wall shall cover. It is enacted, at the same time, that the second builder, having the use of one half of the wall, shall reimburse one half of the expense of building it; which is a reasonable and useful regulation, calculated to prevent animosities and disputes. Whether, however, a purchasor of the second house, after it is built, shall be liable to the claim of the first builder, who has neglected, or declined, to insist upon the payment, before his wall was broken into, has been made a question, but, I think, it is easily resolved by attending to the expression and manifest intent of the law. The Act of Assembly declares that the first builder shall be reimbursed; but it also prescribes the time of reimbursement to be, before the second builder shall in any wise use, or break into the wall. This, it has been observed, is an indefinite right of payment; for, until the second house is begun, it cannot always be ascertained how much of the wall will be wanted, nor, until then, is there any

form of action in which a recovery can be had. But this argument may, at once, be obviated by considering, that if a man makes a breach in my wall, he is a trespasser, and, generally speaking, I have a competent remedy for the injury which he has done. The Act of Assembly, however, provides, that any person whose lot joins upon my house, may lawfully use and break into

the wall, if he has first paid me a moiety of the cost of building it. Now, although no action will lie to recover this moiety until the second house is actually begun, yet, if it is begun and a breach made in the wall before the payment, the builder is considered as a trespasser, notwithstanding half of the wall is raised upon his ground; and in an action of trespass against him, he could not justify under this Act. Or, perhaps, the Plaintiff might wave the trespass and bring an action on the implied assumption for money paid for the Defendant's use.

The difficulty, indeed, of ascertaining how much the first builder is entitled to receive, until the second house is erected, has given rise to the usage that has been proved; but this extends no further than to show, that the valuation of the party wall is never made before the second house is built, and often, not until several years afterwards. The usage, to this effect, may have a reasonable foundation; but to reach the present case the evidence of a usage, if at all admissible, ought to have shown, that, for a long series of years, the owner of the second house, however remote from the builder, was held liable to pay the moiety of the charge of the party wall. This has not, I think, been satisfactorily done.

The Plaintiff then contends for his claim upon another principle, that, as the Defendant has the use and occupation of the wall, he ought to be proportionally liable for the cost of building it; and this would certainly be a strong argument, if a lien actually existed. But, if the moiety of a party wall is only a personal charge against the second builder, there is no more reason that a subsequent purchasor should be responsible for that, than for the payment of the brickmaker or mason. Considering it, therefore, as a lien, it will bind the estate, like a mortgage or judgment; but, considering it as a personal charge, the Plaintiff, upon an implied

contract (as well as the tradesmen who were employed, upon an express one) must resort to Waters for payment and satisfaction of his demand.

This, therefore, brings it to the original question, whether, in this case, a lien exists or not? And the Court are clearly of opinion that it does not. Why, indeed, should the Legislature have directed the payment to be made before the breach, if they meant that the second house should be forever charged with the cost of the party wall, whoever might be the owner? In almost every instance of a lien there is some record by which it is announced to the public, and to which every man may have access. But here, it is a dormant transaction; the claim is not known when the sale takes place, so that the purchasor loses the opportunity of indemnitying himself; and, even if it had been satisfied by the first builder, or the intermediate purchasor, that is a fact which it cannot be in the Defendant's power at this time to establish.

Verdict for the Defendant.