Levinz Vs. Will

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Court : US Supreme Court

Decided On : 1789

Appeal No. : 1 U.S. 430

Appellant : Levinz

Respondent : Will

Judgement :

LEVINZ v. WILL - 1 U.S. 430 (1789)
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1 U.S. 430 (Dall.)

Levinz
v.
Will

Supreme Court of Pennsylvania

April Term, 1789

This action was tried at July term 1788, when, by consent. a verdict was given for the Plaintiff, for the sum of sl.687.5. with six pence costs, subject to the opinion of the Court on the following facts:

'The Plaintiff executed and acknowledged a mortgage on the 3rd day of September 1782, which was recorded on the 30th of October, 1783. The mortgaged premisses being sold by the Defendant, then Sheriff of the city and county of Philadelphia, the ballance, after deducting the sum for which the land had been sold, was paid to the mortgagee. Afterwards, to wit, on the 16th of July, 1785, the Plaintiff made an assignment of all his property for the use of all his creditors, and the assignees bring this action, in his name, to recover the money thus paid over to the mortgagee.

'If the Court shall be of opinion with the Defendant on the foregoing case, then judgment shall be entered for him; otherwise judgment to stand for the Plaintiff for the sum specified in the verdict.'

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The question was, whether a mortgage, not recorded within six months, is good against the mortgagor? And it was argued on the 5th of January, 1788, by Wilson and Ingersol, for the Plaintiff; and Sergeant and Bradford for the Defendant. For the Plaintiff, it was urged, that, on account of the notoriety of conveyances at common law, they were not liable to so many frauds as modern alterations in the mode of transferring property tended to introduce. To prevent these, however, several satutary statutes have been made, which, principally, have in view to protect the rights of honest creditors, and bona fide purchasors. Thus, by the act of Assembly, 1 State Laws 79. it is expressly said that 'no deed, or mortgage, or defeasible deed, in the nature of mortgages, hereafter to be made, shall be good or sufficient to convey or pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed be acknowledged or proved, and recorded within six months after the date thereof, where such lands lie, as herein before directed for other deeds:' And upon the construction of this clause the present case depends. By a subsequent act of Assembly, indeed, the neglect or omission to record an absolute conveyance within six months, makes it only void against a subsequent purchasor, or mortgagee, for a valuable consideration; 1 State Laws 520. but there was abundant reason to vary the intent and form of the expression in the two cases; because, on an absolute conveyance possession

accompanies the deed, which does not take place on a mere mortgage; and the object of the Legislature was, to prevent a false and delusive colour of property. Since, then, the mortgage, for want of being recorded within six months, was not sufficient to convey or pass any estate, the Plaintiff, or rather his creditors who use his name, are entitled, in this action, to recover the money back from the Defendant, that has been paid to him on account of a deed, or instrument, which the law had previously made void and nugatory. For the Defendant, it was contended, that, although the letter of the act was against him; the spirit of it, which is the true guide in the construction of laws, was in his favor. It is a general rule, that cases without the letter, if within the mischief, shall have the remedy. 4 Bac. Abr. 648. Nay, words shall sometimes be expounded against the letter, in order to maintain the intent. 19 Vin. 519. 1 Black. Com. 61. Statutes must be expounded by a consideration of the previous law, the mischief complained of, and the remedy provided. Ibid. 512. Now, by the common law, the mortgage would have been good, although not recorded; and the sole reason, for calling for a record of the deed, must be to protect subsequent purchasors, since it could be of no consequence to the mortgagor himself. The construction of this very act, has, in another respect, been contrary to the letter; for, it requires, that the deed shall not only be executed, but acknowledged and recorded; and yet the execution, without the acknowledgement, has always been held sufficiently binding on the party. But the authorities to this

point are express and numerous. By the statute of 13 Eliz. c. a. all leases by ecclesiastical bodies for longer terms than three lives or twenty one years are declared 'utterly void to all intents and purposes, any law, custom, or usage, to the contrary thereof notwithstanding;' and, yet, as no Legislature could mean to make a man's act void against himself, the mischief, which was the impoverishing their successors, has always been deemed sufficiently suppressed by vacating longer leases after the death of the grantors, but the leases, during their lives, being not within the mischief, are not within the remedy. 1 Black. Com. 87. Were it otherwise, the grantors would be allowed to do wrong to other persons. 3 Bac.

Abr. 390. And every principle that applies in that case, equally applies in the one before the Court. By the act of Assembly, 1 State Laws 520. an absolute conveyance, not recorded within six months, is made void against a subsequent purchasor for a valuable consideration; but, let us suppose, that such subsequent purchasor had notice of the previous conveyance, it is certain that he would not be protected by the act, although his case would come fully within the words.

Thus, also, the words of the English statute of frauds and perjuries, 29 Car.

2. c.

3. s.

1. are as strong as those in the act now under discussion; and any agreement which is not to be performed within a year from the making thereof, is declared to be invalid both in law and equity; and, yet, if an agreement to lease for a longer term is confessed in an answer to a bill in Chancery, the Court will compel the party (though the law has expressly declared the agreement void) to execute the lease. In Cowp.

141.

2. is a case within the letter of a rule of the King's Bench, respecting warrants of attorney given by persons in custody, and, yet, as it was not within the intent, the Court refused to consider it within the remedy. But, it is clear, that, if the common law could not grant relief, a Court of Equity would; 2 Eq. Ca. Abr

684. 1 P. Will.

279. See 4 and

5. W. and M. c.

20. And this Court exercises both jurisdictions. Against Levine, the Defendant has a specific lien in equity, though the mortgage had been void (which is denied) at common law; and, not withstanding the action is brought in his name for the use of

others, the assignees can be in no better situation than the assignor, and are bound by the same equity. 1 Chan. Cases.

170. If, indeed, a judgment, or mortgage, had been obtained by any person before the sale of the land, and actual payment of the money to the Defendant, the preference so obtained at law, would have been conclusive against him: but, as the case stands, the Court will do justice and support right. If a father conveys to a child for love and affection, though this will not be good as a bargain and sale, it is good in equity as a covenant to stand seized to uses. 3 Eq. Ca. Abr.

482. pl.

19. See how far a deed operates against the maker; 4 Burr. 2209. And the relief in cases of defective titles. Gilb. For. Rom.

228. 1 Eq. Ca. Abr.

357. 385.

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For the Defendants, in reply, it was observed, that the arguments of the adverse counsel proved the imperfection of human language; for, never were words more definite, more clear, than those in question, and yet, it is contended that they do not express the intention of the Legislature that used them. Two general positions, however, are to be discussed- first, Whether a mortgage not recorded within six months is absolutely void? and, secondly, Whether the creditors can take any advantage which the Defendant himself could not? But we trust that the decision of the first will be so plain, that it is hardly necessary to consider the second. 1. The cases cited from 4 Bac. Abr. and 19 Vin. contain nothing but general observations, that where the meaning of the Legislature is evidently different from the letter of the act, the latter shall be construed agreeably to the former: and this it is not intended to deny. But we contend, that the Legislature had in view the protection and interest of creditors, as well as subsequent purchasors; to prevent frauds upon those, as well as to secure the rights of these; and there is no just

reason for giving the one class a superiority over the other, since all the bankrupt acts, by which the present act may in this respect be explained, are made to prevent a false appearance of property, by which men may be induced to give credit, as well as to purchase an estate. There must be some force given to all the words of the Legislature, as well as to the words of a deed; and, as the words vary in the two acts, 1 State Laws 79 and 520. we must presume there was an intentional variation of the meaning. The case from Black. Com. on the 13. of Eliz. c. 10. shows that the statute was made for the benefit only of the successors of exxlesiastical bodies; and had no respect to the party himself or to his creditors. But we will meet them on the statute of frauds and perjuries, from which they have argued by analogy; for, are not leases for more than three years void? It is said, that if an agreement to lease for more than three years is confessed in an answer, the Chancellor, if money has been received, will compel a performance: though we do not admit this doctrine, it does not affect the present argument, which turns upon the validity of a mortgage actually executed. A deed of bargain and sale not inrolled, is void. 1 Danv. Abr. 696. 2 Vern. 564. The case from Cowp. was that of an attempt to commit a fraud, which vitiates every transaction. But, we still insist, that where the letter is plain, the Court cannot construe it differently. Term. Rep. 101. It would, indeed, be the assumption of a dispensing power, if the Judges could give relief against a positive act. Property is the foundation of credit; and hence, with an admirable independence of the prejudices in favor of English jurisprudence, one of the first acts of this Province recognized it as such; so that by the silent operation of the law for taking real estate in execution, the whole is, in fact, mortgaged to creditors in case of the death of the possessor. But where a mortgage is actually executed

in Pennsylvania, the mortgagor remains in possession, although the legal title is in the mortgagee; and hence the necessity for the precautions required by the act of Assembly. The statute of inrollments, 27 H. 8. c. 16. has the same expression; and the construction under that statute in, that deeds of bargain and sale, have no operation to transfer the estate, 'till they are enrolled; but, when that is done, the

deeds operate ab initio, by relation, as in the case of letters of administration, or assignments under commissions of bankrupts; and that, as Lord Coke says by the words of the statute. 2 Inst. 674. But the words of the act of Pennsylvania are in the negative, that no interest shall pass; and therefore, although the deed may have the effect of a covenant, and be, in many other respects obligatory on the person of the mortgagor, it cannot convey any interest in the land unless duly recorded. 2. But, to notice the second proposition, whether the assignee can derive an advantage to which the assignor would not be entitled, it is clear that the latter may sue his debtor for the benefit of the former: Term. Rep. 619. And, although, generally speaking, the assignor and assignee must stand on the same footing; yet, as in the case of an innocent purchasor without notice of a previous conveyance, so in the case of an honest creditor deluded by a fictitious appearance of property, there may be circumstances which place him in a more favorable point of view. Neither, upon the whole, is there any ground to complain of hardship, for the Legislature, considering the situation of the country, gave ample time for recording deeds, that had been neglected. by the act of the 23rd of September, 1783. 3 State Laws. 226. And the universal understanding upon this subject has been, that a mortgage is absolutely void, to all intents and purposes, if not recorded within the six months prescribed by the law. The cause having been for some time under advisement, the Chief Justice delivered the opinion of the Court as follows:

McKean, Chief Justice. The judgment in this case depends upon the construction of the acts of Assembly 1 State Laws, pages 79. and 520. It is to be premised, that the reason which induced the Legislature to make such acts as take away the common law, may be, and usually is, urged, as the rule by which the acts ought to be construed. In doubtful cases, therefore, we may enlarge the construction of an act of Assembly, according to the reason and sense of the law-makers, either expressed in other parts of the act itself, or guessed by considering the frame and design of the whole. 11 Mod. 161. Archer v. Brokenham. And the original intent and meaning is to be observed. 11 Rep. 73. Magdalen Colledge Case. Where, indeed, the expressions in an act of Assembly are in general terms, they are to receive a construction that may be agreeable to the rules of common law, in cases

of a similar nature. 19 Vin. Abr. 512.

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The original intent, then, of the makers of the law immediately under consideration, and their principal reason, seems to have been to prevent honest purchasors, or mortgages, of real estates, from being deceived by prior secret conveyances, or incumberances; and, therefore, they have directed that such conveyances, or incumberances, shall be recorded in six months, or that they should not be sufficient to pass any estate. Thus, by having recourse to the offices of the Recorders, any one may ascertain the previous liens upon the property, which he wishes to purchase, or to receive as a pledge; and this amounts to a constructive notice to all men, and supercedes the necessity of express personal notice. But the Legislature did not mean, nor have they, in fact, enacted, that express personal notice, where given, should have no effect: Neither could they entertain an idea of defeating fair and honest bargains, which do not injure other persons: And, if this unrecorded deed can be obligatory in no other manner, it may certainly operate as a covenant to stand seized to uses. 2 Wils. 72 105. But why should it not be good as between John Levinz and the grantee, since by construing it so, no one else can be hurt, and the deed was clearly delivered for securing a just debt, without any suggestion of fraud in the transaction? It is true, it would not have been valid against a subsequent grantee, or mortgagee, whose deed or mortgage was regularly recorded; but we think it is efficient against John Levinz, and all other persons; that the deed, so far, is sufficient to pass the lands, and that, under it, the possession of the premisses might have been recovered in an ejectment. There is a great variety of cases which confirm this opinion, and some of them have been already cited by the Defendant's counsel. Thus, with respect to church leases, the statute enacts, that they may be made for twenty one years or three lives, from the date; and, it made for a longer term, that they shall be utterly void, any law, custom, or usage, to the contrary. And, yet, leases for a longer term have always been adjudged good against those who made them; because, that could do no wrong to the successors, or to any other persons. See 1 Eliz. c. 10. sect. 5. 3 Bac. Abr. 390. Cowp. 141. So, likewise, notice of a judgment, though not

docqueted, will bind a purchasor, notwithstanding the express words of the statute of 4 and 5 Will. and Mary c. 20. sect. 3. by which it is declared that judgments not docqueted, shall not affect lands, as to purchasors or mortgages. 2 Eq. Abr. 684. In the case of a lease made in Ireland, where there is a statute providing, that all leases which were not registered by a certain day, should be void, if a subsequent lessee had notice of the prior lease, though not registered, it shall be good against him. 2 Eq. Abr. 282. Ca. 19. And, in the instance of a surrender of a copyhold by way of mortgage, not presented to the Court in time, the surrender will nevertheless be valid against voluntary dispositions, or creditors; and that, although by the custom of the manor, confirmed by act of Parliament, all such surrenders were to be void, if not presented in twelve

months after they were made. 1 Chan. Ca. 170 2. Vern. 564. These, indeed, were considered in the nature of purchasors by defective conveyance, and the law as a penal one. See, also, 1 Will. 279.

Upon the whole, the Court are clearly of opinion with the Defendant, and direct judgment to be entered accordingly.

Judgment for the Defendant.