Mcferran Vs. Taylor and Massie

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 270

Appellant : Mcferran

Respondent : Taylor and Massie

Judgement :

McFerran v. Taylor & Massie - 7 U.S. 270 (1806)
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McFerran v. Taylor & Massie

7 U.S. (3 Cranch) 270

ERROR TO THE DISTRICT

COURT OF KENTUCKY

SYLLABUS

He who sells property on a description given by himself is bound in equity to make good that description, and if it be untrue in a material point, although the variance

be occasioned by mistake, he must still remain liable for that variance.

A finding by the jury which contradicts a fact admitted by the pleadings is to be disregarded.

McFerran in his bill alleged that on 19 March, 1784, the defendant, Taylor, for a valuable consideration, executed his bond to the complainant for the conveyance of 200 acres of land out of 1,000 acres located by him on Hingston, or out of 5,000 acres which Taylor then had for location. The condition of the bond was as follows:

"That if the said Richard Taylor, his heirs, &c.;, shall well and truly make or cause to be made to the said Martin McFerran, his heirs or assigns, a good sufficient title in fee simple to two hundred acres of land in the County of Kentucky out of 1,000-acre tract located by the said Richard Taylor on Hingston's Fork of Licking, or 200 acres out of 5,000 which the said Taylor has now for location, provided he obtain the same, at such part or place thereof as the said McFerran shall choose, not to exceed more than twice the breadth in length thereof, so soon as the lands can in any degree of safety be surveyed,

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then this obligation to be void, otherwise to remain in full force and virtue."

The bill further alleged that on 25 September in the same year, the defendant Taylor executed another bond to the complainant for 300 acres of land adjoining the former tract of 200 acres.

That the said 5,000 acres of land alluded to by the bonds was granted to Taylor for his military services by a warrant numbered 1,734, which issued for 6,000 acres, but that Taylor did not inform the complainant that it contained more than 5,000 acres. That 1,000 acres of the 6,000 have been located on Paint Creek, and 2,000 on Brush Creek, in the northwestern territory, and 3,000 on the Green River, in the District of Kentucky. That Taylor had not any lands on Hingston, so that the complainant cannot make his choice there, where he avers the general quality of the land is equal to any in Kentucky, and is worth from $8 to $10 an acre. That

Taylor has sold the 1,000 acres on Paint Creek to the defendant Massie, who, before he paid for the land and obtained a title from Taylor, had notice of the complainant's claim to 500 acres from Taylor, as before stated.

That before the sale to Massie, Taylor had sold the 2,000 acres on Brush Creek to Abraham Buford or to someone else, and in consequence thereof assigned the certificate of survey to John Brown. That in 1796, the complainant applied to Taylor to show him his lands, that he might make his choice, but Taylor neglected and refused to show them. That the complainant chooses to have the 500 acres laid off and conveyed to him from the land on Paint Creek, and has given notice of his choice to Taylor, who refuses to convey the same from out of that tract and refuses to accompany the complainant to have the same laid off, and that Massie also refuses to convey.

The bill concludes with a prayer that the complainant may be permitted to make choice of 500 acres of land out of the 1,000 acres on Paint Creek, that the defendants may be compelled to convey the same, and that the court would grant general relief, &c.;

The answer of the defendant, Taylor, admitted the bonds and that the 500 acres were to be laid off in one tract. It alleged that the consideration of the first bond was two horses, sold to him by the complainant at the price of 40 Virginia currency for both, and that the consideration of the other bond was another horse valued at 48. It refers to the entry for the 1,000 acres upon the waters of Licking, dated June 15, 1780, which is in these words:

"Colonel Richard Taylor enters one thousand acres on Treasury warrants, adjoining an entry of Major Thompson on a buffalo road leading from Hingston's Fork to the sweet licks, beginning at his southeast corner, thence north along said Thompson's line 600 poles, thence east for quantity."

The answer then avers that the mentioning of Hingston's Fork of Licking in the bond was not a description of locality, but of tract, and that the mentioning Hingston was no greater recommendation of the land than if another fork of Licking had been named, because both parties were unacquainted with it and Taylor had understood that his said entry was on Hingston. That the provision in the bond for a choice out of 5,000 acres was an alternative, and it was not intended that the complainant should have his choice out of the 6,000-acre warrant, and it was intended and understood by both parties that Taylor should hold 1,000 acres thereof unencumbered, and not liable to the complainant's choice. It avers further that these 1,000 acres were located on the shares on Paint Creek; that Taylor held part, and Kenton and Helm another part, as locators; that he sold his part to Massie, but he does not recollect the quantity. Of the remaining 5,000 acres, he exchanged 2,000 with Colonel Abraham Buford for two entries of 1,000 acres each, because there was a greater probability of getting good land upon small entries than upon large. That these 2,000 acres were located on the south side of Green River. That the other lot of 2,000 acres, part of the 5,000, was located on the north fork of Paint Creek, but understanding the land was not good, he had 1,500 acres withdrawn, and finally located on some of the waters of Paint Creek, as he is informed, but he is so much unacquainted with that country that he cannot point it out particularly. The remaining 1,000 acres are located and patented south of Green River. That he has offered the complainant a choice of any of those lands except the 1,000 acres held

by Massie, Kenton, and Helm, which he has refused. That the 500 acres on the north fork of Paint Creek are inferior to the other lands, as he has been informed and believes, and the complainant having positively refused them, Taylor has sold them. But the 1,500 acres on the waters of Paint Creek, which were originally part of the 2,000 acre lot and the three tracts of 1,000 acres each south of Green River are yet held by him ready for the choice of the complainant. That Taylor informed the complainant before the commencement of this suit fully of the exchange with Buford, and has been always ready and willing to let him have his 500 acres as

aforesaid. That Taylor informed the complainant of his said military warrant and that it was for 6,000 acres, and that he reserved 1,000 acres thereof, which it was then possible he might want to live on, and that the complainant's right of choice was only to extend to the remaining 5,000 acres. That since Taylor discovered that the first-mentioned 1,000 acres laid on Slate Creek, a branch of Licking, and not on Hingston, a branch of Licking, he informed the complainant thereof and also that he had no lands on Hingston.

The answer of Massie denied that previous to his paying the consideration of the land to Taylor and the issuing of the patent, he has any notice that the complainant had any claim to that land, and averred that he was a *bona fide* purchaser for a valuable consideration without notice.

The jury (which, by the practice of Kentucky, is called to ascertain facts in chancery suits) found the following facts:

1. That the defendant executed the bonds.

2. That at that time, he had no lands on Hingston's Fork of Licking.

3. That on 29 August, 1795, he assigned to John Brown the plot and certificate of survey, &c.; (the 2,000 acres before mentioned), which survey was made by virtue of a military warrant, No. 1,734.

4. That on the 31st of July, 1797, he assigned to Massie, &c.;, the 1,000 acres before mentioned, being a survey of part of the same warrant.

5. That the complainant demanded of Taylor 500 acres in virtue of the said bonds before the commencement of this suit, but it does not appear that any lands have been conveyed in compliance with that demand; neither does it appear that any particular piece of land was pointed out by the complainant when the said demand was made, except that he had made his election to have 500 acres out of the survey assigned to Massie, and gave notice thereof to Taylor, who refused to

convey it.

6. That 500 acres might be laid off in that survey worth five dollars an acre in the form called for in the bonds.

7. That the 5,000 acres mentioned in the bonds were part of the warrant No. 1,734, for 6,000 acres, granted to Taylor for his own services.

8. That Taylor had the entry of 1,000 acres of June 15, 1780.

9. That when the bonds were executed, Taylor had a military warrant for 6,000 acres, 1,000 whereof were entered on Paint Creek in partnership with the locators, and since assigned to Massie; 2,000 were exchanged with Abraham Buford, for other 2,000 acres of military warrants, in separate entries of 1,000 each, because Taylor deemed it more probable that he should get good land on small entries than on large ones.

10. That 1,000 acres of the said 5,000 were entered on the south side of Green River.

11. That the remainder of the 5,000 acres is located on Paint Creek, or its waters.

12. That Taylor is willing that the complainant should make his choice out of any of the three tracts of 1,000 acres each, south of Green River, or out of the 1,000 acres on the waters of Licking, or out of the 500 acres, or the 1,500 acres on the waters of Paint Creek.

13. That the average price of lands on Hingston is three and a half dollars per acre, and on Slate two dollars per acre.

14. The 1,000 acres adjoining Thompson are worth two dollars per acre.

15. The land transferred from Taylor to Buford is worth one dollar and fifty cents per acre.

16. The land transferred by Buford to Taylor is worth two dollars per acre.

The decree of the district court, upon the bill, answers, and facts found, was in substance

That the complainant should, on or before 1 September then next, make choice of his 500 acres out of the following tracts of land, to-wit: 1,000 acres adjoining Major Thompson's entry on a buffalo road leading from Hingston's Fork to the Sweet Licks; the 2,000 acres transferred by Buford to Taylor; the 1,000 acres entered in the name of Taylor on Lost Creek, a branch of the Ohio; the 500, or the 1,500 on Paint Creek; and give notice to Taylor of such choice within one month after it should be made.

commissioners were appointed to lay off and survey the said 500 acres for the complainant, and it was further decreed that Taylor should, before 1 November then next, convey the said 500 acres to the complainant, but if the complainant should not make his choice and give notice as aforesaid, then Taylor should, on or before the 25th of the then next November, convey to the complainant 500 acres out of one of the said tracts in a reasonable form, according to the condition of the bonds, and that Taylor should pay the costs of the suit.

Upon this decree the complainant sued out his writ of error.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The bill states the original contracts, and claims a specific performance by permitting the plaintiff to elect the 500 acres to which he is entitled, out of the tract of 1,000 acres which had been located on Paint Creek, and also contains a prayer for general relief.

On the specific object of the bill, the right to make an election out of the lands on Paint Creek, there can be no difficulty. One thousand acres, part of the original warrant, having been clearly withdrawn at the time of the contract from the quantity

out of which the 500 acres, sold by the defendant, were to be chosen, there can be no pretext for the claim set up in the bill.

As little foundation is there for the claim to damages instead of the land itself on account of the 500 acres stated in the answer to have been sold, which sale the counsel for the complainant considers as a wrong which has put out of his client's reach a tract he had a right to elect, and has consequently disabled the defendant from complying with his contract.

To this claim two answers may be given, either of which would completely defeat it.

1st. The fact found by the jury shows that the defendant is still ready to convey this land. The Attorney General would exclude this finding from the case because it contradicts the admission of the answer, and it is a rule of law that a finding which contradicts a fact admitted in the pleadings is to be disregarded.

The principle of law is unquestionably laid down correctly, but the Court can perceive no incompatibility between the admission of the answer and the fact as found by the jury. They may both be true, and of consequence,

the Court must consider both as true. After the answer was filed, the land may have been repurchased by Mr. Taylor, and such a repurchase would have been proper evidence to justify the fact found by the jury, and would put him in a situation to perform his contract so far as respected this particular tract. But were it even otherwise:

The 2d answer is that the concession made by the defendant must be taken altogether. He states the complainant to have refused this particular tract of 500 acres before it was sold. The complainant had consequently elected not to take it, and of course the defendant was at liberty to dispose of it.

The other point in the case is attended with more difficulty. It is that the representation made by Taylor at the time of the sale was untrue in a material

point. He represented the tract of 1,000 acres which had been located, and out of which the plaintiff would have a right to take the lands he purchased, to lie on Hingston's Fork of Licking, when in truth it lay on Slate, another branch of the same river, where the lands prove to be less valuable than on Hingston. That this misrepresentation is material cannot be denied, but it is contended by the defendant that it originated in mistake, not in fraud, and as the country was at that time unknown to both the contracting parties and the material object was to give the purchaser a right to take the land he had purchased out of the tract already located for the seller, an accidental error in the description of the place where the tract in contemplation of the parties lay -- an error which could have had at the time no influence on the contract, ought not now to affect the person who has innocently committed it.

From the situation of the parties and of the country and from the form of the entry it is reasonable to presume that this apology is true in point of fact, but the Court does not conceive that the fact will amount to a legal justification of the person who has made the misrepresentation. He who sells property on a description given by himself is bound to make good that description, and if it be untrue in a material point, although the variance be occasioned by a mistake, he must still remain

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liable for that variance. In this case, the defendant has sold land on Hingston, and offers land on Slate. He has sold that which he cannot convey, and as he cannot execute his contract, he must answer in damages.

It is therefore the opinion of the Court that the plaintiff is entitled to an issue to ascertain the damages he has sustained by the inability of the defendant to perform his contract and to the damages which shall be found.

Although in the general principles laid down the Court was unanimous, I did not, in consequence of the particular circumstances of this case, concur in the opinion which has been delivered. I will briefly state those circumstances.

In his bill the plaintiff does not allege that he was in any degree induced to make the contract by supposing the land already located to lie on Hingston's fork. This representation, then, was an accidental circumstance which has not in the slightest degree influenced his conduct. Nor does he now, in his bill, urge this variance in the description of the property as a reason for claiming damages instead of the specific thing contracted to be sold. Nor does it appear that this claim was set up in the district court. On the contrary, he alleges that the land on Paint Creek is also in his power, and insists on making his election out of that tract. Under such a bill, in a case where the contract is a very advantageous one to the purchaser, I am not convinced that a court of equity ought to award him damages on account of an error in the description of the property which was innocent in itself, which at the time appeared to be unimportant, and which most obviously did not conduce to or in any manner affect the contract. The person claiming damages in such a case should, I think, be left to his remedy at law. I should therefore have been disposed to affirm the decree of the district court. I am, however, perfectly content with that which I have been directed to deliver.