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Shirras Vs. Caig

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 34

Appellant : Shirras

Respondent : Caig

Judgement :

Shirras v. Caig - 11 U.S. 34 (1812)
U.S. Supreme Court Shirras v. Caig, 11 U.S. 7 Cranch 34 34 (1812)

Shirras v. Caig

11 U.S. (7 Cranch) 34

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF GEORGIA

SYLLABUS

A mortgage of land made by one who has a legal and equitable title to a moiety of the property which the mortgage purports to convey passes only his legal right, although he had a power from the person who held the residue of the legal, but not

of the equitable, estate in the land, to sell and convey his right also, the mortgagor not having affected to convey, any part of it under his power from the other person, although his deed purported to mortgage the whole, and the equitable title not being in the person who gave the power.

A plat referred to in the deed as being annexed to it, but which was never in fact annexed and was not recorded with the deed, affords no evidence in aid of the description of the property mentioned in the deed.

A person cannot be charged with fraudulently secreting a deed who places it upon record as soon as the law requires.

It is not necessary to the validity of a mortgage that it should truly state the debt it is intended to secure, but it shall stand as a security for the real equitable claims of the mortgagees, whether they existed at the date of the mortgage or arose afterwards upon the faith of the mortgage, before notice of the defendant's equity.

Error to the Circuit Court for the District of Georgia by Shirras and others original complainants

Page 11 U. S. 35

against Caig & Mitchel, original defendants, in a suit in equity to foreclose a mortgage of a lot, houses, and wharf in Savannah called Gairdner's Wharf, which were in the possession of the defendants.

The mortgage was made on 1 December, 1801, by Edwin Gairdner, in his own name, and also as attorney for the defendant, Caig (but without any authority from Caig so to do), to secure the payment of 130,000 sterling, for which E. Gairdner had, on the same day, executed a bond for himself and Caig.

In the year 1796, this property had been purchased by James Gairdner, Edwin Gairdner, and Robert Mitchel as joint tenants, who took a conveyance from Levi Sheftall to themselves, by the description of James Gairdner, Edwin Gairdner and Robert Mitchel, merchants and co-partners of the City of Savannah. The name of the firm was Gairdner & Mitchel. In 1799, this firm was dissolved, and the business

was carried on in Charleston by Edwin Gairdner alone under the firm of Edwin Gairdner & Co., and by mutual consent, in December, 1799, an entry was made in the books of Gairdner & Mitchel by James Gairdner charging this property to the account of Edwin Gairdner & Co. at the price of $20,000. In 1800, Edwin Gairdner entered into partnership with John Caig, the defendant, at Savannah under the firm of Edwin Gairdner & Co., under which name he continued to carry on business alone at Charleston, and upon his books at that place made an entry charging this property to the Savannah house (consisting of himself and Caig) at an agreed price, and the Savannah house by an entry on their books credited the same on the account of the Charleston house consisting of Edwin Gairdner alone.

On 7 January, 1802, Edwin Gairdner and John Caig dissolved their partnership at Savannah and a new firm was established consisting of Edwin Gairdner, John Caig, and the defendant, Robert Mitchel, under the name of Gairdner, Caig & Mitchel, who by their articles of co-partnership under seal, agreed to take the property in question at a valuation and hold it as their joint property.

Page 11 U. S. 36

Previous to this, *viz.,* in March, 1800, Mitchel had by deed conveyed his third part of this property to Edwin Gairdner and John Caig as joint tenants, and at the time of executing the mortgage (*viz.,* December 1, 1801), Edwin Gairdner had full power and authority from James Gairdner to sell and convey his share of the property.

Subsequent to the mortgage, *viz.,* on 27 July, 1802, Edwin Gairdner, as attorney for James Gairdner, by deed conveyed to Mitchel one-third of the property, and by his own deed of the same date he conveyed one-sixth of the property to Caig, who had before received a conveyance of one other sixth from Mitchell.

These two last deeds were proved and recorded on 14 September, 1802.

The mortgage was proved on 10 and recorded on 17 September, 1802.

By the law of Georgia, deeds of bargain and sale are to be recorded in 12 months -- and by a law of 1768, every mortgage and deed recorded within ten days after it's execution shall have preference of other deeds and mortgages not recorded within that period.

At the time of executing the mortgage, therefore, the legal title of three sixths of the property was in Edwin Gairdner, and according to the book entries of the several co-partnerships, he was also equitably entitled to the same. The legal title of two-sixths was in James Gairdner, and of the other sixth in Caig, who, according to the book entries, was equitably entitled to three-sixths, so that although Edwin Gairdner had a legal power to sell and transfer James Gairdner's two-sixths, yet he was bound in equity to transfer them to Caig.

The complainants in their bill claim the whole. They state that Edwin Gairdner was the real *bona fide* owner of the property -- that the book entries were made only to give a credit to the Savannah house, and were without consideration -- that the Savannah house was only to hold it in trust for Edwin Gairdner during the co-partnership. That Edwin Gairdner became bankrupt on 3 November, 1802, has received his certificate of discharge,

Page 11 U. S. 37

and that two of the complainants, Blacklock and Verrees, were duly appointed his assignees. That Caig & Mitchel and the firm in which they are partners are still largely indebted to Edwin Gairdner, who is also very largely indebted to the complainants. And they pray that all conveyances under which Caig & Mitchel claim to hold possession of the property may be declared void and may be cancelled -- that the property may be sold and the proceeds applied towards payment of the debts due to the complainants -- and for general relief.

The answers of Caig & Mitchell, the defendants, do not admit that anything was due by E. Gairdner to the complainants on 1 December, 1801, the date of the mortgage, and suggest that if anything was due, it has since been paid off or otherwise settled. That Caig was made a party to the bond and mortgage without

his authority and consent. That the bond and mortgage were carefully kept secret until 13 September, 1802. That it was not a regular transaction, and ought not to avail against the defendants, who are *bona fide* purchasers.

They set forth the several co-partnerships and entries in the books, and aver that they and all the parties considered them as good transfers of the property which was always holden and considered as stock in trade. They deny all private, secret, or confidential trust for the benefit of E. Gairdner. They aver that they believe that at the date of the mortgage, the Charleston house was indebted to the Savannah house, after allowing credit for the property in question.

In this state of the cause, the defendants, Caig & Mitchel, filed a cross-bill against the complainants, Shirras and others, alleging secret transactions between them and E. Gairdner and praying a discovery. They charge that the execution of the bond and mortgage was an act of hurry and despair, in the confusion and embarrassment of entangled circumstances and at the eve of one of the greatest and most distressing bankruptcies. That the deeds were not signed until some weeks or months after their date. That no title papers were shown to the mortgagees (they being all in the hands

of Caig at Savannah), nor any authority from Caig to convey his interest. That the mortgage was taken without reflection or previous contemplation as to the security intended to be given, but as the last hope of saving or securing something from a person on the eve of insolvency. That the bond and mortgage were not executed for advances made or money lent on the security or hope of security arising from the mortgage, but with the intent to indemnify the mortgagees for endorsements at the banks in South Carolina for E. Gairdner and for other collateral securities entered into for him, all which were settled and discharged by the exertions of E. Gairdner and the resources he was then enabled to bring into activity. That there is no money due on the bond or on the consideration for which the bond was given. That all the obligees have been fully paid, satisfied, and indemnified without having recourse to the mortgaged premises, and that the mortgage is kept up for

speculating purposes and to oppress Caig & Mitchel or to cover some transaction between E. Gairdner and one of the obligees, subsequent to the execution of the mortgage and which has no relation to the same. That the mortgage was concealed from Caig & Mitchel for fear of injuring E. Gairdner's credit, and was not delivered to the mortgagees till some time before it was recorded, and was not recorded until Caig & Mitchel had paid a valuable consideration for two-thirds of the property and were in the quiet possession thereof, with the knowledge of the mortgagees. They claim title to two-thirds of the property under the various book entries of the several firms.

The bill then seeks a discovery of the day and consideration on which the bond and mortgage were really executed, and whether the mortgagees had not notice of the claim of Caig & Mitchel. Whether the mortgagees gave notice of the mortgage to them, and requires Shirras and others to disclose the real debts, together with the particulars thereof, actually due from E. Gairdner, to each of them, at the date of the mortgage. It prays that the mortgage may be decreed to be fraudulent and void as to Caig & Mitchel, and for general relief.

The separate answers of the several defendants, Shirras and others, to the cross-bill set forth minutely

Page 11 U. S. 39

their several claims against E. Gairdner, and aver that the monies loaned and responsibilities incurred were upon the faith of the mortgage -- except Wm. Blacklock, who did not know that he was included in the mortgage till some time after its date. Black in his answer produces on oath the plat referred to in the mortgage, which he says had remained with him ever since the execution of the mortgage.

They all admit that Caig & Mitchel were not notified of the mortgage and that they knew of no authority from Caig to E. Gairdner to encumber his share of the property. They admit they did not see any title papers and that they did not require them, having a perfect confidence in the representations and character of Edwin

Gairdner. They deny that they had any knowledge of any transfer to Caig & Mitchel, except that E. Gairdner stated that Caig held one-sixth. They admit that the mortgage was kept secret until 10 September, 1802, lest it should injure the credit of the mortgagors. They aver that it was executed on the day of its date or within a very few days afterwards, and was not retained by E. Gairdner, but immediately delivered to the defendant, Black. The testimony in the cause related merely to the authentication of the instruments, and the entities upon the books, and to the balance of the accounts between the Charleston and the Savannah house, and tending to prove that the Savannah house was considerably indebted to the Charleston house at the date of the mortgage.

In May, 1807, the circuit court, consisting of judges Johnson and Stevens, gave the following opinion.

"In the great confusion of legal and equitable interest which exist in this case, the mind can resort to no other means of making a just discrimination but that of recurring to the original state of the interests of the several parties and following their respective portions through the several changes of property which resulted from subsequent transactions."

"By the conveyance from Levi Sheftall to James Gairdner, Edwin Gairdner, and Robert Mitchel, each acquired a fee simple in one-third of the property in question. "

Page 11 U. S. 40

"In legal language, they were each seized *per my* and *per tout* of a third part in joint tenancy. The third part of James Gairdner never was legally conveyed until the deed of July, 1802, by Edwin, attorney for James Gairdner, conveying it to Robert Mitchel. With regard, therefore, to that third, and the one-sixth conveyed by Mitchel and Caig, making up a moiety of the whole, there can be no doubt that the complainants are not entitled to recover. Both law and equity are on the side of the defendants. The only difficulties that exist arise in relation to the one-sixth conveyed by Mitchel to Edwin Gairdner and by him conveyed to Caig, and the

remaining third originally vested in Edwin Gairdner."

"With regard to these propositions, the complainants are in possession of the legal right, and the question is how far are the defendants relieved in equity."

"It is contended that this court ought not to aid the complainants, on several grounds."

"1. Because this property ought to be considered as a part of the co-partnership funds of the first firm of Gairdner, Caig & Mitchel, and of E. Gairdner & Co. -- and neither co-partner is at liberty to alienate his share until the debts of those concerns are discharged and their balances adjusted."

"2. Because the amounts claimed by the several mortgagees were for loans and assumptions not existing at the time of the mortgage, but incurred afterwards, with a small exception."

"3. Because by the articles of co-partnership, the property is legally pledged to the last concern of Gairdner, Caig & Mitchel, and this instrument as well as the conveyance of one-sixth to Caig from E. Gairdner, are entitled to a preference to the mortgage, in consequence of the mortgagees' having neglected to record their mortgage and thereby to put others on their guard."

"On the first of these grounds, we remark there are many cases in which real property may be pursued as part of a co-partnership stock, but it is only in the hands of legal representatives in cases of descent, bankruptcy,

Page 11 U. S. 41

&c.;, but not where a legal alienation has been made or the property is unaffected by articles of co-partnership."

"With regard to the 2d and 3d grounds, we think them of much importance. This Court will certainly support a mortgage when there exists no actual debt, if the mortgagee is under any liability or engagement which may ultimately subject him to loss or the payment of money for the mortgagor, such, for instance, as the

endorsement of notes, the renewal of notes originally endorsed or an arbitration or administration bond or other undertaking from which a debt only may be incurred. But it is evident that some bounds ought to be set to this mode of mortgaging on contingencies, especially when the mortgagee retains an absolute unrestrained option, whether the mortgagor shall or shall not be his debtor, when he is under no legal or moral obligation to make loans or assume a liability in his behalf. But as we do not mean to found our decree in this case on this ground, we shall not now attempt to draw the line. The subject is a very delicate one."

"On the 3d ground, the court feel itself compelled to decree in favor of the defendants."

"The complainants, by not making known to the world the existence of this mortgage, have lost their right to the aid of this court in obtaining a foreclosure in their behalf. The defendant Caig ought not to lose the benefit of the conveyance of the one-sixth executed to him by Gairdner. He was legally proprietor of the one-sixth, and, by book entries, equitably, of another sixth."

"We consider the acknowledgment of interest in him by Gairdner upon the face of the mortgage as sufficient notice to complainants of his interest, both legal and equitable. This alone would be sufficient to entitle him to the favor of this Court, independently of his having become purchaser afterwards of the legal title without notice of the mortgage. With regard to the remaining 3d, we consider the articles of co-partnership, accompanied with the payment of the consideration, as a covenant to stand seized to the use of the firm, and entitled to a precedence to the mortgage because of the latters' not having been recorded. "

Page 11 U. S. 42

"The co-partners therefore will be entitled to a preference as to Gairdners' 3d, both as to payment of creditors of the last house of G. C. & M. and for the satisfaction of any demand which the co-partnership may have upon him. Subject to their claims the complainants will be entitled to relief."

In May 1808, the circuit court made the following final decree.

"The court, referring to the interlocutory decree of May term, 1807, orders, adjudges, and decrees that the bill be dismissed with costs as against the defendants John Caig and Robert Mitchel as to the two third parts of the mortgaged premises, and that the bill the sustained as to one-third of the mortgaged premises, reserving a preference on the said third part of the premises both as to the payment of the creditors of the late house of Gairdner, Caig & Mitchel, and for the satisfaction of any demand which the co-partnership may have upon him, said Gairdner."

To reverse this decree the present writ of error was sued out by Shirras and others.

Page 11 U. S. 46

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

This is an appeal from a decree rendered by the Circuit Court for the District of Georgia.

Shirras and others, the appellants, brought their bill to foreclose the equity of redemption on two lots lying in the Town of Savannah, alleged to have been mortgaged to them by Edwin Gairdner. The deed of mortgage is dated the first of December, 1801, and purports to be a conveyance from Edwin Gairdner and John Caig by Edwin Gairdner his attorney in fact. Edwin Gairdner not appearing to have possessed any power to act for John Caig, the conveyance as to him is void, and could only pass that interest which was possessed by Gairdner himself. The Court will proceed to inquire what that interest was.

It appears that on 17 May, 1796, the premises were conveyed to James Gairdner, Edwin Gairdner, and Robert Mitchel, merchants and co-partners of the City of Savannah.

In 1799, this partnership was dissolved, and in December in the same year James Gairdner made an entry

on the books of the company charging this property to Edwin Gairdner & Co. of Charleston, at the price of $20,000. This firm consisted of Edwin Gairdner alone. James Gairdner also executed a power of attorney authorizing Edwin Gairdner to sell and convey his interest in this and other real property.

In March, 1801, a partnership was formed between Edwin Gairdner and John Caig to carry on trade in Savannah under the firm of Edwin Gairdner & Co., and in the same month Robert Mitchel conveyed his one-third of the lots in question to Edwin Gairdner and John Caig.

About the same time it was agreed between the house at Charleston and that in Savannah to transfer the Savannah property to the firm trading at that place, and entries to that effect were made in the books of both companies, and possession was delivered to Edwin Gairdner & Co. of Savannah.

Such was the state of title in December, 1801, when the deed of mortgage bears date.

The plaintiffs claim the whole property, or, it not the whole, five-sixths, because they suppose Edwin Gairdner to have been equitably entitled to his own third, to that of James Gairdner, and to half of the third of Robert Mitchel. But for this claim, the Court is of opinion that there can be no just pretension, because he did not affect to convey by virtue of the power from James Gairdner -- he did not affect to pass the interest of James Gairdner, but to pass the estate of John Caig and himself. Consequently the power of attorney may be put out of the case, and the conveyance could only operate on his own legal or equitable interest.

In law, he was seized under the original deed and the deed from Robert Mitchel of one undivided moiety of the property.

Under the various agreements and entries on the books of the firms at Charleston and Savannah which have been stated, his equitable interest was precisely equal to his legal interest. In law and equity, he held one

moiety of the premises in question. The other moiety was in John Caig. To one-sixth Caig was legally entitled by the conveyance from Robert Mitchel, and to two-sixths he was equitably entitled by the agreement with Edwin Gairdner and the consequent entries on the books.

Of the equitable interest of John Caig the mortgagees were bound to take notice because the purchaser of an equitable interest purchases at his peril and acquires the property burdened with every prior equity charged upon it, because the deed itself gives notice of Caig's title and because Caig was in possession of the property.

The mortgage deed of December, 1801, could not, then, in law or equity, pass more than one moiety of the property it mentions.

A question arises on the face of the deed respecting the extent of the property comprehended in it. The plaintiffs contend that both lots are within the description, the defendants that only the wharf lot is conveyed.

The property conveyed is thus described

"All that lot of land, houses, and wharfs in the City of Savannah as is particularly described by the annexed plat and is generally known by the name of Gairdner's Wharf."

The plat was not annexed, nor was it recorded with the deed. It is, however, filed as an exhibit in the cause, and appears to be a plat of part of the Town of Savannah, including the lot on which Gairdner's Wharf was, and also one other lot belonging to the same persons, which was designated as No. 6, and which does not adjoin the property on which the wharves are erected.

The words descriptive of the property intended to be conveyed do not appear to the Court to be applicable to more than the wharf lot. The word "lot" is in the singular number; the term "houses" is satisfied by the fact that there are houses on the wharf lot, and there is no evidence in the cause, nor any reason to believe that

lot No. 6 was "generally known by the name of Gairdner's Wharf." The Court therefore cannot consider that lot as comprehended within the conveyance.

Page 11 U. S. 49

The mortgaged property is in possession of the defendants Caig & Mitchel, who derive their title thereto in the following manner.

On 7 January, 1802, a new partnership was formed between Gairdner, Caig & Mitchel, and, by the articles of co-partnery, which are under seal, the Savannah property is declared to be stock in trade, and an entry was made on the books of the old firm transferring this property to the new concern. On the 12th of the same month, the co-partnership of Gairdner & Caig was dissolved.

On 27 July, 1802, by deeds properly executed, one-third of the property became vested in John Caig and one other third in Robert Mitchel.

On 3 November, 1802, Edwin Gairdner became a bankrupt, and this bill is brought by his mortgagees and assignees.

The claim to foreclose is resisted by Caig & Mitchel because, they say,

1st. The mortgage was not executed at the time it bears date, but long afterwards and on the eve of bankruptcy.

2d. That the transaction is not *bona fide,* there being no real debt nor any money actually advanced by the mortgagees.

3d. That the mortgage was kept secret instead of being committed to record.

4th. That the whole transaction is totally variant from that stated in the deed.

They therefore claim the property for the creditors of Gairdner, Caig & Mitchel.

1st. From the testimony in the cause it appears that the deed, if not executed on the day, was executed about the day of its date, and that Gairdner, at the time,

was believed to be solvent.

Page 11 U. S. 50

2d. It appears also that the mortgage was executed in part to secure the payment of money actually due at the time and in part to secure sums to be advanced and to indemnify some of the mortgagees for liabilities to be incurred.

3d. The mortgage is dated 1 December, 1801, and was recorded in September, 1802.

By the laws of Georgia, a deed is valid if recorded within twelve months; but any deed recorded within ten days after its execution takes preference of deeds not recorded within that time, or previously on the record.

It appears to the Court that neither negligence, nor that fraud which is inferred from the mere fact of omitting to place a deed on record, can with propriety be imputed to the person who has used all the dispatch which the law requires. If subsequent purchasers without notice sustain an injury within the time allowed for recording a deed, the injury is to be ascribed to the law, not to the individual who has complied with its requisition.

In this case, the subsequent purchasers might have proceeded to record their deeds within ten days and have thereby obtained the preference they claim, but they have failed to do so. They are themselves chargeable with the very negligence which they ascribe to their adversaries, and, were they to be preferred, the Court would invert the well established rule of law and postpone under similar circumstances a prior to a subsequent deed.

4th. It is true that the real transaction does not appear on the face of the mortgage. The deed purports to secure a debt of 30,000 sterling due to all the mortgagees. It was really intended to secure different sums, due at the time from particular mortgagees, advances afterwards to be made, and liabilities to be incurred to an uncertain amount.

It is not to be denied that a deed, which misrepresents the transaction it recites and the consideration on which it is executed, is liable to suspicion. It must sustain a

Page 11 U. S. 51

rigorous examination. It is certainly always advisable fairly and plainly to state the truth.

But if, upon investigation, the real transaction shall appear to be fair, though somewhat variant from that which is described, it would seem to be unjust and unprecedented to deprive the person claiming under the deed of his real equitable rights unless it be in favor of a person who has been in fact injured and deceived by the misrepresentation.

That cannot have happened in the present case.

There is the less reason for imputing blame to the mortgagees in this case because the deed was prepared by the mortgagor himself, and executed without being inspected by them, so far as appears in the case.

It is then the opinion of the Court that the plaintiffs, Shirras and others, have a just title under their mortgage deed to subject one moiety of the lot or parcel of ground commonly known by the name of Gairdner's Wharf to the payment of the debts still remaining due to them, which were either due at the date of the mortgage or were afterwards contracted upon its faith, either by advances actually made or incurred prior to the receipt of actual notice of the subsequent title of the defendants Caig & Mitchel, and that the decree of the circuit court of Georgia, so far as it is inconsistent with this opinion, ought to be reversed.

The following is the decree of this Court.

This cause came on to be heard on the transcript of the record and was argued by counsel. On consideration whereof it is the opinion of this Court that the deed of mortgage in the proceedings mentioned, and dated on 1 December, 1801, is in law a valid conveyance of one moiety of that lot of land, houses, and Wharves in

the City of Savannah which was generally known by the name of Gairdner's Wharf, being the parcel of ground lying between the river and the street, and that the mortgagees in the said deed mentioned are entitled to foreclose the equity of redemption in the said mortgaged property and to obtain a sale

Page 11 U. S. 52

thereof and to apply the proceeds of the said sale to the payment of what remains unsatisfied of their respective debts which were either due at the date of the mortgage or have been since contracted either on account of monies advanced, or liabilities incurred prior to their receiving actual notice of the title of the defendants, John Caig, and Robert Mitchel. And the decree of the Circuit Court for the District of Georgia, so far as it is inconsistent with this opinion, is reversed and annulled, and in all other things is affirmed, and the cause is remanded to the said Circuit Court for the District of Georgia that further proceedings may be had therein according to equity.

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