Conway's Executors and Devisees Vs. Alexander

Conway's Executors and Devisees Vs. Alexander

SooperKanoon Citation : sooperkanoon.com/78549

Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 218

Appellant : Conway's Executors and Devisees

Respondent : Alexander

Judgement :

Conway's Executors and Devisees v. Alexander - 11 U.S. 218 (1812)
U.S. Supreme Court Conway's Executors and Devisees v. Alexander, 11 U.S. 218 (1812)

Conway's Executors and Devisees v. Alexander

11 U.S. 218

APPEAL FROM THE CIRCUIT COURT IN THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF ALEXANDRIA

SYLLABUS

If A advance money, to B. and B. thereupon convey land to trustees in trust to convey the same to A. in fee in case B. should fail to repay the money and interest

on a certain day and if B. fail to repay the money on the day limited, and thereupon the trustees convey the land to A., B. has no equity of redemption.

Page 11 U. S. 219

Walter S. Alexander, the appellee, son and residuary devisee of Robert Alexander, deceased, filed his bill in equity against the executors and devisees of Richard Conway, deceased, to be permitted to redeem a certain tract of land which his father, Robert Alexander, had, in the year 1788, conveyed to certain trustees by a deed which the complainant contended was a mortgage, which land the trustees had conveyed to W. Lyles, who had conveyed the same to said Richard Conway. The deed was by indenture, dated March 20, 1788, between Robert Alexander of the first part, W. Lyles of the second part, and certain trustees of the third part, whereby Robert Alexander (after reciting his title to an undivided moiety of 400 acres of land, holden in common with Charles Alexander), in consideration of 800 paid to him by W. Lyles, and in consideration of the covenants to be performed by the trustees, bargained, granted and sold, aliened and confirmed to W. Lyles, in fee, twenty acres, being part of the said undivided moiety -- and to the trustees the residue of the moiety, except part thereof conveyed to B. Dade on 1 January, 1788, which residue was supposed to contain 140 acres, to have and to hold the 20 acres to W. Lyles, his heirs and assigns, to his and their use forever -- and the said residue of the said moiety to the trustees and the majority of them, and the survivors and survivor of them, in trust as follows, to-wit:

"To convey the said residue of the said moiety, except as before excepted, unto him the said W. Lyles, his heirs and assigns forever, by good and sufficient deeds in law for that purpose, at any reasonable time after the first day of July, which shall be in the 1790, unless the said Robert Alexander, his heirs, executors, or administrators shall pay or cause to be paid to the said W. Lyles, his heirs, executors, or administrators the sum of 700 current money of Virginia in gold or silver coin, with lawful interest thereupon from the date hereof on or before 1 July, which shall be in the year 1790. And if the said Robert Alexander, his heirs, executors, or administrators shall pay or cause to be paid to the said W. Lyles, his

heirs, executors, or administrators the said sum of 700 current money of Virginia, in gold or silver coin, with lawful interest thereupon,

Page 11 U. S. 220

at any time on or before the said first day of July, which shall be in the year 1790, in trust, immediately upon the payment being made, to reconvey to him the said Robert Alexander and his heirs forever, by good and sufficient deeds in law, all the title which by virtue of these presents passeth to them the said [trustees] or any of them, of, in, and to the said residue of the said moiety, except as before excepted, hereinbefore granted and confirmed unto them."

Robert Alexander then covenants that he has good title in fee simple to the land conveyed, and that the 20 acres shall be laid off in a certain situation contiguous to other land of Lyles, and by certain metes and bounds therein described. The trustees then covenant that they will well and truly execute the trusts reposed in them by reconveying the land to Robert Alexander, if he should pay the money and interest on or before 1 July, 1790, or by conveying it to Lyles, if Robert Alexander should not pay it by that day. Robert Alexander then covenants with Lyles, that he will make further assurance, &c.;, both as to the 20 acres, and as to the residue of the moiety, if the trustees should convey it to him. He then covenants to warrant the 20 acres to Lyles against the claims and demands of all persons whomsoever. This deed did not contain any covenant on the part of Alexander to pay the 700.

On 19 July, 1790, the trustees, by deed of that date, reciting the deed of 29 March, 1788, and that Lyles had represented that R. Alexander had not paid the money, and had required them to execute the trust, conveyed the residue of the undivided moiety in fee to Lyles, in consideration of the covenants, agreements, and trusts in the former deed contained on their part to be performed, and in consideration of 700 mentioned in the said former deed to have been paid by Lyles to Alexander.

On 23 August, 1790, Lyles by deed of that date (after reciting the title of Robert Alexander to the undivided moiety of the 400 acres of land, and his deed of 20

March, 1788, to Lyles and the trustees, and that Alexander failed to pay the 700 on 1 July, 1790, and that the trustees, by their

Page 11 U. S. 221

deed of 19 July, 1790, had conveyed the land in question to Lyles) in consideration of 900 paid him by Richard Conway, conveyed the 20 acres, and the residue of the undivided moiety of the 400 acres, and all his right, title, interest, use, trust, property, claim, and demand, in and to the same, by force of the said indenture, and all deeds, evidences and writings in any manner or way touching the same, and the right and privilege of prosecuting in the name of Lyles (if at any time judged necessary by Conway, his heirs or assigns), any actions at law for the breach of any of the covenants in the said indenture contained, to have and to hold all and singular the premises thereby granted, with the appurtenances, and all the estate, right, title, use, trust, interest, property, claim, and demand of him the said W. Lyles thereto, by force and virtue of the aforesaid indentures to Conway, his heirs and assigns, to his and their use forever, with a special warranty against the claims of Lyles and his heirs and assigns only.

On 17 January, 1793, Robert Alexander made his will, and after devising specifically a number of tracts of land and moieties of tracts by name and description, to his son Robert, devised all the rest and residue of his estate, real and personal, to his son Walter, the complainant. Robert Alexander, the testator, died in February, 1793. The land in question was not specifically devised by his will, and Walter, the complainant, obtained title under the will to several other tracts not specifically devised.

The complainant became of full age in November, 1803, and brought this suit in 1807.

The deposition of W. Lyles was taken on the part of the defendants. He testified that Robert Alexander was not indebted to him at the time of the contract for the land. No part of the money was advanced by him as a loan to be secured by mortgage. He was no lender of money, and would not have lent Alexander the

money on mortgage. Alexander was generally reputed not punctual in paying his debts, and rather too fond of law, and at the time of the contract for the land was confined in jail for a large debt, and sent several times to Lyles, and urged him buy the land. Lyles then

resided on land adjoining the 20 acres; and his house was very near the line. He wanted the addition of about 20 acres, and was not anxious to have any more. Alexander was more willing to sell his whole residue of the moiety of 400 acres than to sell a part, his object being to raise a considerable sum to pay the debt for which he was in prison. It was agreed that the 20 acres should be sold absolutely, and the residue should be sold conditionally, as otherwise Lyles would not advance the money. The 20 acres were purchased absolutely, to suit the convenience of Lyles, and the residue was purchased conditionally, to suit Alexander. Lyles was determined to advance no money on any bargain which should make it necessary to go into court to get it back. The condition was understood by both to be that if he paid the money by the time limited, the trustees were to reconvey the land to Alexander, but otherwise they were to convey it to Lyles in fee simple, and he was to have the land thereafter absolutely to his own use forever. He sold it as soon as he could after he left Alexandria, to get back his money. He received from Conway 900 at the date of the conveyance, or a few days after. Alexander never made any claim upon Lyles for any part of the land, and never expressed to him any dissatisfaction with the sale, although he saw him frequently afterwards. Alexander was not in confinement when the trustees made their deed to Lyles. No part of the land was cultivated, and no formal possession delivered.

The deposition of Ch. Lee, Esq. who drew the deeds of 20 March, 1788, and 19 July, 1790, stated that Lyles consulted him about the bargain with Alexander, and represented that Alexander wanted a considerable sum of money to pay a debt which was pressing, and offered to sell some land, but would not sell the whole of it absolutely, but was willing to sell part of it absolutely, and the residue was to be conveyed to trustees, in trust, to convey the fee to Lyles, if a certain sum of money

was not paid by a certain day; and if it was, the trustees were to reconvey to Alexander. The deponent was asked if such a contract was lawful, or would be deemed in law only a mortgage, and gave it as his opinion, that the parties might make such a contract, and that it could not be considered a mortgage. Lyles intimated that if that was not very clear, he

Page 11 U. S. 223

would not have anything to do in the business. That he would not, on any terms, make a bargain with Alexander, if he should be obliged to go into a court of equity about it, which might be the case if there should be a mortgage; that Alexander was well known to be troublesome and found of law. The deponent was requested to draw such instruments as would place the contract in the state of a conditional purchase of a part of the land, and with this view he drew the writing. He is certain that Lyles consulted him as to the nature and effect of the contract, and did not intend to have a deed in the nature of a mortgage, but of absolute sale of a part, and of a conditional sale of the other part of the land, and such was the deponent's intention when he drew the deed. That he afterwards drew a deed of conveyance from the trustees to Lyles to carry into effect their trust, and delivered it to Lyles to carry to the trustees. Lyles informed him that one of the trustees refused to execute the deed, unless Alexander would signify his consent, and asked whether a verbal consent would not do. The deponent sketched a note in writing for Alexander to sign, signifying his consent, and was afterwards informed that the trustees were satisfied, and did execute the deed, but he does not know whether Alexander gave his consent. Lyles was not easy in his pecuniary affairs, and he never knew him lend a large sum upon mortgage. Alexander was a bad manager of his estate, was generally needy of money, and not punctual in payment of his debts, though his landed estate was really of great value.

The answer of the executors does not admit the deed to be a mortgage, and states that Conway began to make expensive and permanent improvements on the land in the summer of 1791; that Alexander had an opportunity of seeing part of them, and probably did see them, and made no objection as they believe.

It appeared in evidence that the land had lately been sold for more than $20,000, but that it was very poor, much broken by gullies and exhausted, when Conway began his improvements. There was also evidence tending to show, that it was then worth more than he gave for it.

The court below being of opinion that the deed was

Page 11 U. S. 224

to be considered as a mortgage, directed an account to be taken of the value of the permanent improvements, and the original sum advanced by Lyles and interest, and of the rents and profits, which being done, it appeared that the complainant would have to pay the sum of $4,943 to redeem the land, and the court accordingly decreed a release upon the payment of that sum.

From this decree the defendants appealed to this Court.

Page 11 U. S. 235

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

This suit was brought by Walter S. Alexander, as devisee of Robert Alexander, to redeem certain lands lying in the neighborhood of Alexandria which were conveyed by Robert Alexander in trust by deed dated 20 March, 1788, and which were afterwards conveyed to William Lyles, and by him to the testator of the plaintiffs in error.

The deed 20 March, 1788, is between Robert Alexander of the first part, William Lyles of the second part, and Robert T. Hooe, Robert Muire, and John Allison of the third part. Robert Alexander, after reciting that he was seized of one undivided moiety of 400 acres of land, except 40 acres thereof previously sold to Baldwin Dade, as tenant in common with Charles Alexander, in consideration of eight hundred pounds paid by William Lyles, and of the covenants therein mentioned, grants, bargains and sells twenty acres, part of the said undivided moiety, to William Lyles, his heirs and assigns forever, and the residue thereof, except that

which had been previously sold to Baldwin Dade, to the said Robert T. Hooe, Robert Muire, and John Allison in trust to convey the same to William Lyles at any reasonable time after 1 July, 1790, unless Robert Alexander shall pay to the said William Lyles on or before that day the sum of 700 with interest from the said 20 March, 1788. And if the said Robert Alexander shall pay the said William Lyles, on or before that day the said sum of 700 with interest, then to reconvey the same to the said Robert Alexander. Robert Alexander further covenants that in the event of a reconveyance to him, the said twenty acres sold absolutely shall be laid off adjoining the tract of land on which William Lyles then lived. The trustees covenant to convey to William Lyles, on the nonpayment of the said sum of 700; and to reconvey to Robert Alexander in the

event of payment. Robert Alexander covenants for further assurances as to the 140 acres, and warrants the twenty acres to William Lyles and his heirs.

On 18 July, 1790, the trustees, by a deed in which the trust is recited, and that Robert Alexander has failed to pay the said sum of 700, convey the said land in fee to William Lyles.

On 23 August, 1790, William Lyles, in consideration of 900, conveyed the said 20 acres of land and 140 acres of land to Richard Conway with special warranty against himself and his heirs.

On 9 April, in the year 1791, a deed of partial partition was made between Richard Conway and Charles Alexander. This deed shows that Charles Alexander asserted an exclusive title in himself to a considerable part of this land.

Soon after this deed of partition was executed, Richard Conway entered upon a part of the lands assigned to him, and made on them permanent improvements of great value and at considerable expense.

In January or February, 1793, Robert Alexander departed this life, having first made his last will in writing, in which he devises the land sold to Baldwin Dade, but

does not mention the land sold to William Lyles.

The plaintiff, who was then an infant, and who attained his age of twenty-one years in November, 1803, brought his bill to redeem in 1807. He claims under the residuary clause of Robert Alexander's will.

The question to be decided is whether Robert Alexander, by his deed of March, 1788, made a conditional sale of the property conveyed, by that deed, to trustees, which sale became absolute by the nonpayment of 700 with interest on 1 July, 1790, and by the conveyance of the 19th of that month, or is to be considered as having only mortgaged the property so conveyed.

To deny the power of two individuals, capable of

Page 11 U. S. 237

acting for themselves, to make a contract for the purchase and sale of lands defeasible by the payment of money at a future day, or, in other words, to make a sale with a reservation to the vendor of a right to repurchase the same land at a fixed price and at a specified time, would be to transfer to the court of chancery in a considerable degree, the guardianship of adults as well as of infants. Such contracts are certainly not prohibited either by the letter or the policy of the law. But the policy of the law does prohibit the conversion of a real mortgage into a sale. And as lenders of money are less under the pressure of circumstances which control the perfect and free exercise of the judgment than borrowers, the effort is frequently made by persons of this description to avail themselves of the advantage of this superiority, in order to obtain inequitable advantages. For this reason, the leaning of courts had been against them and doubtful cases have generally been decided to be mortgages. But as a conditional sale, if really intended, is valid, the inquiry in every case must be whether the contract in the specific case is a security for the repayment of money or an actual sale.

In this case, the form of the deed is not in itself conclusive either way. The want of a covenant to repay the money is not complete evidence that a conditional sale was intended, but is a circumstance of no inconsiderable importance. If the

vendee must be restrained to his principal and interest, that principal and interest ought to be secure. It is therefore a necessary ingredient in a mortgage that the mortgagee should have a remedy against the person of the debtor. If this remedy really exists, its not being reserved in terms will not affect the case. But it must exist in order to justify a construction which overrules the express words of the instrument. Its existence, in this case, is certainly not to be collected from the deed. There is no acknowledgement of a preexisting debt, nor any covenant for repayment. An action at law for the recovery of the money, certainly could not have been sustained, and if, to a bill in chancery praying a sale of the premises, and a decree for so much money as might remain due, Robert Alexander had answered that this was a sale and not a mortgage, clear proof to

Page 11 U. S. 238

the contrary must have been produced to justify a decree against him.

That the conveyance is made to trustees is not a circumstance of much weight. It manifests an intention in the drawer of the instrument to avoid the usual forms of a mortgage, and introduces third persons, who are perfect strangers to the transaction, for no other conceivable purpose than to entitle William Lyles to a conveyance subsequent to the nonpayment of the 700, on the day fixed for its payment, which should be absolute in its form. This intention, however, would have no influence on the case, if the instrument was really a security for money advanced and to be repaid.

It is also a circumstance which, though light, is not to be entirely disregarded, that the 20 acres, which were admitted to be purchased absolutely, were not divided and conveyed separately. It would seem as if the parties considered it as at least possible that a division might be useless.

Having made these observations on the deed itself, the Court will proceed to examine those extrinsic circumstances which are to determine whether it is to be construed a sale or a mortgage.

It is certain that this deed was not given to secure a preexisting debt. The connection between the parties commenced with this transaction.

The proof is also complete that there was no negotiation between the parties respecting a loan of money; no proposition ever made respecting a mortgage.

The testimony on this subject is from Mr. Lyles himself and from Mr. Charles Lee. There is some contrariety in their testimony, but they concur in this material point. Mr. Lyles represents Alexander as desirous of selling the whole land absolutely, and himself as wishing to decline an absolute purchase of more than twenty acres. Mr. Lee states Lyles as having represented to him that Alexander was unwilling to sell more than twenty acres absolutely, and offered to sell the residue conditionally. There is not, however, a

Page 11 U. S. 239

syllable in the cause, intimating a proposition to borrow money or to mortgage property. No expression is proved to have ever fallen from Robert Alexander before or after the transaction, respecting a loan or a mortgage. He does not appear to have imagined that money was to be so obtained, and when it became absolutely necessary to raise money, he seems to have considered the sale of property as his only resource.

To this circumstance the Court attaches much importance. Had there been any treaty -- any conversation respecting a loan or a mortgage, the deed might have been, with more reason, considered as a cover intended to veil a transaction differing in reality from the appearance it assumed. But there was no such conversation. The parties met and treated upon the ground of sale and not of mortgage.

It is not entirely unworthy of notice that William Lyles was not a lender of money, nor a man who was in the habit of placing his funds beyond his reach. This, however, has not been relied upon, because the evidence is admitted to be complete, that Lyles did not intend to take a mortgage. But it is insisted that he intended to take a security for money, and to avoid the equity of redemption; an

intention which a court of chancery will invariably defeat.

His not being in the practice of lending money is certainly an argument against his intending this transaction as a loan, and the evidence in the cause furnishes strong reason for the opinion that Robert Alexander himself did not so understand it. In this view of the case, the proposition made to Lyles, being for a sale and not for a mortgage, is entitled to great consideration. There are other circumstances, too, which bear strongly upon this point.

The case, in its own nature, furnishes intrinsic evidence of the improbability that the trustees would have conveyed to William Lyles without some communication with Robert Alexander. They certainly ought to have known from himself, and it was easy to procure the information, that the money had not been paid. If he had considered this deed as a mortgage, he would

Page 11 U. S. 240

naturally have resisted the conveyance, and it is probable that the trustees would have declined making it. This probability is very much strengthened by the facts which are stated by Mr. Lee. The declaration made to him by Lyles, after having carried the deed drawn by Mr. Lee to Mr. Hooe, that the trustees were unwilling to execute it until the assent of Alexander could be obtained, and the directions given to apply for that assent, furnish strong reasons for the opinion that this assent was given.

It is also a very material circumstance that, after a public sale from Lyles to Conway, and a partition between Conway and Charles Alexander, Conway took possession of the premises and began those expensive improvements which have added so much to the value of the property. These facts must be presumed to have been known to Robert Alexander. They passed within his view. Yet his most intimate friends never heard him suggest that he retained any interest in the land. In this aspect of the case, too, the will of Robert Alexander is far from being unimportant. That he mentions forty acres sold to Baldwin Dade, and does not mention one hundred and forty acres, the residue of the same tract, can be

ascribed only to the opinion that the residue was no longer his.

This, then, is a case in which there was no previous debt, no loan in contemplation, no stipulation for the repayment of the money advanced, and no proposition for or conversation about a mortgage. It is a case in which one party certainly considered himself as making a purchase, and the other appears to have considered himself as making a conditional sale. Yet there are circumstances which nearly balance these, and have induced much doubt and hesitation in the mind of some of the Court.

The sale on the part of Alexander was not completely voluntary. He was in jail and was much pressed for a sum of money. Though this circumstance does not deprive a man of the right to dispose of his property, it gives a complexion to his contracts, and must have some influence in a doubtful case. The very fact that the sale was conditional, implies an expectation to redeem.

Page 11 U. S. 241

A conditional sale made in such a situation at a price bearing no proportion to the value of the property would bring suspicion on the whole transaction. The excessive inadequacy of price would, in itself, in the opinion of some of the judges, furnish irresistible proof that a sale could not have been intended. If lands were sold at 5 per acre conditionally, which, in fact, were worth 15 or 20 or 50 per acre, the evidence furnished by this fact, that only a security for money could be intended, would be, in the opinion of three judges, so strong as to overrule all the opposing testimony in the cause.

But the testimony on this point is too uncertain and conflicting to prevail against the strong proof of intending a sale and purchase, which was stated.

The sales made by Mr. Dick and Mr. Hartshorne of lots for building, although of land more remote from the Town of Alexandria than that sold to Lyles, may be more valuable as building lots, and may consequently sell at a much higher price than this ground would have commanded. The relative value of property in the

neighborhood of a town depends on so many other circumstances than mere distance, and is so different at different times that these sales cannot be taken as a sure guide.

That twenty acres, part of the tract, were sold absolutely for 5 per acre; that Lyles sold to Conway at a very small advance; that he had previously offered the property to others unsuccessfully; that it was valued by several persons at a price not much above what he gave; that Robert Alexander, although rich in other property, made no effort to relieve this, are facts which render the real value, at the time of sale, too doubtful to make the inadequacy of price a circumstance of sufficient weight to convert this deed into a mortgage.

It is therefore the opinion of the Court that the decree of the circuit court is erroneous and ought to be reserved, and that the cause be remanded to that court with directions to dismiss the bill.

Decree reversed.