Pratt Vs. Law and Campbell

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Appeal No. : 13 U.S. 456

Appellant : Pratt

Respondent : Law and Campbell

Judgement :

Pratt v. Law & Campbell - 13 U.S. 456 (1815)
U.S. Supreme Court Pratt v. Law & Campbell, 13 U.S. 9 Cranch 456 456 (1815)

Pratt v. Law & Campbell

13 U.S. (9 Cranch) 456

ERROR TO THE CIRCUIT COURT

FOR THE COUNTY OF WASHINGTON

SYLLABUS

Decided that in the sales of lots in the City of Washington, the lots are not chargeable for their proportion of the internal alley laid out for the common benefit of those lots, although the practice so to charge them has been heretofore

universally acquiesced in by purchasers, and if a purchaser has acquiesced in that practice and has received a conveyance accordingly without objection, yet he does not thereby acquire a fee simple in such proportion of the alley, and may in equity recover back the purchase money which he has paid therefor.

If a purchaser of city lots stipulates to build within a limited time a house on every third lot purchased, or in that proportion, and receives conveyances for the greater part of the lots, he is not bound to build in proportion to the lots conveyed unless the whole number be conveyed.

In a case where it would be difficult to ascertain the injury resulting from the breach of contract or the sum in damages by which the injury might be compensated, this Court will not themselves ascertain the injury nor the damages, nor direct an issue *quantum damnificatus.*

Where a contract for the sale of land has been in part executed by a conveyance of part of the land, and the vendor is unable to convey the residue, a court of equity will decree the repayment of a proportionate part of the purchase money with interest.

If three persons mortgage their joint property to indemnify the drawer of bills of exchange drawn for their accommodation in case of protest, and if each of the mortgagors agrees to take up a third part of the bills upon their return under protest, and if two of them neglect to take up their two-thirds, whereby the other mortgagor is compelled to take up the whole of the bills, in consequence of which he requests the drawer not to release the mortgage, but to hold it for his benefit, a lien in equity is thereby created upon the mortgaged property to the amount of two-thirds of the bills in favor of that mortgagor who took up the whole.

Quaere whether a subsequent encumbrancer can compel a prior encumbrancer to disclose the consideration which he gave for the notes of the debtor upon which his encumbrance was founded?

An equity of redemption of real estate in Maryland is liable to attachment.

These several suits in chancery in the Circuit Court for the County of Washington in the District of Columbia, being involved in each other and relating to the same property, were heard and argued as one cause.

The first of these suits in the order of time was that of *Pratt v. Duncanson & Ward,* which was instituted on 24 March, 1801. The bill prayed that Duncanson and Ward might be enjoined from selling certain squares in the City of Washington which had been mortgaged by Morris, Nicholson and Greenleaf to Duncanson to indemnify him against the return of certain bills of exchange which he had drawn for their accommodation, to the amount of 12,000 sterling, a part whereof, *viz.,* 7,600, it was alleged had been taken up by Ward, who claimed payment from Duncanson and persuaded him to advertise the mortgaged property for sale. The bill alleged that although the bills had been taken up by Ward, he had done it as the agent of Greenleaf, one of the mortgagors, and with his funds, and

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prayed for general relief. The squares which were thus mortgaged to Duncanson were included in a previous mortgage to Thomas Law.

The next suit in order of time was that of *Pratt v. Thomas Law and William Campbell.* The bill was filed on 14 December, 1804.

Its objects were to compel Law to release to the complainants, who were assignees of Morris, Nicholson and Greenleaf, certain squares in the City of Washington which had been mortgaged by them to secure to him the conveyance of certain lots and squares in the same city which they had contracted to convey to him and which he was to select from a larger number which they had purchased of the commissioners of the city, to compel Law to complete his selection, and to vacate certain releases made by him at the solicitation of Campbell, who had attached the equity of redemption of some of the squares which were included in the mortgage to Law.

The third suit in the order of time was that of *Law v. Pratt.* The bill was filed on 4 October, 1805, and its object was to foreclose the mortgage given to secure to

Law the conveyance of 2,400,000 square feet of land in the City of Washington, agreeably to a certain contract between him and Morris, Nicholson and Greenleaf, because about 400,000 square feet which Law contended he had selected agreeably to his contract had not been conveyed to him.

The last of these suits in the order of time was that of *Campbell v. Pratt et al.,* assignees of Morris, Nicholson and Greenleaf, and W. M. Duncanson and Samuel Ward. The bill was filed in June, 1806, and was in the nature of a bill of interpleader. Its object was to obtain a release from Duncanson of the mortgage given to him by Morris, Nicholson, and Greenleaf to indemnify him against the return of certain bills of exchange drawn by him for their accommodation and which Campbell alleged had been taken up by them, or some of them, which release, if made, would enure to the benefit of Campbell inasmuch as he had attached, and under the proceedings upon the attachment had

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purchased Morris and Nicholson's equity of redemption.

In order to understand the argument of counsel and the opinion of the Court, it may be necessary to state more minutely the allegations of the parties.

The bill of Pratt and others against Law and Campbell stated that Morris, Nicholson, and Greenleaf, on 3 December, 1794, gave to the defendant Thomas Law their bond with condition to convey to him in fee simple within 90 days from that date

"2,400,000 square feet of land in the City of Washington, the said Law having paid them the sum of five pence Pennsylvania currency per square foot for the same."

That on 4 December, 1794, the day after the date of the bond, a written agreement was executed between the same parties by which, after reciting the bond, Morris, Nicholson, and Greenleaf covenanted that if Law should, within 18 months, be displeased with his purchase, they would return him the purchase money, with interest, at the expiration of that term. And Law covenanted that if, within the same

term he should finally determine to keep the land, he would, within 4 years from the time of such determination, cause to be built on every third lot, or in that proportion, one brick dwelling house or other brick building at least two stories high; the lots were supposed to average 5,265 square feet each. The bill further charges that Law did, within the limited time, elect to keep the land, and thereby became liable to build the houses mentioned in the agreement of 4 December, 1794, but had not built them. That on 19 March, 1795, the parties entered into another agreement by which Law was

"to have his selection under his contract of 4 December last in all squares in which the said Morris and Greenleaf have a right of selection excepting water property and excepting such squares as are now appropriated, or respecting which the said Morris, Nicholson, and Greenleaf have made arrangements, a list of which squares is hereunto annexed."

By the same agreement, Morris, Nicholson, and Greenleaf covenanted to mortgage to Law other squares and lots which were then in their possession until they could give him

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a good title to such property as he might select; Law agreed to give up his right to return the property, and thereby made the purchase absolute. He also agreed to select by squares and not by lots, and to close his selection within 90 days from the date of the agreement, and stipulated that the houses which he was to build should be such houses as Morris and Greenleaf were obliged to build by contract with the commissioners.

The bill further states that Morris, Nicholson, and Greenleaf, agreeably to that contract, on 4 September, 1795, mortgaged to Law 857 lots and 3,333 square feet of land, the condition of which mortgage was that Morris, Nicholson, and Greenleaf should pay the penalty of the bond or, agreeably to its condition and to the contract of 10 March, 1795, convey to Law in fee simple with general warranty 2,400,000 square feet in the City of Washington.

That Law selected about 2,000,000 square feet, but in making his selections violated his agreement of 10 March, 1795, by selecting lots in squares from which he was excluded by that agreement, to the injury of Greenleaf who never assented to such selection.

That Law had obtained titles to about 2,000,000 of square feet, and that there remain to be conveyed to him about 400,000 square feet, when he shall have complied with his contract of selection, and when he shall have built the stipulated number of houses.

That on 13 May, 1796, Greenleaf conveyed to Robert Morris and John Nicholson all his interest in the City of Washington, excepting three squares,

"and excepting all such lots, lands or tenements as were either conveyed or sold, or agreed to be conveyed by all or either of them, the said Greenleaf, Morris, and Nicholson, or any of their agents or attorneys to any person prior to 10 July, 1795."

That on 26 June, 1797, Morris, Nicholson, and Greenleaf conveyed all their interest in the City of Washington to Pratt and others, the present complainants.

That Law, knowing the complainant's interest in the property and with intent to injure the complainants and to benefit the defendant, Campbell, on 4 September and 5 October, 1797, executed two deeds releasing to Morris, Nicholson, and Greenleaf part of the mortgaged property, which had been attached by Campbell, which releases were executed by Law with a full knowledge of the interest of the complainants in the mortgaged property, in defiance of their express prohibition and with a fraudulent intent to vest the legal estate in Morris and Nicholson so as to give effect to the attachment of Campbell. That Campbell had engaged to indemnify Law for that act. That the releases were executed without the knowledge or consent of Morris, Nicholson, and Greenleaf or either of them, and were never delivered to them or either of them, but were put on record by Law. The complainants pray that those deeds of release may be vacated and annulled.

They state that they are ready, able, and willing to carry into effect the contracts between Law and Morris, Nicholson, and Greenleaf and to do everything that in justice and equity ought to be done on their part, but that Law has refused and neglected to build the houses and to make his selection within the time limited and out of the squares prescribed, has violated his contract in setting up a claim and keeping the property mortgaged as a collateral security for making him titles to property, which titles he has prevented by refusing to select the property, &c.;

The bill requires Campbell to state when, from whom, and at what price he obtained the notes of Morris and Nicholson upon which his attachment was issued, and prays for general relief.

The answer of Law admits that he had received conveyances for "about 2,000,000 of square feet of ground under the contract, but not within the time stipulated;" it states the number and kind of houses which he had built; denies that he was bound to receive conveyances with a condition to build, the building contract being independent of the contract to convey the land. It states that he was induced to enter into the building contract by the contract which Morris, Nicholson, and Greenleaf had entered into with the commissioners and others to build

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a large number of houses, which contract it avers they never complied with.

It states also that Morris and Nicholson assigned Law's building contract to the commissioners of the city, and that the present complainants are not the assignees thereof, nor have any interest therein, and that if they had, their remedy is at law, and not in equity.

With regard to the releases of September and October, 1797, he says that the mortgaged property was more than ample security; that Morris and Nicholson were in 1797 generally deemed bankrupts, that their creditors were suing out attachments, and he thought it unjust to keep covered, by his mortgage, from fair creditors, a property so much more than enough to secure his demands, and therefore executed those releases. He admits that Campbell gave him a bond of

indemnity, but denies that he received any compensation. He admits also that one of the complainants desired him not to execute them, but he disregarded the request.

Exceptions having been taken to this answer, Mr. Law filed an amended answer in which he insists that he was released from his building contract because he had not received titles for all the lots he had purchased, or that, as he had originally four years from the date of the contract to complete his buildings and was to have had his titles in 90 days, he ought to be allowed four years from the time of receiving his titles. He affirms that he made his selection within the time limited by his contract, and exhibits a copy thereof. He avers that by the contract of March 10, 1795, he had a right to select as well from the property which Greenleaf had contracted to purchase in his own name from D. Carroll, as from that which Morris and Greenleaf had contracted to purchase from the commissioners of the city. That on 14 March, 1796, after much trouble and vexation, he received his first conveyance of a part of his lots, amounting to 773,122 1/4 square feet, to obtain which he had to release to Morris, Nicholson, and Greenleaf a part of the mortgaged property, *viz.,* squares No. 465, 468, 469, 470, 495, and 498. He avers that any variation which may appear between his original selection and the squares afterwards conveyed to him

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was occasioned by the slow compliance on the part of Morris, Nicholson, and Greenleaf with their contracts with Carroll and the commissioners. He states that they gave him full liberty to make another selection of any lots within their purchases or contracts, and refers to Morris and Nicholson's letter to him of 17 September, 1796, in which they say

"you may select by squares out of any that are within our selection, although not chosen by you already, except water property, or where we have since your selection, or before improved on, or contracted for the sale of that which you desire; and we wish you now to name the squares, as the selection and titles shall be completed for you without delay."

That in consequence of that letter he made another selection including other squares, and on 20 July, 1797, received another conveyance of lots from the commissioners containing 1,142,068 1/4 square feet. That he also received a deed dated January 28, 1797, directly from Morris and Nicholson for 128,223 square feet, the title to which has since been decided by the chancellor of Maryland not to have been in them but the commissioners of the city.

He also states that after receiving these three conveyances,

"he had selected to have the residue of what was due conveyed to him out of the half of square 743, square 699, and square 696, containing 314,829 1/2 square feet, which, if the deed of January 28, 1797, had remained good, would have been near the quota to which he was entitled, but the said squares or the proper portion thereof never were conveyed, though the said Morris and Nicholson frequently promised so to do. That the said squares were a part of the property which they had contracted to purchase of the said Carroll according to their contract of 26 September, 1793,"

a copy of which is exhibited and appears to be a contract by Greenleaf alone, with Carroll. He refers to a letter from Morris and Nicholson to him of 19 March, 1797, in which they say

"We are equally anxious with you to get Mr. Carroll paid on his [Mr. Carroll's] account, upon our account, and upon your own account, and yet with all this anxiety we do not agree to sign the articles, which were

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handed us yesterday; our objections thereto will be filed. But to make your mind at ease on the subject of the property to be conveyed to you by Mr. Carroll, and ours at ease about getting our property released from your mortgage, which it then ought to be, we propose to enter into a contract, with penalty, with you to fix a limited time within which the money shall be tendered to Mr. Carroll -- say in six weeks -- and on your part to covenant therein that upon so doing, you will release to us our mortgage when Mr. Carroll makes the titles."

He refers also to a letter from Mr. Morris to him of 21 June, 1797, in which Mr. Morris says

"I am in pursuit of money for Mr. Carroll, and expect success, but I hope, when it comes, he will not plague himself and embarrass us by a refusal of it. He ought to have had his money, and I have always lamented that we could not pay it when due, but certainly we will pay as soon as we can."

The answer then avers that Morris and Nicholson never paid the purchase money due to Mr. Carroll nor in any other respect complied with the contract with him, whereby they forfeited all right to the purchase of the property therein mentioned and disabled themselves from conveying to the defendant Law the property he had so selected. That one of the purposes of the deed of assignment under which the complainants claim title was to pay Mr. Carroll $13,000 due upon that contract, whereby it became their duty to pay that sum so as to obtain titles for the defendant Law, but they never did pay that sum to Mr. Carroll, and it is not now in their power to comply specifically with the contract between the defendant Law and Morris, Nicholson, and Greenleaf.

To this answer exceptions were also taken, and the complainants, Pratt and others, filed an amended bill, in which they contend that the defendant Law had not made his selection in due time and manner according to the original contract; that therefore the complainants might now satisfy the balance of the contract by a conveyance of such lots as they should deem proper, and under that idea had tendered to Mr. Law a conveyance for the quantity of land which he had a right to claim.

That by the original contract, Mr. Law had a right to select only out of the property which Morris and Greenleaf had contracted to purchase from the commissioners, for that was the only contract which gave them a right of selection.

The complainants also contended that if, upon Mr. Law's failure to select his lots within the time limited, the right of selection did not revert to Morris, Nicholson, and Greenleaf. yet he was bound to close his selection in a reasonable time, and before Morris and Nicholson had completed their selection under the contract of Morris and Greenleaf with the commissioners, and that after closing their selection, they were not bound to convey to Mr. Law any lots not selected by them or not before that time selected by him and notified to them. They admit that although Mr. Law had forfeited his right of selection, yet Morris and Nicholson, being desirous of gratifying him and of stimulating him to make the stipulated improvements, caused to be conveyed to him, by deeds dated 14 March, 1796, and 20 July, 1797, 1,935,008 square feet of land without annexing thereto the condition of building which they had a right to insist upon, including therein sundry lots not within his right of selection, whereby he obtained more valuable lots and on better terms than he was entitled to under his contracts.

They aver that they are the *bona fide* purchasers for a valuable consideration of Morris, Nicholson, and Greenleaf's equity of redemption in the mortgaged property without notice of any agreements or transactions between them and the said Law other than those which appear on the face of the bond of 3 December, 1794, the agreement of 4 December, 1794, that of March 10, 1795, and the mortgage of 4 September, 1795, and are not in equity bound by any other agreement, if any such exist.

They further state that the legal estate of the mortgaged premises, never was in Morris and Nicholson, or either of them, but was in Greenleaf alone. That after Greenleaf had sold to Morris and Nicholson his interest in the Washington lots, being largely their creditor, he caused all their property in the city to be attached by

process, issued under the laws of Maryland, on 21 April, 1797, which attachment was for the benefit of the complainants and was laid on the same property which on the following day was attached at the suit of the defendant Campbell, which attachment in favor of Greenleaf was continued until and after 26 June, 1797,

when Morris and Nicholson assigned and transferred to the complainants for a valuable consideration all the attached property, whereupon Greenleaf's attachment was dismissed by consent of the parties inasmuch as the complainants had, by the assignment, obtained all the benefit which they could have obtained by prosecuting the attachment to judgment of condemnation. They aver, therefore, that if the defendant Campbell had any equitable claim to the property by virtue of his attachment, the complainants have a prior equitable claim by virtue of their prior attachment.

But they aver also that neither Morris nor Nicholson ever had such an estate in the mortgaged premises as could be the subject of an attachment at law or as could be condemned at law or as could be seized and sold under a *fieri facias,* and that the defendant Campbell had notice of the complainant's legal and equitable title when he purchased the property.

That if Morris and Nicholson had any equitable interest therein, it was subject to the duty of doing justice to Greenleaf, the legal proprietor, by paying all they owed him before the trust as to them would be decreed to be performed, and if they had an equity of redemption in the mortgaged lots, and if anything was seized, condemned, and sold under the said Campbell's attachment, it could be only the right which Morris and Nicholson had to redeem the said lots, by conveying to Mr. Law the balance of property due to him, and by satisfying all equitable claims which Greenleaf had upon them. And that if the complainants should be compelled to convey to Mr. Law the balance of property which he claims, the defendant, Campbell can have no right to the lots as against the complainants until he shall have satisfied them for all the property which they shall have been so compelled to convey to the defendant,

Law, and shall also have satisfied all equitable claims of Greenleaf upon Morris and Nicholson.

The claimants further state that they have been informed and believe that the attachments of the defendant, Campbell were founded upon notes of Morris and Nicholson, purchased upon speculation at market, and at a price far below their nominal value, and they contend that Campbell could not, in equity, recover, even if he had a prior lien upon the lots, more than the *bona fide* actual value which he gave for the notes, with legal interest thereon. They call upon him to state what consideration he gave for the notes, and at what price he purchased in the mortgaged lots at the sale under the *fi. fa.* issued upon the judgment on his attachments.

The answer of the defendant Campbell disclaims all benefit and title under or by virtue of the releases executed by the defendant Law at his request, but claims to hold entirely under the judgment of the Court of Appeals of Maryland upon his attachments, and refers to his bill of interpleader (as he terms it) and the transcript of the record of the Court of Appeals of Maryland exhibited therewith, by which transcript it appears that the attachments were issued on 21 April, 1797, by virtue of the Act of Assembly of Maryland of 1795, ch. 56, entitled "A supplement to the act entitled an act directing the manner of suing out attachments in this province and limiting the extent of them," and commanded the sheriff "to attach, seize, take and safe keep all the lands, tenements, goods, chattels and credits" of Robert Morris which should be found in his bailiwick

"to the value of, as well the damages aforesaid, as . . . , and to have the same before the judges of the General Court . . . , then and there to be condemned, according to the act of assembly aforesaid, to the use of the said W. Campbell unless the said Robert Morris should appear and answer to the said William Campbell in a plea of trespass on the case . . . according to law."

The sheriff was also commanded to make known to the garnishees that they appear, &c.;, to show cause why the lands, tenements &c.;, should not be condemned, and execution thereof had and made as in other cases of recoveries and judgments given in courts of record according to the directions of the act of assembly

aforesaid, &c..; The like process was issued against the property of Mr. Nicholson.

On 22 April, 1797, the sheriff levied these attachments on part of the property included in the mortgage to Law, and particularly set forth in the sheriff's return.

On the return of these attachments, Morris and Nicholson appeared by attorney, and upon argument, the General Court quashed the sheriff's return; whereupon Campbell took a bill of exceptions which stated that the plaintiff, Campbell offered in evidence the deed of 13 May, 1796, from Greenleaf to Morris and Nicholson, whereby Greenleaf conveyed to them all his property in the City of Washington, excepting 3 squares,

"and excepting all such squares, lots, lands, and tenements, as were either conveyed or sold, or agreed to be conveyed either by all or either of them, the said Morris, Nicholson, and Greenleaf or any of their agents prior to 10 July, 1795."

That Campbell prayed condemnation of one moiety of certain squares, particularly described, as the property of Morris, and the other moiety as the property of Mr. Nicholson. That Morris and Nicholson offered in evidence the mortgage to Mr. Law of 4 September, 1795, which included those squares, and that Campbell offered in evidence one of the releases of Mr. Law, dated 5 October, 1797, to Morris, Nicholson, and Greenleaf which are mentioned in the bill of *Pratt v. Law,* and Campbell, Morris, and Nicholson then offered in evidence the deed of trust from Morris, Nicholson and Greenleaf to the complainants, Pratt and others, of 26 June, 1797, conveying to them all the right and interest of Morris, Nicholson, and Greenleaf in the City of Washington, and proved that the aforesaid deed of release from Mr. Law to Morris Nicholson and Greenleaf was lodged by Mr. Law alone, in the proper office to be recorded, and that it was executed by Mr. Law with a knowledge of the aforesaid deed of trust to the complainants against their will and express prohibition and without the knowledge or assent of Morris, Nicholson, and Greenleaf or either of them, whereupon the General Court of Maryland was

of opinion that neither Morris and Nicholson nor either of them had "such an estate in those squares, whereof the plaintiff could have judgment of condemnation."

Upon this bill of exceptions the cause was carried to the Court of Appeals of Maryland, which reversed the judgment of the General Court "as to the land contained in the return of the sheriff of Prince George's County," and adjudged

"that the lands and tenements so as aforesaid attached, that is to say [&c.;, describing them] be condemned towards satisfying unto the said William Campbell as well the said sum of . . . and that the said W. Campbell have thereof execution, . . . whereupon execution issued from the Court of Appeals, returnable to the General Court."

This execution was a special *fieri facias,* which after reciting the attachment, the sheriff's return, the judgment of the General Court, the writ of error, and the judgment of the Court of Appeals commands the Sheriff of Prince George's County, that of the lands and tenements attached (describing the squares, &c.;) he cause to be made the damages and costs, &c.;

Upon this execution, the sheriff sold the attached property to W. Campbell, the plaintiff, for a comparatively small sum.

Under these proceedings, the defendant Campbell in his answer contends that by the laws and Constitution of Maryland, his title and interest in the said lots is conclusive upon all the world, and that the judgment of the Court of Appeals of Maryland cannot be opened. He admits, however, that he acquired by those proceedings no more interest or title than Morris and Nicholson had in the property at the time of the attachment, and that Mr. Law's mortgage was a prior encumbrance, but denies that there is any other lien or encumbrance thereon. He contends that he has a right to redeem the lots from that mortgage on any terms which should be agreed upon between him and Mr. Law. He affirms that the complainants knew of his attachment when they took their deed of assignment of the property. He denies that the complainants had any valid attachment prior to his. He admits that Morris and Nicholson had only an

equitable title in the lots at the time of his attachment. He admits that he knew of the assignment to the complainants when Mr. Law executed his release, and at the time he purchased the property under his attachment.

He demurred to so much of the bill as charged that he purchased the notes of Morris and Nicholson (upon which the attachment issued) on speculation, at a low price, and to so much as required him to state what consideration he paid therefor. To this answer the complainants excepted because the defendant Campbell did not answer that part of the bill to which he demurred.

The bill of Law against Pratt and others stated the bond of Morris, Nicholson, and Greenleaf of 3 December, 1794, to convey to him 2,400,000 square feet of ground in the City of Washington, the agreement of 10 March, 1795, and the mortgage of 4 September, 1795. That he had received conveyances for 773,121 1/4 square feet on 14 March, 1796, for 1,142,068 1/2 square feet on 20 July 1797, and for 128,223 square feet by a subsequent conveyance, the title of which last mentioned quantity was defective. That Morris and Nicholson, having obtained all the right, title, and interest of all the joint property of M. N. & G. in the City of Washington, in the year 1797 became insolvent, and conveyed the same to the defendants Pratt and others. That neither M. N. & G. nor the defendants Pratt and others did procure from the commissioners of the City of Washington a good, clear, and sufficient title to the property, out of which the complainant Law had the right of selection, so that although he made his selection, and requested a conveyance of the remaining 400,000 square feet, the defendants refused to convey the same, and are unable to comply with the engagements of M. N. & G. with him. Wherefore he prays a decree that they should pay him the original purchase money of five pence, Pennsylvania currency, per square foot for the amount of square feet unconveyed, with interest, from 3 December, 1794, by a certain day, and in default thereof that they should be foreclosed of their equity of redemption and for general relief.

The joint and several answer of the defendants Pratt

and others admits the bond of 3 December, 1794, the agreement of 10 March, 1795, and the mortgage of 4 September, 1795, which, it is averred, was executed to remedy a defect in a former mortgage of 11 May, 1795. The defendants also produce the agreement of 4 December, 1794. They admit that the complainant Law had received good titles to 1,915,189 3/4 square feet in part compliance with the condition of the bond, and that the title to the 128,223 square feet was defective. They admit that M. N. & G. became insolvent and conveyed all their interest to these defendants as trustees for certain creditors.

They do not admit that either they or M. N. & G. were ever bound to procure a good title to all the property out of which the complainant had a right to select, nor that he made his selection within the time limited by the contract of 10 March, 1795, nor that they or M. N. & G. ever refused to convey to him any property which he had a right to demand under those agreements.

They say that they have been informed and believe that the complainant Law never made a definite and final selection of lots to satisfy the condition of the bond; but without authority or limitation of time, assumed the right of varying his choice from time to time according as circumstances indicated a prospect of increasing value, and did not confine himself to the property, nor to the terms contained in the contract of 10 March, 1795. They admit, however, that Morris and Nicholson, as a matter of indulgence, acquiesced in the selections thus made, as far as they had the ability to convey the lots so selected.

They contend that upon the complainants' having failed to make his selection within the limited time, the right to select reverted to M. N. & G. and that the complainants, as their assignees, had a right to select and tender a conveyance for the balance remaining unconveyed, and that they had done so, but the complainant refused to accept the same.

They contend also that the complainant is not entitled to relief in equity until he shall have complied with

his agreement to build certain houses according to the agreements of 4 December, 1794, and 10 March, 1795, and they aver that the damage they have sustained by reason of his not having built the houses exceeds the value of the property remaining to be conveyed to him.

They claim the benefit of his releases of certain parts of the mortgaged property dated March 11, 1796 -- September 4 and October 5, 1797, copies of which they exhibit, and they deny in general terms that the mortgage is forfeited or the condition thereof broken.

After replication to this answer, the complainant Law filed an amended bill stating in substance the same matters which are contained in his answers to the bill of Pratt and others against him.

To this amended bill the defendants Pratt and others filed their answer referring to the proceedings in all the causes before mentioned, and praying that the whole may be considered as one cause. They aver that the building contract constituted a material part of the consideration in the sale of lots to the complainant; that the assignment of that contract to the commissioners of the city by Morris and Nicholson was not valid, and did not exonerate the complainant from his obligation in equity to perform it. They proceed to state with more minuteness the facts and transactions stated in their original and amended bills against Law and Campbell.

They deny that Morris and Nicholson could authorize the complainant to make a new selection so as to embarrass the mortgaged property, or to disable themselves from complying with the terms of the mortgage, whereby subsequent encumbrancers, whose rights accrued before such new selection, could be defeated.

They deny also that they are bound by any agreements between the complainant and M. & N. of which they had not notice at the time of the assignment to these defendants.

The complainant having in his amended bill stated that he had solicited to have the residue of what was due to him conveyed out of half of square 743, square 699, square 696, square 730, and the square north of 697, the defendants in their answer deny his right to select either of those squares. As to the square 743, which is the only one in which Morris and Greenleaf ever held any definite interest, they aver that all their interest therein, consisting of one moiety thereof has been conveyed to him. That as to the square 696 and 730, the complainant was expressly prohibited from selecting them by the contract of 10 March, 1795, and that neither of the squares 699, 730, 696, and north of 697 are mentioned in the complainant's selection of December 5, 1795, nor in any former selection pretended to have been made by him; that neither of those squares ever belonged to M. N. & G. or either of them, nor are included in the 6,000 lots bought by Morris and Greenleaf of the commissioners, or have been apportioned to them or either of them, or can of right be claimed by them, or either of them, under any contract.

To this answer there was a general replication.

The bill of Pratt and others against Duncanson and Ward was originally filed to obtain an injunction to prevent Duncanson from selling certain squares which he had advertised for sale under a mortgage dated 12 September, 1795, given to him by Morris, Nicholson, and Greenleaf to indemnify him against the return of certain bills of exchange which he had drawn for their accommodation for 12,000 sterling, 7,600 sterling, of which had been taken up by the defendant, Ward, with the funds of Greenleaf and the residue by Greenleaf himself, and to obtain a conveyance of those squares to the complainants who were the assignees of Morris, Nicholson, and Greenleaf's equity of redemption. Those squares were all included in the prior mortgage to Thomas Law.

After Duncanson and Ward had filed their answers and testimony had been taken in the cause by which it appeared that the facts stated in the bill were true, William Campbell filed a bill against all the parties to the cause, *viz.,* Pratt and others,

assignees of Morris,

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Nicholson and Greenleaf and Duncanson and Ward, in which bill (which he calls a bill of interpleader) he sets forth his attachment of the squares included in the mortgage to Duncanson, the condemnation thereof by the judgment of the Court of Appeals of Maryland (while the City of Washington was under the jurisdiction of Maryland), the *fieri facias* issued upon that judgment, and his purchase of the squares at the sheriff's sale, whereby he avers he acquired the equity of redemption of those squares. He states that the bills mentioned in the mortgage had all been discharged by Morris, Nicholson, and Greenleaf or one of them, or with their funds, and the property thereby exonerated, and prays for a conveyance thereof to him, and for general relief.

The defendants Pratt and others, in their answer, admit that they have heard that the complainant Campbell claims the lots mentioned in his bill by virtue of a pretended judgment of condemnation upon certain pretended attachments issued upon certain pretended claims against Morris and Nicholson, but they deny the validity of those claims and of all proceedings founded thereon, and aver that if any such judgments of condemnation have been obtained, they were obtained, as they believe, by fraud and imposition practiced upon the court rendering such judgments, by producing to such court certain pretended deeds of release fraudulently executed by Thomas Law (meaning the releases mentioned in the bill of *Pratt v. Law and Campbell*). They aver that they were not parties to such judgments, and can not be bound thereby. That the proceedings exhibited by the complainant appear to be proceedings at law, and not in equity, and therefore that if the complainant has any title under those proceedings, it must be a title at law, and his remedy is at law and not in equity, and that no proceeding by these defendants against Duncanson and Ward in equity, can injure the complainant's title at law, if any he has. They therefore deny his right to relief in equity, and contend that the court, as a court of equity, has not jurisdiction in the case stated by the complainant in his bill. They do not admit that any valid attachment was laid on the property before the assignment from M. N. & G. to them. They aver that on

the day before the date of Campbell's attachment, Greenleaf being a large creditor

of Morris and Nicholson, caused attachments in his name, but for the use of these defendants, to be laid on the same property, which attachments remained in full force (if the property was liable to attachment for the debts of Morris and Nicholson) until and after their assignment of their interest therein to these defendants, when they, having by the assignment obtained all the benefit which they could have obtained by prosecuting the attachments to judgment of condemnation and sale, caused the attachments to be dismissed. And therefore that if Campbell could claim any title in equity under his attachments, these defendants have a prior claim in equity by virtue of their prior attachments, and the assignment from Morris, Nicholson & Greenleaf. They deny that the legal title was ever in Morris and Nicholson, or either of them, but was in Greenleaf alone, until conveyed to Thomas Law by the mortgage of 4 September, 1795, in whom it remained until his releases of 4 September and 5 October, 1797, which releases, if valid, enured to the benefit of these defendants.

As to certain squares contained in the mortgage to Duncanson, *viz.,* the square east of 516, the square east of 547, the squares 549 and 596, the square east of 596, and the square 597, they aver that long before Campbell's pretended attachment, *viz.,* on 20 June, 1796, Morris and Nicholson conveyed to the said Greenleaf all their interest therein for a valuable consideration, since which time M. & N. have never had any interest therein.

They aver that the complainant, had notice of all these facts at the time of his purchase at the sheriff's sale under his attachment.

They contend also that if the complainant could, by any process at law, attach the equity of redemption, yet he can have no remedy in equity unless he has offered and can show himself able to redeem the property by a compliance with the contract between Law and M. N. & G. which he has not done.

They say they have heard and believe that the complainant's pretended attachments were founded on notes

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of M. & N. purchased in market at a great discount as an object of speculation, with a view to take the chance of such an attachment, and they are advised that if the complainant should in equity have a prior lien on the property, he could not claim in equity (as against these defendants who are *bona fide* creditors of Morris and Nicholson, and purchasers of their equity of redemption for a valuable consideration, and who are seeking for satisfaction out of the same fund) more than the amount of money actually paid by the complainant, for the said notes and bills, with lawful interest thereon.

One of the defendants, John Miller, Jr., assignee of Greenleaf under the Bankrupt law of the United States, answering separately for himself, states that the bills for 12,000 sterling in the bill mentioned were sold and the proceeds thereof equally divided between Morris, Nicholson, and Greenleaf, each of whom were bound in equity as well as by agreement to take up one-third of the amount, if they should come back protested. That they did come back protested; that Morris and Nicholson wholly failed to take up any part the of, but the whole was paid by Greenleaf with his own separate funds, and that Morris and Nicholson are still indebted to him for two-thirds of the amount of the 12,000 sterling, with interest, charges, damages and costs of protest, and were also otherwise largely indebted to him at the time of the attachment. That upon taking up the bills, Greenleaf informed Duncanson thereof and forbade him to release the mortgage, on his intimating a design so to do, and requested him to retain the same as a security to him (Greenleaf) for the two-thirds of the amount of the said bills, which Duncanson agreed to do, and thereby became in equity a trustee of the mortgage for the benefit of Greenleaf, and this defendant as his assignee claims a right to stand on the same equitable ground as Duncanson would have stood upon if the bills had not been taken up, so far as respects two-thirds of the amount of the bills, with damages, &c.;, and therefore to have a prior equity to that of the complainant, if any he has.

There was evidence tending to show that Mr. Law made a selection of squares within the time stipulated. And that the public property in those squares, which

Morris and Greenleaf had contracted to purchase of the commissioners, was more than sufficient to satisfy Mr. Law's contract. That the commissioners had conveyed to him about 2,000,000 of square feet, and that it was probable they would have conveyed the remaining 400,000 square feet, also at the same time, if Mr. Law would have taken them out of the squares contained in his first selection. No tender however was made to him of the balance out of those squares, and there was evidence that Morris, Nicholson, and Greenleaf had acquiesced in Mr. Law's claim to have part of the property which Greenleaf had contracted to purchase of Mr. Carroll, although neither Greenleaf nor Morris and Greenleaf ever had any right of selection in that property. There was also evidence that it was the universal practice of the commissioners, in selling lots, to charge each lot with its proportion of the alley laid out for the general benefit of the lots in the squares, and that such practice had been universally acquiesced in.

With regard to the opinion of the Court of Appeals of Maryland, upon the subject of Campbell's attachment, there was evidence that the counsel for Morris and Nicholson had written a letter to Judge Rumsey, the Chief Judge of the Court of Appeals of Maryland, requesting to know the extent and ground of the opinion of the court upon which the judgment was rendered, and received from him the following answer:

"The Court of Appeals signed a regular judgment under their hands. It does not contain the point upon which they gave it, but my brethren thought the covenant for a quiet enjoyment * was a lease for years, which was an interest subject to attachment, and this influenced their judgment and they gave it accordingly. The opinion (whether a fee simple, or an estate for years) will not alter the nature of the judgment, which in my opinion will be only of such interest as the party had in the estate, and, if tried in ejectment, can only operate so far. I own privately I was of

opinion that an attachment ought to lie against a mortgagor's interest, because he is considered, in chancery, as the

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owner, because I would not send a man to chancery in so plain a case where there ought to have been conformity in law, and because all men would secure themselves under this artifice. This also was agreeable to the practice of the City of London, where an equitable interest is attachable. But on this the judges gave no opinion. Sufficient to them was it that in their opinion any interest was attachable, and upon ejectment this would have been disclosed."

"In conformity to my opinion, I pointed out a case or two, that was in my common place book, to Mr. Shaaff, that indicated an equitable interest attachable."

"But this was done as an individual, not as a judge; but, being at the time of judgment, he might have mistaken. At the same time I remarked, and do so now, that the distresses of my family and my own state of health were such that I could not be so much master of the subject as I wished."

"You were wrong in delaying opening the points so long, in which you obliged the court to give a judgment so late in the cause. And wherein is their judgment (hastily obtained) better than that of other courts? It quite destroys the use of a court of the last resort."

"I have opposed -- I shall hereafter oppose -- this practice *totis viribus, ergo caveto.* "

"There is no impropriety in asking the courts opinion; they always wish their sentiments to be known, and will, I hope, in a land of law and liberty, always be willing to disclose them when required."

"I am, &c.;"

"1 March, 1801"

These causes having been heard together as one cause, the court below decreed as follows:

"In the case of *Pratt v. Law and Campbell,* that the complainants' bill be dismissed. "

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"In the case of *Law v. Pratt,* that the defendants should pay to the complainant on or before 1 April, 1814, $25,832.88, being the original purchase money for the part not conveyed, with interest from 3 December, 1794, and in default thereof, that the mortgaged property should be sold to raise the same, &c.;"

In the case of *Pratt v. Duncanson and Ward,* no decree appears to have been made.

In the case of *Campbell v. Pratt and others (assignees of Morris, Nicholson, and Greenleaf)* and *Duncanson and Ward,* the defendants, Duncanson and Ward, never answered the bill, nor was it taken for confessed against them, nor was the bill dismissed or abated as to them, but the court below decreed "that the defendants," Pratt and others,

"and William M. Duncanson, and Samuel Ward, release, convey, and transfer to the complainant, William Campbell, all their interest and estate in the squares and lots of land sold under the complainant's attachment, as mentioned and set forth in his bill, and that the said complainant, his heirs and assigns, be forever quieted, in the title, possession, and enjoyment of said squares and lots, against all the claims, interest and estate of the said defendants."

From these decrees, Pratt and others appealed to this Court.

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JOHNSON, J. delivered the opinion of the Court as follows:

In order to present a distinct view of the numerous questions which arise out of this intricate and voluminous case, we will pursue them through a history of the transactions in which they originated, and consider them in order as they occur.

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It is well known that at the founding of this city, the proprietors of the soil gratuitously relinquished a proportion of their property to commissioners appointed to receive it.

Morris, Nicholson, and Greenleaf purchased city lands to the amount of fifty millions of square feet, to which quantity they were entitled on 3 December, 1794. Of this quantity, 6,000 lots were purchased from the commissioners -- 220 lots of Daniel Carroll, and the residue of other persons not necessary to be specified in this case.

In the agreement with the commissioners they stipulate to choose the lots by squares, to build twenty houses per annum for seven years, and until the year 1796, not to sell without the building stipulation.

In the agreement with the Carroll, the division was to take place by lots, not by selection, but alternately in order, and a variety of building and other stipulations were entered into, which not being complied with, Carroll reentered on his land, and the contract was finally abandoned.

On 3 December, 1794, Law entered into a contract with Morris, Nicholson, and Greenleaf for the purchase of 2,400,000 square feet of city land at the rate of five pence, Pennsylvania currency, per foot, for which Law paid them 50,000, and took their bond to convey him that quantity of land, in the penalty of 100,000.

To secure this bond the mortgage was given which is the principal subject of these suits.

On 13 May, 1796, Greenleaf conveyed all his estate and interest in the Washington lands to Morris and Nicholson, who on 26 June, 1797, executed an

assignment of all their interest to these complainants (Pratt and others). Greenleaf afterwards becoming bankrupt, John Miller, one of these complainants, was made his assignee.

In the several bills and answers relative to these transactions, there are various contradictory assertions on

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the subject of fraud; but as there is no evidence to sustain any charge of that kind, and all the various writings executed between the parties appear fair, unimpeached, and reconcilable, we shall wholly reject the consideration of that subject, and dispose of the case upon the unequivocal meaning of the contracts of the parties, and their various acts which have relation to the execution of these contracts.

By the bond to make titles dated Dec. 3, 1794, Morris, Nicholson, and Greenleaf are simply bound to make titles to Law, for the specified quantity of land in the City of Washington, leaving the situation of it, and the mode of selection entirely undefined, and of course retaining it to themselves.

On the day following, the same parties entered into articles of agreement, having relation to objects which appear not to have entered into their contemplation originally, and which, on the face of them, bear the appearance of perfect reciprocity. An option is given to Law to decline his purchase in eighteen months, and Law stipulates that if he should not then decline it, he shall be bound to improve every third lot pursuant to the original contract of Morris and Greenleaf with the commissioners, in a specified time.

On 10 March, 1795, Law purchases other concessions. By relinquishing his right of declining the purchase, he is allowed the right of selecting the property to be conveyed to him

"excepting water property, and excepting such squares as are now appropriated, or respecting which the said Morris, Nicholson, and Greenleaf have made

arrangements."

A list of the excepted squares is subjoined, numerically distinguished.

Morris, Nicholson, and Greenleaf also stipulate to secure Law in the discharge of their contract by a mortgage of other lands in the city

"which are now in their possession, until they can give good and sufficient titles to the said Law, of such property as he may select and of which the titles are not already vested in them,"

but Law is to select by squares; to select in ninety days, and to build in conformity with Morris and Greenleaf's contract with the commissioners.

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From this contract emanated the mortgage of 4 September, 1795.

It was evidently incumbent on Law to make his selection in ninety days, or show some adequate cause to excuse him from the discharge of that part of his agreement. The evidence that he did make his selection in the prescribed time is contained in his amended answer, drawn from him by express allegations in the bill, and an exception to his answer, in which he swears that his selection was made in due time, and that a copy of his selection, thus made, was, in due time, communicated to the other parties. This fact, therefore, being uncontradicted by any evidence, and confirmed by the solicitude expressed by Law, in all his correspondence, to obtain his titles, must be considered as established, and throws upon the opposite party an obligation to show either, that he complied with the selection so made, or some sufficient reason why it was not complied with. For these purposes they contend that it was in part complied with, and that it was the fault of Law himself that it was not wholly complied with.

It appears that on 14 March, 1796, there were conveyed to Law, 792,939 square feet of ground, and on 20 July, 1797, 1,155,857 square feet.

In these conveyances Law acquiesces, with two exceptions;

1. That 128,223 square feet contained in squares 727,789, and 729 have since been recovered of him by due course of law:

2. That in the computation of square feet supposed to be conveyed to him, are included the superficies of the alleys passing through those squares in which the entire squares were not conveyed.

To understand this objection it is necessary to remark that, in the division between the commissioners and the proprietors, it frequently happened that several lots in a square were assigned to the proprietor. In the selections made by Morris and Nicholson, and in those made by Law, the exigency of the agreement to choose by

squares was considered as gratified by the choice of all that part of a square which had been allotted to the commissioners.

To the first exception, the assignees reply that Law was conusant of the defect of title in the squares alluded to; that he took them with his eyes open, and therefore cannot now claim indemnity.

But we do not subscribe to this opinion. There is no evidence in the case that he did agree to take these squares *cum onere.* The letter of 1 September, 1799, proves nothing of the kind. The condition of the obligation is not complied with by a conveyance of a defective title.

The obligation to convey a good and sufficient title with a general warranty will carry with it the obligation to refund in case of eviction. Law's knowledge of the encumbered state of the title is of no consequence whilst the opposite party was under an obligation to make that title good and sufficient. The assignees are, in this respect, in no better situation than the original parties. Their rights and interests are altogether subordinate to those of Law. They take the property in every respect encumbered with the obligation to make good the contracts of Morris, Nicholson, and Greenleaf with him, not only on general principles, but by

express exception in favor of existing liens and encumbrances.

With regard to the allowance for the superficies of the alleys, we remark that if the alleys be comprised under the denomination of streets, the conveyance of the ground which they cover would be void, and unquestionably will not amount to a gratification of the contract. But from the President's instructions of 17 October, 1791, there is reason to think that they were rights of way appurtenant to the lots of each square respectively. If this claim of Law's extended to the alleys in those squares of which the whole was conveyed to him, there would be some ground for disputing it. But as it is confined to those squares only in which the right could not be merged, because some one or more of the lots were the property of another, we think the allowance ought to be made, for Law certainly has not acquired a title in fee simple in those alleys.

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2. It is contended that it was in Law's power to have obtained a full performance, and they charge him with various acts to which alone they attribute the noncompliance on their part.

1. His frequent varying of his selections.

On this subject there is a great variety of evidence and many contradictory allegations. But upon the whole it appears that after acquiescing in a number of changes, the selections about the last of the year 1796, settled down to 699, 696, and half of 743, and the deficiency, if any, to be supplied out of squares 730 and north of 697.

But Law's inclination to vary his selections furnishes no sufficient excuse, for a tender of a conveyance conformably to anyone of those selections would have been a performance.

On 5 December, 1796, it appears a deed was tendered and this is asserted to have been a legal performance of their part of the agreement. Law contends that it was not because it contained the building stipulation, a distinct, independent

contract, and which ought not to have been made a part of this conveyance. This question appears at that time to have been submitted to counsel and decided in favor of Law. Whether correctly or not, it is now too late to inquire, for it appears to have been acquiesced in, and conveyances executed for nearly the whole of the same land which was contained in the tendered deed. The conveyance tendered cannot, even if in unexceptionable form, be now considered as a performance for the balance unconveyed, since the land contained in it constitutes a great part of that for which credit is given upon the agreement, and after receiving conveyances in a different form it is surely too late now to contend for the sufficiency of those tendered.

3. It is contended that the selection of squares 696, 699, and 743 was not sanctioned by the contract of March, 1795, and therefore Morris and Nicholson were under no obligation to convey.

It appears that these squares were situated in Carroll's

land, and in the division between Carroll and the commissioners were assigned to the former. They thus became a part of that land out of which Morris and Nicholson were to be entitled to have conveyed to them their 220 lots, and it is contended that Law's right of selection could not extend to these lots because they were to be assigned alternately, whereas Law's right of selection was to be made by squares out of those in which Morris and Greenleaf had the right of selection. It appears, however, that Morris and Nicholson acquiesced in Law's right to select from Carroll's land, and in a letter of March 19, 1797, explicitly acknowledges it.

The solution of this apparent inconsistency is to be found in an observation previously made on another point in this case. A selection by squares was in practice considered by these parties as complied with when made of all those lots contained in any given square which were owned by the party bound to convey. There could then be no reason for excluding Law from enjoying his right of selection from among the squares contained in Carroll's land. The objection

certainly comes too late at this day. In Morris' letter to Mr. Cranch of February 22, 1796, is contained an express recognition of the correctness of that selection, or at least of his acceptance of it in lieu of one more correctly made.

This act with its attendant consequences must be considered by this Court as giving legitimacy to the selection though it had been otherwise indefensible. Had Law been then informed that this selection was not authorized by contract, he would have been thrown on his right to amend his selection, at a time when he might have done it with little prejudice to his interest. But at this time it is surely too late to retract an assent given nearly twenty years ago.

With regard to the two other squares selected, as it was only provisional, to make up any deficiency that might exist after conveying the three positively selected; until the three absolutely chosen were conveyed, nothing final could be done with these.

The last objection is founded on Law's failure to comply with his building contract.

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But to this we answer: Law was not restricted as to the specific lots on which the buildings were to be erected. This choice, therefore, extended over the whole, and the obligation was not complete until the whole land was conveyed to him. We are of opinion that the selection was sufficiently proved, and that Morris, Nicholson, and Greenleaf were in default with regard to the deficiency of land. On them, therefore, must fall the consequences, of a state of things produced by their own default.

But there are other reasons furnished by the case in support of this opinion.

Law had advanced very considerably in the discharge of his building contract. He asserts (and it is hardly possible to believe otherwise) that he was originally induced to enter into that stipulation in consideration of similar stipulations entered into by Morris, Nicholson, and Greenleaf with the commissioners and Carroll, and urges their failure as his excuse in part for desisting from building. But be this as it

may, it is impossible for the ingenuity of man to devise any expedient by which a means of comparison can be resorted to that would enable this Court, or a jury to ascertain the injury resulting from this cause or the sum in damages by which it may be compensated. We therefore put the building contract entirely out of the case.

It then only remains to decide what remedy Law is entitled to.

It is contended in behalf of Morris, Nicholson, and Greenleaf that it should be by specific performance or by an issue *quantum damnificatus;* that at any rate it should not be by a decree to refund the purchase money with interest, as the value of the residue was necessarily diminished by the gratification of so large a proportion of his right to select.

To obtain a specific performance is no object of Law's bill; it is incumbent on the opposite party therefore to show some ground of right to force such a decree upon him. But considering, as we do, that Law is not in default, there can be no reason to decree a specific performance

when everything shows that it would be productive of nothing but loss. Besides, a specific performance, such as would answer the ends of justice between these parties, has now become impossible. Carroll's property is resumed; a large proportion of the land, purchased of the commissioners, sold under legal process, and thus the benefit of selection so diminished that if performance were to take place, it must take place stripped of this its most valuable appendage, whilst the diminution of the value of property, and the change of circumstances, produced by a lapse of twenty years, would render it mockery to call any execution specific.

An issue *quantum damnificatus* it is certainly competent to this Court to order in this case, but it is not consistent with the equity practice to order it in any case in which the court can lay hold of a simple, equitable, and precise rule to ascertain the amount which it ought to decree.

In this case, the failure on the part of Morris, Nicholson, and Greenleaf certainly was as early as December, 1796, at a time when there is no reason to suppose that any diminution in the value of property had taken place.

And as to the argument that the value of the right of selection diminished in proportion to the exercise of it; that each subsequent choice was of less value than the preceding, we think it is a sufficient answer that Law never appears to have enjoyed the full benefit of his right of selection in consequence of the difficulties which appear at all times to have obstructed his getting titles from the commissioners or others. And finally when his choice settled down upon the squares 727, 789, and 729, and on Carroll's squares 696, 699, and half of 743, he was evicted from the three former, and never could get the titles to the three latter. Now these squares nearly make up his deficiency, and there is reason to believe they are among the most valuable of his choice. At any rate, they appear to have been the favorite objects of his choice. We are therefore of opinion that the rule of equity in this case is that adopted by the court below -- to-wit, refunding at the rate of purchase according to the quantity actually deficient; but that interest is to be calculated only from the time when the selections were finally made, which we fix at 1st of January, 1797.

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With regard to the actual deficiency it is understood that there will be no difficulty in adjusting it as the measurement and calculations of Mr. King will be acquiesced in.

We must next determine in what manner the money to be decreed to Law, in pursuance of the foregoing principles, is to be raised from the mortgaged premises, and this leads us to the connection between the interests of Law, and those of Campbell and Duncanson.

Campbell was holder of the negotiable paper of Morris and Nicholson to a considerable amount.

Greenleaf had conveyed to Morris and Nicholson all his interest in the mortgaged premises, so that each of them was entitled to an undivided half part of the equity of redemption. Campbell sued out an attachment against Morris and Nicholson severally, under the laws of Maryland (as this part of the district was then under the jurisdiction of Maryland), and had it levied on sundry of these mortgaged squares, specifically designating them by their numbers. An issue was made up, and at the trial before the court to which the writ was returnable, the question was distinctly made whether the equitable interest of the defendants in these squares was the subject of attachment. That court decided that they were not, and the plaintiff appealed to the Court of Appeals to have their judgment reversed.

On the hearing before the Court of Appeals, the decision of that court is reversed and the squares attached are specifically and numerically condemned to satisfy the debt due to Campbell. And finally, process issues out of that court to the sheriff of the county reciting the attachment and condemnation of these squares, describing them with equal precision, and commanding the sheriff to make from the said lands the money necessary to satisfy the judgment. Under this writ, the squares so condemned were sold, Campbell becomes the purchaser, and Law, at the instance of Campbell and without the privity of the assignees, executes a release to Morris and Nicholson, which is put on record, at the same time taking a bond of indemnity from Campbell against all consequences that might result from this act.

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Much ability has been exhibited in argument on the question whether an equitable interest in lands and tenements be the subject of attachment under the laws of Maryland. But we are of opinion that we are not now at liberty to enter into the consideration of that question. The decision of the Court of Appeals is final and conclusive on this point. The question was fully brought before it, and although it had not fixed the law, would have fixed the fate of these lands beyond reversal.

Some doubt is entertained by one member of the Court whether the laws of Maryland go further than to authorize the condemnation of this interest to satisfy the judgment so as to leave the plaintiff still under the necessity of applying to an equitable tribunal to effect a sale.

But the majority is of opinion that the attachment act, in making this interest tangible, makes it subject to the ordinary process of the law courts, and that in vesting in the courts in which the condemnation takes place the power to issue execution as in case of other judgments, it has left it with those courts so to fashion its process as to meet the exigency of each case. In this case, the very special nature of the execution shows that it has been fashioned with great care and learning. We therefore hold the sale under this execution to be valid.

Some conclusions were attempted to be drawn in favor of the assignees from the inadequacy of the price at which the property sold and from the following state of facts:

Greenleaf had issued an attachment, to the use of the assignees, against this property of Morris and Nicholson a day prior to that of Campbell. Subsequent to that of Campbell Morris and Nicholson as assign all their interest in this property to these assignees. Greenleaf's attachment was never prosecuted to judgment.

It is contended that this union between the prior lien and the interest attached defeats the immediate lien.

But we cannot admit this conclusion.

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Levying an attachment has the double effect of creating a lien and instituting an action. But the lien is only inchoate; it awaits the judgment of the court for its consummation, and must fall with the suit. To decide otherwise would be to permit the defendant, by collusion, or his own act, to nullify the lien of the subsequent attachment.

As to the inadequacy of price, the evidence is full to show that it was produced altogether by the steps taken by the agents of the assignees to embarrass or prevent the sale, and by the supposed weight of the encumbrances resting upon the land. In this respect, therefore, there is no imputation to be cast upon Campbell.

With regard to the release, it is very evident that, as it was never accepted by the assignees, it ought in no wise to operate to their prejudice, nor ought Campbell to derive any benefit from it, as it was gratuitously proposed by him under an arrangement with Law. Give efficacy to this release, and consider how it will operate. Campbell purchases at a reduced price, subject to an encumbrance, but give effect to this release and he holds an absolute fee absolved from all encumbrance.

Again, the property mortgaged to Law is liable for the whole amount to be raised for his indemnity, but give efficacy to this release, and whilst Campbell acquires an unencumbered estate, on the one hand; on the other, the residue of the mortgaged property (that of which the assignees have not been deprived by sale of the sheriff) must be sacrificed to raise the money due to Law. From this it will follow either that a ratable abatement should be made by Law proportionate to the squares by him released to Campbell or that those squares should contribute their due proportion towards paying Law.

Before we proceed to apply these principles to the final disposal of the case, it is necessary to show in what manner the interests of Duncanson and Ward become involved with those of these other parties.

Duncanson at the request of Morris, Nicholson, and

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Greenleaf and for their use, drew bills on a variety of correspondents to the amount of 12,000.

On 12 September, 1795, Morris, Nicholson, and Greenleaf executed a mortgage of eighteen squares in the City of Washington to indemnify Duncanson against the return of these bills. They were eighteen of the squares previously mortgaged to Law.

Of these bills about 7,600 were returned under protest as the property of Ward, and that sum, together with the damages, was paid, on 26 December, 1796, to Ward by Greenleaf. No satisfaction was entered on the mortgage, nor any assignment demanded until a day long subsequent. The residue of the bills were also returned and paid by Greenleaf.

Thus circumstanced, whilst the mortgage appeared on record in full life, when in fact defunct, as the purpose for which it was created had been answered, the attachment of Campbell was levied on thirteen of these squares, and they were finally condemned, sold, and purchased by him. After the sale, notice was given to Duncanson not to release, and that an assignment to Miller, the assignee of Greenleaf, would be demanded of him. The demand of Greenleaf on Morris and Nicholson, arising from taking up these bills, was contained in his assignment to Miller, and this payment is among the items making up the debit side of the account stated between Greenleaf and Morris and Nicholson.

Miller, the assignee, contends that he is entitled to such an assignment from Duncanson, and therefore to be considered in this Court as entitled to all the advantages which he would have derived from such an assignment if actually made.

On the one hand, Campbell had, at the sale, all the benefit of this sum as an existing encumbrance upon the land. It was in fact so much credited on the purchase money for which it sold; but on the other, it is contended that it was a fraud upon the public to keep up the appearance of an existing mortgage on this property when it was in fact satisfied; that the agents of the assignees alone knew this fact, and good faith demanded of them that they should have avowed it.

We are of opinion that the answer to this argument is complete. The assignees did not conceive it to be a satisfied mortgage; they then supposed, and now contend, that an equitable interest in the security, given for the payment of the bills, resulted to Greenleaf for two-thirds of the sum paid by him on the bills and passed to them on the assignment. This reply, whether correct in point of law or not, certainly removes all imputation of fraud. But if it did not, what reason can be assigned why Campbell should take to himself a benefit from it? Had it been productive in any mode of injury or loss to him, it might have been urged with some plausibility, but there is no reason to suppose that any such effect has resulted from it. It could only operate to reduce the sales of the squares, and in this respect all the effects produced by it resulted to his benefit altogether.

One thing is indisputable -- that if this mortgage be decreed satisfied, Campbell has acquired an interest which he never purchased, and acquired that interest in property which ought otherwise to belong to the assignees. It might perhaps be made a question whether the whole amount apparently secured by the mortgage ought not to be made the measure of compensation to the assignees, for to that amount it may reasonably be supposed the price of the property was reduced at the sale, to that amount were they damnified, and to that amount the purchaser was benefited. But it would not be consistent with the nature of these purchases to apply that rule to them with strictness. The uncertainty under which a purchase is made, when made subject to an unliquidated encumbrance, gives such a purchase somewhat the nature of a speculation which the purchaser ought, to a reasonable extent, to have the benefit of if it prove lucrative. It is therefore only on the ground of an equitable existing lien upon the mortgaged premises or equitable claim upon Campbell that the court can decree in favor of the assignees. And as Campbell has filed his bill of interpleader in the nature of a bill to redeem, we think the court at liberty, when decreeing in his favor, to impose on him such equitable terms as the nature of the case suggests.

The foregoing reasoning proves that Campbell ought in conscience to make compensation to the mortgagor,

the former proprietor of the fee, for that part of the interest which the mortgage appeared to cover. He did not purchase it, and therefore, although strict right may secure to him the whole, he ought to be charged with a sum in compensation for the interest so acquired above what was proposed to be sold.

Again, had these bills not been taken up and the holder prosecuted all the drawers and endorsers to insolvency, there can be no doubt that the holder would have been entitled to charge the mortgaged premises in equity with the payment of the bills. But what difference is there in equity between the case of any other holder of these bills and that of Greenleaf, who, when liable equitably only for one-third, was compelled to take up the whole, and did it with his own funds? It consists only in this -- that the one becomes creditor for the whole; the other only for two-thirds.

Upon the whole, we are of opinion that the thirteen squares purchased by Campbell should be ratably charged with the payment of the debt resulting, under these transactions, from Morris and Nicholson to Greenleaf.

PRATT AND OTHERS, plaintiffs below v. THOS. LAW AND WM. CAMPBELL

DECREE. This cause came on to be heard, &c.;, whereupon it is ordered, adjudged, and decreed that the decree of the Circuit Court for the District of Columbia in this case be reversed and annulled, and this Court decrees that the complainants shall be permitted to redeem the mortgaged premises, exclusive of those squares purchased by the said William Campbell upon paying and satisfying to the said Thomas Law, at the rate of five pence Pennsylvania currency per square foot for the actual difference between the number of square feet conveyed to the said Law and the number of 2,400,000 square feet which Morris, Nicholson, and Greenleaf were bound to convey, deducting from the number of square feet said to have been conveyed to Law the square feet covered by the alleys in those squares in which the entire square was not conveyed to Law, with interest on the sum so to be liquidated calculated from 1 January, 1797, at 6 percent.

And it is further decreed that towards paying and satisfying the sum so to be ascertained, the said William Campbell do pay and contribute a sum proportionate to the ratio, which the squares purchased by him bear to the residue of the premises mortgaged to Law, in quantity of square feet, with interest thereon from 1 January, 1797.

That on payment of the said sum, the said Thomas Law shall reconvey to the complainants all those squares or other mortgaged premises which were not sold as aforesaid, and to the said William Campbell all those squares which the said William Campbell attached and purchased as in bill and answer set forth.

And the Court further decrees that if the said William Campbell shall not, in six months after the liquidation of the sum to be paid by him and notice thereof, with interest thereon as aforesaid, pay and satisfy to the said complainants the sum so liquidated, then the said squares so purchased by him shall be sold under order of the said circuit court to pay and satisfy that sum, and that this cause be remanded to the said circuit court for further proceedings necessary to carry into effect this decree.

PRATT AND OTHERS, defendants below v. THOMAS LAW

DECREE. This cause came on to be heard, &c.;, whereupon it is ordered, adjudged, and that the decree of the circuit court be reversed and annulled, and this Court decrees that the said mortgaged premises, whereof the said Thomas Law prays foreclosure, shall be sold under order of the Circuit Court for the District of Columbia in the County of Washington, to pay and satisfy to the said Thomas Law so much of the sum adjudged to the said Law in the case of these defendants against the said Law and W. Campbell decided at this term as will be proportionate to the ratio which the said portion of the said premises bears to that proportion of the said premises to which the said Law executed a release in favor of Campbell as in bill mentioned, unless the said

complainants shall in six months after liquidation of the said sum and notice thereof pay and satisfy to the said Law so much of the said sum as is in this decree ordered to be raised, upon payment of which sum the said Law shall release to the said complainants his interest in the said premises.

It is further ordered that this cause be remanded to the Circuit Court for the District of Columbia in the County of Washington for further proceedings to carry into effect this decree.

PRATT AND OTHERS, defendants below v. WILLIAM CAMPBELL

DECREE. This cause came on to be heard, &c.;, whereupon it is ordered, adjudged, and decreed that the decree of the circuit court be reversed and annulled, and this Court decrees that whenever William Campbell shall pay and satisfy to John Miller, Jr., assignee of James Greenleaf, so much of the two-thirds of the sum paid by Greenleaf on the bills secured by the mortgage to Duncanson as will be proportionate to the ratio which the squares bought by Campbell subject to the mortgage to Duncanson, bear in quantity to the whole 18 squares mortgaged to Duncanson, then the said Campbell shall hold the said squares so purchased by him, free and discharged of the said mortgage, and the said Duncanson and the complainants shall thereupon convey and assign to the said Campbell all their right and interest in the said squares so purchased by him.

And it is further ordered and decreed that if the said Campbell shall not within six months next after the liquidation of the sum to be paid by him and notice thereof pay and satisfy the said sum to the said Miller, then the said squares so purchased by him shall be sold under order of the circuit court and the proceeds thereof applied to the payment thereof, having regard nevertheless to any other existing prior lien upon the said squares, and this cause is remanded to the circuit court for further proceedings thereon to carry into effect this decree.

* The mortgage from Morris, Nicholson, and Greenleaf to Mr. Law, contained a covenant that they should quietly enjoy the mortgaged property, until the condition of the mortgage should be broken.