

**Astor Vs. Wells**

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**Court :** US Supreme Court

**Decided On :** 1819

**Appeal No. :** 17 U.S. 466

**Appellant :** Astor

**Respondent :** Wells

**Judgement :**

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**Astor v. Wells**

**17 U.S. (4 Wheat.) 466**

*APPEAL FROM THE*

*CIRCUIT COURT OF OHIO*

**SYLLABUS**

Under the registry act of Ohio, which provides that certain deeds

"shall be recorded in the county in which the lands, tenements, and hereditaments so conveyed or affected shall be situate within one year after the day on which such deed or conveyance, was executed, and unless recorded in the manner and within the time aforesaid, shall be deemed fraudulent against any subsequent *bona fide* purchaser without knowledge of the existence of such former deed of conveyance,"

lands lying in Jefferson County were conveyed by deed, and a new county, called Tuscarawas County, was erected, partly from Jefferson, after the execution and before the recording of the deed, in which new county the lands were included, and the deed was recorded in Jefferson. *Held* that this registry was not sufficient either to preserve its legal priority or to give it the equity resulting from constructive notice to a subsequent purchaser.

Notice of a prior encumbrance to an agent is notice to the principal.

Under the statute of fraudulent conveyances of Ohio, which provides that

"Every gift, grant, or conveyance of lands, tenements, hereditaments, &c.;, made or obtained with intent to defraud creditors of their just and lawful debts or damages or to defraud or deceive the person or persons who shall purchase such lands &c.; shall be deemed utterly void and of no effect,"

*held* that a *bona fide* purchaser without notice could not be affected by the intent of the grantor to defraud creditors.

The bill in equity filed in this cause stated that Arnold Henry Dorhman in 1806 became indebted to the United States in the sum of \$6,515.10 for duties upon the importation of certain goods, payable at the custom house in the City of New York. The plaintiff, Henry Astor, became

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bound with Dorhman for the payment of those duties, and thereupon Dohrman, to secure Astor, executed and delivered the mortgage deed of 14 August, 1806, in the bill mentioned, for the 13th township in 7th range, then lying in Jefferson

County, in the State of Ohio, and Dorhman became further indebted to the plaintiff in the sum of \$2,700, to secure which upon said township he afterwards, on 25 August, 1807, executed another mortgage deed of the same premises. Both the deeds were recorded in the County of Jefferson on 2 October, 1810, and in Tuscarawas on 21 October, 1812, which county was erected in part from Jefferson after the execution and before the recording therein of said deeds.

On 26 August, 1807, the plaintiff released to Dorhman one-fourth of said township by deed recorded in Tuscarawas County on 9 March, 1813. On 24 October, 1810, Dorhman gave the defendant Wells a deed of trust of the three-fourths of said township, not released, to secure the payment of \$5,000, for which the defendant Wells had become liable for Dorhman by endorsing his paper at the Bank of Steubenville, which was recorded in Tuscarawas 13 January, 1811. On 12 February, 1813, the defendant Wells took another deed from Dorhman for the quarter sections which had been released, which was recorded in Tuscarawas County on 10 March, 1813, to secure \$3,000 for further endorsements by Wells for Dorhman. The bill then charged the defendant Wells with notice of the plaintiff's deeds and

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lien upon said lands before his deeds, endorsements, or any payments made by him, and that he accepted the deeds, made the endorsements, and payments, if any, with knowledge, &c.; charged a secret understanding that the released sections, conveyed to Wells by the last-mentioned deed, were to inure to Dorhman or his family, and that neither transaction between Wells and Dorhman was *bona fide*. Dorhman died on 21 February, 1813, nine days after his last deed to Wells, who commenced a suit against the heirs of Dorhman on 27 August following, and obtained a decree of sale under which he purchased the premises, all which was charged to be fraudulent.

The widow and heirs of Dorhman, by their answer, admitted all the deeds and answered generally that they knew nothing of the other transactions. The answer of Wells admitted the plaintiff's deeds, stated his own deeds to be *bona fide*, and

denied notice and fraud.

Obadiah Jennings, who was examined as a witness in the cause, testified that he prepared the first deed to Wells and saw it executed, but said that Dorhman employed him, and he considered himself exclusively employed by Dorhman, and not as the agent or attorney of Wells, in that transaction; that it was probable he had held some conversation with Wells as to his liabilities for Dorhman and the nature of the security to be given before Dorhman applied to him to draw the deed, and that Wells sent the deed to him in a letter, to carry to be recorded in Tuscarawas County. Dorhman informed him that Astor's agent had brought Astor's deeds and put them on

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record, and Dorhman wished to give Wells the preference, and consulted him how it could be done. The witness examined the record, and knew of Astor's deeds and lien on those lands. He advised Dorhman to give Wells a deed which, if recorded in Tuscarawas, would give him the preference, but never gave Wells any information respecting Astor's deeds.

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JOHNSON, JUSTICE, delivered the opinion of the Court.

The questions in this case are partly of law, partly of fact. The bill charges the defendant with express notice of the complainant's previous mortgage, and with holding the land purchased under a secret trust for the legal representatives of Dorhman, the mortgagor. Both these facts the answer denies, and as there is no evidence to sustain them, they must be put out of the case. The bill then proposes to affect the defendant, Wells, with constructive notice, and if it fails there, then to set aside the deed to Wells as absolutely void under the express provision of a law of the State of Ohio.

Obadiah Jennings, who drew the mortgage from Dorhman to Wells, was fully apprised of the existence of Astor's mortgage and acted in concert with Dorhman

expressly to defeat Astor's prior lien and give precedence to Wells. The advantage of which they proposed to avail themselves for this purpose was a supposed mistake committed by Astor as to the legal office for recording his deed. The land was originally comprised within the limits of Jefferson County. But before the recording of the deed, the County of Tuscarawas was taken off from Jefferson, and the land lay in that part of Jefferson which thus became Tuscarawas County. The law of Ohio requires that the recording shall take place in the county in which the land lies.

The first question is was this a legal recording under the laws of Ohio, so as to preserve the priority which dates gave to Astor? The office of Jefferson

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County was the legal office, at the time of executing the deed; did it continue to be so at the time of recording it? This can only be decided by considering the object of the law. It was to give notice to subsequent purchasers -- to place at their command the means of investigation, to which if they did not resort they had only to blame their own indolence or folly. But no one in search of such information respecting lands situate in Tuscarawas County would be expected to search the records of Jefferson, subsequent to the date of the separation. He would naturally refer to the records of the new county, to its origin, and from that time pursue his inquiries among the records of the county in which it was originally comprised. And therefore we are of opinion that the recording of Astor's deed was not sufficient either to preserve its legal priority or give it the equity resulting from constructive notice.

But it is contended that Jennings was the mutual agent of both mortgagor and mortgagee in the creation of Wells' mortgage, and therefore the notice to Jennings was notice to Wells. Here again, the complainant's case is unsupported by the evidence. On the law, there could be no doubt if the facts were such as the complainant contends. But it is positively denied both by Wells and Jennings, and if Jennings was the agent of Dorhman only, his knowledge could produce no other effect on the rights of Wells than if it had been concealed in the breast of

Dorhman. And this leads to the final question in the case. As the deed really was "made" to defraud Astor, does that circumstance alone, under the laws

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of Ohio, destroy its validity, without reference to the knowledge or connivance of the mortgagee. And this again must be decided by referring to the object of the law. The words of the statute would literally embrace the case. But who are the objects of the law? Not creditors only, but subsequent purchasers. And to give it such a construction as would expose a *bona fide* purchaser, without notice, to imposition, in order to protect creditors, could never comport with the intent of the law.

Upon the whole, we are of opinion that there is no error in the decree below and that the same be affirmed, with costs.

*Decree affirmed with costs.*