Harding Vs. Handy

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Appellant : Harding

Respondent : Handy

Judgement :

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24 U.S. (11 Wheat.) 103

CROSS-APPEALS FROM THE DECREES OF

THE CIRCUIT COURT OF RHODE ISLAND

SYLLABUS

There must be sufficient equity apparent on the face of the bill to warrant the court in granting the, relief prayed, and the material facts on which the plaintiff relies must be so distinctly alleged as to put them in issue.

A court of equity has jurisdiction of a suit brought by heirs at law to set aside a conveyance of lands obtained from their ancestor by undue influence, he being so infirm in body and mind from old age and other circumstances, as to be liable to imposition, although his weakness does not amount to insanity.

The same jurisdiction may be exercised where one of the heirs at law has, with the consent of the others, taken such a deed upon an agreement to consider it as a trust for the maintenance of the grantor, and after his death for the benefit of his heirs, and the grantee refuses to perform the trust.

Under what circumstances such a conveyance may be allowed to stand as security for actual advances and charges, and set aside for all other purposes.

In such a case, not depending on the absolute insanity of the grantor at the time of executing the conveyance, the court may determine the question of capacity without directing an issue.

The verdict of a jury as to the sanity of the grantor at the time of executing such a conveyance would not be conclusive, the court being competent to determine for itself the degree of weakness or of imposition which will induce it to set aside the instrument.

Exceptions to the report of a master are to be regarded by the court only so far as they are supported by the special statements of the master or by a distinct reference to the particular portions of testimony on which the party excepting relies. The court does not investigate the items of an account nor review the whole mass of testimony taken before the master.

Rules of practice in accounting before a master.

In accounting before a master, the oath of the party should not be received to support charges which, from their nature, admit of full proof.

In a suit inequity brought by heirs at law to set aside a conveyance obtained from their ancestor by fraud and imposition, a final decree for the sale of the property cannot be pronounced until all the heirs are brought before the court as parties if

they are within the jurisdiction.

If all the heirs cannot be brought before the court, the undivided interest of those who are made parties may be sold.

The bill filed in the court below by the appellants, Harding, and Nancy his wife, and Sterling Wheaton, alleged that they, with four others not made parties to the suit, together with Caleb Wheaton, one of the defendants, were entitled, as heirs at law of Comfort Wheaton, deceased, to the real property mentioned in the bill and situate in the State of Rhode Island. That Comfort W., about the year 1802, began to exhibit symptoms indicating a loss of intellect, and soon became, from various causes mentioned in the bill, incompetent to the management of his estate, and died in 1810. That under these circumstances, the defendant, Caleb W. (his son), and who acted as well for himself as in behalf of the plaintiffs and the defendant Handy, the son-in-law of Comfort W., entered into an agreement to endeavor to take his estate out of his hands and to preserve it for the benefit of his heirs at law. That it was agreed that Comfort W. should be prevailed on to convey his real property to

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Handy for a nominal consideration, who should forthwith execute an instrument of writing declaring that he took and held the same in trust, first to provide for the decent support of the grantor during his life, and after a full remuneration for his expenses and trouble in that respect, to hold the residue of the estate for the benefit of the heirs at law. That on 9 May, 1805, Handy did procure such conveyance for the nominal consideration of $2,178 from Comfort W., and entered upon, possessed, and enjoyed the property in question, but that he refused to execute any declaration of trust as he had agreed, but held the property, claiming it as his own. The bill then alleged that the defendant, Caleb W., after the death of his father, Comfort W., acting on behalf and for the benefit of the heirs, procured letters of administration of the personal estate of Comfort W. to be issued by the proper court, and caused such further proceedings to be had as that the administrator exposed to sale the real property before mentioned, which had been

conveyed to Handy, and that Caleb W. became the purchaser thereof for the general benefit of the heirs. That various suits at law had resulted from these transactions, and among others an ejectment brought by the defendant, Handy, against the defendant, Caleb W., by which the value of the property had been much deteriorated. The bill then prayed for an account respecting the property; that a decree might be rendered exonerating it

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from the deeds to the defendant Handy after satisfying his just claims, and ordering one fifth part of the real estate to be set off to the plaintiff, Nancy H., and one fifth to the plaintiff, Sterling W., and for general relief.

The answer of the defendant Handy denied that Comfort W. was incapable of conveying his property when the deeds of 9 May, 1805, were executed, and insisted that his intellect was perfectly sound at that time. It also denied that he, the defendant, purchased as a trustee, and averred that he was a purchaser for a valuable and full consideration. The answer of the other defendant, Caleb W., admitted the allegations of the bill and submitted to any decree the court might think equitable.

A great mass of testimony taken in the court below appeared in the record, which was very contradictory as to the capacity of Comfort W. to make the conveyance in question.

The circuit court, by its interlocutory decree, directed that the deeds of 9 May, 1805, should be set aside as having been obtained by false impressions made on a mind enfeebled by old age and various other causes, and that an account of the receipts and disbursements of the defendant, Handy, should be taken, and that he should be credited for all advances made, and charges incurred for the maintenance of Comfort W. during his lifetime and for repairs and improvements made on the real estate. Exceptions were filed by both parties to the report,

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which was confirmed by the court below. The final decree declared that the real estates conveyed to the defendant Handy should stand charged with the amount of the balance of the account due to him; that the same should be sold and the proceeds brought into court; that the said balance should be paid to him, deducting his proportion of the charges, &c.;, and the residue, deducting their proportions, &c.;, should be paid over, and distributed among the heirs at law of Comfort W. If there be any such heirs not made parties, they to be at liberty to come in under the decree and receive their shares, paying their proportions of costs and expenses, otherwise to be excluded. That each party before the court should pay his own costs, excepting the fees of the officers of the court, which should be a charge on the property and borne by the parties according to their respective proportions of interest in the proceeds of the sale.

From this decree both parties appealed.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court, and after stating the case, proceeded as follows:

The counsel for Asa Handy contend that the bill seeks to set up a parol trust, which is denied in the answer, and that the decree is founded on a supposed incompetency of Comfort Wheaton to convey his property. The decree therefore is not supported by the allegations of the bill.

They also contend that the decree is not sustained by the proofs in the cause.

That the bill alleges the conveyances of 9 May to have been received for the benefit of the family is unquestionable, but this is not

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incompatible with the incompetency of Comfort Wheaton to execute them. Deeds may be obtained from a weak man for the purpose of preserving his estate for himself and family and of protecting him from the impositions to which he might be

exposed, and there is nothing to restrain one of the heirs who may think himself aggrieved from bringing the whole case before a court of equity. If, indeed, it were true in fact that the bill does not allege this incompetency so as to put it in issue, the objection would be conclusive, for it is well settled that the decree must conform to the allegations of the parties. But we think this bill is not justly exposed to this objection. It states the general correct conduct of C.W. during the life of his wife; that soon after her decease, he was visited by a paralytic stroke, which was followed by a total change in his conduct. He was addicted to intoxication and to many vicious habits in the course of which fears were excited in his family that he would waste all his property or convey it to his profligate companions. They consulted together and with their friends, and the first proposition was to apply to the court for a guardian to manage his affairs according to the law of Rhode Island in such cases. It was, however, finally agreed that Asa Handy should obtain deeds for his property and hold it for the use of C.W. during his life and of his heirs after his death. The bill then proceeds to state that the said Asa Handy, knowing the premises, did induce the said Comfort, "he being in the state and condition

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of body and mind aforesaid," for the nominal consideration of $2,178, to make the conveyances in the bill mentioned.

Although a more direct and positive allegation that C.W. was incapable of transacting business would have been more satisfactory than the detail of circumstances from which the conclusion is drawn, yet we think that the averment of his incompetency is sufficiently explicit to make it a question in the cause. The defendant has met this charge, and we cannot doubt that his answer is sufficiently responsive to the bill to give him all the benefit which the rules of equity allow to an answer in such circumstances.

We proceed, then, to look into the proofs in the cause and to inquire whether the testimony establishes the incompetency of C.W. when these deeds were executed.

We have examined with attention the immense mass of contradictory evidence which the record contains. A number of persons, and, among others, the witnesses to the deeds, express the opinion that he was capable of managing his affairs and of disposing of his property. This evidence, however, is met by such a mass of opposing testimony as can scarcely be resisted. Among the numerous witnesses who testify to the imbecility of his mind are many who had been long and intimate acquaintances. All his physicians concur in stating in strong and decided terms the weakness of his mind as well as

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his body, which they ascribe chiefly to the character of his disease. One of them, Doctor Barrows, attended him about the time these deeds were executed. He says

"With regard to the state of his mind, at all times when I saw him within the said period (from 1f March to 25f November, 1809), I can say that he appeared to me wholly incapacitated to transact any money business or to have the care of any concerns whatever. It is my opinion that the decay of his mental faculties was such as to induce that state of fatuity which would unfit him for all the purposes relative to the affairs of life except obeying the various calls of nature."

Some of the witnesses add to their opinion of his imbecility some circumstances on which the opinion is founded which cannot fail to make a deep impression on the mind. Ziba Olney says that he was acquainted with C.W. for the last five years of his life, who, for the last fifteen months of them, resided in his family.

"That during the whole of these times he appeared to be childish and incapable of transacting any business. The reasons of this opinion are that he would frequently repeat the same questions, and would several times in the same day ask what day of the week it was. At short intervals, he would talk rationally, and then would break off from conversation to singing, and from that to crying. That he would frequently go out in the night and day naked except his shirt. That he would frequently break out in profane language, and at other times preach."

Several other

witnesses describe the situation and conduct of this afflicted old gentleman in a manner to add great weight to their opinion that his faculties were prostrated. Many even of those witnesses who depose to his competency declare that the public opinion and language of his neighborhood was that his mind was deplorably impaired, and the conduct and declarations of his family, including the defendant Asa Handy himself, show a settled conviction that C.W. was incapable of managing his affairs.

There is evidence of the consultations in which Handy participated previous to the deeds of 9 May for putting the old gentleman and his estate under guardianship, and there is also evidence of similar consultation respecting the propriety of procuring a conveyance of his property in order to save it for himself and his family. This may not be admissible as proof of a trust, but it is strong evidence of a conviction that the person from whom the deed was to be obtained was unfit for the management of his own affairs. Among other testimony to this point, Abner Daggett deposes that Asa Handy asked him if he had a notion of buying his father Wheaton's lot. The witness answered that he had had some conversation with Wheaton about it, upon which Handy said Wheaton was no more capable of selling his estate than a child. The witness was deterred from purchasing, though he wished to acquire the lot, by the fear of subsequent controversy.

The great and sudden revolution in the whole

conduct of C.W. immediately after the first paralytic stroke, viewed in connection with his advanced age, is a strong circumstance in corroboration of the opinion that his mind was diseased. A sober, prudent, reflecting, and moral man, between seventy and eighty years of age mingles with profligate people, to whom he devotes himself, and becomes suddenly intemperate, immoral, and childishly whimsical and indiscreet, so that his nearest friends think it necessary to put it out of his power to ruin himself.

The terms on which the old gentleman stood with his family are not entirely unworthy of consideration. But two of his children, Caleb, and Mary, the wife of the defendant Asa, lived near him. From causes some of which may be discerned in the record, he was on ill terms with Caleb. One of the witness deposes that he said on one occasion, "You know, Asa, I made you the deeds to spite Caleb." There is other testimony to the same effect. The necessary consequence of this quarrel with Caleb was to subject him in an increased degree to the influence of Mary Handy and her husband and exposes the deeds conveying all his property to them to an increased degree of suspicion.

The inadequacy of the consideration as stated in the bonds referred to in the answer furnishes an additional argument against these deeds. It was chiefly the support of C.W. for the residue of his life. This proved to be five years, which was a longer time than his age and state of health at the time of the transaction rendered

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probable, but which was certainly not a full consideration for the property.

These various circumstances add so much weight to the opinions of those who depose to the incompetence of C.W. that the mind cannot withhold its assent from that conclusion. An issue, indeed, might have been directed, but we do not think it a case in which this course ought to have been pursued. The degree of weakness or of imposition which ought to induce a court of chancery to set aside a conveyance is proper for the consideration of the court itself, and there seems to be no reason for the intervention of a jury unless the case be one in which the court would be satisfied with the verdict, however it might be found. A verdict affirming the capacity of C.W. to execute these deeds on 9 May, 1805, could not, we think, have been satisfactory to the court, and it was, consequently not necessary to refer the question of competency to a jury.

If these deeds were obtained by the exercise of undue influence over a man whose mind had ceased to be the safe guide of his actions, it is against

conscience for him who has obtained them to derive any advantage from them. It is the peculiar province of a court of conscience to set them aside. That a court of equity will interpose in such a case is among its best settled principles. The cases cited in the argument, which we will not repeat, place this beyond the possibility of question. It was therefore proper to set aside the deeds and to direct the defendant

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Handy to account for the money he had received under them.

But although that defendant ought not to be permitted to benefit himself by his own improper act, it is not reasonable that he should be burdened with the debts of C.W. and the expenses of his maintenance. These are proper charges on the estate itself. So are improvements and repairs which enhanced the rents and the value of the estate. As a defendant in equity, Asa Handy has certainly a right to retain them and to receive credit for them in the account which was directed by the circuit court.

There is, we think, no error in the manner in which the account was directed to be taken.

The parties were heard before the master, who, after a very laborious and comprehensive examination of their accounts, has made a voluminous report, to which both parties have excepted.

It may be observed generally that it is not the province of a court to investigate items of an account. The report of the master is received as true when no exception is taken, and the exceptions are to be regarded so far only as they are supported by the special statements of the master or by evidence, which ought to be brought before the court by a reference to the particular testimony on which the exceptor relies. Were it otherwise -- were the court to look into the immense mass of testimony laid before the commissioner -- the reference to him would be of little

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avail. Such testimony, indeed, need not be reported further than it is relied on to support, explain, or oppose a particular exception.

1. The first exception made by Handy is that only the sum of $5,448.26 was allowed him by the commissioner, instead of $101,167.30, the amount of his claim. This is a general exception, which comprehends, it is supposed, the particular alleged errors enumerated in the subsequent exceptions.

2. The second exception is that the master did not admit his whole account on his own oath.

The conduct observed by the master on this point is thus specially stated by himself.

"I admitted said Asa to make oath to all charges, whether for money, specific articles, or services, which, from the circumstances of the parties or the nature of the charge itself, could not, in my opinion, be proved by vouchers or other legal evidence."

This rule adopted by the master is in our opinion one to which Handy could make no just objection. There can be no propriety in admitting the party as a witness to support items in an account which from their character admit of full proof. Of this description are the items which constitute his third exception. It is the demand of testimony to support his charges for repairs and improvements. These repairs and improvements are susceptible of complete proof, and as there could be no difficulty in procuring

it, the commissioner did right in requiring it. The fourth exception is to the rejection of his oath to discharge himself from rents, which, as he alleged, he had not received.

The commissioner has made considerable deductions from the total amount of rent, if calculated for the whole time, but has rejected the oath of Handy because he admitted that he had kept ledgers in which his receipts of rents were regularly

entered which were still in his possession, but which he refused to produce. The decision of the master on this point was so obviously right that it need only be stated to be approved.

5. The fifth exception is that the master has not allowed for repairs and improvements according to the measurement of Nathan Parks, which was on oath, but according to the estimate of John Newman, which was not founded on actual measurement, but made principally by the eye.

The master reports that

"in addition to the evidence produced by the parties, I appointed John Newman, an experienced and skillful measurer of carpenters' work, to go on the premises, together with the said Handy and myself, and to measure and estimate all such repairs, and alterations and buildings as said Handy, being under oath, should point out as being made and executed by him."

The estimate of the said Newman, with his deposition, are referred to, and annexed to the report.

Newman deposes that his estimate is founded

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on actual measurement, except parts of the roof of one building, which he took from the measurement of Nathan Parks and of another, in which he was guided by the statement made by Handy himself of the length of the rafters, which accorded with his own estimate.

That a measurement thus made and proved was entitled to more respect than the *ex parte* measurement of Parks cannot be doubted.

6. An exception is also taken to the report because it disallows the charge made by Handy of a note which he says was proved.

This exception, it is presumed, was not taken before the master, as he does not notice it, and it is too vague to be regarded. Neither the note nor the ground on which payment is claimed, nor its amount, nor the reasons of its rejection, is stated; nor is there any reference to the evidence in support of it. Nothing is stated to induce a suspicion that the disallowance of it was improper. Yet the Court, from its solicitude to discover whatever the record might contain on this subject, has looked through the report. Nothing is said, so far as we can perceive, respecting a note except in the affidavit of Ziba Olney, who states that Asa Handy became the endorser of some note for Appleby, which was settled in some way in the board of C.W., on which note, he believes, Handy was sued. If this is the note to which the exception alludes, the claim is absorbed in the allowance made him for the board of C.W. But whether it be the note or not,

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the exception is totally unsupported and cannot be sustained.

7. A seventh exception is a charge of money alleged to have been received of Doctor Bowen, although he discharged himself therefrom on oath, in payments of different sums under twenty dollars each.

This is the application to a particular item of the principle contained in the second exception, and is disposed of with that exception.

8, 9. The eighth exception is a repetition of the objection to the manner in which Handy is charged with repairs, the master's report respecting which has been already stated to be satisfactory, and the ninth is a repetition of the claim to sustain his accounts on his own oath.

10. The tenth exception is to the requisition made on him to produce his ledger, in which entries had been made of the rents he had received -- a requisition to which he objects because it contained transactions anterior to the entries of rent.

The validity of this objection cannot be admitted. The ledger might be inspected in the presence of the defendant, Handy, and there could be no propriety in

commencing the examination with prior transactions.

11. The eleventh exception respects the calculation of interest. The commissioner had made what are denominated rests in the account, instead of calculating interest on each minute item. This mode of calculating receipts and expenditures in accounts consisting of numerous

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small items, is recommended by convenience and has been generally adopted. It seems to have been properly adopted in this case.

12. The twelfth and last exception is a repetition of the often repeated and as often rejected claim to be admitted to swear to his whole account.

The original plaintiffs except:

1. To the allowance made to the said Asa Handy for buildings which were erected on the lot after the death of C.W., which are said to be no advantage to it.

But there is no proof and no reason to believe that these buildings were not a real advantage to the property and did not increase the rent and the value. This exception therefore was properly overruled.

2. The second exception is to the admission of the said Handy's oath, in cases in which he refused to produce his books and the books of C.W.

No example of this admission is given, nor is there any proof in support of the exception. The rule by which the master was governed has been already stated and approved.

3. The third exception is a repetition of the objection to the admission of items in the account of Handy, on his own oath, and is answered by a reference to that part of the report which relates to this subject, and which has been already stated.

The fourth, fifth, sixth, and seventh exceptions are totally unsupported by evidence, and consequently cannot be sustained.

We think the circuit court did right in confirming the report of the commissioner.

Upon the return of this report, the circuit court directed the estates to be sold and the money due to the said Asa Handy to be paid in the first instance, and that one-fifth of the residue should be paid to each of the plaintiffs, that being the distributive share of each under the law of Rhode Island. The decree proceeds to authorize the heirs who were not made parties to come in and receive their distributive shares on paying their proportion of the costs and charges of suit.

The objection to this decree is that the children of Mary Handy and the children of Daniel Wheaton are not parties to the suit.

It has been supposed that it is not necessary in Rhode Island to make all the heirs parties because, by the laws of that state, parceners can sue separately for their respective portions of the estate of their ancestor. This law would undoubtedly be regarded in a suit brought on the common law side of the circuit court. Its influence on a suit in equity is not so certain. But however this may be, we are satisfied that a sale ought not to have been ordered unless all the heirs had been before the court as plaintiffs or defendants. Although the legal estate may be in Caleb Wheaton under the deed made by the administrator, yet he acknowledges himself to be a trustee for the heirs, having purchased for their benefit. They have therefore a vested equitable interest in the property of which they

ought not to be deprived without being heard. They may choose to come to a partition and to redeem their shares by paying their proportion of the money with which the estate is charged. The bill does not state that the heirs who are not made parties are unwilling to become so or cannot be made defendants by the service of process. We think, then, that there is error in proceeding to decree a sale without bringing all those heirs before the court who can be brought before it, and for this error the decree must be

Reversed and the cause sent back with liberty to the plaintiffs to amend their bill by making proper parties. If all the heirs cannot be brought before the court, the undivided interest of those who do appear is to be sold and the lien of Asa Handy is to remain on the part or parts unsold, to secure the payment of so much of the money due to him as those parts may be justly chargeable with.

DECREE. These causes came on to be heard, &c.;, on consideration whereof this Court is of opinion that there is no error in the interlocutory decree, nor in so much of the final decree as approves and confirms the report made by the master, but there is error in so much thereof as directs a sale of the premises therein mentioned, all the heirs who are shown to be interested in the said premises not being made parties and it not being shown or alleged that they could not be made parties. So much of the decree, therefore, as directed a sale of the premises in the

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bill mentioned is REVERSED and ANNULLED, and the residue thereof is AFFIRMED, and the cause is remanded to the said circuit court with liberty to the plaintiffs to make all proper parties, that the whole may be sold if all the heirs can be made parties, otherwise the shares of such as are made parties. Each party to pay his own costs in this Court.