

Horsburg Vs. Baker

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 232

Appellant : Horsburg

Respondent : Baker

Judgement :

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Horsburg v. Baker

26 U.S. (1 Pet.) 232

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

A court of chancery is not the proper tribunal to enforce a forfeiture, the remedy for the same being at law.

After an answer and discovery, the rule is that a suit brought merely for discovery cannot be revived. The object is obtained, and the plaintiff has no motive for reviving it.

A bill had been filed originally for discovery, and afterwards became a bill for relief. The relief prayed for, was a forfeiture, which might be enforced at law. Under such circumstances, it was proper to dismiss the bill so far as it sought for relief against the forfeiture, but the dismissal should have been without prejudice to the legal rights of the parties, as an absolute dismissal might be considered as a decree against the title the plaintiff claimed, and which, by the bill and the evidence obtained under it, he sought to establish.

The facts and the pleadings in the case are fully stated in the opinion of the Court.

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

In the year 1813, James Henderson and his wife, filed their bill in the Court of the United States for the Seventh Circuit and District of Kentucky stating that Alexander Hartsburg, the former husband of the plaintiff, did, by deed bearing date 25 April in the year 1787, confirm to Martin Baker and Hannah his wife for their lives and the life of the survivor then residing in the County of Halifax in Virginia a negro girl named Charlotte, previously loaned to them (which deed was recorded), reserving to himself and his heirs the reversion of the said slave and her increase and prohibiting any alienation of them under the penalty of forfeiting the loan.

This deed was recorded on 4 July, 1787, in the Court of Hustings for the Town of Petersburg, the town in which the said Hartsburg resided. The bill further states that the said Alexander Hartsburg departed this life in the year 1798 having first made his last will in writing, whereby he bequeathed the residue of his estate to his wife, who afterwards intermarried with the plaintiff, James Henderson.

The bill proceeds to state that Martin Baker and wife have removed to Kentucky with the slave Charlotte and her increase, whom they profess to hold as their

absolute property, and that the plaintiffs fear that they will be secreted or conveyed

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out of the state to places unknown. The plaintiffs further allege that they are unable to prove the identity of the said slaves, and pray that the said Baker and wife may be compelled to discover their number, and names, and may be decreed to give security for their forthcoming when the life estate should determine.

The court awarded an injunction to restrain the defendants from removing Charlotte, and her issue, out of the state.

In May, 1814, the plaintiff, James Henderson, filed an amended and supplemental bill, stating the death of his wife, and praying that the suit might be continued in his name. The bill also states, that Baker and wife had sold Charlotte and her increase to Francis Clarke and Robert Boyce, who intend removing them out of the state, and concealing them. It prays that the slaves may be rendered to the plaintiff, and that Clarke and Boyce may be restrained from removing them. The court extended the injunction to the other defendants. The defendants, Baker and wife, file their answer denying the loan, and insisting that certain friends of the defendant, Hannah, subscribed the sum of forty-three pounds, which was placed in the hands of Alexander Hartsburg, to purchase the slave Charlotte for her. They insist on their title, but give a full description of all the descendants of Charlotte.

The defendants, Clarke and Boyce, also deny the right of the complainant.

In 1817, the plaintiff again amended his bill and charged that Baker and wife had brought the deed from Hartsburg with them into Kentucky, as their title to Charlotte.

In November, 1819, Junius K. Hartsburg appeared, by his attorney, and leave was given him to file a bill of revival. The bill is filed by the said Hartsburg, as the administrator and devisee of James Henderson, and as the heir and only child of Mrs. Henderson, the wife of the said James, and the former wife and devisee of Alexander Hartsburg.

The bill recites the previous proceedings in the cause -- exhibits the will of James Henderson and his letters of administration and charges the sale to Boyce and Clarke since the institution of this suit, who purchased at a low price with the intention of removing the slaves beyond the jurisdiction of the court.

In answer to this bill, Baker and wife say that in the year 1773, Thomas Simmons and others named in the answer contributed 43, for the purpose of purchasing a negro girl, for the said Hannah, which sum was placed in the hands of Alexander Hartsburg as their agent, with instructions to convey the said negro to the defendants for their lives and to their children after the death of the survivor. They believe

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this plan was adopted for the purpose of protecting the property thus given by her friends from the creditors of her husband. Under these instructions, Charlotte was purchased and delivered to them. In the year 1787, after the defendants had been in peaceable possession of Charlotte about fourteen years, the said Hartsburg, without any previous communication of any sort, sent to them, then residing in Halifax, about 120 miles from Petersburg, the deed, a copy whereof is annexed to their answer. They also say that on the same day the said Hartsburg executed another writing obliging himself to convey Charlotte and her increase, after the death of the defendants, to their children, to which they refer as being filed in the office of the circuit court for the County of Garrard. They also refer to a letter written by the said Hartsburg which they say was given up to be filed in the cause.

In May, 1824, leave was given to file an amended bill, and the cause was sent to the rules for further proceedings.

The amended bill charges that Clarke and Boyce purchased not only pending the suit, but with knowledge in fact thereof -- that they purchased the said slaves for a trifle, less than half their value, in consequence of an agreement to take upon themselves the risk of the title.

The deposition of John T. Mason states, that the deponent, as counsel for the original plaintiff, called on the defendants, Baker and wife; who, after some time, admitted, that they claim Charlotte and her offspring, under a deed, from Alexander Hartsburg, which they showed him.

It is a copy, or the original of the deed, filed in the cause. They also showed the witness several other papers and letters in relation to the subject, and particularly two letters from Alexander Hartsburg, which he believes to be the same or to the same purport with those filed in the cause.

The copy of the deed of 1787, recorded in the Court for the Town of Petersburg, is filed, together with the will of Alexander Hartsburg and of James Henderson, but neither the subsequent deed stated in the answer of Baker and wife to have been executed by Alexander Hartsburg for the purpose of securing Charlotte and her offspring to the children of Baker and wife nor the letters from Hartsburg is found on the record.

The last amended bill was taken for confessed and the cause set down for hearing. The court directed the bill to be dismissed.

Baker and wife being alive, the plaintiff could have no pretense to recover the slaves claimed by the amended bill except under the clause of forfeiture for alienation which the deed contains.

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As a court of chancery is not the proper tribunal for enforcing forfeitures, no decree for the purpose of effecting that object ought to have been made. But the plaintiff had a right to apply to the court of chancery for a discovery in order to enable him to proceed at law either immediately or on the death of Martin Baker and his wife, and also for an injunction to restrain the tenants for life from removing the slaves out of the country. The decree dismissing the bill entirely defeats both these objects.

The bill therefore ought not to have been dismissed unless the plaintiff had failed to show any title which might be litigated in a court of law. The court will not in this case decide upon the title, but is of the opinion that it authorizes the plaintiff to come into a court of chancery to pray for a discovery, and as there was reason to fear that the property would be removed to obtain security for its forthcoming if the title should be determined in his favor. This bill was in its origin merely a bill of discovery and *quia timet*. Before the answer was filed, the original defendants are alleged to have sold the slaves, and, by that act to have forfeited their life estate. The amended bill therefore prays a decree for the slaves themselves. After this bill was filed, the defendants Baker and wife answer and make the discovery with respect to the descendants of Charlotte.

In this state of the cause, the plaintiff dies and his administrator and devisee files a bill in the nature of a bill of revivor.

After answer and discovery, the rule is that a suit brought merely for discovery cannot be revived. 1 Mad. 217; 1 Dick. 133; 10 Vez. 31. Its object is obtained, and the plaintiff has no motive for reviving it. But such a bill ought not to be dismissed, 1 Mad. 217; 1 Atk. 286.

The court might properly order that no further proceedings be had in the case. Had this bill, then, been merely a bill of discovery, at the death of the original plaintiff it ought not to have been sustained in the name of his devisee because the discovery was made. But it had then become a bill for relief. The relief, however, prayed is for a forfeiture, which might have been enforced at law. The present plaintiff was in possession of all the evidence which was necessary to support his action at law, and was not driven into a court of chancery for the purpose of obtaining its aid. In such circumstances, it was proper to dismiss the bill so far as it sought relief on the ground of forfeiture, but it ought to have been dismissed without prejudice to the legal rights of the plaintiff; an absolute dismissal may be considered as a decree against the title.

The decree therefore is to be

remanded with directions to dismiss the bill so far as it asks relief, without prejudice.

The injunction may be continued in the discretion of the court till the plaintiff has time to institute a suit at law.

This cause came on, &c.;, on consideration whereof this Court is of opinion that after the discovery sought by the original bill was obtained, the suit ought not to have been revived, nor ought the bill in the nature of a bill of revivor to have been entertained, because the relief sought by that bill was solely to enforce a forfeiture to which the plaintiff's title, if he has any, is complete at law. It was therefore proper to refuse the relief for which that bill prayed, but as a general decree for a dismissal on the merits may be considered as a decree against the title on which the court ought not to have decided the bill ought to have been dismissed without prejudice. It is therefore the opinion of this Court that there is error in so much of the decree of the circuit court as dismissed the bill of the plaintiff generally, and that the said decree ought to be reversed and the cause remanded to the circuit court with directions to dismiss so much of the plaintiff's bill as prays relief on the ground of forfeiture, and to continue the injunction at the discretion of the court.