

King's Heirs Vs. Thompson

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Decided On : 1835

Appeal No. : 34 U.S. 204

Appellant : King's Heirs

Respondent : Thompson

Judgement :

King's Heirs v. Thompson - 34 U.S. 204 (1835)

U.S. Supreme Court King's Heirs v. Thompson, 34 U.S. 204 (1835)

King's Heirs v. Thompson

34 U.S. 204

APPEAL FROM THE DISTRICT COURT OF THE

UNITED STATES FOR THE COUNTY OF WASHINGTON

SYLLABUS

District of Columbia. A few days after the marriage of J. Thompson with the daughter of George King in 1812, the latter residing in Georgetown in the District of Columbia and having a large, active capital and a large real estate there,

proposed to grant to J.T. a house and lot in Georgetown, then much out of repair and untenable, provided he would repair the same so as to make it a comfortable residence, and saying that he intended the property for his daughter. This proposition was accepted by J.T., who repaired the property, expending upwards of four thousand dollars on the same, and he,

with his wife, resided on it about four years. Before his removal from it, a correspondence on the subject of the conveyance of the property to J.T. or to J.T. and his wife took place which ended in propositions to convey the property, on certain terms beneficial to J.T. and wife in pursuance of and intended to be in execution of the original offer of G.K. to J.T., made immediately after the marriage. No conveyance was made. J.T. and wife removed from Georgetown, and G.K. collected and paid to J.T. the rents of the property for some time after their removal. G.K. died in 1820, insolvent; his debts amounted to thirty-six thousand dollars, and his whole estate, both real and personal, when sold, did not pay thirty-nine percent of his debts. The property claimed by J.T. and wife in this case was sold for sixteen hundred dollars by a trustee under a decree in chancery obtained by the creditors of G.K., but the sale has not been ratified.

From the occupancy of the property and the amount of money expended in improving it, it was certain that there was an understanding between G.K. and J.T. that the property in some manner should be possessed and enjoyed by J.T. and his wife. The evidence, however, showed that G.K. did not intend to vest it absolutely in J.T., but that the value of it, before the improvements, should in some form be secured to the wife of J.T. Whatever uncertainty may have existed as to the terms of the contract, J.T. acted under it in taking possession of the property and expending a large sum of money on it.

J.T. and wife filed a bill against the heirs of G.K. and the trustee of the creditors of G.K. claiming a conveyance of the property, and for general relief. By the court:

"In no point of view could such a contract as that in this case be considered voluntary. There was not only a good consideration, that of natural affection, but a valuable one. To constitute a valuable consideration, it is not necessary that

money should be paid, but if, as in this case, it be expended on the faith of the contract, it constitutes a valuable consideration."

In testing the validity of the transaction of 1812, the subsequent fall of property in Georgetown or the failure of King cannot be taken into view. The inquiry must be limited to his circumstances at that time. It is not shown that the persons for whom he was bound as endorser were then

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unable to pay the respective sums for which he was responsible, and it would be improper to consider those sums as debts due by King. He was responsible for their payment on certain contingencies, but the fact that his credit remained unimpaired for several years after the contract shows that neither his credit nor the credit of those for whom he was endorser was considered doubtful. In this state of facts, King was in a condition to dispose of the house and lot, not worth more than two thousand five hundred dollars, on the terms stated.

The terms of the contract not being sufficiently established by the evidence, the court decreed that the property should be sold and the proceeds of the sale should be first applied to the payment of the money expended by Thompson in making improvements on the property, and the balance, if any, paid over for the benefit of the creditors of George King, Thompson not to be charged with rent of the premises while he occupied them with the rent collected and paid to him after he, removed.

The appellees, Josiah Thompson and wife, 14 June, 1826, filed a bill on the equity side of the circuit court alleging that George King, in October, 1812, a few days after the marriage of Josiah Thompson with Elizabeth, the daughter of the said George King, proposed to grant to the said Thompson and wife a house and lot of ground in Georgetown if Thompson would repair and make it comfortable for a residence, at the same time informing Thompson he intended the property for his daughter Betsey. The bill alleges that this offer was accepted by Thompson, and that he made repairs to a large amount, and that he occupied the property after it

was repaired until 1816, when he removed to the western country.

At the time of this gift, the bill alleges that George King was in good credit and in prosperous circumstances, it being believed he had a large capital and that he owned a valuable real estate which, after the payment of his debts, not large in amount, would enable him to provide handsomely for his children.

In 1816, before Josiah Thompson removed from Georgetown, a correspondence took place between him and George King, which was annexed to the bill and which is referred to as evidence of the contract under which Josiah Thompson took possession of and improved the property.

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The first letter was from George King to the complainant, Josiah Thompson, and was dated,

"Georgetown, 17 April, 1816"

"Mr. Josiah Thompson: "

"Sir, I am informed that you are in suspense in regard to the property you now live on, and I think it a duty incumbent on me to let you know the terms I mean to let my daughter Betsey have it. I hold myself ready and hold myself bound to give a deed to a trustee, who shall hold it in trust for her and yourself during your lives, and then, after the death of you both, to revert to her lawful heirs, her children, if any she has, if not, to my heirs, but you may say I wrong you in this way by not letting you know before now that I did not mean to deed to you, instead of keeping it for her, and on that account you have put more improvements than you would have done had you have been informed before. You may now sell the property, and all you can get over three thousand dollars for it you can do as you like with, but that sum must be kept sacred for the use of your wife in the hands of trustees, for her support in case she might ever need it, the use of which as the income will be at your disposal during your own and her life, and then to her heirs as before, and other terms than this it will be useless for you to look for without you find two

just fathers that shall say I ought to do otherwise, and, after hearing their reasons on the subject, perhaps I might alter my opinion."

"Yours, with due esteem,"

"GEORGE KING"

In reply to this letter, after remonstrating against making the conveyance of the property in trust, the complainant, under date of 26 April, 1816, made three proposals to George King.

"1. Let the property be valued as to its worth at the time it was put into my possession, and I will pay the amount over to you, which you may then hold for my wife, or give it to whom you please, for when I married her, I was not influenced by any pecuniary motive, and as she has never given

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me reason to regret my choice, I surely will not allow a consideration like the present to create the smallest uneasiness."

"2. Let the improvements be estimated; pay me the amount, and then I will relinquish all claim, and you will be at liberty to dispose of it as you may deem proper."

"3. Execute a deed to your daughter at once in fee simple, and I will for her benefit and advantage cheerfully give in all that I have expended; this will at once be making her the guardian of her own property, and, if it should please God to call me first, will be to her a support."

"Thus, my dear sir, you will find that I am not disposed to dispute about the original value of the property, for though I consider it as certainly the property of my wife from the delivery of it into my possession, as any subsequent act could make it, and from the manner I was allowed and encouraged to go on with the improvements, yet I am willing at any moment to bind myself to abide by either of the above proposals."

To these proposition, George King, on 29 April, 1816, replied:

"I make no hesitation of complying with your first proposal, for it is just what I proposed in my first to you, and I will do it another way, giving you your choice, viz., I will deed the dwelling house and all above it to you, and about twenty feet below it, and then all below that I will deed to Betsey, provided she will never deed it nor otherwise dispose of it during her life, only by will, which she shall always be at liberty to make when and how she pleases."

"GEO. KING"

The bill proceeds to state that the complainant, Josiah Thompson, was satisfied with the proposition contained in the letter of 29 April, 1816, and that at the removal of the complainant from Georgetown he rented the property, and constituted George King, his agent to collect the rents of the same, which duties he continued to perform, without advancing at any time a claim to the same.

On the death of George King, the legal title to the property descended to his heirs, no conveyance having been made of it

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to the complainants, and the bill prays for a decree that the heirs of George King convey the said legal title to the complainants in fulfillment of the agreement of George King, and in the event that the same for any reason cannot be done, that the said property stand charged to the amount of the repairs and improvements put on it by the complainants, and for other and further relief, &c.;

After the decease of George King in 1830, largely in debt to the amount of \$36,000 and insolvent, his whole real and personal estate not being sufficient to pay his debts, in fact not more than thirty-nine percent of his just debts; his whole real estate was sold by Raphael Semmes, appointed trustee by the court of chancery for that purpose at the instance of George King's creditors, and among the rest the property now in controversy was sold for \$1,660 to John W. Baker.

John W. Baker deposited \$1.190.18, part of this purchase money in the Mechanics Bank of Georgetown in 1826 and 1827, to remain until the termination of this suit; the first deposit was made on 26 July, 1826, after the filing of this bill.

In the suit instituted by the creditors of George King to compel a sale of his real estate for the payment of his debts, all the heirs of George King were made parties, and among the rest, the said Thompson and wife. The sale to Baker never was ratified in consequence of this suit instituted by Thompson and wife. The heirs of George King (his estate being insolvent) feeling no interest in the suit, filed their answers to the bill of Thompson and wife, neither admitting nor denying the facts alleged, submitting themselves to the judgment of the court.

Raphael Semmes, the trustee for George King's creditors, on petition and by leave of the court, was made a defendant, and allowed to contest the claim set up by Thompson and wife, as was also Charles King one of the principal creditors. They denied the pretended contract and gift set up in the bill; denied the improvements charged to have been made on the property; averred the indebtedness of George King at the time of the pretended gift, to a large amount, and the continuance of such indebtedness to the same creditors up to the time of his death, and the unlawfulness and fraud in law of such gift, if any

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could be proved, and the insufficiency of George King's whole estate, real and personal, to pay his just debts, and claimed the proceeds of said house and lot for said creditors of King.

Charles King, as a creditor, also filed a bill against Josiah Thompson and wife charging in substance the same facts, to which bill Thompson and wife responded, reasserting in substance the matters alleged in the original bill. They admit in this answer that they were married on 6 October, 1812, and that the alleged gift of the house and lot was made after the marriage.

Evidence was taken by the complainants and the respondents which is fully stated in the opinion of this Court, and on 5 April, 1832, the circuit court, all the parties

having been heard together, pronounced a decree directing a conveyance in fee of the property, claimed in the bill, to Josiah Thompson, from which decree this appeal was taken.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The defendants here, who were the complainants in the circuit court, filed their bill stating that in the year 1812, they were married and that the wife of the complainant is the daughter of George King, who at that time lived in Georgetown and was extensively engaged in a profitable mercantile business. That his credit was high, and complainants believe he was possessed of a large active capital, and in addition had a large real estate, consisting of houses and lots in Georgetown. That it was universally believed he would have a large surplus property after paying his debts which would enable him to provide handsomely for his children.

That a few days after the marriage, George King proposed to grant to the complainant, Thompson, a house and lot on Cecil Alley, in Georgetown, which was very much out of repair and almost untenable, provided he would repair the same so as to make it a comfortable residence, and that the said King at the same time stated he intended the property for the wife of the complainant.

The complainant accepted the property, and expended upwards of \$4,000 in making repairs of the house and other

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improvements on the lot. That he occupied it as a residence about four years, and then removed to the western country. Before his removal, a correspondence took place between him and the said King in relation to the title, and the complainant made King his agent to collect the rents, &c.;

The complainant further states that the said King died intestate, leaving, in addition to the wife of the complainant, certain children who are made defendants, and a decree for a legal title is prayed, or if that cannot be decreed, that the property may stand charged to the amount of the repairs and improvements.

George King died in the year 1820, insolvent. His debts amounted to \$36,000, and his whole estate, both real and personal, when sold, did not pay more than thirty-nine percent of his just debts. The property claimed by the complainant was sold for \$1,660, by a trustee, under a decree of chancery, obtained by the creditors of George King, but the sale has not been ratified.

Raphael Semmes, the trustee of George King's creditors, and Charles King, one of the principal creditors, filed their answers to the bill of the complainant, in which they deny that the improvements were made on the property as set forth in the bill, and insist that George King, at the time of the intended gift, was embarrassed and unable to pay his debts, and they insist that the right set up by the complainants is fraudulent and void as against creditors.

There are some irregularities in the record which it is not material to notice, as these statements show the points to which the evidence applies.

The first inquiry is whether a contract was made between the complainant and George King for the property in question.

It is insisted by the complainant's counsel that the correspondence between the parties which is contained in the record, establishes the contract.

The first is a letter from George King to the complainant, dated 17 April, 1816. In this letter King says,

"That in order to remove any suspense in regard to the property on which the complainant then lived, that he held himself bound to give a deed to a trustee, who shall hold it in trust for the complainant and his wife during their lives,"

&c.;

This letter is answered by the complainant 26 April, 1816, in which he declines the terms proposed, and suggests the following.

1. Let the property be valued at the time it was put into his possession, and that he would pay the amount over to King, &c.;
2. That the improvements should be estimated, and King, on paying the amount, should receive a relinquishment of all the right of the complainant.
3. That a deed should be executed for the property to the wife of the complainant.

On 29 April, 1816, King replies,

"I make no hesitation in complying with your first proposal, for it is just what I proposed in my first to you, and I will do it another way, giving you your choice, viz., I will deed the dwelling house and all above it to you, and about twenty feet below it, and then all below that I will deed to Betsey,"

the wife of the complainant, "provided she will never deed it, or dispose of it, except by will, which she shall always be at liberty to make when and how she pleases."

On 14 August, 1819, King writes to the complainant,

"Mr. Kennedy has left your house since the first of July last, and I have not been able to get a tenant since. Houses are very dull here now; rents have fallen very much,"

&c.;

And on 23 March, 1831, George King, son it is presumed of George King deceased, writes to complainant, "I am sorry to inform you that Mr. Jacob Payne has laid an attachment on your property in Georgetown . . . ," referring to the property in controversy.

This is all the evidence to show a contract except what might be presumed from the occupancy and improvement of the house and lot.

Specific propositions were made by each party in regard to the title of the property, but it does not satisfactorily appear that either was finally accepted. The complainant in the first place objects to the conveyance of the property to a trustee for the benefit of his wife, and he proposes to pay to King the value of the property at the time it was put into his possession, which sum, at the pleasure of the donor, might be vested for the benefit of complainant's wife. To this King replies that he

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has no hesitation in accepting the proposal, but he accompanies this acceptance with a proposition to deed the dwelling house, with a certain part of the lot, to the complainant, and the residue of the lot to his wife.

Whether this last proposition or the one made by the complainant and assented to by King formed the contract is uncertain, or indeed whether any definite agreement was finally made.

From the occupancy of the property and the amount of money expended in improving it, there can be no doubt that there was an understanding between the parties that the property, in some manner, should be possessed and owned by the complainant. The evidence, however, shows that King did not intend to vest the property absolutely in the complainant, but that the value of it, before the improvements, should in some form be secured to the complainant's wife.

This Court is now called on to decree a specific execution of this contract and what are its terms. Shall the title be vested in fee in the complainant, without condition; or shall a part of the property be vested in trust for the benefit of his wife? Or shall the title be vested in the complainant on his paying into the hands of trustees, for the benefit of his wife, the value of the property when he first received it?

The evidence does not afford a satisfactory answer to any one of these inquiries. It is impossible, therefore, for the Court to decree a title as prayed for in the bill, as

the evidence fails to establish the specific terms of the contract.

But it is insisted that this arrangement or contract, if proved, was void as against the heirs of King, and especially as against his creditors, on account of the indebtedment of King at the time and his subsequent insolvency.

Although a contract is not proved with sufficient certainty as to its conditions to authorize a specific execution of it, yet there can be no doubt there was an agreement between the parties which induced the complainant to enter into the possession of the property and to expend large sums of money upon it, as if it were his own, and when he left it and removed to the western country, it was rented as his property, and George King acted as the agent of the complainant. And

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the property seems to have been considered as belonging to the complainant by the heirs of George King.

Whatever uncertainty may exist as to the terms of the contract, there can be no question that the complainant acted under it in taking possession of the property and expending a large sum of money in its improvement.

In no point of view could such a contract be considered voluntary. There was not only a good consideration, that of natural affection, but a valuable one. To constitute a valuable consideration, it is not necessary that money should be paid, but, if, as in this case, it be expended on the property on the faith of the contract, it constitutes a valuable consideration.

The debts of George King for the years 1812, 1813, and 1814 amounted to about \$13,000 or \$14,000, of which \$11,000 were due to the Bank of Columbia. And the average amount of his debts from 1812 until his death was about the sum of \$13,000.

In 1812 and for some years afterwards, George King was supposed to be rich. For his house on High Street he refused \$12,800. The whole amount of his property

was estimated at \$60,000 or more. He was endorser on accommodation notes for about \$20,000 at the above period.

At this time, the property claimed by the complainant was not worth more than \$2,000 or \$2,500. Its value was increased three or four times this sum by the improvements.

In 1827, it appears by an exhibit of the debts due by the estate of George King, including interest, that they amounted to the sum of \$36,418.10. But many of these debts seem to have been contracted subsequent to the time that the property in question was placed in the possession of the complainant. It appears also the property of which King died possessed did not pay forty percent of the debts due by the estate. And that he retained the greater part, if not the whole of his real estate, except the lot claimed by the complainant, until his decease. But it seems from the prices fixed upon this property in 1813 and those for which it was sold that there must have been a great deterioration in the value of it.

Under the above circumstances, it is insisted by the appellants that the contract with the complainant by George King for the above property was fraudulent.

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It has already been observed that the money expended in the improvement of this property constituted a valuable consideration. The contract therefore, if proved so as to entitle the complainant to a decree for a specific execution, could not be avoided on the ground that there was no consideration.

At the time this property was received by the complainant, King was supposed to be rich. His property was estimated at \$60,000; his debts did not exceed \$13,000-\$14,000, and his endorsements were about \$20,000. That his credit stood high is shown by his endorsements, and the standing accommodation given to him in the banks. So high did he stand as a man of property and business that it was deemed a valuable object to obtain his services as director in one of the Georgetown banks. There seems to have been no diminution of his credit or

means for several years after the transaction with the complainant.

In testing the validity of that transaction, the subsequent fall of property or failure of King cannot be taken into view. The inquiry must be limited to his circumstances at the time. Was King, when this property was received by the complainant, in a failing or embarrassed condition?

It is not shown that at this time the persons for whom he was bound as endorser were unable to pay the respective sums for which he was responsible, and it would be improper to consider these sums as debts due by King. He was responsible for their payment on certain contingencies, but the fact that his credit remained unimpaired for several years after the contract with the complainant shows that neither his credit nor the credit of those for whom he was endorser was considered doubtful.

In this state of facts, he surely was in a condition to dispose of a house and lot not worth more than \$2,500 on the terms stated in the bill.

There appears to have been no fraudulent intent in the case; no disposition to defeat the claims of present creditors or to cover the property from future demands. It seems to have been a *bona fide* transaction, and one which neither a court of law nor of equity could refuse to sanction. And if the terms of the contract were established, so that this Court could decree a specific execution of it, it would pronounce such a decree.

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But as a specific performance cannot be decreed, the inquiry remains, whether the complainant has a lien on the property for the money he expended in improving it.

The counsel for the appellant do not controvert the right of the complainant to a just remuneration for the valuable improvements he made, but they insist that he must exhibit his claim as a general creditor of the estate of George King, and that from such claim there should be deducted a reasonable rent for the time the property was in his possession.

This claim for improvements by the complainant is founded upon the most equitable considerations. At the instance of George King, his father-in-law, the complainant entered into the possession of this property, and under a full belief that it would be secured to him as his own, he was induced to expend a large sum of money in making permanent and valuable improvements. These improvements, some of the witnesses say, have increased the value of this property to three times the amount which it was worth before they were made. From this it appears the money was not injudiciously expended, and the question arises whether this expenditure, under the circumstances of this case, does not create a lien upon the property.

If King were living, he could not object to this lien. Can his creditors object to it? By enforcing it can their interests be injuriously affected?

It may be said that the deterioration of property in Georgetown has been such as to reduce the value of this property to a less sum than was expended in making the improvements. This cannot change the principle that must govern the case. If the money has been judiciously expended, under such circumstances as to entitle the complainant to a lien, the court must give effect to it. It is an equitable mortgage, and in a court of chancery is as binding on the parties as if a mortgage in form had been duly executed.

Suppose George King, for the purpose of improving this property, had borrowed from the complainant \$4,000 and had executed a mortgage on the same property to secure the payment of the money. Could the creditors of King complain of the lien of the mortgage? It is clear they could not. And is it not equally clear that they have no ground to complain

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of the equitable mortgage? If there be any difference in the force of the liens thus created, it must be in favor of the equitable lien.

In the first case supposed, the money was loaned at a fixed rate of interest and the property was looked to as securing the payment. But in the second case, the

money was expended under a belief that the property belonged to the individual and that the amount expended increased so much the value of his estate, and, in many cases a failure to obtain the property under such circumstances would cause an injury which a return of the money expended would not repair.

It would be most unjust to leave the complainant, as a creditor, to receive a dividend on the distribution of the estate of King.

Ought the complainant to be held accountable for rents while he occupied the premises or which he may have subsequently received from his tenants?

The rents received by the complainant after his removal to the west, independent of other facts in the case, go to show that he was not considered as the tenant of King. Indeed, there can be no doubt that the complainant considered the property as his own, and it was so treated by George King, for he collected the rents as the agent of the complainant and accounted to him for them. It would therefore be unjust now to compel him to pay rents which, with the concurrence of all parties, were paid to him at the time they accrued, as his own.

And in addition to this, the interest on the money expended would perhaps be equal to the whole amount of the rents.

As the circuit court decreed a conveyance of this property to the complainant, that decree must be

Reversed and the cause remanded to that court with instructions to cause the property to be sold, after due notice, on such terms as they shall deem most advantageous to the estate of George King, and the proceeds of the sale first to be applied to the payment of the money expended by the complainant in making improvements on the property, and the balance, if any, to be paid over for the benefit of the creditors of the estate of King.

This cause came on to be heard on the transcript of the record

from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein according to law and justice and in conformity to the opinion of this Court.

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