

Swayze Vs. Burke

Swayze Vs. Burke

SooperKanoon Citation : sooperkanoon.com/79596

Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 11

Appellant : Swayze

Respondent : Burke

Judgement :

Swayze v. Burke - 37 U.S. 11 (1838)

U.S. Supreme Court Swayze v. Burke, 37 U.S. 12 Pet. 11 11 (1838)

Swayze v. Burke

37 U.S. (12 Pet.) 11

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Ejectment. John Ormsby died in Alleghany County, Pennsylvania, in December, 1805, having a son Oliver, who administered to his estate. He had also a son who had married in Mississippi, and who died in 1795, leaving an infant daughter.

Oliver Ormsby filed no inventory of the estate of his father, and never settled an account as administrator, and in 1826, he confessed a judgment in favor of the Messrs. Penns for a part of the purchase money of a valuable real estate which had been held by John Ormsby in his lifetime. In the suit against him for this debt, Mr. James Ross acted as the attorney for the plaintiffs, and in 1827 the real estate was sold under an execution issued by Mr. Ross on the judgment and was purchased by Mr. Ross for three thousand dollars, he having, before the purchase, given Oliver Ormsby to understand and having publicly declared that he would hold the property as a security for the debt due to the Messrs. Penns, and on the payment of the debt that he would relinquish all claim to it. In April, 1831, Oliver Ormsby paid the debt to Mr. Ross and took a conveyance of the property. At the same time, he gave a receipt, as administrator of John Ormsby, to the sheriff for the balance of the three thousand dollars. He claimed to hold the property so purchased as his own. In March, 1828, Oliver Ormsby wrote to the wife of the plaintiff in this ejectment, who was the daughter of John Ormsby, junior, stating that his father had not left more property than would pay his debts. There was evidence that less than one-tenth of the real estate would have satisfied the judgment for which the land was sold to Mr. Ross. Mr. Ross had no knowledge of any fraudulent purpose of the administrator. The daughter of John Ormsby, junior, having intermarried with Gabriel Swayze, with her husband brought an ejectment to recover a moiety of the land which

was held by Oliver Ormsby under the conveyance from Mr. Ross. The court instructed the jury that

"In matters of fraud, courts of law and chancery have a concurrent jurisdiction. It is therefore within the province of the jury to inquire whether the conduct and proceedings of Oliver Ormsby whereby the legal title to the property in dispute became vested in himself for his exclusive use and benefit were in fraud of his co-tenant Mary Swayze, and if they were, the"

verdict ought to be for the plaintiffs.

"That the fraud should be brought to the knowledge of Mr. Ross, and that if Mr. Ross took a valid title under the sheriff's deed, the title of the vendee would be good under the circumstances"

disclosed in the evidence.

By the Court: "We think that the judge erred in charging the jury that the deed to Ormsby was valid unless they should find that Ross participated in the fraud."

It is clear that a purchaser at sheriffs sale cannot protect himself against a prior claim of which he had no notice, or be held a *bona fide* purchaser unless he shall have paid the money.

That fraud is cognizable in a court of law as well as in a court of equity is a well established principle. It has often been so ruled in this Court.

As there is no court of chancery under the laws of Pennsylvania, an action of ejectment is sustained, or an equitable title, by the courts of that state. Such is not the

Page 37 U. S. 12

practice in the courts of the United States, and if the plaintiffs in an ejectment fail to show a paramount legal title in themselves, they cannot recover.

The case, as stated, in the opinion of the Court was as follows:

An action was instituted in the District Court of the United States for the Western District of Pennsylvania by the lessors of the plaintiffs, Gabriel Swayze and wife, citizens of the State of Mississippi, for the recovery of a tract of land in Alleghany County in the State of Pennsylvania, to October sessions, 1833.

The plaintiffs and the defendants claimed the land under a deed from John Penn and John Penn, Jr., proprietaries of Pennsylvania, the land forming part of one of the manors reserved by the proprietaries. John Ormsby died intestate in 1791, and left a son, named Oliver, a daughter, Sidney, who intermarried with John Gregg; a

son named John, who married and died in the State of Mississippi, leaving a daughter Mary, an infant, at the time of his decease, and who has since intermarried with Gabriel Swayze, the plaintiff in error. In December, 1807, Oliver Ormsby administered to the estate of his father, John Ormsby, and gave the usual administration bonds, but he filed no inventory of the estate of the intestate, nor did he at any time settle an account of his administration of the estate.

The estate of John Ormsby, deceased, was indebted to John Penn, and John Penn, Jr., for the land purchased from them, in the sum of four hundred and sixty-seven dollars and sixty-four cents, and on 6 September, 1826, the administrator confessed a judgment in their favor for the amount of the debt, upon which judgment an execution was forthwith issued by Mr. Ross, their attorney, and the land of John Ormsby was levied on and sold, Mr. Ross being the purchaser of the same, for three thousand dollars. At the time of the purchase of the estate, Oliver Ormsby, the administrator, was absent. Mr. Ross declared in the most public manner that Ormsby, the administrator, or any of the family of the deceased John Ormsby, might redeem the land at any time, on the payment of the debt and interest. Before the sale, Oliver Ormsby, the administrator, was informed by Mr. Ross that he only wanted the money due upon the judgment, and that he did not intend to buy the land to hold it. Ormsby, the administrator, was in possession of the land at

Page 37 U. S. 13

the time of the sale, and continued in possession of it, and at the time of the sheriff's sale, or when the deed for the land was made to him by the sheriff, Mr. Ross paid no money. The rents and profits of the land were continued to be received by Oliver Ormsby, and in April, 1831, he paid to James Ross, Esq., the sum of five hundred and twenty-three dollars, the amount of the judgment, and the interest due thereon, and took from him a conveyance of the land in fee simple, giving to the sheriff at the same time, as administrator of John Ormsby, a receipt for the sum of three thousand dollars, less five hundred and twenty-three dollars, the amount of the payment to James Ross, Esq., in satisfaction of the debt due to the Messrs. Penns. The land consists of eighteen coal hill lots and of thirty-five

acres of land adjoining to them, and is now of great value. It was highly valuable at the time of the sheriff's sale. The defendants were in possession of the property as tenants of Oliver Ormsby when the suit was commenced.

In March, 1828, in answer to an application for information as to the value of the estate of John Ormsby by Mrs. Swayze, one of the lessors of the plaintiff, Oliver Ormsby wrote

"My father, at his death, was not possessed of more property than a sufficiency to pay his debts, having, from time to time, sold to individuals, and conveyed to his children."

Evidence was also given conducing to prove that by a sale of two of the coal lots, the judgment could have been satisfied.

The case was tried at October term, 1835, and a verdict and judgment were rendered for the defendants under the charge of the district judge. The plaintiffs excepted to the opinion of the court and prosecuted this writ of error.

On the trial of the cause, the counsel requested the district judge to charge the jury

"In matters of fraud, courts of law and chancery have a concurrent jurisdiction. It is therefore within the province of the jury to inquire whether the conduct and proceedings of Oliver Ormsby, whereby the legal title to the property in dispute became vested in himself, for his exclusive use and benefit, were in fraud of the rights of his cotenant, Mary Swayze, and if they were, the verdict ought to be for the plaintiffs."

The court gave the instruction as requested, with this qualification, that the fraud should be brought to the knowledge of Mr. Ross; if he took a valid title, under the sheriff's deed, the title of his vendee would be good, under the circumstances disclosed in the evidence.

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

An action of ejectment was brought in the Western District of Pennsylvania by the plaintiffs against the defendants to recover the land in controversy. Both parties claim by descent from John Ormsby, R., who died in Alleghany County, Pennsylvania, in December, 1805. The deceased had a son, Oliver, who survived him, and who administered on his estate, and a daughter, Sidney, who married Isaac Gregg. He had also a son called John Ormsby, Jr., who married in the Mississippi country and died in August, 1795. Mary Swayze, the wife of the plaintiff, is the daughter of this son, and was an infant at his decease.

In December, 1807, Oliver Ormsby gave bond as administrator of his father; but it seems he filed no inventory of the personal estate, as the law required, nor did he ever settle his administration account.

On 6 September, 1826, as administrator, he confessed a

Page 37 U. S. 22

judgment for four hundred and sixty-seven dollars and sixty-four cents in favor of Messrs. Penns, Mr. James Ross acting as the attorney of the plaintiffs. An execution was issued on this judgment, and the premises were sold to Mr. Ross for three thousand dollars. He declared publicly at the sale that Ormsby or any of his family might redeem the land at any time on the payment of "debts and interest," and Mr. Ross further states that before the sale, Mr. Ormsby was informed that he only wanted the money on the judgment, and that he did not intend to buy the land to hold it.

No money was paid by Mr. Ross at the sheriff's sale or at the time he received the sheriff's deed. Ormsby remained in possession of the land, receiving the rents and profits, and in April, 1831, four years after the sheriff's sale, he paid Ross five hundred and twenty-three dollars, the amount of the judgment and interest, and received from him a conveyance of the land. At this time Ormsby receipted to the sheriff as administrator for the balance of the three thousand dollars, after deducting the amount paid to Ross. The sheriff's deed to Ross and the deed from

him to Ormsby were recorded on the same day.

The land in controversy consists of eighteen coal hill lots near Pittsburgh and thirty-five acres adjoining them and which is now of great value and was worth a large sum at the time of the sheriff's sale.

There was a letter in evidence, written by Oliver Ormsby to Mrs. Swayze, dated 19 March, 1828, at Natchez, in which he says:

"My father, at his death, was not possessed of more property than a sufficiency to pay his debts, having from time to time sold to individuals and conveyed to his children."

And there was evidence conducing to show that the sale of two of the lots would have satisfied the judgment.

On these facts and others in the case, the counsel for the plaintiffs prayed the court to instruct the jury that

"in matters of fraud, courts of law and chancery have a concurrent jurisdiction. It is therefore within the province of the jury to inquire whether the conduct and proceedings of Oliver Ormsby whereby the legal title to the property in dispute became vested in himself for his exclusive use and benefit, were in fraud of his co-tenant, Mary Swayze, and if they were, the verdict ought to be for the plaintiffs."

This instruction was given as requested with this qualification,

"that the fraud should be brought to the knowledge of Mr. Ross and that if he took a valid title under the sheriff's deed, the title of

Page 37 U. S. 23

his vendee would be good under the circumstances disclosed in evidence."

To the refusal of the instruction as requested and the instruction as given an exception was taken which raises the question of law whether to render the title of Ormsby as set up by the defendants inoperative and void it is essential that Ross

should have participated in the fraud.

The charge of the judge was explicit on this point. He not only instructed the jury that to make the title of Ormsby fraudulent, Ross must have had a knowledge of the fraud; but assuming, it would seem, the province of the jury, he declared that the fairness of the transaction was above suspicion.

That fraud is cognizable in a court of law as well as in a court of equity is a well established principle. It has been often so ruled in this Court.

As there is no court of chancery under the laws of Pennsylvania, an action of ejectment is sustained on an equitable title by the courts of that state. Such is not the practice in the courts of the United States, and in this case, if the plaintiffs fail to show a paramount legal title in themselves, they cannot recover.

It is unnecessary to inquire whether, under the circumstances, Ormsby did not receive the conveyance of the land from Ross in trust for the heirs of his father generally. This inquiry would be appropriate in the exercise of a chancery jurisdiction on a bill framed for the purpose. But the jury was limited to the question of fraud. The deed by the sheriff to Ross and the one from him to Ormsby contain upon their face all the requisites of legal conveyances, and they must be operative to convey the title unless the circumstances under which they were executed make them void.

In 1807, Ormsby took out letters of administration, but he seems to have acted in the management of the estate without regard to the law or the obligations of his administration bond. He filed no inventory, made no settlement of his accounts. In 1825 he promised to pay the debt in the hands of Ross, but he took no step to fulfill this promise. It was his duty as administrator to make application to the orphans' court for authority to sell as much of the real estate as would pay the debt. But to obtain this order it would have been necessary to show that the personal assets were exhausted.

In 1826, he confessed a judgment and suffered an execution to be taken out and the property in controversy to be sold. He remained

in the undisturbed possession of the property, enjoying the rents and profits, and then received a conveyance of the land from Ross on the payment of the judgment and receipting to the sheriff for the balance of the purchase money. And prior to this time, by his letters he informs Mrs. Swayze, who lived in Mississippi, and still resides there, that the property left by his father would all be consumed in the payment of debts.

In deciding the question of law raised by the exception, it may not be proper for this Court to say whether these facts do not show fraud in the administrator. The facts were properly before the jury, and it was for them to determine the question of fraud. But may Ormsby and his representatives hold the land under their deed unless it shall be shown that Ross participated in the fraud?

A *bona fide* purchaser without notice is not affected by the fraud of his grantor, and it is admitted that a conveyance by such purchaser to a person who may have knowledge of the fraud would be valid. But the purchase and conveyance of Ross cannot be considered as coming within this rule.

In the first place, Ross did not purchase with the intention of holding the property. This was declared publicly at the sale, and some time before it took place the same determination was made known by him to the administrator. And in the second place it appears the purchase was never perfected by Ross. He received the sheriff's deed, but he paid no part of the consideration. In this state the matter remained four years, and until the administrator paid the judgment and receipted to the sheriff for the residue of the purchase money. On this payment he received a deed from Ross, and then he caused the sheriff's deed to be placed on record.

In making the purchase, Ross seems to have had no design to aid the administrator in the perpetration of a fraud, if such were his intention, or to defeat or embarrass the claims of the heirs of John Ormsby, Sr. By the proceeding, he was desirous of securing the debt placed in his hands for collection and for the payment of which he felt himself personally responsible. The judgment and the

sale of the land secured the desired object. It might have been secured by the judgment only.

The purchase at the sheriff's sale was not made by Ross on his own account or for the benefit of the plaintiffs in the judgment. Having fixed a lien on the land by the judgment and sale, he did not desire to complete his purchase by the payment of the money.

Page 37 U. S. 25

And it is clear that a purchaser at sheriff's sale cannot protect himself against a prior claim of which he had no notice, or be held a *bona fide* purchaser unless he shall have paid the money.

Had the administrator, under the circumstances of this case, become the purchaser at the sheriff's sale, could he have held the land as a *bona fide* purchaser? His omissions of duty in failing to account for any assets which may have come into his possession, and his neglect to apply to the orphans' court for authority to sell a part of the real estate to pay the debt connected with the judgment and the proceedings under it are facts from which a jury might, in the exercise of their judgment, have inferred fraud.

Had the administrator fraudulently furnished an agent with money and employed him to purchase at the sheriff's sale, could a title thus acquired be held valid against the heirs of John Ormsby, Sr., though the deed might have been made to the agent? The agent may be supposed to have been made the innocent instrument of fraud by the administrator, and whether the title apparently remained in the agent or had been conveyed to the administrator, could not the fraud be inquired into at law?

There may not have been, in terms, an agreement between Ross and the administrator that the purchase should be made at the sheriff's sale by the former as agent of the latter. But before the sale, the administrator was assured by Ross that he would not purchase to hold the land, and his high character was a sufficient guarantee on the subject; and may not this conduce somewhat to show

to a jury why the eighteen lots, and the thirty-five acres adjoining, were sold on the execution, when the sale of two or three of the lots would probably have satisfied the judgment? The money was paid by the administrator.

In making the purchase, Ross seems in effect to have acted as the agent of the administrator, and it was proper for the jury to inquire whether the transaction was not fraudulent. If the administrator suffered the land to be sold through the agency of Ross with the view of securing the title to himself, to the exclusion of the other heirs of his father, the proceeding was fraudulent and void. And as Ross could not be considered a *bona fide* purchaser against the legal and equitable right of the plaintiffs, he not having paid the purchase money, the deed which he executed to Ormsby is not a *bona fide* conveyance. Had the plaintiffs brought their action against Ross, he could not have defended himself under the sheriff's deed

Page 37 U. S. 26

without showing the payment of the consideration. Nor is this deed a good defense against the right of the plaintiffs under the circumstances of the case when set up by Oliver Ormsby or his representatives. To the objection already stated to the title of Ross may be superadded all the circumstances going to show fraud in the administrator, and of which the jury are the proper judges.

We think, therefore, that the judge erred in charging the jury that the deed to Ormsby was valid unless they should find that Ross participated in the fraud, and on this ground the judgment of the court below is

Reversed and the cause remanded for further proceedings.

This cause came on to be heard on the transcript of the record from the district Court of the United States for the Western District of Pennsylvania and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the district court be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court with instructions to award a *venire facias de novo*.

