

Buchannon Vs. Upshaw

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Decided On : 1843

Appeal No. : 42 U.S. 56

Appellant : Buchannon

Respondent : Upshaw

Judgement :

Buchannon v. Upshaw - 42 U.S. 56 (1843)

U.S. Supreme Court Buchannon v. Upshaw, 42 U.S. 1 How. 56 56 (1843)

Buchannon v. Upshaw

42 U.S. (1 How.) 56

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

There were two titles to a tract of land, the senior title held by Upshaw and the junior by Buckner, both derived from the same person who had sold to both.

Buckner soon afterwards sold to Buchannon, who paid Buckner and took possession.

Upshaw subsequently agreed to ratify the sale from the original holder to Buckner, upon receiving an assignment of Buckner's bond for the purchase money, not yet due, and other securities.

The bond not being paid, Upshaw brought an ejectment and obtained a judgment. Buckner's assignees filed a bill to obtain a perpetual injunction.

There is a privity of contract between them and Upshaw, and a perpetual injunction will be granted upon their fulfilling the obligations of Buckner, their assignor; it was not their duty, under the circumstances, to have tendered the money to Upshaw.

A power in Buckner to resell, and a sale made under that power, prior to Upshaw's giving his assent to the sale from the original holder to Buckner himself, did not extinguish the equitable right of Upshaw to receive the purchase money, or to proceed against the land.

Upshaw's right not destroyed by lapse of time, because he had brought suit on Buckner's bond and the other securities, and was not in a condition for a long time to make a valid title.

Upshaw, being held bound by his assent to the sale to Buckner, is entitled to the advantage which that paper gave him as to the application of part of the purchase money to one purchase in preference to another.

Interest must begin to run from the time when Upshaw asserted his claim to the land, and what is due to Upshaw must be made up by the present holders of the land, each one contributing in proportion to the price which he paid to Buckner.

The case was this:

John Buchannon and others filed a bill in the Circuit Court of Ohio against Upshaw, stating that Upshaw had obtained a judgment in an action of ejectment

against them, and praying for two things:

1. That he, Upshaw, might be perpetually enjoined from proceeding in execution upon said judgment; and
2. That he might be compelled to convey by deed in fee simple, the land

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which had been the subject of the suit in ejectment. The circuit court, after various proceedings, decreed that the injunction which had been temporarily granted, restraining Upshaw from suing out executions upon his judgment in ejectment, should be dissolved; that the bill should be dismissed, and that Buchannon and others should pay to Upshaw a certain sum of money for the rents and profits, after deducting the value of the improvements made upon the land. From this decree an appeal was taken to this Court.

On the 11th of December, 1789, Beverly Roy obtained from the Commonwealth of Virginia a patent for one thousand acres of land in the Virginia Military District of Ohio, and within Clermont County. He sold three hundred acres of this tract to one Buchannon, and contracted to convey the remaining seven hundred (the land in controversy in the present suit) to Lyne Shackleford.

On 10 April, 1797, Shackleford sold this tract of seven hundred acres to Upshaw, the defendant in the present appeal; but not having the legal title in himself at that time, he procured it to be made directly from Roy to Upshaw, without passing through himself. On 20 July, 1797, Roy accordingly executed a conveyance to Upshaw for these seven hundred acres, and also a bond for further assurance.

On 16 November, 1797, Shackleford, being thus destitute of the legal title, nevertheless sold to Philip Buckner, the same tract of seven hundred acres which he had previously sold to Upshaw. It was alleged in the bill that this sale was made with Upshaw's consent, but no evidence of it was furnished, except that in the contract of 1801, his consent is stated to be given at some time prior to 1801. At the same time, Shackleford sold also to Buckner another tract of one thousand

acres. The price for both tracts was 1020, without saying what was the sum for each tract. No part of it was to be paid in cash. A bond of Anderson for 600 held by Buckner was assigned to Shackleford; a claim against Coats for 250 was also assigned over, and for the balance Shackleford agreed to wait until Buckner sold the one thousand seven hundred acres, provided he sold it prior to January, 1799; if not, payment to be then made, or sooner if Buckner should sell.

In 1798 and 1799, Buckner sold to the complainants, or to those

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under whom they claim, in several parcels, the whole of the seven hundred acres in question, who paid him in full therefor, received conveyances, and entered into possession.

On 18 April, 1801, Upshaw, having made some payments to Shackleford, entered into a new contract with him, which was endorsed on the original one, stating

"that since the date of the within, Shackleford had, with the consent of Upshaw, sold the seven hundred acres of land to Buckner for 420, which sum is still due,"

and it was agreed that Shackleford should assign Buckner's contract to Upshaw, who was to make a deed as soon as the money should be paid. But if, upon application, Buckner did not pay the said sum of money and interest, Upshaw was immediately to take proper steps to have the land sold to raise the money and interest.

On 16 May, 1803, Shackleford assigned to Upshaw the contract between Shackleford and Buckner, and authorized Upshaw to receive from Buckner the balance due on the same, amounting on that day to 530 9 s ., having previously assigned the claim upon Coats' bond, and an order which Buckner had given upon one Copland, the attorney who was charged with its collection. The result of that claim may be stated in a few words. Suit was brought in the Circuit Court of the United States at Richmond, by John Marshall, in 1798, against Coats; there was a judgment, a *ca. sa.*, another *ca. sa.*; and, finally, it got into chancery against

Coats' widow and children. The plaintiff at last gave it up in 1820.

Upshaw made more than one effort to obtain the money from Buckner, which was due under the contract assigned by Shackleford. In April, 1804, he empowered John H. Upshaw, who was going to Kentucky, to receive from Buckner the sum due on his contract, and, on the payment of the money, the agent was authorized to make a deed.

The agent called on Buckner, who expressed much anxiety to comply with his contract, and induced the agent to remain some days, in the hope of raising the money. But he failed to pay any part of it. The agent, after authorizing John O'Bannon to receive the money from Buckner, and make him a deed, returned to Virginia.

Upshaw drew an order on John O'Bannon in April, 1807, for

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the money, which was returned protested for nonacceptance. O'Bannon shortly after this died, and in the year 1813, or 1814, Upshaw obtained from his representatives the assigned contract of Buckner, which had been left with him, and on which was endorsed a credit for \$100 on 10 April, 1805, and another for the same amount, 18 April, 1806. On obtaining the contract, Upshaw caused an action to be brought on it against Buckner for the money. The suit being brought in the name of Upshaw, as assignee of Shackleford, there was a demurrer to the declaration; and at May term, 1815, the Circuit Court of the United States for Kentucky sustained the demurrer, and the action failed.

Shortly after this, Upshaw commenced an action of ejectment, in the Circuit Court of the United States for the District of Ohio, against Buchannon and others, who occupied the land, to recover possession of it, which, at May term, 1816, failed, on the ground that the patent emanated from the State of Virginia, subsequently to the deed of cession from Virginia to the United States; and of course Upshaw was only invested with the equitable title to the land.

In August, 1817, Roy and wife executed another deed to Upshaw for the land, in compliance with the covenant for further assurance, which he had entered into in 1797.

Some short time prior to December, 1820, Buckner died. His will, made in February, 1817, contains bequests of real estate and some small legacies of personalty. The executor filed two accounts, one in 1822, and the other in 1823, the latter showing a balance in the hands of the executor of \$50.18. It does not appear that any of his real estate was required to be sold to pay debts.

In 1826, Upshaw obtained from the United States a patent for the seven hundred acres.

In 1829, he brought another ejectment, in the Circuit Court of the United States for the District of Ohio, against Buchannon and others, occupiers of the land, and having now a patent from the United States, succeeded in obtaining judgment; upon which, Buchannon and others filed a bill upon the equity side of the same court, and obtained an injunction to stay proceedings. This is the bill mentioned in the commencement of this narrative,

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which, upon hearing, was dismissed by the circuit court, and the injunction dissolved; and the case now came up by an appeal from that decree.

The proceedings in this case were diversified in its history, by two collateral chancery suits, one by John H. Upshaw against E. Upshaw, and another by E. Upshaw against Chamberlayne, the executor of Shackleford, but as the decision of this case does not rest upon any of the facts or principles disclosed in them, they are not further noticed.

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MR. JUSTICE CATRON delivered the opinion of the Court.

This is an injunction bill, to restrain the defendant from taking out a writ of possession and an execution for costs, on a recovery, of seven hundred acres of land, by Upshaw, in an action of ejectment against the complainants in the circuit court of Ohio. They ask a perpetual injunction of the execution, and a specific decree for title.

The complainants, and those under whom they claim, purchased from Philip Buckner, paid a full price, and took deeds dated in 1798 and 1799.

Buckner purchased from Lyne Shackleford in November, 1797, when the latter had no title to, or interest in the land; Upshaw, the respondent, being the owner. It had been granted to Beverly Roy by the Commonwealth of Virginia, in 1789, and sold by Roy to Shackleford. In April, 1797, Shackleford sold to Upshaw, and directed the title to be made to him. On 20 July, 1797, Roy conveyed to Upshaw, and in November afterwards, Shackleford sold a second time to Buckner.

To remedy this defect of title and want of good faith, in April, 1801, Shackleford entered into a covenant with Upshaw, by which the sale to Buckner, of November, 1797, was confirmed, and in May, 1803, Shackleford and Upshaw entered into another covenant, again confirming the contract between Shackleford and Buckner, and which is more specific in its terms than the first, of 1801.

By these contracts alone Upshaw was bound, and on them the bill is founded and a specific decree asked. They must be taken together; so the complainants treat them in their bill; nor can the court do otherwise.

Upshaw, having stipulated to make title to Buckner, on receiving 420, the purchase money, took an assignment of the covenant

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between Buckner and Shackleford, on which it appears by the covenant of 1803, 420 was remaining unpaid.

It is insisted that a bill for a specific performance of the contracts, could not be maintained until the purchase money was tendered to Upshaw, the vendor, and of

this opinion was the circuit court, and principally on this ground, taken in connection with other circumstances, dismissed the bill.

We are of opinion that if such a rule exists in any case, it has no application to the one before us. The complainants purchased from Buckner when he had no interest in the land, and at that time they acquired no equity against Upshaw; yet of this fact they had no knowledge, and rested confident that they were occupying and improving the land under a good title. Nor did they have any knowledge of the contracts between Shackleford and Upshaw, after their purchase from Buckner, for many years; probably not until about the time the recovery was had against them in the action of ejectment in 1831. It was not Buckner's interest to give the information; and Shackleford took no further trouble on himself in the matter after 1803; he and Upshaw residing in the remote parts of Virginia, five hundred miles from the complainants.

Upshaw admits in his answer that he did not know Buckner had sold the land, or that it was in the possession of the complainants, until about the time he brought his first action of ejectment in October, 1818; that he sued for the land because he had failed to obtain the purchase money from Buckner. The suit failed because the patent from the Commonwealth of Virginia was void, the country having been ceded (north of the Ohio River) by Virginia to the United States, before the land was granted.

In 1826, Upshaw, on the production of the patent to Roy and his deed, obtained a patent from the United States in confirmation of the Virginia grant. On this he brought another suit against the complainants, and in 1831, recovered the land. This is the judgment the bill seeks to enjoin.

During all this time, Upshaw was a stranger to the complainants; he set up no claim against them for the purchase money due from Buckner to him; he sought the land, and disavowed that Buckner's contract with the complainants bound him. And

so he continues to do. His principal defense in the answer to the bill is

"That having no contract, or privity of contract, with the purchasers from Buckner, he conceives they can have no right to come into a court of equity to enforce a specific performance of the contract with Buckner."

It is manifest that at no time were these complainants afforded the opportunity to pay the purchase money due from Buckner to Upshaw.

We therefore hold, that complainants were in no default prejudicial to their original equities, for failing to discharge, or offering to discharge, the bond of Buckner.

Nor could the complainants be justly charged with sleeping on their rights, had the true state of the facts been known to them. Until 1826, Upshaw was in no situation to comply with his part of the contract; that is, to make title. A court of chancery would have enjoined the payment of the purchase money before the patent issued from the United States -- and set aside the contract, if the vendor could not have made title.

Neither can this be treated as a stale claim, for another reason. The complainants went into possession under Buckner's deeds, dwelt upon, and in good faith improved the land, and are now seeking to protect their possessions and homes, in affirmance of their deeds.

We also hold that there was privity of contract between Upshaw and the complainants. When he sanctioned Shackleford's contract with Buckner, he became a party to it: Buckner had assigned all its benefits to the complainants, and they must be treated as rightful assignees; with the modifications imposed by the contract of 1801 and 1803, between Upshaw and Shackleford.

The equitable title being in the complainants by a contract complete in all its parts, they are entitled to a specific decree of course, on principles too familiar to require authorities to support them. On this part of the case the court has had neither doubt or difficulty in arriving at a conclusion favorable to a specific decree.

The complainants being entitled to relief, the next question is on what terms? For as they ask the active aid of the court to coerce performance of the respondent's contracts, they can only have such aid on the terms that they do him equity. A rule

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without an exception, within our recollection. Having dealt for an equitable title, complainants took it subject to all the equities existing between their immediate vendor, Buckner, and his vendor, Upshaw. It follows, they must perform the covenants favorable to the defendant found in the contracts on which they seek relief. Therefore, before Upshaw can be compelled to convey the land, he is entitled to receive the purchase money, unless his right is cut off by the contract, or has been forfeited by his subsequent conduct.

The first objection is that in the contract between Shackleford and Buckner, there is a power given to the latter to sell; until which time Shackleford agreed to wait for a portion of the money; that is, as to 170; provided the resale was made by 1 January, 1799, before which time, the sale was made to some of the complainants. It is true in the nature of buying and selling, that where a power of resale is given to the vendee, he has conferred on him the corresponding power to receive payment. But this could not affect Upshaw's title. Buckner took no interest by his contract with Shackleford; nor did the complainants acquire any by their purchase from Buckner. Their equities originated with Upshaw's sanction, given after the power had expired. He might sanction the contract of Shackleford with Buckner, or not, at his election, and, of course, modify it to suit his own interest. Having the transaction in his power, he saw proper to become a party to the contract on the terms that he retained a lien on the land for the 420, first by the covenant of 1801, he bound himself to Shackleford, to proceed against the land if he failed to receive payment from Buckner, and, secondly, by that of 1803, he bound himself to convey to Buckner on being paid the 420. The bill being founded on these contracts, Upshaw is entitled to be paid the purchase money, irrespective of the stipulation that Buckner was authorized to resell, by his contract with Shackleford.

In the covenants of 1801, and 1803, Upshaw admits that Shackleford sold to Buckner with his consent, and it is insisted for complainants that Upshaw must be held to have authorized Shackleford to sell before the contract of 1797 was made. All the evidence we find in the record of Upshaw's sanction, is found in the contracts of 1801, and 1803; by these he was not bound to convey until he received payment for the land; we think in this modified

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form is Upshaw bound, and that he never intended simply to sanction Shackleford's sale to Buckner.

Next it is contended respondent was negligent in not collecting a bond upon Coats on which 250 was due. Upshaw's covenants have no reference to this security. It was delivered over to Shackleford by Buckner for collection; credit was to be given for the money, if collected, on Buckner's bond. The claim was diligently pursued, but Coast proved insolvent, so that there is nothing in this objection.

Again, it is contended, and with much force, that Upshaw was grossly negligent in failing to collect the 420 from Buckner. He received Buckner's covenant in 1803. In 1804, it was sent by John H. Upshaw from Virginia to Kentucky for collection; the agent was fully authorized to receive the money and to make title to the land on its payment; which Buckner evaded, and the contract was put into the hands of another agent, O'Bannon, who collected \$200 from Buckner: and in 1814, Buckner was sued in Upshaw's name as assignee, and the suit failed because an assignee could not sue upon such an instrument. During this time, Upshaw had no valid title to the land, although there can be no doubt he thought the Virginia patent valid; still he could not have coerced payment from Buckner until 1826, when the patent from the United States was obtained; had the latter resisted payment on this ground. Under all the circumstances, we think Upshaw did not forfeit his right to demand the purchase money from the complainants.

Shackleford sold to Buckner two tracts of land, one of a thousand acres, and this in controversy of seven hundred acres, for the gross sum of 1020, and obtained

600 on Anderson's bond in part payment. It is insisted that this sum must be applied in discharge of the complainants, as seven hundred is to one thousand, and that they are only bound for the residue.

The complainants are compelled to rely on Upshaw's contracts of 1801 and 1803, to maintain their claim to relief, and to affirm them in all their parts. By these contracts it appears the seven hundred acre tract was estimated at 420, and that no part of the purchase money for this tract had then been paid by Buckner: he was concluded from asserting the contrary, and so are the complainants.

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The next question is from what time are the complainants bound to pay interest on the unpaid purchase money. They insist from the time Upshaw obtained his patent from the United States in 1826. Respondent insists he is entitled to interest from the time the debt fell due against Buckner, or the 1st of January, 1799. Until the complainants were notified that, as purchasers of Upshaw's title, they were responsible to him for the purchase money, and recognized as his debtors, they had no opportunity to make payment; as to them, the debt was payable on demand, express or implied. Respondent admits in the answer that he neither pursued the land, or the purchasers under Buckner, until he failed to obtain payment from the latter. His first assertion of claim, was by the suit in ejectment in 1818; after which the purchasers cannot be heard to say, they remained ignorant of the defects in their own title, or of Upshaw's rights; it was imposed upon them to trace up the outstanding equities favorable, and unfavorable. Had they done so, the contracts of 1801, and 1803, would have been discovered, and the state of the title explained: this complainants did in 1831, and it could have been done quite as conveniently in 1818. We therefore deem the suit equivalent to a demand.

That Upshaw had no legal title in 1818, is no excuse: the complainants entered upon, occupied, and enjoyed the fruits of the land, under his title, and could no more be allowed to disavow it while they remained in possession, than could a tenant for years, be permitted to disavow his landlord's title. So in effect, this Court

held in [Galloway v. Finley](#), 12 Pet. 264. But being remote purchasers of Upshaw's title; not from him, but another; and only bound to pay the purchase money by the rules adopted by courts of chancery; by the same rules, the complainants are entitled to an abatement of interest in part, accruing on Buckner's contract, and as the right to receive interest depends on the time when Upshaw notified them that they were held responsible for Buckner's failure to pay; and the action of ejectment, of October, 1818, being equivalent to a demand of payment, legal interest accrued from that date.

This we deem a well founded principle, where a personal demand existed upon real security, and is brought forward at a late

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day. Interest may be allowed at the discretion of the court, only from the time of filing the bill, in such cases. The rule is established in the Court of Chancery in England, and can be properly applied in this case. *Pickering v. Lord Stamford*, 2 Ves.Jr. 272, 582. And under similar circumstances it equally applies where mesne profits are claimed. *Acherly v. Roe*, 5 Ves. 565.

We order that the \$200 paid to O'Bannon be deducted from the 420; leaving \$1,200 due; on this sum interest will be allowed from 15 October, 1818, until paid. As the record does not show when the action of ejectment was brought, we assume the middle of the month as the true time, the interest to be at the rate of six percent per annum.

The purchase money will be apportioned among the complainants, according to the original value of the several tracts when purchased from Buckner and the price paid to him taken as the measure of value. Those claiming under Buckner's vendees will be governed by the same rule, of their vendor's. If the money is not paid in a limited time, sales will be ordered, of all, or any of the tracts, at the discretion of the circuit court, to raise the money.

The injunction at law, insofar as to restrain the writ of possession, will be made perpetual, but will be dissolved as to the judgment for costs, so that an execution

may issue to collect them.

The costs of this suit in the circuit court will be equally divided between the complainants, and the respondent, Upshaw, they paying half and he the other half, and the complainants will contribute among each other in the same proportion that they are bound to do in discharging the decree for the purchase money.

The appellee Upshaw will pay the costs of this Court.

On the complainants' discharging the purchase money, the contract between Buckner and Shackleford will be assigned to them by Upshaw, if he is required to do so, and he will also be decreed to execute deeds to the complainants for the tracts they respectively claim, in such form and with such covenants as the circuit court shall direct.

The decree of the circuit court for the mesne profits falls, of course, by the reversal of the principal decree.

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ORDER

"Edwin Upshaw, Appellant"

"v."

"Buchannon and others"

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 Ohio, and on the cross-appeal by Edwin Upshaw, and was argued by counsel. On consideration whereof, it is now here adjudged and decreed by this Court, that the said appeal of Edwin Upshaw be and the same is hereby dismissed, with costs.

"Buchannon and others, Appellants"

"v."

"Edwin Upshaw"

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 Ohio, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court, with directions to proceed therein conformably to the opinion and decree of this Court.

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