

Oliver Vs. Piatt

Oliver Vs. Piatt

SooperKanoon Citation : sooperkanoon.com/79897

Court : US Supreme Court

Decided On : 1845

Appeal No. : 44 U.S. 333

Appellant : Oliver

Respondent : Piatt

Judgement :

Oliver v. Piatt - 44 U.S. 333 (1845)

U.S. Supreme Court Oliver v. Piatt, 44 U.S. 333 (1845)

Oliver v. Piatt

44 U.S. 333

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

In cases of trust, where the trustee has violated his trust by an illegal conversion of the trust property, the *cestui que trust* has a right to follow the property into whosoever hands he may find it, not being a *bona fide* purchaser for a valuable

consideration, without notice.

Where a trustee has, in violation of his trust, invested the trust property or its proceeds in any other property, the *cestui que trust* has his option either to hold the substituted property liable to the original trust, or to hold the trustee himself personally liable for the breach of the trust.

The option, however, belongs to the *cestui que trust* alone and is for his benefit, and not for the benefit of the trustee.

If the trustee, after such an unlawful conversion of the trust property, should repurchase it, the *cestui que trust* may, at his option, either hold the original property subject to the trust or take the substituted property in which it has been invested, in lieu thereof. And the trustee, in such a case, has no right to insist that the trust shall, upon the repurchase, attach exclusively to the original trust property.

Where the trust property has been unlawfully invested, with other funds of the trustee, in other property, the latter, in the hands of the trustee, is chargeable *pro tanto* to the amount or value of the original trust property.

What constitutes notice of a trust?

An agent, employed by a trustee in the management of the trust property, and who thereby acquires a knowledge of the trust, is, if he afterwards becomes possessed of the trust property, bound by the trust, in the same manner as the trustee.

Where, upon the face of the title papers, the purchaser has full means of acquiring complete knowledge of the title from the references therein made to the origin and consideration thereof, he will be deemed to have constructive notice thereof.

A co-proprietor of real property, derived under the same title as the other proprietors, is presumed to have full knowledge of the objects and purposes and trusts attached to the original purchase, and for which it is then held for their common benefit.

A purchaser by a deed of quitclaim without any covenant of warranty, is not entitled to protection in a court of equity as a purchaser for a valuable consideration, without notice, and he takes only what the vendor could lawfully convey.

A warranty, either lineal or collateral, is no bar to an heir who does not claim the property to which the warranty is attached by descent, but as a purchaser thereof.

Whether a bill in equity is open to the objection of multifariousness or not must be decided upon all the circumstances of the particular case. No general rule can be laid down upon the subject, and much must be left to the discretion of the court.

The objection of multifariousness can be taken by a party to the bill only by demurrer, or plea, or answer, and cannot be taken at the hearing of the cause. But the court itself may take the objection at any time-at the hearing or otherwise. The objection cannot be taken by a party in the appellate court.

Lapse of time is no bar to a subsisting trust in real property. The bar does not begin to run until knowledge of some overt act of an adverse claim or right set up by the trustee is brought home to the *cestui que trust*. The lapse of any period less than twenty years will not bar the *cestui que trust* of his remedy in equity, although he may have been guilty of some negligence, where

Page 44 U. S. 334

the suit is brought against his trustee, who is guilty of the breach of trust, or others claiming under him with notice.

Where exceptions are taken to a master's report, it is not necessary for the court formally to allow or disallow them on the record. It will be sufficient, if it appears from the record, that all of them have been considered by the court, and allowed or disallowed, and the report reformed accordingly.

There is no principle of the common law which forbids individuals from associating together to purchase lands of the United States on joint account at a public sale.

The record was very voluminous, consisting of nearly eight hundred printed pages. The acts and declarations of the parties were given in evidence, running through a period of twenty years, and the case being an appeal from the decree of the circuit court as a court of equity, all this matter was brought up to the Supreme Court. It is impossible, therefore, to put into this statement all the circumstances which had a bearing upon the point in issue, which was whether a trust did or did not continue in a valuable body of land. The leading incidents in the history of the case are these:

In the summer of 1817, two distinct companies were formed at Cincinnati for the purpose of purchasing lands at the public sales of the United States to be shortly held at Wooster, in the State of Ohio, the object being to lay out and establish a town in the reserve of twelve miles square on the Miami of Lake Erie, since called the Maumee River.

One company, called the Piatt Company, was composed of the following persons: John H. Piatt, William M. Worthington, Gorham A. Worth, and Robert Platt, the plaintiff in the suit below, and now defendant in error.

The other company was called the Baum Company, and composed of the following persons: Martin Baum, Jacob Burnett, William C. Schenck, William Barr William Oliver (one of the plaintiffs in error), Andrew Mack and Jesse Hunt.

What the articles of agreement were between the members of the Piatt Company the record did not show.

On 7 June, 1817, the Baum Company entered into the following articles of agreement, Mack being admitted to half a share, the whole interest was divided into thirteen parts, whereof Mack held one-thirteenth and each of the other persons two-thirteenths:

"We, the undersigned, agree to enter into a partnership for the purpose of purchasing lands and lots at the public sales to be held at Wooster, on the seventh and fifteenth of July next, and for the purpose of effecting the said purchases, we agree to borrow, at the Office of Discount and Deposit at Cincinnati, the sum of

eight thousand dollars, for which sum, and for all purchases made by our agents, either at the public sales or otherwise, we hold ourselves

Page 44 U. S. 335

jointly and equally liable. And we do further agree that William C. Schenck, William Barr and William Oliver shall be our agents to explore the lands and make the purchases. And we do agree to confirm and comply with any contracts that our agents aforesaid may make on our account. And it is further agreed that our said agents shall be authorized to take in any other partner or partners that they may see proper, on such terms as they may esteem advantageous. And it is further agreed that in consideration of the services to be performed by the agents above, their expenses, incident to making the purchases aforesaid, shall be defrayed by the other individuals comprising the company."

"In witness whereof we have hereunto set our hands and seals at Cincinnati this the seventh day of June, eighteen hundred and seventeen."

"MARTIN BAUM [SEAL]"

"JESSE HUNT [SEAL]"

"J. BURNET [SEAL]"

"W. C. SCHENCK [SEAL]"

"W. BARR [SEAL]"

"WILLIAM OLIVER [SEAL]"

The Piatt Company appointed Robert Piatt its agent.

On 23 June, 1817, Worthington, John H. Piatt and Worth addressed a letter of instructions to Robert Piatt, their agent, directing him how to proceed, and enclosing \$4,000 to make the first payment on the lots of land which he might purchase.

The agents, having made their selections, met at Wooster to attend the sales, and then ascertained that they had each selected the following tracts, viz., 1, 2, 3, 4, 86, and 87. In consequence of this, the following agreement was entered into, viz.:

"We, the undersigned, agree, on behalf of the companies we represent, to-wit: William C. Schenck, of Warren County, Ohio, and William Oliver, of Cincinnati, Ohio, for themselves and for Jacob Burnet, Martin Baum, Jesse Hunt, William Barr and Andrew Mack, all of Hamilton County, Ohio, and Robert Piatt, of Boon County, Kentucky, for himself, and for William M. Worthington, John H. Piatt, and Gorham A. Worth, all of Hamilton County, Ohio, to purchase at the public sales, in July, 1817, at Wooster, lots numbered 1, 2, 3, and 4, at, and including, the mouth of Swan Creek, in Township No. 3, in the United States reserve, at the foot of the rapids of the Miami of the Lakes, for the joint benefit of both companies -- that is, one company to have one-half interest in the whole, and the other company to have the other half, each company paying one-half of the purchase money. It is further agreed that Robert Piatt, in behalf of his company and the company of Schenck and Oliver, shall be the bidder for lots Nos. 1 and 2, and William Oliver for lots Nos. 3 and 4, they being the above four lots at the mouth of Swan Creek. "

Page 44 U. S. 336

"In witness whereof, the parties have hereunto interchangeably set their hands and seals, this 17 July, 1817."

"W. C. SCHENCK [SEAL]"

"WILLIAM OLIVER [SEAL]"

"ROBERT PIATT [SEAL]"

And afterwards the following:

"The undersigned have agreed to purchase, for the joint benefit of their companies, lots or tracts of land numbered 86 and 87, opposite the mouth of Swan Creek, on the same principles that lots numbered 1, 2, 3, and 4, at the mouth of

Swan Creek, were purchased, as per agreement between William C. Schenck and William Oliver, for themselves and others, and Robert Piatt, for himself and others, bearing date 17 July, 1817."

"ROBERT PIATT [SEAL]"

"WILLIAM OLIVER [SEAL]"

On 18 July, 1817, in conformity with the above agreements, William Oliver bid in lots Nos. 3 and 4, and on 19 July, Robert Piatt bid in tracts 1, 2, 86 and 87. The original certificates for the tracts bid in by Oliver, were made out in his name, and for the tracts bid in by Piatt, in the names of himself, John H. Piatt, Worth, and Worthington, in conformity with the letter of instructions addressed to him on 23 June.

On 21 July, 1817, Robert Piatt bid in, for the separate account of the Piatt company, the following other tracts, *viz.:*

North-west quarter-section 2, township 3.

South-west quarter-section 2, township 3.

South-west quarter-section 3, township 3.

North-west quarter-section 3, township 3.

South-east quarter-section 3, township 3.

The first installment of the purchase money for which was paid by the Piatt company.

On 4 August, 1817, Robert Piatt settled an account with the Piatt company, giving them credit for the four thousand dollars above mentioned, and charging them with one-half of the installments which had been paid upon Nos. 1, 2, 3, and 4, and with the whole of the installments which had been paid upon Nos. 86 and 87, and upon the five quarter-sections.

After the return of the agents to Cincinnati, a meeting of both companies was held; the acts of the agents at Wooster were ratified, and the two companies were, in respect to their joint purchases, consolidated in a new company called the Port Lawrence Company. Martin Baum was appointed trustee, for the purpose of carrying out a resolution of the company that a town should be laid out upon a part of the land. It was further agreed that Oliver should be appointed an agent to lay out the town and make sale of the lots, and he was directed, in performing this duty, to call to his

Page 44 U. S. 337

assistance William C. Schenck, another of the original members of the Baum Company.

Each of the companies purchased other lands upon its own private account.

On 14 August, 1817, Oliver executed a bond to Baum in the penal sum of twenty thousand dollars, the condition of which was as follows:

"Whereas the above named Martin Baum hath this day constituted and appointed the before-bound William Oliver his agent with power to lay out a town at the mouth of Swan Creek, on the Miami of the Lakes, and hath authorized the said William to sell and dispose of the lots in said town, agreeably to a letter of instructions, and to receive payment for the same from the purchasers, and to execute and deliver certificates, in the nature of title bonds, for the lots by him sold. Now the condition of the above obligation is such, that if the said William Oliver shall in all things well and truly execute the trust reposed in him by the said Martin Baum, and shall render a true account of his proceedings, when required, and shall faithfully pay over to the said Martin all moneys by him received for or on account of sales made in the town to be laid off by him, as aforesaid, when thereto required, then, and in such case, the above obligation shall cease and determine, otherwise remain in full force and virtue."

On the same day, Baum executed a power of attorney to Oliver, as follows:

"Know all men by these presents, that I, Martin Baum, of Cincinnati, in the State of Ohio, for divers good causes and considerations me thereunto moving, have made, constituted, and appointed, and by these presents do make, constitute and appoint William Oliver, of said place, my true and lawful attorney, for me and in my name, to sell and dispose of the lots in a town to be laid off at Swan Creek, on the Miami of the Lakes, agreeably to a letter of instructions therewith delivered, and to receive payment for the same from the purchasers, and to execute and deliver certificates, in the nature of title bonds, for the lots by him sold, and to all lawful acts requisite for effecting the premises, hereby ratifying and confirming all that my said attorney shall lawfully do therein by virtue hereof. In testimony whereof,"

&c.;

On the same day, Baum delivered to Oliver a letter and a set of instructions. The letter is as follows:

"Cincinnati, August 14, 1817. "

"SIR: You will observe by the power of attorney this day handed to you that you are appointed an agent to lay out a town at the mouth of Swan Creek, on the Miami of Lake Erie. Your appointment is for one year, commencing this day, for which services so rendered you are entitled to receive from the proprietors twelve hundred dollars. And the proprietors of the lands lying in that

Page 44 U. S. 338

country, but which is a distinct concern from the above, have agreed to allow you three hundred dollars for attending to their separate business."

"Your obedient servant,"

"MR. W. OLIVER"

"MARTIN BAUM"

The instructions were as follows:

"Cincinnati, 14 August, 1817"

"DEAR SIR: As agent for the proprietors of the land recently purchased at Swan Creek, you will, immediately upon the receipt of these instructions, proceed to that place and commence the laying off a town. General Schenck, who accompanies you, will assist in the survey of the ground, in determining the site, and in the arrangement and formation of the plat. In running the streets, and in the division of the lots, it is not the wish of the proprietors that interest or convenience should be sacrificed to form; that the growth of the place should be retarded by a useless adherence to any particular figure, or to any fanciful uniformity of squares. The number of lots to be laid off may be from three to five hundred, and, with the exception of water lots and fractional sections, of about sixty feet in front, and one hundred and twenty feet in depth. The principal or central street should be at least one hundred and sixty feet wide; others from eighty to a hundred; the alleys from twelve to fifteen. Let there be three lots, each of one hundred and twenty feet square, set off for public uses, churches, schools &c.;, and one, of two hundred and forty feet square, for courthouse and jail. There should also be reserved one or two suitable lots out of the town for burying grounds. It is not, however, the intention of the proprietors to tie the agent down to any specific number of feet and inches in the width of the streets or size of the lots, but they leave to him the exercise of his own judgment, and recommend to him the use of that sound discretion which his better knowledge of the ground, and his practical information, will enable him to display, to the interest and advantage of all concerned."

"As soon as the surveys have been made, and a plat of the town formed, it is necessary that a copy of them should be immediately forwarded to the proprietors, as also a notice of the time of sale, which, if, practicable, should correspond with the time of holding the treaty with the Indians, and on this subject it is necessary that the agent should obtain the earliest information. In the disposition and arrangements of the lots for sale, let one-third of the whole number taken in different sections of the town be reserved for the use and benefit of the proprietors, or for future disposal."

"The terms of sale, one-fourth down, and the residue in three equal annual installments, with interest from date, if not punctually paid, subject, however, to such variations as the judgment of the agent may dictate, or particular circumstances require. An immediate correspondence is to be opened by the agent with Martin

Page 44 U. S. 339

Baum, Esq., of this city, who will act as trustee for the proprietors, and any information given to him in relation to the business of the agency, the sale of lots, and the progress of the town, that may be thought of any consequence to the interests of the proprietors, or that may be required by the trustee. It is the intention of the proprietors to give public notice of the time of the sale, and it is necessary that this notice should be as general and as widely spread as possible; the agent will therefore immediately, upon the times being fixed, forward the proper advertisement to Detroit, Buffalo, Albany, New York, Philadelphia, Pittsburgh, Chillicothe, and to the trustee in this city, for publication. The instructions of the trustee are, in all respects, to be regarded as coming from the proprietors themselves."

"Wishing you a safe and pleasant journey, and an easy and prosperous management of the trust committed to your care, we remain, with great respect &c., your obedient servant,"

"MARTIN BAUM"

"Trustee of the Proprietors"

"To Major WM. OLIVER."

"In another part of the record, the same paper is found, with a few and unimportant variations, but the names of these persons are signed to it, viz., Barr Mack, Burnet, Worthington, Hunt, John H. Piatt, Worth and Baum."

"The agents proceeded to lay out a town, and on 20 September, 1817, offered the lots for sale, according to the following advertisement: "

" *Terms of sale* "

" Terms of sale of lots in the Town of Port Lawrence: one-fourth down; the balance in three equal annual installments, with interest from the date of purchase, if not punctually paid, and if the whole amount of the purchase money is not paid when the last installment becomes due, the lots now purchased shall revert to the proprietors of Port Lawrence. The undersigned reserve the privilege of one bid on each lot offered."

"W. C. SCHENCK,"

"WILLIAM OLIVER, Agents"

"Miami Rapids, Sept. 20, 1817"

At the sale, seventy-nine lots were sold. Two of them, *viz.*, Nos. 223 and 224, were purchased by Oliver himself, with the assent, as he alleged in his answer, of the company, and of Martin Baum, the trustee.

On 5 October, 1817, Schenck gave to Oliver the following receipt:

"Miami Rapids, Oct. 5, 1817"

"Received from William Oliver, agent, eight hundred and fifty-five dollars and thirty-three cents, the proceeds of sales of lots in the

Page 44 U. S. 340

Town of Port Lawrence, for which I am accountable to Martin Baum of Cincinnati."

"\$855.33 [Signed duplicates] W. C. SCHENCK"

In January, 1818, Oliver went to Port Lawrence and spent the winter there. In May, 1818, he returned to Cincinnati, about which time he was elected cashier of the Miami Exporting Company, and entered upon the duties of his office on the 1st of July, 1818.

On 14 August, 1818, Oliver, as it was alleged by him in his answer to the bill, sold and transferred one-half of his interest in the Baum Company, and also in the Port Lawrence Company, to Steele & Lytle, they assuming all outstanding liabilities, and in an early part of the ensuing spring, the remaining half of his interest in both companies to Embree & Williams.

On 19 September, 1818, Oliver and Worthington made a division of the lots in the Town of Port Lawrence, between Martin Baum and John H. Piatt, these persons representing their respective companies. One hundred and fifty-seven lots were assigned to Piatt, and one hundred and fifty-eight to Baum.

On 24 April, 1820, Congress passed an act entitled "An act making further provision for the sale of the public lands," changing the mode of selling lands from credit to cash, and reducing the price from two dollars to one dollar and twenty-five cents per acre. The effect of this law, and of the general embarrassment in the business of the country which occurred about this period, was, as it was alleged in the answer to the bill, to depress the prospects of the companies before mentioned, and the pecuniary condition of the individual members thereof, to such an extent that they resolved to abandon the lands, and forfeit them to the United States, rather than pay the installments which were still due. But before this was done, the intention was changed by another act of Congress.

On 2 March, 1821, Congress passed "An act for the relief of the purchasers of public lands prior to the first day of July, 1820," which allowed a purchaser to file a relinquishment of the land so purchased, upon which the whole purchase money had not been paid, and apply the sums which had already been paid for such land, to the completion of payments which might be due upon any other land.

On 15 September, 1821, Oliver transferred to Baum the certificates of Nos. 3 and 4, which he had bid for at the public sale, as heretofore described; and on 17 September, John H. Piatt, Robert Piatt, G. A. Worth, and William M. Worthington, united in transferring to Baum the certificates Nos. 1, 2, 86, and 87, which they had bid for at the sale; and by the same instrument the last-mentioned parties also transferred to Baum the certificates for the five quarter-sections, which it has

already been stated the Piatt Company purchased on their own private account, at the

Page 44 U. S. 341

public sale. Both transfers were absolute, to Martin Baum, his heirs and assigns, forever.

On 27 September, 1821, Baum, to whom the certificates had thus been assigned, filed by Micajah T. Williams, his attorney in fact, a relinquishment of tracts Nos. 1 and 2, and requested that the proceeds of former installments might be applied to the completion of the payments still due upon 3, 4, 86, 87, and the five quarter-sections. The consequence of this transaction was that as Nos. 1 and 2 had been bought at a much higher price than the other tracts, the credit acquired on the books of the government by their relinquishment was more than enough to complete the payments for all the other lands mentioned above, and a surplus existed, in the form of land scrip, which might either have been sold or applied to a payment for other lands. Four hundred and seventy-four dollars and fifty-nine cents of this scrip belonged to the Piatt Company, and was applied by the Baum Company in payment for lands which that company had purchased. The following is the account:

image:a

On 27 September, 1821, Oliver made a memorandum, or addressed a letter to some person, stating several particulars which he had attended to at Maumee, directing the land to be run out, counsel to be employed &c.;

On 20 January, 1822, Baum presented a petition to Congress representing that he had laid out a town upon tracts Nos. 1 and 2, and sold a number of lots to persons to whom he was bound to give a title; that in consequence of the late law of Congress reducing the price of public lands, he had been obliged to surrender them, and praying that Congress would authorize an immediate sale of those two tracts of land, so as to give him an opportunity to repurchase them at a fair price, and thus be enabled to fulfill his engagements to those who had purchased of him.

On the 10 September, 1822, Baum gave to Oliver the following certificate:

"Cincinnati, Sept. 10, 1822"

"It is hereby certified, that there is due William Oliver, from the Port Lawrence Company, two hundred and thirteen dollars and seven cents, which the said Oliver refunded, by request of the company, to purchasers of lots in Port Lawrence, the title of which has been relinquished to the United States by the company, it being the

Page 44 U. S. 342

amount due on the shares originally owned by John H. Piatt, Robert Piatt, G. A. Worth, and William M. Worthington."

"MARTIN BAUM"

"Agent for the Port Lawrence Land Company"

On 25 of December, 1822, Baum addressed a letter to Hon. E. A. Brown, Washington City, enclosing his petition, to be again presented, and saying, amongst other things,

"Though it is signed by myself only, still others have an interest in it, to-wit, Jacob Burnet, William Steele, M. T. Williams, S. R. Miller, John Rowan, of Kentucky; but, for the sake of convenience, all the lands of the company were transferred to me. The petition gives a true statement of facts; the grounds why those tracts were surrendered to the United States; the injurious operation of the law of Congress (called the relief law) in the case; and the just claim which (I think) I and my associates have on the government for redress,"

&c.;

In January, 1823, Baum came into arrangements with some of those who had purchased town lots, and to whom he was unable to give a title, agreeing for himself and his associates to repurchase the lots and refund the money which he

had received on them.

On 3 February, 1823, Oliver addressed the following letter to Robert Piatt, which was received by him:

"Cincinnati, February 3, 1823"

"DEAR SIR: I have been anxious to see you in relation to the Port Lawrence business, and was on the eve of setting off yesterday for your house, but have concluded to write, requesting the favor of your attention to the matter. In consequence of the company's securing the Port Lawrence property, they are liable to the purchasers for the money received for lots, and as some of my friends in Detroit were disposed to bear pretty hard on me for advising them to purchase, I authorized Colonel Hunt to redeem the certificates of sale from those who had purchased by my advice. The payments made in this way were upwards of \$400. M. Baum's company has refunded its proportion, but my claim (\$213.07, which is from 19 September, 1822) against you is unsatisfied, and as we are at a loss to know the particular interest of the members of your company, I must ask the favor of your stating the present proprietors, and their respective interests in the concern. Please say when it will be convenient for you to arrange your proportion, as also to request Mr. Grandon to pay on his share or shares. Respectfully, your obedient servant,"

"WILL. OLIVER"

"R. PIATT, Esq."

On 6 February, 1823, Baum addressed another letter to Mr. Brown upon the subject of his petition, representing that the case was a ruinous one to him and his associates &c.;

On 3 June, 1823, Oliver exhibited an account against

"Martin Baum and his associates," running from 1818 to June, 1823, and bringing them in debt to Oliver in the sum of \$1835.47.

On 27 August, 1823, Baum mortgaged to Oliver tracts Nos. 3, 4, 86, and 87, to secure the payment of the above sum of \$1,835.47 with interest from the 1st of September, 1823. The payment was to be made on or before 1 January, 1824.

On 31 January, 1824, Baum addressed a letter to the proprietors of the Maumee and Sandusky Land Company, accompanied by an account between himself and the proprietors of Port Lawrence. The letter was as follows:

"Cincinnati 31 January, 1824"

"To the Proprietors of the Maumee and Sandusky Land Co."

"DEAR SIR: Enclosed, I hand you a statement of the Port Lawrence land speculation, by which you can see how that business stands, to-wit, a balance due me by the company of upwards of \$4,755, and is daily increasing with interest. Suits have been commenced against me for the restoration of the money which was paid the company for lots, and the amount of improvements made thereon, as well as for damages. I was obliged to borrow money to compromise and quiet those claims, for fear of incurring heavy damages, great expenses, and much trouble, and probably a total loss of the company's property by sales, or judgments and executions. The lands have consequently been mortgaged for the money borrowed, and unless it is shortly refunded, the lands may yet be sold under the mortgage; it is therefore necessary that the proprietors pay to me their respective quotas, to save their lands from sale. I am extremely anxious to close this business, and therefore propose that I will exonerate you from paying any more money, if you will sell and convey me your interest in all those lands. But, lest you should think that I wish to make speculation out of you, if you will exonerate me from paying any more, I will sell you my interest in these lands, and will thank you to accept the latter proposition. It is needless to go into an explanation, as the account will do it of itself, and my proposition will satisfy you as to the prospects of gain. Please inform me soon what course you intend to pursue."

"Yours respectfully,"

"MARTIN BAUM"

One of these letters appears to have been directed to Mr. Robert Piatt, and another to W. M. Worthington, Esq.

On 23 April, 1824, Baum authorized and empowered Major William Oliver to lease, let, and rent all the lands, in and outlots, houses, and other property which he owned, or of which he had the control, situate and being within the United States reservation on the Maumee River for the then present season, and also to collect all rents which might be then due on all or any of the said property.

Page 44 U. S. 344

On 28 August, 1824, Baum addressed a letter to G. A. Worth, Esq., a part of which is as follows:

"Cincinnati, 28 August, 1824"

"DEAR SIR: Your favor of 10 April last came duly to hand -- contents noticed. The land speculation has truly been an unfortunate business, and no one can be more tired of it than I am, for it's I who has to stand the brunt of the company -- suits, judgments, executions, with all its attendant vexations. First, our agents were crazy in making purchases at such high rates -- then the madness of Congress in reducing the price of the public lands -- change of times -- scarcity of money -- the impossibility of managing that species of property where so many are concerned; the change of sentiments of persons in holding real estate; in fact all and everything has operated against such speculations; and were I relieved of that concern, an immense burden would be taken off my shoulders, &c.;"

On 21 September, 1825, Baum gave to Oliver the following power:

"Cincinnati, 21 Sept., 1825"

"I have and hereby authorize and empower Major William Oliver to lease, let, and rent all the lands, in and outlots, houses, and other property which I own, or of which I have the control, situate, lying, and being within the United States reservation, on the Maumee River, for the ensuing season, and also to collect all rents or other moneys due me in and about the town of Maumee and Port Lawrence."

MARTIN BAUM

On 5 October, 1825, Oliver commenced proceedings in attachment in Michigan by making the following affidavit:

"Martin Baum, agent for John H. Piatt (since deceased), Robert Piatt, G. A. Worth, and William M. Worthington, to William Oliver, debtor, for the sum of two hundred and thirteen 7/100 dollars, being the amount refunded to purchasers of the lots in Port Lawrence, by request of said Baum, with interest from 10 September, 1822."

"Michigan, Monroe County, ss.: "

"I, William Oliver, of lawful age, do solemnly swear that the sum mentioned in the above account is justly due from the persons therein named; that they do not reside within the Territory of Michigan, and that he has reason to fear, unless an attachment issues upon the property of the persons above named, his debt cannot be recovered."

"WILL. OLIVER"

"Sworn this 5 October, 1825, before me,"

"PETER P. FERRY, Justice of the Peace"

On 7 October, 1825, an order was filed in the office of the Clerk of Monroe County Court, for an attachment against the

rights and credits, moneys and effects, goods and chattels, lands and tenements of the parties above named. The writ was issued on the same day.

On 15 October, 1825, an attachment was laid upon the

Southwest quarter of section 2, township 3.

Northwest quarter of section 3, township 3.

Southwest quarter of section 3.

Southwest quarter of section 4.

The three first of these were included in the original purchase by Piatt and subsequent transfer to Baum. The fourth belonged to some other transaction and is not involved in this case. The whole four were appraised collectively at \$1,200.

The suit went on, no one appearing for the defendants, until October, 1826, when it appearing that notice to defendants in attachment had been published nine months, judgment was entered against them, a *feri facias* issued, and, on 5 April, 1828, the property was sold to Charles Noble for \$241.60, who on the same day conveyed it to Oliver.

Having traced out the proceedings under the attachment to their consummation, it is necessary to go back to the year 1825.

On 13 October, 1825, Oliver filed a bill in the Supreme Court of the Territory of Michigan, sitting as a court of chancery, to foreclose the mortgage which had been given by Baum on 27 August, 1823. Baum being a nonresident, a notice to him to appear was published for nine weeks successively in a newspaper published at Monroe.

On 7 December, 1827, the bill was taken *pro confesso*, and 5 September, 1828, the court decreed that the property should be sold, which was accordingly done. Oliver became the purchaser, and received a deed from the register, who had been directed to make the sale.

To return again to the chronological order of events.

Congress having made a donation of land to the University of Michigan, the trustees of that institution resolved, on 25 June, 1827, to accept of No. 1 in lieu of a section, in the expectation that in the event that lot No. 2 should revert to the United States, then the same should be considered a part of the section to which they were entitled under the act, and requested the chairman to advertise the Treasury Department thereof.

On 20 July, 1827, Baum addressed a long letter to the Commissioner of the General Land office, giving a history of the Port Lawrence Company, and expressing a desire to repossess Nos. 1 and 2. He then says

"It has been hinted that the trustees of the Seminary Lands of the Michigan Territory have had sufficient influence to delay the sale, with a view to get the privilege of locating these two tracts for that purpose. If this is the fact, I protest against such an arrangement. They have no claim to them whatever, but

Page 44 U. S. 346

mine is a strong one, and I am determined to pursue it in every possible way till I obtain justice."

In August, 1827, Oliver went to Detroit to ascertain if the tracts 1 and 2 could be obtained from the university, but nothing was then done.

On 18 October, 1827, Charles Noble wrote to Benjamin H. Piatt, one of the heirs of John H. Piatt, who had died, and enclosed him a copy of the proceedings in the attachment at the suit of Oliver.

On 18 February, 1828, Piatt acknowledged the receipt of this letter, and desired further information.

On 1 April, 1828, Noble replied, and enclosed a copy of the advertisement of the auditor for the sale of the three quarter-sections of land as before mentioned. The sale was to take place on 5 April, 1828.

On 12 August, 1828, Oliver opened a negotiation with the University of Michigan, proposing to give other lands in exchange for Nos. 1 and 2, which was prosecuted without success for some time.

On 1 September, 1828, Charles W. Whipple, the Assistant Register of Michigan, executed to Oliver a deed for Nos. 3, 4, 86 (excepting sixty acres, which Baum had sold to Prentiss and Tromley in 1823) and 87. The deed recited the proceedings for a foreclosure of the mortgage, and conveyed the property to Oliver, his heirs and assigns forever.

On 13 January, 1830, Congress passed an act, entitled "An act to authorize the exchange of certain lots of land between the University of Michigan and Martin Baum and others."

On 16 August, 1830, Oliver (called in the proceedings of the board the agent of Martin Baum and others) appeared before the trustees of the university on the subject of the exchange of lands, which subject was discussed from time to time.

In December, 1830, Oliver (having previously received an assignment of the final certificates from Baum) obtained patents for the following:

Lot No. 3.

Lot No. 4.

Northwest quarter of section 3.

Southwest quarter of section 3.

Southeast quarter of section 3.

Southwest quarter of section 2.

Being the whole of the five quarter-sections originally purchased by the Piatt Company, except the northwest quarter of section 2.

On 7 February, 1831, an exchange took place between Oliver and the university, the negotiation therefor having resulted in an agreement. Oliver ceded to the trustees:

Lot No. 3, except ten acres reserved.

Page 44 U. S. 347

Lot No. 4.

The northwest quarter of section 3.

The southwest quarter of section 3; and

The southwest quarter of section 2.

The university deeded to Oliver lots Nos. 1 and 2, and authorized the President of the United States to issue a patent or patents to the said William Oliver.

On 4 March, 1831, a patent was issued to Oliver for these lots Nos. 1 and 2.

On 16 May, 1831, Oliver sold to Baum and Micajah T. Williams each one undivided third part of lots Nos. 1, 2, 86, and 87, excepting sixty acres of No. 86, which had been sold by Baum to Prentiss and Tromley. Each of the two parties was to pay \$1,555. The necessary provision was made for laying out a town on the property where Port Lawrence was formerly laid out, making partition &c.; The 8th article was as follows:

"The parties agree to admit a fourth person as a proprietor -- a man of enterprise and character -- on equal terms with themselves, on his establishing himself permanently at Port Lawrence, and devoting himself to the improvement of the place."

On 19 September, 1832, under the article just mentioned, Stephen B. Comstock was admitted to have an undivided fourth part.

On 22 October 1833, Oliver repurchased from Baum's heirs (for he had died before this time) the whole of Baum's interest under the contract of 16 May, 1831.

On 8 May, 1834, Oliver and Williams sold to Edward Bissell one-fourth part of lots Nos. 1 and 2, for \$7,000.

On 23 May, 1834, Oliver sold to Williams an undivided moiety of 86 and 87.

On 17 October, 1834, Oliver sold to Pratt and Taylor one undivided sixteenth part of Nos. 1 and 2, for \$4,000. They were also to erect a warehouse, two dwelling houses, and arrange for a line of steamboats to stop at Toledo, as the town was now called. And on the same day he sold to Smith and Macy another undivided sixteenth, on the same terms.

On 30 June, 1835, Oliver sold a portion of the property to Lynde and Raymond, for \$13,000; in September, 1835, another portion to Lot Clark, for \$1,000, and in January, 1836, another portion to Philander Raymond, for \$22,000.

On 21 April, 1836, Robert Piatt, the appellee in the present case, filed his bill of complaint in the Circuit Court of the United States for the District of Ohio, against Oliver and others. But before narrating the proceedings under this bill, it is proper to close the history of the transactions of the parties by stating that on 5 May, 1837, Oliver received a deed from the trustees of the University of Michigan for the property which he had given to

Page 44 U. S. 348

them in exchange as previously related. The property thus conveyed to Oliver consisted of tracts Nos. 3 and 4, the southwest quarter of section No. 2, the northwest quarter of section No. 3, and the southwest quarter of section No. 3. The consideration was \$5,000, and the sale was stated in the deed to be made "pursuant to a contract entered into between the said trustees and the said William Oliver, on the twenty-fourth and twenty-fifth days of October, 1834."

To return to the bill, which was filed in 1836. It made Oliver and Williams and a number of other persons, who were the representatives of the original parties,

respondents, most of whom appeared. After the pleas, which were filed by the defendants, were overruled, an amended bill was filed.

These bills recite the formation of the Piatt and Baum Companies; their union in the Port Lawrence Company under the circumstances already related; the acceptance of the trust by Baum; the assignment to him of the certificates of purchase the appointment of Oliver as agent; his acceptance thereof; the instructions, bond, and power of attorney; the laying out of the town; the sales of lots, for which the respondents are called upon to account; the relinquishment of Nos. 1 and 2; the application of the credits arising therefrom to the completion of the payments due upon the other tracts; the understanding of the parties that Nos. 1 and 2 should be repurchased for the benefit of all concerned, whenever it should be possible to do so; the application to Congress; the death of John H. Piatt, in 1822; the formation, some short time thereafter, of a fraudulent combination and confederacy between Baum, as trustee, and Oliver and Williams, as agents, for the purpose of cheating the members of the Piatt Company out of their entire interest and claims; that in pursuance of this fraudulent combination Baum issued to Oliver the certificate of debt; that the complainant resided at a short distance from Cincinnati; that about that time, and prior, and long subsequently thereto, he was during some part of nearly every week in Cincinnati in company with said Baum and Oliver, or one of them; that they knew the complainant to be a man of property, well able and willing to pay his just debts; that neither Baum nor Oliver ever gave him the slightest information that any such certificate had been given; that he had received a letter from Oliver, dated on 3 February, 1823; that the mortgage given by Baum to Oliver was without authority, and fraudulent and void; that the assignment of the certificates for the quarter-sections was also fraudulent and void; the circumstances under which the exchange of lands took place with the University of Michigan; the circumstances also under which Williams became interested; that the proceedings in Michigan were *coram non judice* and void; that if they vested a title in Oliver, it was to constitute him a trustee for the complainant with others, and that Oliver and Williams were acting with a sole view

to benefit themselves at the expense of the complainant and the other co-proprietors.

The bill then enumerates the original parties who were dead, states their representatives and the assignees of the living, and prays that they may all be made defendants.

It then prays for an injunction, a receiver &c.;

Most of the parties answered, but a notice of Oliver's and Williams' will be sufficient.

Oliver's answer admitted the formation of the Baum Company, of the Port Lawrence Company, but denied that after the sales any agreement was made to unite the interests in the several tracts; the appointment of Baum as the trustee of the Port Lawrence Company, but denied that the object of the trust was fully stated in the bill; alleged that Baum was authorized to sell and dispose of any of the property on speculation, or for payment of claims against the company &c.; that Baum had also a right to dispose of the quarter-sections to pay the debts of the Piatt Company; admitted the instructions, except some of the signatures; the laying out of the town; the power of attorney from Baum; the letter from Baum fixing the appointment for one year, and the compensation therefor; the sale of lots in the town; alleged that he surrendered up the agency to Baum at the time of his appointment as cashier of the Miami Exporting Company, and that he then closed up his accounts; that his subsequent acts as temporary agent were only to accommodate Baum; that he and Baum had erected a warehouse on one of the lots which he had purchased at the sale, which circumstance drew him often to the town; that he had transferred one-half of his interest in the Baum Company to Steele and Lytle in 1818, and the remaining half to Embree and Williams in 1819; admitted the relinquishment; denied the intention to repurchase; that Baum authorized to negotiate with the university, but that he did so in his own right and upon his own account; alleged that the certificate of debt and mortgage were given upon *bona fide* considerations; that the members of the Piatt Company, and especially the complainant, were repeatedly urged to satisfy the claims and

release the lands; that he, the respondent, bid the full value for the lands, and more than they would have been sold for to others for cash; that the assignment of the certificates was in good faith; explained the reasons which led to an exchange of land with the university; that he purchased back from the university the lands which he had conveyed to it, long after all agency for the companies or for Baum was ended and settled up; denied all fraud and combination; admitted that he had united Baum and Williams in the subsequent attempt to build up a town, and relied upon the lapse of time, the defaults, laches, and acquiescence of the complainant and the statutes of limitation, in bar of the claim set up in the bill. The respondent, moreover, admitted or explained a number of papers respecting

Page 44 U. S. 350

which he had been interrogated, and then prayed that his answer might be considered as a cross-bill.

The answer of Williams admitted the formation of the Baum Company, the subsequent formation of the Port Lawrence Company; averred that in the spring of 1819, Embree, the partner of the respondent, whilst the respondent was absent in Illinois, purchased from Oliver an interest of one-thirteenth in the Baum Company; admitted the relinquishment to the United States of Nos. 1 and 2, which was made by the respondent himself; that the proceeds of the large number of tracts standing in the name of Baum, and thus relinquished, were ascertained in gross, and a credit entered to that amount on the lands retained; that the proceeds of tracts Nos. 1 and 2, were \$4,817.55 $\frac{1}{2}$, and the amount due to the United States, on tracts 3, 4, 86, 87, was \$1,372.36, and upon the five quarter-sections \$1,248; averred that he did not know what became of the balance of \$474.60, except that John H. Piatt and Baum arranged it to their mutual satisfaction; denied that there was any agreement, understanding, or intention, amongst the members of the Port Lawrence Company, to repurchase tracts 1 and 2; averred that after the relinquishment the members of the Port Lawrence Company abandoned Baum, and left him to settle the liabilities of the company as he could; denied all knowledge or belief that the complainant or Baum attended the public sales in 1827 with the intention of repurchasing said tracts for the benefit of the company,

but on the contrary intended to purchase them on account of other persons; denied all knowledge or belief that Oliver was authorized by Baum to open a negotiation with the trustees of the Michigan University; averred that in May, 1831, Oliver offered to sell to the respondent one-fourth of tracts 1 and 2, 86 and 87, except sixty acres of 86, for a specified sum, and at the same time offered another fourth each to Martin Baum and Jacob Burnet, which offer the respondent accepted, taking one-third instead of one-fourth, as Burnet declined becoming interested; and in 1832, the respondent purchased an additional sixth from Oliver, which purchases together gave him an interest of one-half, for which he received a deed in fee simple from Oliver and wife; averred that at the time of paying the purchase money and receiving the deeds, he had no notice or knowledge of any right, title, claim, demand, or interest, of the complainant, or the Port Lawrence Company, or any of the members thereof, nor had he any notice, knowledge, information, suspicion, or belief, of any fraud, or breach of trust, or other transactions, matters or things, affecting the titles of said lands, but maintained that he purchased the same *bona fide*, in good faith, and for a full and fair consideration actually paid.

To all these answers a general replication was filed.

In December, 1840, the bill was taken as conferred by all the defendants who had failed to plead, demur, or answer, and the cause

Page 44 U. S. 351

came on for hearing upon the bills, answers, replications, testimony and exhibits, when the court passed the following decree:

"The court does here find that the law and equity of the case are with the complainant, but because the Court here is not fully advised as to the exact nature and extent of the relief to which the complainant is entitled, so as to enable it to render up a final decree in the premises, it is therefore adjudged, ordered, and decreed that this cause be, and the same is hereby, referred to Aaron F. Perry as special master commissioner, who is hereby instructed to make out, and report to

us at our next term, an amount of the sales made in whole or in part of tracts one, two, three, four, eighty-six, eighty-seven, and the five quarter-sections, designating the date and amount of sales in each tract, title made, moneys received and due, and also an account of all moneys expended, either in the purchase or improvement of each tract, by the defendants Williams and Oliver, or either of them, including compensation for the agency exercised in the general management of the property, and such other matters of fact and calculations as either party may deem necessary, in order to a just and equitable decree in the premises, and for that purpose he is hereby invested with power to demand the production of any books, papers, and accounts in possession of either of the parties, to examine them, if necessary under oath, touching any particular matter or thing connected with the matters in contest, to examine and take the deposition of witnesses, to withdraw any exhibit or paper now on file with the clerk, giving a receipt therefor, and perform every act necessary to a proper adjustment of the accounts and transactions of the parties. He is hereby required to deliver to each party demanding the same, a copy of his report, twenty days previous to the next term of this Court, until which time this cause is continued."

In addition to the points upon which the master was directed in the decree to report, the solicitor for the complainant stated twenty-five others, and the respondent fourteen, as matters of fact and calculation which they respectively deemed necessary.

On 3 July, 1841, the master presented a very voluminous report, occupying nearly five hundred pages of the printed record.

To this report the complainant filed twenty-one exceptions, and the defendants ten. They related chiefly to matters of detail and account, which it would be difficult to understand unless the whole report were here inserted.

In July, 1842, other parties were made in place of those who had died; and John Rowan, a citizen of Kentucky, filed his answer voluntarily, claiming an interest of six-thirteenths in the Baum Company.

At the same term, the court referred the case to Edward D. Mansfield, master, to report the deduction of title as claimed by each of the parties.

Page 44 U. S. 352

On 22 July, 1842, the master, in conformity with the above reference, reported the deduction and then condition of the several titles.

At the same term, additional parties were made to represent the dead, and the case was again referred to Mansfield, with the following instructions, *viz.:*

"To state separate accounts of the compensation which, under all the circumstances, ought to be made to the said William Oliver and to the said Micajah T. Williams for their services, and also an account for expenses in the procurement, management, and improvement, in the value of the trust property, consisting of tracts 1, 2, 86, 87, and the ten acres in No. 3, and that the said master also restate separate accounts touching the moneys or other proceeds arising to said Oliver and Williams, from sales made prior to the filing of the bill, of any parts of said trust property, and also of the account of said Oliver against the Port Lawrence or Piatt Company for advances not heretofore reimbursed."

"In estimating services, expenses &c.;, the master is to have reference to the advantage derived from said expenses and services &c.;, as well to tracts Nos. 3 and 4, and the half-section No. 3, and southwest quarter-section No. 2, township 3, as to the tracts before named. And that in performing this order, the master, besides having reference to the papers, depositions &c.;, now on file, may take further testimony, or further examine the parties if he deems it necessary."

On 27 July, 1842, the master filed a report, entering minutely into the several matters of account, to which four of the defendants took four exceptions.

On 29 July, fresh parties were made in the place of some more who had died, and the master made two additional reports, to which Oliver and Williams took twelve exceptions.

On 30 July, the court pronounced the following final decree:

"1st. That Philip Grandin and Hannah C. Grandin his wife, Marry P. Ewing, Egbert T. Smith and Sarah R. Smith his wife, Nathaniel G. Pendleton, William J. Van Horn and Margaret Van Horn his wife, John Spencer and Susan Spencer his wife, Samuel Perry, as administrator of Martin Baum, deceased, Jacob Burnet, the administrator of William C. Schenck, deceased, William J. Van Horn, as administrator of William Barr deceased, having been duly served with process requiring them to appear and answer the complainant's bills, and they not having appeared, plead, demurred to, or answered the same, as required by the rules of this Court, the said bills, and the matters therein contained, are hereby, as against them respectively, declared to be taken as confessed."

"2d. That the rights of the defendants, Isaac Dunn, the unknown heirs of William Steele, deceased, Alexander Findley and Ann Ellen Findley his wife, Woodhull S. Schenck, Andrew Mack, Israel T.

Page 44 U. S. 353

Canby, and Gorham A. Worth, who are not inhabitants of the State of Ohio, or found within the District of Ohio and jurisdiction of this Honorable Court, if any they or either of them have, or hath, in and to the lands and premises in question, be, and the same are hereby, reserved to them respectively, in as full and ample a manner as if this decree had never been rendered."

"3d. That Eleanor Baum, Egbert T. Schenck, Elizabeth Schenck, James F. Schenck, Jr., Susan Louisa Pendleton, Martha Pendleton, George Hunt Pendleton, Elliott Hunt Pendleton, Ann Pierce Pendleton, Nathaniel Pendleton, Mary Barr William W. Barr and David Barr the infants, defendants, are hereby respectively allowed six months after attaining majority, to show cause, if any he, she, or they, hath or have against this decree."

"4th. And the court further decree that all *bona fide* sales, interests, and undivided interests, in and to lots in the Town of Toledo, in the ten acres of tract number three, and in the lots 86 and 87, made by the said Oliver and Williams,

before the filing of the original bill in this case, together with the sixty acres sold by Martin Baum to Tromley and Prentiss in tract 86, be, and the same are hereby, ratified and confirmed; and as to any of said sales not yet perfected by conveyances, and as to which the outstanding claims upon the purchasers have been reported on, it is decreed that the same inure to the said Oliver and Williams, and they are empowered to receive the amounts due thereon to their own use, and to convey the land to the purchasers. And all donations, appropriations, and dedications of any parts of said several tracts of land for any public use heretofore made, be, and the same are hereby, confirmed to the original purpose of the donation, appropriation, or dedication. And inasmuch as Benjamin S. Brown, to whom, by the resolution of the proprietors, on 17 September, 1837, the lots Nos. 109, 110, 111, were to be conveyed for the purpose of the appropriation of those lots, has departed this life, it is ordered, with the assent of the parties to this suit, in interest, that Richard Mott be, and he is hereby, appointed trustee, instead of said Brown, to carry out said appropriation. And the partition heretofore made between the said Oliver and Williams, and their assignees of interests, be, and the same is hereby, ratified and confirmed to the respective parties thereto, according to the original intent of the same; and it is further decreed that the lease made by the said Williams to Garret D. Palmer, on 24 November, 1840, be, and the same is hereby, confirmed; and the rents accruing and to accrue on said lease, since 1 July, 1842, inure to the benefit of the parties in interest, as settled by this decree."

"5th. That the said Oliver and Williams hold the legal title to the following tracts of land mentioned in the pleadings, not otherwise disposed of in this decree, that is to say: tracts 1 and 2, 86, 87, and ten acres of tract 3, in trust, for themselves and the other

Page 44 U. S. 354

members of the Port Lawrence Company, so-called, and those now holding and representing their interests, as tenants in common, in the proportions affixed to their names, that is to say, dividing the whole into 2832 parts, then the said trust is:"

For Alexander H. Ewing 989 6-10 parts

John Rowan 496 6-10

Robert Piatt 219 5-10

John G. Worthington. 219 5-10

William Oliver 165 5-10

Micajah T. Williams. 82 8-10

the heirs of William M. Worthington. . . 219 5-10

the heirs of John H. Piatt 439 parts

"For the said heirs of J. H. Piatt, being Benjamin M. Piatt, Abraham S. Piatt, Hannah C. Grandin wife of Philip Grandin, each one-fourth part of the said 439 parts, and for the heirs of Francis Dunn the other fourth, viz.: John P. Dunn, Jacob P. Dunn, George Dunn, Strange S. Dunn, Hannah M. Tousey wife of George Tousey, Sarah Jane Layton wife of William Layton, each one-seventh of said fourth, and Francis E. Smith, and Adam C. Smith, each one-fourteenth of said fourth."

"6th. And the court do further order, adjudge and decree, that the said Oliver and Williams do, within five months from the date of this decree, by deeds, with special covenants, to be prepared by each of said parties for their respective interests, convey to each of said parties, in fee simple, the undivided proportion of said trust estate affixed to his or her name as aforesaid, together with the undivided interests in the same proportions in the wharves, ferries &c.;, heretofore reserved for the use of the said Oliver and Williams in their former conveyances; and also the same proportions of all public edifices, materials, and advantages heretofore reserved to the said Oliver and Williams, saving to the said Oliver and Williams the hotel materials, and also, in the same proportions, the interests remaining in the said Oliver and Williams in and to the following common and other property, that is to say, lots numbered 109, 110, 111, 119, 120, 121, 162, and 163, in the Town of

Toledo, and any others in which there is any such interest in said Oliver and Williams, they, the said Oliver and Williams, retaining in themselves only the proportions pertaining to them and ascertained as aforesaid. And it is further decreed that the said Oliver and Williams permit the said parties respectively, to enter into the possession and enjoyment of their said portion of said estate as tenants in common. And it is further ordered and decreed, that the said Oliver and Williams, do, within the said sixty days, transfer to the said parties respectively, without recourse, in the same proportions, the demand on the books of said Oliver and Williams against Andrew Palmer, as agent, now amounting, according to the report of the master, to the sum of \$5,568.79, and the like demand against Edward Bissell, now amounting, according to said report, to the sum

Page 44 U. S. 355

of \$2,427.35; and also the like demand against Stephen B. Comstock now amounting, according to said report, to the sum of \$976.62; the said three sums being reported as due from the said Palmer, Bissell, and Comstock of moneys which came to their hands as agents connected with the sale of lots and improvements in said Town of Toledo."

"7th. It is further ordered and decreed, in respect of the moneys heretofore received by the said Oliver and Williams, or either of them, from sales, rents, or otherwise, arising from either of said tracts of land, which is not allowed to the said Oliver and Williams for compensation for their services, or for expenses on account of said trust property, that there remains in their hands, as said trustees, the sum of \$2,237.35, which said sum is held by them in trust for themselves and the other parties, in the same proportions heretofore found and decreed as to the said trust lands; and apportioning the same according to said rule, the parties will be entitled to the following sums: "

To said Alexander H. Ewing \$781.76

John Rowan 392.35

Robert Piatt 173.40

John G. Worthington. 173.40

William Oliver 130.78

Micajah F. Williams. 65.39

Alice Worthington, executrix and trustee of Wm. M. W. . . 173.40

heirs of John H. Piatt 346.80

"And of the share of the said John H. Piatt, the following are the portions of his heirs, that is to say,"

To Benjamin M. Piatt \$86.70

Abraham S. Piatt 86.70

Hannah C. Grandin. 86.70

John P. Dunn 12.33

Jacob P. Dunn. 12.33

George Dunn. 12.33

Strange S. Dunn. 12.33

Hannah M. Tousey 12.33

Sarah Jane Layton. 12.33

Francis E. Smith 6.16

Adam C. Smith. 6.16

"And the court order and decree, that the said Oliver and Williams pay, within five months from the date of this decree, the said several sums, except those opposite their own names, with interest; and in default thereof, that execution issue therefor, as at law."

"8th. That the said William Oliver, having held the legal title to the southeast quarter of section 3, township 3, in the said reserve, as trustee, in trust for the complainant and the other members of the Piatt Company, on 25 July, 1835, at the time he sold

Page 44 U. S. 356

and conveyed the same to William J. Daniels, for the sum of \$1,000, whereby the said complainant and the other members of said company, their heirs or legal representatives, became, and are now entitled to their proportionate shares of the avails of said sale, with the interest which has accrued thereon, amounting, in the aggregate, to \$1,420 -- that is to say, each are entitled to the proportionate shares of said avails annexed to their names respectively, viz., "

The complainant, one-eighth part \$177.50

Alexander H. Ewing, three-eighth parts 532.50

John G. Worthington, one-eighth part 177.50

Alice Worthington, as executrix and trustee of Wm.

M. Worthington, dec'd, one-eighth part. 177.50

The heirs of J. H. Piatt, dec'd, two-eighth parts. . . . 355.00

That is to say, of the share of the said John

H. Piatt, his heirs are entitled as follows, to-wit:

Benjamin M. Piatt the sum of 88.75

Abraham S. Piatt 88.75

Hannah C. Grandin. 88.75

John P. Dunn 12.68

Jacob P. Dunn.	12.68
George Dunn.	12.68
Strange S. Dunn.	12.68
Hannah M. Tousey	12.68
Sarah Jane Layton.	12.68
Francis E. Smith	6.34
Adam C. Smith.	6.34

"It is therefore further decreed that the said defendant, Oliver, do, within five months from this date, pay to the complainant and the heirs and legal representatives of the original proprietors of the Piatt Company the above sums, annexed to their respective names, with interest from this date, or that executions issue therefor as on judgments at law."

"9th. That Mary P. Ewing, in her own right, and the said Alexander H. Ewing, in right of his wife, the said Mary P. Ewing, being invested with the legal title to the northwest quarter of section 2, township 3, in said reserve, as trustee, in trust for the complainant and those now holding and representing their interest in the Piatt Company; that is to say, in trust for the persons, and in the proportions annexed to their respective names, as follows:"

The complainant, one-eighth part	20 acres
Alexander H. Ewing, three-eighth parts	60
John G. Worthington, one-eighth part	20
Alice Worthington, executrix, and trustee of Wm	
M. Worthington, dec'd, one-eighth part	20
Heirs of John H. Piatt, dec'd, two-eighth parts. . .	40

That is to say,

Page 44 U. S. 357

Benjamin M. Piatt.	10
Abraham S. Piatt	10
Hannah C. Grandin, wife of Philip Grandin.	10
John P. Dunn	1 3/7
Jacob P. Dunn.	1 3/7
George Dunn.	1 3/7
Strange S. Dunn.	1 3/7
Hannah M. Tousey, wife of George Tousey.	1 3/7
Sarah Jane Layton, wife of Gm. Layton.	1 3/7
Francis E. Smith	5/7
Adam C. Smith.	5/7

"It is therefore further decreed, that the said Alexander H. Ewing and Mary P. Ewing his wife, do, within sixty days from the date of this decree, by deed, with special covenants (to be prepared by each of said parties for their respective interests), convey to the said parties in fee simple, except the said John G. Worthington, to whom a conveyance of his proportion has already been made, the undivided proportion of said trust estate affixed to his or her name as aforesaid; they, the said Alexander H. Ewing and Mary P. Ewing, retaining in themselves the proportion pertaining to them as ascertained as aforesaid. And it is further decreed, that the said Alexander H. Ewing and Mary P. Ewing permit the said parties respectively to enter into the possession and enjoyment of their said portions of said estate as tenants in common."

"10th. As to the account on file and reported upon by the master, for advances made by Martin Baum for the Port Lawrence Company, the courts find that the amount of the same, with interest to this time, is \$2,063.96, which is chargeable upon the said trust estate, and the court further finds that the said claim is now held by the defendant, Alexander H. Ewing, and should be apportioned to the several interests in said property, except the proportion of the said Oliver and Williams, which has been satisfied. The proportions of said demand remaining to be satisfied are as follows, to-wit: "

John Rowan to pay \$360.08

John H. Piatt's heirs to pay. 320.38

Robert Piatt to pay 160.19

J. G. Worthington to pay. 160.19

Wm. M. Worthington's heirs to pay 160.19

Alexander H. Ewing's share. 721.29

William Oliver's share. 120.36

M. T. Williams'(8 Pet.) share 60.18

"And thereupon the court further decree, that the said John Rowan, the heirs of John H. Piatt, according to their portions ascertained in this decree, Robert Piatt, John G. Worthington, the heirs of Wm. M. Worthington, shall each pay the proportion of said account affixed to their names, with accruing interest, within five months, or in default, that execution issue against each for his or her proportion. "

Page 44 U. S. 358

"11th. As to the claim set up by Robert C. Schenck's answer to lot No. 1 in the original plat of Port Lawrence, which was sold to William C. Schenck, and for which Martin Baum, trustee, in his lifetime issued a certificate to Egbert T. Smith, who afterwards assigned the same to the said Robert C. Schenck, who now holds

it in his own right, the bill is dismissed, without any prejudice to his, the said Schenck's right, and he has leave to withdraw from the files of this Court his answer and other papers relating thereto."

"12th. As to the costs in this suit, it is ordered, that the costs of this suit be paid by the defendants, according to their several interests ascertained by this decree, within four months, into the hands of the clerk, one docket fee only to be taxed, and that to the complainant, and in default of payment, execution may issue as by law. And the court allows to master Perry the sum of \$618 for his services and expenses, to be taxed in the costs -- of which there has been paid to him \$50 by the defendant, A. H. Ewing, and \$50 by the said Robert Piatt; the balance of the allowance only to be paid said Perry, and the said Ewing and Piatt to be credited with their said advances. And the court allow to the master Mansfield, to be taxed, the sum of \$75, for his services in this case."

From this decree an appeal brought the case up to this Court.

Page 44 U. S. 396

MR. JUSTICE STORY delivered the opinion of the Court.

This is the case of an appeal from the decree of the Circuit Court of the District of Ohio, sitting in equity -- rendered in favor of the original plaintiff, and it is brought to this Court by the original defendants, who are now the appellants. The record is exceedingly voluminous, and the facts and proceedings complicated and perplexed by a variety of details. A general outline of the leading facts is given in the printed opinion of the court below, with which we have been favored; and those facts cannot be more succinctly stated than they are in that summary -- we shall therefore avail ourselves of it upon the present occasion. It is as follows:

"In the summer of 1817, the complainant, in connection with John H. Piatt, William M. Worthington, and Gorham A. Worth, formed an association to purchase lands of the United States, at a public sale, which was shortly to take place at Wooster, in this state -- and the complainant was appointed the agent of the company, to

attend the sale for that purpose."

"Another association consisting of Martin Baum, Jesse Hunt, Jacob Burnet, William C. Schenck, William Barr William Oliver,

Page 44 U. S. 397

and Andrew Mack, was formed for the same object -- and William Oliver and William C. Schenck were appointed its agents to attend the sale."

"Before the sale took place, it was discovered that both companies were desirous of purchasing the same tracts of land, and the agents agreed that they would purchase tracts 1, 2, 3, and 4, at, and including the mouth of Swan Creek, in the United States reserve, at the foot of the rapids of the Miami, and also Nos. 86 and 87 on the other side of the river, opposite the mouth of Swan Creek, for the joint benefit of both companies, each company to have one-half of the lands purchased, and to pay at the same rate. Nos. 86 and 87 were bid off by Oliver, and the certificates of purchase issued to him. The other tracts were bid off by the complainant, and the certificates of purchase were issued in the names of the association represented by him."

"At the same sale, the complainant, in behalf of his company, purchased the northwest quarter of section 2, township 3, the southwest quarter of the same section, the northwest quarter of section 3, township 3, and also the southeast and southwest quarters of the same section, in said reserve, and one-fourth of the purchase money on each tract being paid, certificates of purchase were made out in the names of the company. And the other agents purchased for their company, at the same sale, other tracts of land."

"On the return of the agents to Cincinnati, their acts were ratified by both companies. One company was designated the Piatt Company, the other the Baum Company; and the union of both, in regard to the lands jointly purchased, was called the Port Lawrence Company. The joint, or Port Lawrence Company, having made their purchase with a view of laying out a town, to be called Port Lawrence, appointed Baum a trustee, and authorized him to sell lots, and do other things in

relation to his agency, for the benefit of the company."

"On 14 August, 1817, Baum appointed Oliver his attorney, to sell lots in the town to be laid out, receive the money, and give certificates of sale, in the nature of title bonds, to the purchasers, and he, in association with William C. Schenck, was authorized to lay out the town. Baum, and also the proprietors, gave to Oliver a letter of instructions in relation to the plan of the town, the sale of the lots &c.; By the conditions of sale, one-fourth of the purchase money was to be paid down, and the residue in three equal annual payments."

"At the sale of lots, the sum of \$855.33 was received by Schenck, for which he was to become accountable to Baum."

"At the sale, Oliver purchased lots 223 and 224, an undivided half of which he afterwards conveyed to Baum, and they erected a warehouse and other improvements on them. "

Page 44 U. S. 398

"In August, 1818, he sold one-half of his interest in the Port Lawrence Company to William Steele and William Lytle, and in March, 1819, he sold the residue of his interest to Micajah T. Williams, one of the defendants, and his partner Embre."

"By the reduction of the price of the public lands, and the pressure of the times, the Port Lawrence Company were under the necessity of relinquishing to the United States tracts 1 and 2, having agreed to pay for the same about \$20,000, and of appropriating the money paid on them to the payment in full of the residue of the tracts purchased by them, and by the Baum and Piatt Companies respectively. In pursuance of this object, the five quarter-sections purchased by the Piatt Company were assigned to Baum, 17 September, 1821; and on the same day, tracts numbered 1, 2, 86, and 87, purchased in the name of the Piatt Company for the Port Lawrence Company, and also tracts 3 and 4, purchased by Oliver for the same company, were assigned to Baum. It is alleged that these tracts had been previously assigned to Baum, of which there is no evidence."

"On 27 September, 1821, Baum, through his agent, Micajah T. Williams, one of the defendants, relinquished to the United States, tracts 1 and 2. On these tracts there had been paid the sum of \$4,817.55: \$1,372.34 of this sum were applied to complete the payments on tracts 3, 4, 86, and 87, the residue of the tracts purchased at the sale by the Port Lawrence Company. From the relinquished tracts, there still remained \$3,445.21. Of this sum, one-half belonged to the Piatt Company: \$1,248 were applied to complete the payment on the five quarter-sections, which left a balance of \$474.60 still due to the Piatt Company, but which was applied in payment of lands held by the Baum Company."

"After the relinquishment of the tracts on which the town had been laid out, the purchasers of town lots claimed a return of the money paid by them, with interest, and also damages for their improvements."

"On 10 September, 1822, Baum gave to Oliver a certificate, which stated there was due him, by the Port Lawrence Company, the sum of \$213.02, which he refunded to purchasers of lots, by the request of the company, 'it being the amount due on the shares originally owned by John H. Piatt, Robert Piatt, G. A. Worth, and William M. Worthington.'"

"And on 27 August, 1823, Oliver having made out an account against the Port Lawrence Company, for money paid by him to purchasers of lots, and services rendered as agent, Baum admitted his account, amounting to the sum of \$1,835.47; to secure the payment of which, Baum executed to him a mortgage on tracts 3, 4, 86, and 87. The payment was to be made, with interest, on or before 1 January, 1824."

"The 7th October, 1825, Oliver caused an attachment to be

Page 44 U. S. 399

issued by the clerk of Monroe County, in the Michigan Territory, against Baum and the members of the Piatt Company, on the certificate of indebtedment given by Baum. This attachment was levied on four of the five quarter-sections owned by the Piatt Company, and such proceedings were had on the attachment, as to

obtain an order of sale of the property attached; three of the quarters were sold, by the auditors appointed, for the sum of \$241.60, to Noble, the agent of Oliver. Noble, shortly afterwards, conveyed these tracts to his principal."

"A bill to foreclose the mortgage given to Oliver was filed by him in the Supreme Court of Michigan, 13 October, 1825. And a final decree having been obtained, the mortgaged premises were sold, by the assistant register of the chancery court, to Oliver, 1 September, 1828, for \$618.56."

"By the Act of 20 May, 1826, the Secretary of the Treasury was authorized to select, for the benefit of the University of the Michigan Territory, a certain number of acres of the public lands within the territory, and he selected tracts 1 and 2, which had been relinquished."

"In the summer of 1828, as appears from the report of the committee of the trustees of the university, Oliver, as the agent of Baum and others, proposed to exchange certain lands owned by Baum, in the vicinity of Port Lawrence, or any of the public lands subject to entry, for tracts 1 and 2, on which the Town of Port Lawrence had been laid out."

"A law of Congress was passed, authorizing the exchange, 13 January, 1830. Previous to this, Baum assigned to Oliver the final certificates for the tracts he purchased under the attachment, and also under the decree of foreclosure; and one of the quarter-sections levied on by the attachment, but not sold under it, in payment of the balance of the judgment on the attachment, which enabled Oliver to obtain patents for the same in his own name. And on his conveying to the university tracts numbered 3 and 4, except ten acres reserved of number 3, and the northwest quarter of section 2, township 3, and also the northwest and southwest quarters of section 3, township 3, he received an assignment from the university of their right to tracts 1 and 2, for which patents were issued in the name of Oliver."

"After the exchange was effected, Baum, and the defendant Williams, each purchased an interest of one-third in tracts 1 and 2, 86, and 87. After Baum's

death, in 1832, Oliver purchased his interest from his heirs. And 1 December, 1832, Oliver conveyed to Williams an undivided half of the ten acres reserved in number 3. On 23 May, 1834, he conveyed to him an undivided half of tracts 86 and 87, except sixty acres which had been sold to Prentiss and Tromley; and on the ___ day of November, he conveyed to him 'one undivided half of lots 1 and 2, on which Port Lawrence

Page 44 U. S. 400

was laid out,' together 'with a like interest in all sales and improvements thereunto belonging.'"

"Oliver, Baum, and Williams, agreed to lay out the Town of Toledo on the site of Port Lawrence, and to make titles to the Port Lawrence purchasers of lots, on their complying with their contracts."

"Some years after this, Oliver purchased from the Michigan University the tracts of land he conveyed to it in exchange for tracts 1 and 2."

"Of the Piatt Company, John H. Piatt is deceased, and his administrators and heirs are made parties to this suit. William M. Worthington assigned one-half his interest in the Port Lawrence Company, and it is claimed and represented by John E. Worthington. The interest of Worth has been assigned to the defendant Ewing, who also claims the entire interest of Baum, Mack, Barr Burnet, and half the interest of the complainant."

"Of the Baum Company, Martin Baum, Jesse Hunt, William C. Schenck, and William Barr and deceased."

Such is a general outline of the leading facts. There are others which may be required to be adverted to in the progress of this opinion; but there are many details which must necessarily be passed over in silence, as they would tend to embarrass the discussion of the main questions in the cause, and obscure rather than illustrate the merits thereof.

The object of the bill is to subject the tracts No. 1 and No. 2, now constituting the site of the Town of Toledo, formerly known as Port Lawrence, to the rights of the Port Lawrence Company, composed, as we have seen, of the Piatt Company and the Baum Company, and those who claim under them, now in the possession of Oliver and Williams, under a title derived from the grant of the Michigan University, upon the ground that a trust has attached to those tracts in favor of the Piatt and Port Lawrence Companies, under the circumstances which will be presently stated. These circumstances are that the lands given in exchange to the Michigan University, for tracts No. 1 and No. 2, under the negotiation with the university, were, at the time, the property of the Piatt and Port Lawrence Companies, as *cestuis que trust* thereof; that the facts were at the time well known to Baum, and Oliver, and Williams, and consequently that the trust by operation of law attached thereto in the hands of those parties. To this conclusion several objections have been taken by the counsel for the appellants. In the first place, that no such trust attached to the lands so given in exchange to the Michigan University, at the time of the transfer, and consequently none to tracts Nos. 1 and 2, taken in the exchange. In the second place, that if it did, as Oliver afterwards repurchased the exchanged lands from the university, and Oliver and Williams under him now hold some parts thereof, the trust is revived, and has reattached

Page 44 U. S. 401

to these lands, and thus has displaced any supposed trust upon tracts No. 1 and No. 2, at least *pro tanto*. In the next place, that Oliver and Williams are purchasers without notice of the trust, or of any misapplication of the trust property by the trustee.

Before proceeding to the considerations applicable to the first and third points, it may be well to dispose of that which grows out of the second point, as it involves a most important principle in equity jurisprudence. It is a clearly established principle in that jurisprudence, that whenever the trustee has been guilty of a breach of the trust, and has transferred the property, by sale or otherwise, to any third person, the *cestui que trust* has a full right to follow such property into the hands of such third person, unless he stands in the predicament of a *bona fide* purchaser, for a

valuable consideration, without notice. And if the trustee has invested the trust property, or its proceeds, in any other property into which it can be distinctly traced, the *cestui que trust* has his election either to follow the same into the new investment, or to hold the trustee personally liable for the breach of the trust. This right or option of the *cestui que trust* is one which positively and exclusively belongs to him, and it is not in the power of the trustee to deprive him of it by any subsequent repurchase of the trust property, although in the latter case the *cestui que trust* may, if he pleases, avail himself of his own right, and take back and hold the trust property upon the original trust; but he is not compellable so to do. The reason is that this would enable the trustee to avail himself of his own wrong, and if he had made a profitable investment of the trust fund, to appropriate the profit to his own benefit, and by a repurchase of the trust fund to charge the loss or deterioration in value, if any such there had been, in the meantime, to the account of the *cestui que trust* -- whereas the rule in equity is that all the gain made by the trustee, by a wrongful appropriation of the trust fund, shall go to the *cestui que trust*, and all the losses shall be borne by the trustee himself. The option, in such case, to take the new or the original fund is therefore (as has been already suggested) exclusively given to the *cestui que trust*, and is given to him for the wisest purposes and upon the soundest public policy. It is to aid in the maintenance of right and in the suppression of meditated wrong. Many cases on this subject will be found collected in the elementary writers. See 2 Sugden on Vendors, chap. 14, 3, 148 &c.;, 9th edit.; 2 Story Eq. Jurisp., 1258 to 1265, 3d edit.; Com.Dig. chancery 4 W. 25, to 4 W. 28; and the rule will be found fully discussed and recognized in *Ryall v. Ryall*, 1 Atk. 59; *Lane v. Dighton*, Amb. 409; *Lench v. Lench*, 10 Ves. 511; and *Docker v. Somes*, 2 Myl. & K., 655; in many of its important bearings. Lord Ellenborough, in the case of *Taylor v. Plumer*, 3 Mau. & S. 562, examined and confirmed the doctrine in its application to cases at law, and cited and approved the decisions in equity; so that it is plain upon authority, and the

same would be equally true upon principle, that if the tracts Nos. 1 and 2 were purchased with the trust fund belonging to the Piatt and Port Lawrence Companies, the latter are at full liberty to follow the same into the hands of any persons not being *bona fide* purchasers for a valuable consideration without notice, and the circumstance that there has since been a repurchase of the original trust property by Oliver, does not in any manner affect, or control, or vary, the right or option of the *cestuis que trust*. The case is not like that put at the bar, where a part of the funds of the *cestuis que trust* have been mixed up with other funds exclusively belonging to the trustee in the new purchase or investment. In such a case there may be ground to hold the trust funds in charge *pro tanto* therein. Here, the whole consideration of the purchase was a fund wholly and exclusively belonging to the *cestuis que trust*, if they have made out any title at all, which we shall hereafter consider.

Let us then proceed to the consideration of the other questions above stated. And the first is whether at the time of the exchange with the Michigan University, the lands given in exchange for tracts Nos. 1 and 2, were, in the hands of the party or parties making that exchange, affected with any trust such as has been already suggested? And this leads us to the consideration of the antecedent state of facts between the parties to this record.

We have seen that the original purchase of tracts Nos. 1, 2, 3, and 4, and Nos. 86 and 87, was made for the account and benefit of the Port Lawrence Company, and the object of the purchase was to lay out a town thereon, and to sell the lots to purchasers. Baum was appointed a trustee and agent for this purpose, and he was to make sale of the lots and conduct the other affairs of the agency. With the consent of the company, in August, 1817, he employed Oliver as a sub-agent, who received instructions from the company in relation to the plan of the town (which he was to lay out in conjunction with Wm. C. Schenck) and the sale of the lots. This agency of Oliver, under Baum, was originally (as it should seem) limited to one year, but it was certainly continued, if not for all, at least for some purposes, to a much later period. In August, 1818, Oliver sold one-half of his interest in the Port Lawrence Company to Steele and Lytle, and in March, 1819, he sold the residue

to the defendant Williams, and his partner Embre. And these facts are most important to be borne in mind, since they clearly establish that Oliver, as an original proprietor, and Williams, as a derivative proprietor, under Oliver, in the Port Lawrence Company, had full and complete notice of the nature and objects of the original purchase by that company, and of the trust and agency of Baum in accomplishing those objects. In truth, the laying out of a town on those tracts, and the sale of the lots, seems to have been an enterprise always cherished by some of the company with uncommon solicitude and sanguine expectations of profit.

Page 44 U. S. 403

In consequence of the reduction of the price of the public lands by Congress, and the pressure of the times, the Port Lawrence Company found themselves compelled, in 1821, to relinquish a part of their tracts to the government. For this purpose they assigned all the four tracts to Baum, in September, 1821, and the Piatt Company at the same time assigned to Baum their five quarter-sections; and he, through the defendant, Williams, thereupon relinquished tracts Nos. 1 and 2, to the United States, and the return purchase money was applied *pro tanto* to complete the payments due on the other tracts (Nos. 3 and 4, and Nos. 86 and 87), and the residue was applied partly to pay the balance due on the five quarter-sections, purchased by the Piatt Company, and partly to pay a balance due on other lands purchased by the Baum Company.

Pausing here for a moment, it is apparent that the original trust created in tracts Nos. 1 and 2, under the agency and assignment to Baum, for the benefit of the Port Lawrence Company, was, by this relinquishment to the government, entirely displaced and extinguished. These tracts afterwards, in the summer of 1828, under the Act of 20 May, 1826, were selected by the Secretary of the Treasury for the Michigan University, and certainly came into the possession of the latter discharged of the trust. Still, however, it is obvious from the papers in the cause that in the intermediate time between the relinquishment of these tracts and the grant thereof to the university, the original plan of establishing a town on the site, remained a favorite project of Baum as agent of the Port Lawrence Company, and

he made strenuous efforts by applications to Congress, and to the General Land office, to reacquire the title thereof, not for himself alone, but, as his applications and letters show, on behalf of himself and his associates. He constantly held himself out as acting for the benefit of the concern, and there is every reason to suppose, that some, if not all, of his associates were lulled into security, and contemplated, if he should be successful, to resume the original plan. This may serve in some measure to explain their inactivity, and to show that they continued to place unlimited confidence in Baum, that all his proceedings would be for their benefit, and not for his own sole advantage. Baum petitioned Congress on the subject as early as January, 1822, and in his letter to Mr. Brown (a senator in Congress) of 25 December, 1822, enclosing a duplicate of his petition, he says: "Enclosed is the petition signed by myself only, still others have an interest in it," and he names in the letter, and its postscript, Williams, Piatt, and others. In another letter to the same senator, dated 6 February, 1823, he says: "The tracts purchased by myself and associates in that quarter; those retained and relinquished can be ascertained in the Land Office." In another letter addressed to the Commissioner of the General Land Office as late as 27 July, 1827, he says:

"In consequence of the President's proclamation, announcing

Page 44 U. S. 404

the sales of lands, I attended, at Delaware on the 9th instant, but was much disappointed to find there instructions of the General Land Office, to withhold from sale all lands situate north of the line which divided the State of Ohio and the Michigan Territory, for I went there for the express purpose of repurchasing tracts Nos. 1 and 2, in the Maumee reservation, which I formerly owned and which I have relinquished."

He adds:

"These lands, though bought in sundry persons' names, were afterwards transferred to me as agent for the purpose of managing and conveying them in case of sales."

In the same letter he protests against the trustees of the Michigan University having a grant of these tracts, as they have no claim to the same, and that he has a strong claim upon the government.

To repel the inferences deducible from these facts, it is said, that the testimony of Carneal establishes that Piatt attended that very sale at Delaware for the purpose of buying these tracts, not for the Port Lawrence Company, but for another company consisting of Colston, Carneal, and himself, and that Baum also attended on his own account, and not for the Port Lawrence Company. Of transactions of this nature, after such a lapse of time, it is perhaps not easy to ascertain all the facts which then regulated the conduct of the parties, when they depend upon the frail recollections of witnesses. It is quite possible that the circumstances might have been explained, and nothing have been intended by either party really injurious to the interests of the Port Lawrence Company. But as no sale took place of these tracts upon that occasion, the only effect which can be properly attributed to the testimony, admitting it in its fullest latitude, is that it weakens our confidence in Piatt's own conduct, and diminishes the force of the inference as to Baum's then acting as an agent for the Port Lawrence Company. But the written statements of Baum in the letters above cited are evidence of his intentions and acts, of a far higher character, which the lapse of time has not obscured or varied, and those letters are, as to himself, most conclusive to show, that he did not deem himself as acting for his own interest alone, but for that of his associates also, in his whole proceedings to reacquire those tracts.

As soon as the Michigan University had obtained a title to tracts Nos. 1 and 2 (in the summer of 1828), Oliver, avowedly on behalf of Baum, made an application to the trustees of that university for an exchange of those tracts for other tracts in the vicinity. These negotiations were begun as early as 12 August, 1828, and various propositions were made and negotiations were had by the trustees and Oliver, as agent of Baum, between that time and 4 January, 1831, when the consent of Congress having been obtained for the exchange, by an act approved on 13 January, 1830, the university agreed to make the exchange, and accordingly, by their deed, dated 7 February, 1803, did

convey their right and title to tracts Nos. 1 and 2 to Oliver in fee simple, in consideration of receiving a deed from Oliver of certain tracts, containing seven hundred and sixty-seven and a half acres, *viz.*, the whole of tracts Nos. 3 and 4, the southwest quarter of section 2, and the west half of section 3; the tracts being part of the purchase of the Port Lawrence Company, and the quarter and half sections being part of the purchase of the Piatt Company, in 1817. We thus trace the trust property home to the Michigan University, as obtained by a conveyance from and under Baum and Oliver in pursuance of a negotiation, avowedly made by Oliver on behalf and as agent of Baum, as the sole consideration of the grant Nos. 1 and 2 to Oliver by the university.

And this conducts us to the consideration of that which is the main hinge on which the present case turns -- that is whether the tracts, so conveyed by Oliver to the university, were at the time affected with the trust in favor of the Piatt and Port Lawrence Companies, with which they were originally chargeable in the hands of Baum. This necessarily involves a review of the title of Oliver to the tracts (the three quarter-sections) belonging to the Piatt Company under the attachment proceedings in Michigan, and also of his title under the mortgage of tracts Nos. 3 and 4, and Nos. 86 and 87, belonging to the Port Lawrence Company, and the foreclosure thereof -- in connection with the subsequent acts of Baum and Oliver in the premises. Unless the title thus derived is beyond all legal exception (*omni exceptione major*) as an adverse and unimpeachable title, it is plain, that the original trust attached at the time of the exchange to the tracts so conveyed, and consequently (as has been already suggested) it was, at the option of the *cestuis que trust*, transferable and transferred to tracts Nos. 1 and 2. For it is in our judgment beyond all question, that Oliver at the time of the exchange had full notice of the trust and title originally invested in Baum, and that his acts in making the exchange are to be deemed the acts of Baum, and affected by the same considerations as if personally transacted by Baum himself, and were designed by mutual consent to promote the contemplated objects and interests of both.

And first let us review the proceedings under the attachment. In September, 1822, Baum gave a certificate to Oliver, stating that a debt of \$213.02 was due to him from the Port Lawrence Company for money refunded to purchasers of lots at the request of the company, "it being the amount due on the shares originally owned by John H. Piatt, Robert Piatt, G. A. Worth, and Wm. M. Worthington." These persons constituted the Piatt Company; and consequently the claim thus asserted was a subdivision of a debt confessedly due from the Port Lawrence Company, in which the Piatt Company had a moiety of the interest only. Whether Baum had, in virtue of his general agency, the right to give such a certificate, thus severing a joint debt, so as to be binding upon the Piatt Company,

Page 44 U. S. 406

alone, without their consent, and whether this certificate was *bona fide* given under justifiable circumstances, it is unnecessary to consider, although the transaction is certainly open to some observation in point of authority as well as propriety in the then unliquidated concerns of the Port Lawrence Company.

Assuming, however, the transaction to have been perfectly correct and binding in all respects, let us examine the subsequent proceedings consequent thereon. Upon this certificate Oliver, in October, 1823, instituted a suit by attachment in Monroe County, in the Territory of Michigan, against Baum, Robert Piatt, G. A. Worth, and William Worthington (John H. Piatt being then deceased) alleging them to be joint partners and survivors, and all residing out of the territory -- upon which four of the quarter-sections of land owned by the Piatt Company in that county were attached. At the October term, 1826, of the same court, judgment was obtained by default against all the defendants, no appearance having been entered for them; and upon the execution issuing thereon, three of the four sections (those which were afterwards conveyed to the Michigan University) were sold, and bid off by an agent of Oliver, and were afterwards conveyed by him to Oliver. Of this suit there is no pretense to say, that any of the defendants, except Baum, had any notice, if indeed he had any, although some of them resided in the same state where Oliver resided, and one of them in a neighboring state, at no great distance, who was known to be a man of large property. The other members

of the Port Lawrence Company were not made parties to the suit. It was brought in a distant territory, almost then a wilderness, more than two hundred miles from the residence of the defendants, and if it had been the design of Oliver to procure a judgment against the parties without any notice to them which should be obligatory upon them, and to give Oliver a good title to the lands at a comparatively trivial price, better means could scarcely have been devised to accomplish the purpose. For the institution and consummation of this suit behind the backs and without the knowledge of the parties in interest, no better excuse can now be found than that Oliver did not choose to institute a suit against them at home, as it might give them offense and break up some former ties of acquaintance. How far such an excuse is admissible we do not stop to inquire. It rather tends to cast a shade upon the transaction than to vindicate it. But what was the title thus acquired, supposing all the proceedings to be *bona fide*? It was a mere naked title in equity to the tracts, the title to which still remained in the United States; and the legal title could not be consummated, unless the certificates of the purchase and payments for the tracts were first surrendered to the United States. Those certificates were then in the hands of Baum, as trustee of the Piatt Company; and he had no right under the circumstances to assign or surrender those certificates to Oliver to enable him to make his title available at law, without the express consent

Page 44 U. S. 407

of the Piatt Company. If he had refused, Oliver could not have obtained them, unless upon a bill in equity to which all the proprietors should be made parties, and in which they would have been at full liberty to examine into the validity and merits of the original claim of Oliver, on which his attachment was founded, and also into the regularity and *bona fides* of the transactions in and under the suit. Yet Baum, in December, 1828, assigned and surrendered up these certificates to Oliver, and thus enabled him to consummate his title and reduce it to a legal title, by obtaining a patent, without any such consent; and in so doing he was guilty of a manifest breach of trust, of which Oliver cannot now be permitted to pretend ignorance. It is also a fact of no small significance, that the surrender of these certificates was contemporaneous with the surrender to Oliver of the certificates of tracts Nos. 3

and 4; and subsequently, in December, 1829, a like surrender of Nos. 86 and 87, belonging to the Port Lawrence Company, under the foreclosure of the mortgage, which we shall have occasion to review, and that all this was done pending the negotiations with the Michigan University by Oliver on behalf of Baum for the exchange.

This view of the matter releases us from no small doubt and difficulty in relation to an argument pressed at the bar with great earnestness; and that is whether such an equity was attachable and vendible under the attachment law of Michigan. There is great difficulty in maintaining the affirmative, for the reasons stated in the opinion of the learned judge in the court below; and especially if, as has been suggested, the act is but a transcript of an act of New Jersey, and the courts of that state have, as has been asserted at the bar, held no such equity attachable.

Then as to the mortgage and the proceedings under it. The mortgage was given upon tracts Nos. 3 and 4, and Nos. 86 and 87, by Baum to Oliver, in August, 1823, upon an account then adjusted between him and Oliver against the Port Lawrence Company (and which does not appear ever to have been examined or sanctioned by the company itself) for a balance of \$1,835.47, then supposed to be due to him for money paid and services rendered by him as agent of the company. In October, 1825, a bill was filed in the Supreme Court of Michigan (within which these tracts were situate) to foreclose the mortgage, and such proceedings were had upon this suit that in September, 1828, the tracts were sold, and at the sale bought by Oliver for the sum of \$618.56, and a deed of conveyance thereof was accordingly made to him. To this suit Baum alone was made a party, none of the other proprietors of the Port Lawrence Company being made parties, although Oliver knew perfectly well who they were, and that Baum was merely their trustee, and that they were the *cestuis que trust*, possessing the beneficial interest in the premises. Under such circumstances, to allow the foreclosure to stand, so as to conclude the rights of the *cestuis que trust*, would be a violation of

all the doctrines of courts of equity upon this subject. The decree must be treated, as to them, as wholly inoperative and void.

But there is another view of the matter, which is conclusive. The mortgage was of a mere equity, the legal title being still outstanding in the United States, and supposing that this equity could have been foreclosed in such a suit (which, considering the defect of the real parties in interest, it clearly could not), still it was a naked equity, which could be made available to obtain a legal title from the United States, only by an assignment and surrender of the certificates of the purchase and payments, then held by Baum for the benefit and use of the Port Lawrence Company. And here, again, the same considerations apply, which have been already suggested. Oliver could not obtain an assignment and surrender of those certificates, except by a bill in equity against Baum, to which the other proprietors in the Port Lawrence Company must have been made parties, as they were necessary parties, and thus the whole merit of the mortgage and foreclosure must have been brought directly before the court for adjudication. Yet Baum, without any consultation with or assent of those proprietors, assigned and surrendered the certificates of those tracts also to Oliver, and thus enabled him to obtain a patent therefor from the United States, in subversion of their rights and his duty. This was a gross breach of trust, and was done (let it be repeated) in December, 1828 and 1829, pending the negotiations with the Michigan University, obviously for the purpose of enabling Oliver in his, Baum's, name, and on his behalf, to consummate the exchange. And, finally, when the negotiation was consummated by means of these very certificates, Oliver, with the consent of Baum, was enabled to obtain a patent therefor, on 4 March, 1831.

Very soon after the patent was so obtained, *viz.*, on 16 May, 1831, we find that Baum, Oliver, and Williams, entered into a written agreement, by which Oliver purported to sell, in fee simple, to Baum and Williams, each one-third part of the tracts Nos. 1 and 2, and Nos. 86 and 87, with the exception of sixty acres out of No. 86, and they were to receive a quitclaim deed therefor from him accordingly, for the sum of \$1,555 for each third part. The parties farther agreed to lay out a town upon the old site, with some change of the plan, and to bring the lots into the

market for sale, and they were to contribute to the charges and expenses according to their respective interests. After the death of Baum, Oliver purchased his share of the tracts from his heirs, and by certain deeds of quitclaim, executed in December, 1832, in May, 1834, and in November, 1834, Oliver conveyed one-half of the premises to Williams.

Now looking at these transactions together, it seems almost impossible to escape from the conclusion, that Baum and Oliver had a mutual interest in the negotiation with the Michigan University; that it was not only carried on in the name of Baum, and apparently for his account, but that Oliver acted as his agent throughout; that the

Page 44 U. S. 409

deed from the university was made directly to Oliver, with the consent of Baum; that the assignment and surrender of all the certificates by Baum to Oliver, was for the express purpose of enabling Oliver to complete the bargain with the university, and that the agreement between Baum, Oliver, and Williams, which followed almost immediately upon the grant of the patent, was made in pursuance of a prior understanding between all the parties, and was but a consummation of the objects originally contemplated by Baum and Oliver, from the period of their first negotiation with the university down to the time of the execution of that agreement. And all this was done by Baum and Oliver, without the knowledge, or consent, or approbation, of the Piatt and Port Lawrence Companies, and was never sanctioned by them. Under such circumstances, what is the true duty of a court of equity? It is, to hold the parties engaged in these transactions, with full notice of the title and the trust in Baum, bound by that trust, and to enforce that trust against the tracts Nos. 1 and 2, so far as they remain in their hands unaffected by the rights of purchasers under them, *bona fide* for a valuable consideration, without notice. In our judgment, no reasoning can make the proposition more clear than a simple recital of the facts, and the statement of the general doctrine of equity jurisprudence that the *cestuis que trust* have an option to follow their property, or its proceeds, into any other property into which it has been converted by a breach of the trust, subject only to the rights of such purchasers as have been just

referred to. Indeed, the question, as against Baum and Oliver, seems absolutely closed by the state of the evidence, and their intimate knowledge of the whole concern requires neither illustration nor commentary.

Let us, then, proceed to the consideration of the case as to Williams. It is said that he stands in the predicament of a *bona fide* purchaser for a valuable consideration, without notice, and if he does, he is certainly entitled to protection. Williams, in his answer, asserts himself to be such a purchaser, but it is difficult to maintain that averment in its just legal sense, looking to all the circumstances of the case. In 1819, he became a purchaser of one-half of the interest of Oliver in the Port Lawrence Company, and, as such, he could not fail to know that tracts Nos. 1 and 2, 3 and 4, and Nos. 86 and 87, belonged to that company; and he has never ceased to be a member of that company. In 1821, he was employed by Baum, the acknowledged trustee and agent of the company, to surrender tracts Nos. 1 and 2 to the government of the United States, and through him the relinquishment took place. He says that he did not know of the negotiation between Oliver and the university, for an exchange of the lands, until after its consummation, and never heard of the details of said negotiations, nor what lands were given in exchange, except parts of tracts Nos. 3 and 4. Now these very tracts belonged to the Port Lawrence Company, so that he was necessarily

Page 44 U. S. 410

put upon the inquiry by what means Baum had parted with them, and Oliver had become possessed of them.

Besides, in his negotiation and surrender of tracts Nos. 1 and 2 to the government, and the apportionment of the funds arising from the relinquished lands, first to the remaining lands of the Port Lawrence Company, and then to the lands respectively purchased by the Piatt and Baum Companies, he necessarily became acquainted with the relative interests of all these companies therein. The origin and title of the Michigan University to the tracts Nos. 1 and 2, and the exchange thereof with Oliver, were matters of public notoriety, and proclaimed in the acts of Congress under which the exchange was made. The deed from the university to Oliver

recited the material facts respecting the lands given in exchange, and referred to the records of the antecedent negotiations; and the patent itself, from the government, of tracts Nos. 1 and 2, referred to the deed of Oliver to the university, of the lands given in exchange; so that it is most manifest that Williams, as a proprietor in the Port Lawrence Company, and as agent thereof in the relinquishment above referred to, and as a purchaser under Oliver, not only had the most ample means of knowing the nature and character and extent of the title of Oliver to the lands under consideration, but he was positively put upon inquiry in relation to the whole matter. If, under such circumstances, he chose to remain in indolent ignorance or indifference to the title, it was a voluntary ignorance and indifference, which ought not to be permitted to avail him against the rights of the *cestuis que trust*. If we add to this the fact that within two months after the patent was obtained by Oliver, he and Baum united in an agreement with Oliver, by which each was to take a third part in the tracts Nos. 1 and 2, and Nos. 86 and 87 (these tracts never having been relinquished by the Port Lawrence Company to the government) to be laid out as a town, and the lots sold on joint account, it would seem almost incredible that he should not have made some inquiries on the subject. And the only reasonable conclusion seems to be, that he was in as full possession of all the facts as were his partners Oliver and Baum. Another significant circumstance is that this very agreement contained a stipulation that Oliver should give a quitclaim deed only for the tracts, and the subsequent deeds given by Oliver to him accordingly were drawn up without any covenants of warranty, except against persons claiming under Oliver, or his heirs and assigns. In legal effect, therefore, they did convey no more than Oliver's right, title, and interest, in the property; and under such circumstances, it is difficult to conceive how he can claim protection as a *bona fide* purchaser, for a valuable consideration, without notice, against any title paramount to that of Oliver, which attached itself as an unextinguished trust to the tracts.

And here, in our judgment, the merits of the case would seem to be brought to a close. But certain objections have been made to

the right of the plaintiff to maintain the bill upon other collateral grounds. In the court below an objection was taken, by way of plea, that the original agreement of the Piatt and Baum companies, in regard to the purchases of these tracts at the public sale in 1817, was an illegal combination in fraud of the rights of the United States, and therefore it makes the whole purchase an utter nullity. This objection was fully answered in the opinion of the circuit court, in which, on this point, we fully concur. It has been abandoned by the learned counsel here, and indeed, in our opinion, properly abandoned, as unmaintainable in point of fact as well as law.

Another objection is to the lapse of time. The mere lapse of time constitutes of itself no bar to the enforcement of a subsisting trust, and time begins to run against a trust only from the time when it is openly disavowed by the trustee, who insists upon an adverse right and interest, which is fully and unequivocally made known to the *cestui que trust*. Now until 1831, no final overt act was done by Baum in violation of his duty as trustee, and the first and great breach of that duty on his part was the surrender of the certificates of the tracts to Oliver at different periods between 1828 and 1831. At what particular period the subsequent acts of Baum, Oliver, and Williams, became first known to the plaintiff and the other proprietors of the Piatt and Port Lawrence companies having the same interest, does not distinctly appear; but the facts could not have been fully known or understood until within a few years before the filing of the bill, and at most probably not exceeding eight or ten. That period, upon admitted principles, is far too short to interpose any positive bar to relief in equity. There may have been an unjustifiable delay, and gross inattention on the part of some of the proprietors. But as against persons perfectly conusant of the trust it can furnish no ground for any denial of the relief which the case otherwise requires.

Another objection urged at the argument is that the bill is multifarious in uniting the trust property owned by the Piatt Company and the Port Lawrence Company in one bill, as the interests of each are separate and distinct in the tracts conveyed by Oliver to the Michigan University. We are of opinion that the bill is in no just sense multifarious. It is true that it embraces the claims of both the companies; but their interests are so mixed up in all these transactions, that entire justice could

scarcely be done, at least not conveniently done, without a union of the proprietors of both companies; and if they had not been joined, the bill would have been open to the opposite objection that all the proper parties were not before the court, so as to enable it to make a final and conclusive decree touching all their interests, several as well as joint. It was well observed by Lord Cottenham in *Campbell v. Mackay*, 1 Myl. & C. 603, and the same doctrine was affirmed in this Court in [Gaines v. Relf and Chew](#), 2 How. 619, [43 U. S. 642](#) , that it is

Page 44 U. S. 412

impracticable to lay down any rule, as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must necessarily be left, where the authorities leave it, to the sound discretion of the court. But if the objection were tenable (as we are of opinion it is not), it would be quite too late to insist upon it. The objection of multifariousness cannot, as a matter of right, be taken by the parties, except by demurrer, or plea or answer, and if not so taken, it is deemed to be waived. It cannot be insisted upon by the parties even at the hearing in the court below, although it may at any time be taken by the court *sua sponte*, wherever it is deemed by the court to be necessary or proper to assist it in the due administration of justice. And at so late a period as the hearing, so reluctant is the court to countenance the objection, that, if it can get on in the cause to a final decree without serious embarrassment, it will do so, disregarding the fault or error, when it has been acquiesced in by the parties up to that time. *A fortiori*, an appellate court would scarcely entertain the objection, if it was not forced upon it by a moral necessity. There is no pretense to say, that such is the predicament of the present cause in this Court.

Another objection taken at the argument is that Baum's heirs cannot insist upon any title to the property in question, because they are bound by the warranty of their ancestor in the conveyance thereof to Oliver. But this objection has no foundation whatsoever in law, whether the warranty be lineal or collateral, for the heirs here do not claim any title to the property by descent, but simply by purchase; and it is only to cases of descent that the doctrine of warranty applies. For this it is sufficient to cite Litt., sec. 735; Co.Litt. 365; Com.Dig. *Guaranty*, I, 2,

and Bac.Abridgement, *Warranty*, G, H, I, L. The fact, therefore, that assets descended upon Mary P. Ewing, one of the children and heirs of Baum, can have no influence upon the right of her husband or herself to enter the land in controversy by purchase, however it might repel their right to take it by descent.

Another objection suggested at the argument was the difficulty of apportioning the respective interests of the *cestuis que trust*, in the tracts Nos. 1 and 2. But this difficulty has been overcome, and it constitutes no matter of difference between the Piatt and the Port Lawrence Companies, so far as their own interests are concerned, as distinguished from that of Oliver and Williams.

As to the report of the master and the exceptions thereto in the court below, although those exceptions were not formally overruled or allowed; yet it is plain that in the final decree they were all disposed of, some being allowed and others disallowed, and no argument

Page 44 U. S. 413

has been addressed to us upon the present occasion, which points out any specific errors, which require correction beyond those which have been already incidentally hinted at.

We pass over some other objections, which were suggested at the argument, without remark, as this opinion has already been protracted to an unusual length. We need only say, that we see nothing in those objections which requires us to reform the decree of the court below.

Upon the whole, the decree of the circuit court is

Affirmed with costs.