

Beals Vs. Hale

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Decided On : 1846

Appeal No. : 45 U.S. 37

Appellant : Beals

Respondent : Hale

Judgement :

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Beals v. Hale

45 U.S. (4 How.) 37

ON CERTIFICATE IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN

SYLLABUS

There were two statutes of the State of Michigan, both passed on the same day, namely 12 April, 1827. One was "An act concerning Deeds and Conveyances," which directed that such deeds or conveyances should be recorded in the office of

register of probate for the county or register for the city where such lands &c.;, were situated. This act became operative from its passage.

Another was "An act concerning Mortgages," which provided

"That every mortgage, being proven or acknowledged according to law, may be registered in the county in which the lands or tenements so mortgaged are situated."

This act did not go into operation until several months after its passage.

In the case in question, there were two mortgages, both including the same property, in the City of Detroit, Wayne County, one of which was recorded in the city registry and the other in the county registry.

These statutes are not so contrary or repugnant to each other as necessarily to imply a contradiction. Both can stand.

The recording of the prior mortgage in the county registry was sufficient to give it validity and priority.

Statutes which apparently conflict with each other are to be reconciled, as far as may be, on any fair hypothesis, and validity given to each if it can be and is necessary to conform to usages under them, or to preserve the titles to property undisturbed.

This was an ejectment brought by the plaintiff, Thomas Beals, a citizen of New York, against Felicite Hale, the defendant, a citizen of the State of Michigan. Nathaniel Weed, Harvey Weed, and Henry W. Barnes were, on application, permitted to defend their title to the premises, claiming that the said Felicite Hale was their tenant and in possession under them.

The facts in the case are set forth in the special verdict of the jury, which was as follows:

"Issue being joined in this case, and the parties present, by their respective attorneys, hereupon comes a jury, to-wit: John C. Mundy, Alanson Sherwood, William P. Patrick, Albert Bennet, Robert Rumney, Austin Stocking, Sylvester Granger, Garry Spencer, John Bour, James Beaubien, Tunis S. Wendell and James Cicotte Sr. who, being empanelled and sworn to try the issue joined in this cause, and after having heard the evidence adduced therein, find specially the following facts, and say:"

"That John Hale was, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty eight, seized and possessed in his own right of said lots number sixteen, seventeen, and eighteen, in the City of Detroit, County of Wayne, and (then Territory, now) State of Michigan."

"That, being so seized and possessed of the said premises, he, the said John Hale, and Felicite Hale, his wife, executed a mortgage, to secure the payment of a certain sum of money, to one James Lyon, bearing date the thirteenth day of November in the year of our Lord one thousand eight hundred and

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twenty-eight, of the said lots, together with other lands lying in the said County of Wayne, as well as of certain lands in the County of Monroe in the Territory of Michigan, which said mortgage was recorded in the office of the register of the said County of Wayne, where said lots and part of said mortgaged premises were situated, on the thirteenth day of January, in the year eighteen hundred and twenty-nine, in Liber 9 of Mortgages, 103, 104, 105 &c.;, and also in the County of Monroe where the remainder of said lands and premises were situated, in the office of register for said county, in Liber 9, Folios 281 to 286. That said mortgage was afterwards, to-wit, on the twenty-first day of November, in the year eighteen hundred and thirty-eight, foreclosed under the statutes of the State of Michigan, and the said several lots sold at public auction, and struck off to said Lyon at the sale thereof, and that a sheriff's deed was afterwards, on 6 April, A.D. 1842, executed to the said plaintiff, as assignee of the certificate of sale to said Lyon of the said lots, they not having been redeemed within two years from the time of

sale, pursuant to statutes of said state in such case made and provided, which said deed was duly recorded."

"And the said jury further find that the said John Hale, and Felicite, his wife, after the execution of the former mortgage and before a foreclosure thereof, to-wit, on the sixth day of June, in the year eighteen hundred and thirty-seven, for a good and valuable consideration, duly made, acknowledged, and delivered, under their respective hands and seals, to Nathaniel Weed, Harvey Weed, and Henry W. Barnes (who had no notice of said prior mortgage unless said record was notice) another or second mortgage on the said premises, lots sixteen, seventeen, and eighteen, in the City of Detroit, County of Wayne, and State of Michigan, which said mortgage, bearing date the said sixth day of June, in the year eighteen hundred and thirty-seven, was duly recorded in the appropriate registry, on the seventh day of June, in the year eighteen hundred and thirty-seven, in Liber 8, Folio 343, of Mortgages, and which said mortgage was afterwards, on the thirty-first day of August, in the year eighteen hundred and thirty-nine, foreclosed under the statutes of said state, exposed to sale, and struck off to said Weeds and Barnes at the said sale, and, not having been redeemed within two years therefrom, that a sheriff's deed of said premises was executed on the sixteenth day of August, eighteen hundred and forty-two, and delivered to said Nathaniel and Harvey Weed and Henry W. Barnes, of all and singular the said premises, which was duly recorded."

"That the plaintiff and defendant both claim under the respective mortgages above set forth, and the sheriff's deeds under the respective foreclosures aforesaid, and that Felicite Hale, the defendant, was, at the institution of this suit, and still is, a tenant in possession

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of said premises, under a lease from said Weeds and Barnes, who are admitted under the statute to defend as her landlords."

"And the jurors aforesaid, on their oaths aforesaid, do further say that if it shall appear to the said court from the facts above found that the recording of said prior mortgage from Hale to Lyon in the registry of Wayne County was sufficient record thereof to constitute notice of said mortgage under the laws of Michigan, in reference to mortgages of real estate situate in the County of Wayne, within the limits of the City of Detroit, then they find for the plaintiff."

"But should said court be of opinion that said record in the office of said registry for the County of Wayne was invalid and insufficient in law, so far as the said premises in the City of Detroit are concerned, to constitute notice thereof to the subsequent mortgagees, then they find for the defendants."

"THOMAS BEALS"

"vs."

"FELICITE HALE"

"On consideration of the said special verdict, the same being brought before the court on a motion for judgment on the verdict, the opinions of the judges were opposed on the point whether the recording of the mortgage from Hale to Lyon in the registry of Wayne County was a sufficient record thereof to constitute notice of said mortgage under the laws of Michigan, in reference to mortgages of real estate in the County of Wayne, within the limits of the City of Detroit, and it is ordered and directed, that this cause, with said point, be certified to the Supreme Court of the United States, in pursuance of the act of Congress in such case made and provided. "

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MR. JUSTICE WOODBURY delivered the opinion of the Court.

The sole question presented in this case is whether a mortgage executed by the tenant and her husband to James Lyon, on 13 November, 1828, shall prevail over another mortgage executed by them to Nathaniel and Harvey Weed and Henry W Barnes, on 6 June, 1837. Being earlier in time by nine years, the first mortgage

ought of course to have precedence, and will entitle the demandant to recover unless it was improperly recorded.

The facts important to be now noticed in connection with that question are that at the time of the execution of the first mortgage, there were two registries -- one in the City of Detroit and the other in the County of Wayne, within which that city was situated. The premises in dispute were within the limits of the city, and the first mortgage was recorded, on 30 January, 1829, in the registry for the County of Wayne, but not in the registry for the City of Detroit, where the second mortgage was recorded June 7, 1827. On these facts, whether the recording of the first mortgage was legal or void must depend upon the construction of two statutes of the State of Michigan, both passed April 12, 1827.

The demandant relies upon one of them as being the only statute for recording "mortgages," and as his registry was duly made under that, he claims to recover. While the tenant relies upon the other statute as embracing the case of mortgages, and as his was the only one recorded in conformity with it and others not so recorded are declared void, he asks for judgment in his favor. It seems hardly to have occurred to either side that a construction may be given to these statutes which will make them both operative on this subject and sustain both of the mortgages according to their original rank and intent, and if on legal principle is opposed to such a course, it is certainly entitled to preference.

Because it is a well settled principle of construction that conveyances are, if practicable on any reasonable view of the subject, to be sustained rather than pronounced void, and also that statutes which apparently conflict with each other are to be reconciled as far as may be on any fair hypothesis, and validity given to each if it can be and is necessary to conform to usages under them, or to preserve the titles of property undisturbed. [Cooper v. Telfair](#), 4 Dall. 14; 1 Serg. & R. 105; [6 U. S. 2](#) Cranch 358; Bac.Abr., *Statute*, l.

The statute which passed on 12 April, 1827, and related to "deeds and other conveyances," went into effect immediately, and was the only law of the state in force as to recording mortgages as well as other deeds, till January, 1828.

It provided that all deeds should be recorded in the County of

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Wayne or the City of Detroit according as the land conveyed was situated in one or the other. Laws of 1827, p. 258.

Though the title to this act and its general language do not embrace mortgages *eo nomine*, we do not agree with the counsel for the demandant that they are not included.

In the second section, the word "mortgagee" is twice used. In the third section also, "conveyances affecting in law or equity," "real estates," are spoken of. And besides this, it is reasonable to construe it as including mortgages under the general words of "all deeds and other conveyances of any lands," &c.; (Sec. 1), because they are sufficiently broad for that purpose, and because a similar generality had existed in the expressions in former laws in the territory on this subject, Woodward's. Code, p. 52; Code of 1820, p. 156, and was construed to include mortgages; and because, if these are not included, there were eight months, from April, 1827, to January, 1828, during which no law except the first one was in operation, and consequently when no provisions whatever existed in respect to the recording of that important species of conveyance. The law, then, for that eight months, as to recording mortgages, must be considered to have been, that those relating to lands in the City of Detroit should be recorded there and those relating to lands in other parts of the County of Wayne should be recorded in the registry for the county. See the second section.

The prior mortgage in this case, however, was not executed within that period, but on 13 November, 1828, and in the meantime the other act, which passed on the same day with that we have just considered, had come into operation "concerning mortgages," and was made applicable to all executed after January 1, 1828.

The next important question then is what, if any, was the alteration made by it in respect to the recording of mortgages? and was the mortgage to Lyon, not having been registered as the first act required, recorded in the manner authorized by the

last act?

That act purports to relate to "mortgages" alone, leaving other conveyances to be recorded as they had been under the other law during the eight months before it took effect. As to "mortgages," it provided, that those executed after 21 January, 1828, "may be registered in the county in which the lands or tenements so mortgaged are situated," and that a subsequent one, recorded before a prior one, should be preferred. Laws of the Territory of Michigan, p. 273.

The mortgage under which the demandant claims, being executed about eleven months after these new provisions, was recorded in conformity to them.

After this literal compliance with that law, and a construction under it which seems to uphold, as should be done, if practicable, the early mortgage, it does not seem desirable, and it is hardly expedient,

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unless on principle necessary, to resort to a different construction which would render the first security void as to the second mortgagee, although recorded in strict conformity with the law last going into operation. And as little does it seem expedient, unless necessary under imperative principles or precedents, to push this construction so far as to avoid or postpone any mortgages recorded in conformity to the provisions of the act first going into operation. The statute as to "mortgages" does not profess in so many words to repeal any portion of the other statute, nor is it necessary so to construe it. Going into effect later, if not passed later, it is true that any of its provisions entirely inconsistent with the laws in force before it took effect or repugnant to them might, without words of repeal, be considered as changed or abrogated, and the first impression would naturally be that the provisions of the second law, so far as regards mortgages of land situated in the City of Detroit, were irreconcilable with the former act and hence to that extent repealed it. But such a construction, though sustaining the mortgage to Lyon, might avoid many others and disturb numerous titles, and hence is not to be adopted unless clearly the proper one. *Ld.Raym.* 371; *Bac.Abr.*, *Statute*, C. and

G; *Stradling v. Morgan*, Plowd. 206. We think it is not the proper one.

A second law on the same subject does not repeal a former one without a repealing clause or negative words unless so clearly repugnant as to imply a negative. 1 Bl.Com. 89; 1 Gall. 153, in *Case of Ship Argo*, "leges posteriores priores *contrarias* abrogant." But if they be not so contrary or so repugnant, that the last act expresses or implies a negative of the first, then they may continue to stand together. And if such be the case here, a mortgage of city property recorded in conformity to either law would be valid. Such, in our opinion, is the case here, there being no words of repeal or negation in the act concerning mortgages. Many cases of this kind, very analogous, are cited in *Foster's Case*, 11 Coke 63, 64. See also 2 Roll. 410; 19 Viner's Abr. 525.

Among them is one where an act of Parliament made an offense punishable at the Quarter Sessions and another passed making it punishable at the Assizes, without any words of repeal. It was held that you may indict under either or at either court. 11 Coke 63.

The same result is arrived at if the two acts be considered as passing and taking effect as one law on the same day. In that view, the last one only says that "mortgages" executed after the 1st of January, 1828, "*may be registered*" in the county where the lands lie, while the first one provided that they "shall be recorded" in the registry of the city, if the lands lay within its limits. These provisions may stand well together, upholding, under one

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act, a recording of mortgages in the city registry as good in all cases of property situated there and, under the other, upholding a record of mortgages of like lands in the county registry as also good whenever any persons prefer to resort to that. As either of these views does not avoid the second mortgage, but only gives it, as was intended by the maker of it, a rank second to the first one, and as they both give force or operation to both statutes, and do not endanger or disturb titles either in the city or county, when either statute has been complied with, they ought to

settle the question.

It may not be amiss to notice, also, that the mortgage to Lyon contained land in the County of Monroe as well as in the City of Detroit, and having been seasonably recorded in that county, would be valid for some purposes, if not for this, without any second registry whatever in another city or county. [McKeen v. Delancy's Lessee](#), 5 Cranch 22; *Delancy's Lessee v. McKeen*, 1 Wash.C.C. 525.

It is gratifying to find, that our conclusion in this case accords with the result in the only decision which is supposed to have been made in the State of Michigan on this subject. See *Weed v. Lyon*, in Harrington, 363.

Had that decision been made by the highest judicial tribunal of the state, or been shown to accord with a settled usage and practice under these statutes affecting the titles to real estate. We should have felt bound to conform to it, as a part of the local law. [13 U. S. 9](#) Cranch 87; [27 U. S. 2](#) Pet. 58, [27 U. S. 85](#) ; [19 U. S. 6](#) Wheat. 119; [23 U. S. 10](#) Wheat. 152; [24 U. S. 11](#) Wheat. 361; 1 Brockenbr.C.C. 539.

But though entitled to respect and weight, that case has not been treated as a precedent to control this, because the judgment was not in a court of the last resort, and is said to have been appealed from, but further proceedings defeated by some accident.

Let a certificate be sent down that in the opinion of this Court, the recording of the mortgage from Hale to Lyon was sufficient to give it validity and priority under the laws of Michigan.