BeIn Vs. Heath

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Appellant : Bein

Respondent : Heath

Judgement :

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Bein v. Heath

47 U.S. (6 How.) 228

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

The Civil Code of Louisiana (article 2412) enacts that

"The wife, whether separated in property by contract or by judgment or not separated, cannot bind herself for her husband nor conjointly with him for debts contracted by him before or during the marriage."

Where a wife mortgaged her property to raise money and the question did not turn upon her doing so as the surety of her husband, it was not necessary for the lender to prove that the proceeds of the loan inured to her separate use.

The fact of the application of the money may be proved to show the character of the transaction with a view of establishing collusion or fraud.

The decisions of the state courts of Louisiana upon this subject examined.

Where a wife mortgaged her property and then sought relief in chancery upon the ground that the contract was void in consequence of her disability to contract, and it was shown that the lender acted in good faith, proceeded cautiously under legal advice, under assurances that the loan was for the exclusive use of the wife, to whom the money was actually paid, the interest upon the loan paid for several years, the mortgaged property insured by her, and the policy assigned to the mortgages, a bill to relieve her from the contract cannot receive the sanction of a court of equity.

But it is no objection to such a bill as a rule of pleading that the husband is made a party to it with the wife. He acts only as her *prochein ami.*

The facts are sufficiently set forth in the opinion of the Court.

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

The bill was filed by the appellants, Bein and wife, to enjoin proceedings under a writ of seizure and sale taken out by the appellee, Mary Heath, to sell certain property of the appellant, Mary Bein, under a mortgage from the latter dated 8 May, 1838, to secure two notes drawn by her in favor of her husband, and by him

endorsed -- the one for $10,711.71, the other for $535.50.

These notes, the complainants allege, were given for a loan obtained by Richard Bein, the husband, for his own use, and which was so applied, and that in such a case, by the laws of Louisiana, the mortgage of the wife, and her promise to pay the debt, or to make her property responsible, is not binding, but void.

The answer of the appellee denies the averment of the bill, as to the purpose of the loan or the use of the money.

It is objected that, the suit being brought in the name of the husband and wife, it must be considered the suit of the husband, and that a decree would not bind the wife.

On looking into the bill, it appears that the name of the husband is used only as the *prochein ami* of his wife. He asks no relief. The wife prays an injunction against the sale of the mortgaged property and a rescission of the mortgage and notes and a release from all liability thereon. The bill was sworn to by the wife, and a rule was entered on the attorneys of the defendant, to show cause why the injunction should not be granted in favor of Mary Bein, and at a subsequent day the writ was granted. An injunction bond was given by the wife, with security, the name of the husband being used only as authorizing the wife to execute the bond. And so throughout the proceedings the wife is treated as the party in interest, the name of the husband being formally used.

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Where the wife complains of the husband and asks relief against him, she must use the name of some other person in prosecuting the suit; but where the acts of the husband are not complained of, he would seem to be the most suitable person to unite with her in the suit. This is a matter of practice, within the discretion of the court. It is sanctioned in the 63d section of Story's Equity Pleadings, and by Fonblanque. The modern practice in England has adopted a different course, by writing the name of the wife with a person other than her husband, in certain

cases. From the frame of the bill, no doubt is entertained that the decree will bind the wife.

Prior to the marriage of Bein and wife, they entered into a marriage contract, in which it was stipulated that neither should be liable for the debts of the other, and each reserved the right of selling and disposing of their property, after marriage, as they might deem proper, with the consent of the other. The wife brought into the marriage, and settled upon herself, as stated, property, real and personal, estimated to be worth eighty-eight thousand six hundred and thirty-five dollars. This contract was entered into in accordance with the Louisiana law.

The loan was negotiated on 8 May, 1838, at which time it is proved that Richard Bein was known to be much embarrassed, and, as it appears in proof subsequently, was actually insolvent. In the act of mortgage Mrs. Bein declared that she was justly indebted unto Sherman Heath in the full sum of ten thousand seven hundred and eleven dollars and seventy-one cents, being a loan of money made to her, and for her sole benefit &c.; This act had all the sanctions required by law. On the 10th of the same month, a check, payable to Mrs. Mary Bein, or order, for the above sum, was drawn by S. Heath & Co. on "The Citizens' Bank of Louisiana," and handed to Mrs. Bein.

It appears that Heath had knowledge of the embarrassments of Bein, and consulted with J. W. Smith, a lawyer, who is a witness, how the loan could be legally made. He was informed that it must be made for the sole benefit and use of the wife, and that the husband should not be interested in or benefited by it. Heath stated that the money belonged to his mother, and he did not wish to receive more than the legal interest, for fear of difficulty, and that he had rather loan the money to Mrs. Bein, believing it to be safe, than to let other persons have it at higher rates. Afterwards, Heath and Bein being present, the witness stated to them that the loan would not be legal unless it was for Mrs. Bein's sole use and benefit; "that no loan could be made legally to him under cover of a

loan to his wife, and that it must be a *bona fide* contract with Mrs. Bein." Bein then, in the most positive manner, informed Heath that the proposed loan was a real *bona fide* loan to Mrs. Bein, that there was no cover or concealment about it. Witness examined the act of mortgage, and filled up the check and handed it to the notary.

For nearly five years, Mrs. Bein paid the interest on the loan, kept the property insured, and assigned the policy annually.

On 2 April, 1840, Richard Bein filed his petition for the benefit of the insolvent act, attached to which was a schedule of his debts, and among others, a debt due to his wife for the same amount above loaned to her. It appears that Bein paid several debts of large amounts shortly after the loan was negotiated, but independently of his own statements there is no positive evidence that these payments were made with the money loaned.

The article 2412 of the Civil Code of Louisiana declares

"The wife, whether separated in property by contract or by judgment, or not separated, cannot bind herself for her husband, nor conjointly with him, for debts contracted by him before or during the marriage."

Under this law, a mortgage given by the wife to secure a loan made to the husband, or to the wife covertly for his use, is void. As the loan in question was made to the wife, which appears from the mortgage and the check for the money, a question in the case is whether these forms were adopted to charge the wife, in fraud of the law, for the benefit of the husband.

No fraud or mistake is alleged in the bill. The complainant states that the loan was made by her husband for his benefit, that she became his surety in violation of the law of Louisiana, and was induced, contrary to her wish, to mortgage her property for the payment of the money. On these grounds, the court are asked to declare the mortgage void.

If this bill be sustainable, it must be on the peculiar provisions of the Louisiana law. In ordinary cases, it would be demurrable. Where a *feme covert,* by the forms of law, has conveyed her property, she can avoid the effect of such conveyance only by showing mistake or fraud. And this must be alleged in the bill. On ordinary principles, an individual is estopped from denying a fact which he has admitted in a sealed instrument.

In making the loan, Heath acted with great caution. He was agent for his mother. He proceeded under legal advice, and consummated the agreement in the presence of his counsel. Bein was known to be irresponsible; consequently Heath

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did not rely upon him for payment. The acts of Heath in negotiating the contract and the account he gave of it all show that he acted in good faith and in full confidence that the loan was made to Mrs. Bein. The mortgage was executed by her, under the most solemn declaration "that the money was borrowed for her benefit" -- her attention being specially directed to the clause of the mortgage which so declares, as appears from a marginal note -- sanctioned by the notary, and signed also by other persons. And the check for the money was paid to the mortgagor.

From these facts it is clear that Heath is not chargeable with collusion. And there is nothing on the face of the contract to excite suspicion. On such a transaction, the mortgagee may well stand and claim the benefit of the security until it shall be impeached by the mortgagor. This is attempted to be done not by proof of fraud or mistake, but on the ground that the loan did inure to the benefit of the husband, and not to the benefit of the wife. This is a matter subsequent to the contract, and involves the inquiry, whether the person making a loan, with the utmost fairness and caution, to the wife, must, to charge her, see that the money is applied to her use.

The article, which declares that the wife cannot become the surety of her husband, does not superadd the above important condition as to the application of the

money. It is not in the law, unless it shall have been put there by judicial legislation. The fact, that the money borrowed was paid to the husband or was used for his benefit, as a matter of evidence, may be proved to show the character of the transaction. And, connected with other facts, it may conduce to establish collusion or fraud. But to treat this supposed requisite as a matter of law, under the above article, would violate every known rule of construction. With this general remark we will examine the Louisiana decisions on this point.

The case of *Brandegee v. Kerr and Wife,* 7 Martin N.S. 64, in facts and principle is said to be similar to the one under consideration. That was an "action on the note of the wife endorsed by the husband, alleged to have been received from the wife on a loan made to her by a check delivered to her." And the court said

"that the circumstance of the wife having a separate advantage in the contract, being of the essence of her obligation, must be proven by some other evidence than proof of her having touched the money."

And in conclusion they say

"Being of opinion that there is no fact in evidence from which it is possible to infer that the plaintiff's money was employed for the separate use of the wife,"

&c.;, "we conclude that the wife is not bound." The court also said

"We cannot distinguish

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this paper from a note joint and several of husband and wife, for they are bound jointly and severally, and the plaintiff has prayed for a judgment joint and several."

It must be admitted that the court, in the above case, consider proof of the application of the money to the use of the wife as essential to bind her. And unless that case, in its facts or the law under which it was decided, shall be shown to differ from the facts and law of the case under consideration, it will constitute a rule of decision in this case.

If this action were on the notes given by Mrs. Bein and endorsed by her husband, in that respect, and also in the payment of the money to the wife, the cases would be similar. But in the case before us, the action is on the mortgage, in which there is no liability of the husband, and no decree is asked against him. It is true, notes were given similar to that given in the case cited, but the notes of Mrs. Bein, though endorsed by her husband, must be considered as connected with the mortgage, which explains the nature of the transaction. And in addition to this, there is evidence that the contract was made with Mrs. Bein, under the strongest assurance that the loan was made for her sole benefit, and under a full conviction by Heath that it was so made. In these important particulars, there is a difference between the cases. The case cited seems to have rested on the face of the note and the check.

But still the ground, as to the application of the money, remains unanswered.

In the above decision, the case of *Darnford v. Gros and Wife,* 7 Martin 465, is cited, and it is the only authority referred to in the opinion of the court. The decision in that case was founded on the 61st law of Toro. It is cited by the court as follows:

"From henceforward it shall not be lawful for the wife to bind herself as security for her husband, although it should be alleged that the debt was converted to her benefit, and we do also order that when the husband and wife shall obligate themselves jointly in one contract, or severally, the wife shall not be bound in anything, unless it shall be proved that the debt was converted to her benefit, and she shall then be bound in proportion to what shall have been so applied. . . . But if the debt so applied to her use served only to procure that which her husband was obliged to supply her with, such as food, clothing, and other necessaries, then we say that she shall not be bound in anything."

The above action was founded on a promissory note subscribed by the wife conjointly with her husband. And the court said

"that the restriction imposed by the Spanish laws on the obligations contracted by the wife jointly with her husband

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has not ceased to be in force, and that, according to it, when the creditor wishes to compel her to the performance of such an obligation, he must prove that the debt was converted to her benefit."

The law of Toro was repealed, with all other Roman, Spanish, and French laws in Louisiana, in every case provided for in the Civil Code by article 3521. The Civil Code was adopted in 1825. But as the case first cited, of *Brandegee v. Kerr and Wife,* was decided in 1828, after the repeal of the law of Toro, it is contended that the decision could not have been governed by that law. But it seems, from the statement of one of the counsel, that the contract was made under that law. The reference to the case of *Darnford v. Gros and Wife* shows, as above stated, that the decision against Kerr and wife was made under the law of Toro. This appears clearly from the language of the court.

Great reliance is placed on the case of *Fireman's Company v. Julia Louisa Cross,* 4 Robinson 509. That action was instituted on a promissory note for $7,000, drawn by the defendant, and secured by mortgage on her paraphernal property. It was proved

"that no portion of the money loaned was ever paid to the defendant, but that it was paid by the plaintiffs to different persons on orders given by the husband."

The facts in that case show that the wife was the surety of the husband. And the court very properly held, that such proof was admissible, although in the mortgage the wife stated the loan was made to her. Article 2256 declares, "that parol evidence shall not be admitted against or beyond what is contained in the acts," &c.; But this was held not to apply to contracts made *in fraudem legis.*

In their opinion the court said -- "We are satisfied that the money borrowed was intended for, and was applied to the use of, the defendant's husband." "This case,"

they observe,

"is much stronger than that of *Brandegee v. Kerr and Wife,* in which it appeared that the wife had actually received the money, but there was no proof of its having turned to her separate advantage."

The citation of the case against Kerr and wife is a seeming sanction of the ground on which that case was decided. But the case before the court did not turn upon the application of the loan, as it was clear that the husband received the money, and applied it, by orders on the plaintiffs, to the payment of his own debts. This shows the intent with which the loan was made, and also that the facts were known to the plaintiffs. The reference seems to have been made to the case of Kerr and wife generally, without adverting to the law under which it was decided.

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Of the same character was the case of *Pascal v. Sanvinet,* decided in 1846, and reported in manuscript.

The husband and wife, by a decree, were separated in property, after which she delegated to him extensive and general powers for the management and administration of her affairs. Two years after this, the husband, under this power, executed the notes and mortgage in question,

"stating in the act that the sum was due by his wife, in consequence of a loan made to her by the defendant, and which he, as her agent, acknowledged to have received."

And the court said --

"There is no proof that any part of this loan passed into the hands of the plaintiff, or that it was applied or turned to her benefit. She was not personally present at the execution of the act, and is not shown to have been aware that the loan had been made or the mortgage granted."

From these facts, there would seem to have been no mode by which the wife could be bound, except by showing that the money was applied to her use. This, on being shown, would, it is supposed, have confirmed the agency. It would have established the *bona fide* character of the act done by the husband. As a matter of evidence, then, to explain the nature of the transaction, proof that the loan accrued to the benefit of the wife was necessary to bind her.

It must be admitted, that the general language of the court covers the ground assumed by the counsel for the appellant. They say

"It has been settled, by repeated decisions of the late supreme court, that it is incumbent on the party claiming to enforce the contract of a married woman to show that the contract inured to her separate advantage."

And they cite the case of *Brandegee v. Kerr and Wife,* and repeat, "that the circumstance of the wife having a separate advantage in the contract, being of the essence of her obligation, must be proved."

In answer to these remarks, it may be said, that the case turned upon the suretyship of the wife, and not upon the application of the money. The act was done by the husband without the knowledge of the wife, which shows that it was done for his benefit.

It was held, 2 Martin N.S. 39, that the wife may bind herself jointly and severally with her husband, provided she renounces the law of Toro in due form. And that, when this is done, the creditor need not prove that the engagement turned to her advantage. But she cannot bind herself as surety for her husband, not even by binding herself *in solido* with him. That decision was made in 1823.

In *Gasquet v. Dimitry,* 9 La. 585, it was held,

"where the wife signs an act of mortgage with her husband,

given to secure a debt for his benefit, in which she renounces formally all her rights, privileges, and mortgages on the property, ceding and transferring them to her husband's creditor, was a contract entered into by the wife conjointly with her husband, binding herself for his debt, which, being prohibited by article 2412, was void."

The court in their opinion said

"The counsel for the appellant, in support of the position, that the agreement on the part of the wife to renounce her claims on the mortgaged property is null and void, relies upon article 2412."

After citing the article, they observe

"The question thus presented is to be decided by us without reference to the laws of Toro, which have no longer here the force of laws, and independently of former decisions of this Court while guided by the Spanish jurisprudence; but we are called on to say what, in our opinion, is the law of the land on this subject, as established by the code standing by itself."

On a rehearing of the above case, the court held that the wife was the surety of the husband, within "the sense of article 2412, and that the act was consequently void." And it appears that the legislature, being dissatisfied with the decision, passed an act declaring "that married women aged twenty-one years shall have the right to renounce, in favor of third persons, dotal, paraphernal, and other rights," in a certain form &c.;

In the case of *E. Monfort v. Her Husband,* 4 Robinson 453, it was held

"that the purchaser of dotal property, legally alienated, has nothing to do with the investment of the proceeds, and that the husband alone has the administration of the dowry. If he misapplies it, there is a lien of the wife on his property."

The law of Toro declared -- "The wife shall not be bound in anything, unless it shall be proved that the debt was converted to her benefit." In reference to this provision, the court said in the case of *Darnford v. Gros and Wife,* above cited --

"Whether that restriction was attended with inconvenience is not for us to consider. Our duty is to declare the law, not to modify it." But, that law being repealed and another substituted in its place declaring only "that the wife should not be bound as the surety of the husband," it is not to be supposed that a citation of decisions made under the law of Toro by the court, in cases where the wife was clearly the surety of the husband, was designed essentially to modify the substituted act. That in many cases, as a matter of evidence, to charge the wife it may be necessary to prove that the loan was applied to her use may be admitted. But under the above article,

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we think that such evidence cannot be required as a matter of law. The cases cited did not turn upon that ground.

But there is another view arising from the facts of this case, which will now be considered.

This is a suit in chancery, and it is governed by the general principles of such a proceeding. No new principle is introduced to affect the relation of the parties or to modify rights growing out of their contract.

It is a principle in chancery that he who asks relief must have acted in good faith. The equitable powers of this Court can never be exerted in behalf of one who has acted fraudulently or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this Court the abetter of iniquity. And we suppose that this principle applies to the case under consideration. A *feme covert,* acting on her own responsibility, under the liberal provisions of the Louisiana law, may act fraudulently, deceitfully, or inequitably so as to deprive her of any claim for relief. This results from the capacity to make contracts with which the law invests her.

Heath, the agent, as has already been said, acted in good faith. He proceeded deliberately, under legal advice, and there is no ground to charge him with unfairness or collusion against Mrs. Bein. Assurances were made to him in the

presence of his counsel by Bein, acting in behalf of his wife, that the loan was for her; that it was *bona fide* and without any concealment. Resting upon these and other assurances, the contract of loan was made, the mortgage was executed by Mrs. Bein, and the money paid by Heath to her under the direction and sanction of his counsel. Now if these representations were false and Heath was thereby induced to part with the money, can the complainant have a standing in equity?

Such a proceeding would be fatal, it is supposed, under the law of Toro. For if it were admitted that to make the loan binding on the wife, it must be proved to have inured to her use, yet if, through the fraudulent intervention of the husband, she negotiated the loan, giving to it her special sanction, equity would not relieve her. A doctrine contrary to this would enable the wife to practice the grossest frauds with impunity.

For nearly five years after the loan, the interest was punctually paid by Mrs. Bein, the house and lot were insured, and the policy annually assigned for the benefit of the mortgagee. These facts, connected with the representations which induced Heath to loan the money, show, if the loan was in fact for the husband, a deliberate fraud on her part. Under such circumstances, we think the complainant cannot invoke the aid of a court of chancery. She has acted against conscience, in procuring

the funds of the mortgagee. The law protects her, but it gives her no license to commit a fraud against the rights of an innocent party.

In the repeal of the law of Toro, and in substituting in its place article 2412, the legislature gave the most unequivocal evidence against the policy of that part of the repealed law which required proof to charge the wife that the money borrowed was applied to her use.

But in affirming the decree of the circuit court, we place our opinion upon the unconscientious acts of the wife. The decree of the circuit court is

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.