

**Stockton Vs. Ford**

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**Court :** US Supreme Court

**Decided On :** 1850

**Appeal No. :** 52 U.S. 232

**Appellant :** Stockton

**Respondent :** Ford

**Judgement :**

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**Stockton v. Ford**

**52 U.S. (11 How.) 232**

*APPEAL FROM THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF LOUISIANA*

## **SYLLABUS**

Where there was a judgment which had been recorded under the laws of Louisiana, and thus made equivalent to a mortgage upon the property of the debtor, and the plaintiff assigned this judgment, and was then himself sued and

had an execution issued against him, his rights under the recorded judgment could not be sold under this execution, because he had previously transferred all those rights.

It was not necessary for an assignee of this recorded judgment, who was defending himself in chancery by claiming under the assignment, to notice in his pleading an allegation in the bill that a release of the judgment was improperly entered upon the record. His assignment was not charged as fraudulent.

The attorney who had recovered the judgment which was thus recovered and assigned was not at liberty to purchase it when his client became sued and execution was issued against him.

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This suit was originally brought by Stockton in the district court (state court) of Louisiana by petition to enforce a judicial mortgage against a plantation and slaves in the Parish of Carroll which once belonged to Nicholas W. Ford, but at that time was in the possession of James C. Ford, the defendant below and appellee here. Ford appeared in the state court, and, being a citizen of Louisville, Kentucky, caused the suit to be removed to the Circuit Court of the United States for the Eastern District of Louisiana, where the cause was treated as a suit in chancery for the foreclosure of a mortgage.

The whole of the transactions connected with the suit were very complicated, but it will not be necessary, under the opinion of the Court, to state them fully. The following summary will render them intelligible.

On March 11, 1835, the respondent, James C. Ford, sold and conveyed to said Nicholas W. Ford several parcels of land and a number of slaves situate in said Parish of Carroll for the consideration of \$80,000 payable in five annual installments of \$16,000 each, the said Nicholas W. Ford thereby giving to the said James C. Ford a mortgage upon the said land and slaves, to have the force and effect of a judgment confessed, for said \$80,000.

On May 1, 1837, Roger B. Atkinson, of Vicksburg, drew his bill of exchange in favor of William B. Pryor upon N. & E. Ford & Co., of New Orleans, for \$7,442.74, payable seven months after date. This bill was accepted by the drawees, but was not paid, and after it was protested, Pryor became the holder and owner of it. The firm of N. & E. Ford & Co. was composed of Nicholas W. Ford, Edward Ford, and William F. Markham.

On June 10, 1837, three only out of the five annual installments having been paid to James C. Ford by Nicholas and James having come under other liabilities for Nicholas, Nicholas executed a mortgage of the land and slaves to secure the whole, and added other slaves.

On April 25, 1838, Nicholas mortgaged an additional number of slaves, with the stock, personal property, and crop.

On May 18, 1839, Nicholas mortgaged the then growing crop of corn and cotton.

In 1839, Pryor brought a suit in the Commercial Court of New Orleans against N. & E. Ford & Co., upon the bill of exchange.

On November 25, 1839, William Ford, Jr., a brother of Nicholas W. and James C. Ford, then aged nineteen years

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and theretofore residing with his father, William Ford, in the County of Bourbon in the State of Kentucky, appeared at the chambers of the judge of the Ninth District Court, Parish of Carroll, Louisiana, and obtained a decree for emancipation, dispensing him from the time prescribed by law for attaining the age of majority pursuant to the Act approved January 23, 1829.

On November 26, 1839, Nicholas sold to William Ford Jr. all the property in the Parish of Carroll for certain promissory notes.

In December, 1839, judgment was rendered in favor of Pryor in the suit upon the bill for \$7,442.74, with interest at five percent from December 4, 1837.

Mr. Stockton, the appellant, was afterwards employed by Mr. Pryor to attend to his claim against N. & E. Ford & Co., and, entertaining a doubt whether the judgment so recovered was sufficiently specific as to the persons against whom it was rendered, in December, 1839, commenced a suit in the Circuit Court of the United States for the Eastern District of Louisiana, in favor of Pryor, against Nicholas W. Ford, who was the only member of said firm residing in said district, to recover the amount of said bill of exchange.

To this suit Mr. Nicholas W. Ford appeared and pleaded a former recovery by Pryor in the Commercial Court of New Orleans upon said bill against all the members of said firm of N. & E. Ford & Co., and on the trial of said cause in support of said plea produced the record of said judgment so rendered by said commercial court, which the court held to be a judgment between the same parties for the same cause of action, and dismissed the suit, with costs.

On March 12, 1840, Pryor assigned his judgment to Jones, as follows:

"I hereby transfer to Dr. Joseph Jones all my right, title, and interest in a certain judgment in my favor against N. & E. Ford & Co. of New Orleans, obtained in the Circuit Court of Louisiana at New Orleans for about eight thousand dollars, more or less. The said Jones first paying the attorney's fees and all other costs out of the proceeds of said judgment, and then applying the balance to the payment of such debts of mine as said Jones may be responsible for, and the remainder, if any, to be paid over to me."

"WM. B. PRYOR"

"Vicksburg, 12 March, 1840"

Jones afterwards assigned this judgment to James C. Ford, the appellee.

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On January 2, 1841, the judgment in favor of Pryor was recorded in the mortgage book, making it equivalent to a mortgage.

"I, Felix Bosworth Parish Judge in and for the Parish of Carroll in the State of Louisiana, do certify the within copy of judgment to be recorded in my office in mortgage book B, folio 162."

"Given under my hand and seal of office, this 2d day of January, A.D. 1841."

"[L.S.] FELIX BOSWORTH, *Parish Judge* "

On May 12, 1841, William Ford, Jr., sold back to Nicholas all the property conveyed on 26 November, 1839.

On the same day Nicholas sold and conveyed all the property back to James C. Ford.

On 7 February, 1842, Charles M. Way and E. T. Bainbridge recovered a judgment in a suit commenced by them in the Commercial Court of New Orleans against Pryor and Howard, by which, after a discontinuance as to Howard, they recovered from the defendant, William B. Pryor, \$718.12, with five percent interest from 22 April, 1847, and costs of suit, with privilege on the property attached. Mr. Robert Mott was the attorney who prosecuted the suit for Way and Bainbridge, and Mr. Stockton, the appellant, defended the suit for Pryor.

On February 17, 1842, Felix Bosworth, Parish Judge of the Parish of Carroll and *ex officio* recorder of mortgages, entered on the mortgage book a release of the mortgage resulting from the recording of the judgment of Pryor against Ford & Co. by writing across the face of the record the following words: "This mortgage released by payment in full, February 17, 1842. FELIX BOSWORTH, *Parish Judge.* "

On 26 February, 1842, execution was issued on said judgment against Pryor, to the sheriff of said commercial court, upon which said sheriff seized, and, after all legal formalities had been complied with, advertised for sale the right, title, and interest of William B. Pryor in the said judgment recovered in the commercial court against N. & E. Ford & Co. for \$7,442.74, with interest at the rate of five percent per annum, from 4 December, 1837, and on 17 March, 1842, pursuant to such

seizure and advertisement, said sheriff sold the said judgment of Pryor against N. & E. Ford & Co. to the appellant for the sum of \$300, and on 19 April, 1842, conveyed the same to him by deed.

Mr. Stockton was, at the time of the purchase, the holder

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of a note drawn by said William B. Pryor, payable to the appellant's order, five days after date, and dated January 2, 1841, for \$800.

On 22 October, 1842, Stockton, the appellant, instituted in the District Court of Louisiana for the Parish of Carroll an hypothecary action against the respondent James C. Ford and said Nicholas W. Ford, setting forth his purchase of said judgment, the recording thereof on 2 January, 1841, and that on 12 May, 1841, Nicholas W. Ford, one of said defendants, owned and had possession of a large tract of land and negroes in said parish, and that he had sold them to the respondent, and praying judgment against James C. Ford as the owner and possessor of said property, and that he pay the amount of said judgment and interest, or deliver up said mortgaged property to be sold to satisfy it.

On 12 December, 1842, James C. Ford appeared, and obtained an order to remove the cause into the Circuit Court of the United States for the Eastern District of Louisiana. Nicholas W. Ford resided out of the State of Louisiana, and did not appear.

On 12 February, 1844, the circuit court ordered the case to be put upon the chancery docket, and to be proceeded in as a chancery suit.

It is not necessary to trace the progress of the suit through an amended bill and second amended bill and answer and supplemental and then an amended answer, and changing the pleadings and motions for rehearings.

Numerous depositions were taken, and the cause came on for argument, when, on 24 January, 1848, the circuit court passed the following decree:

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"This cause came on to be heard upon the bill, answers, replications, and exhibits; the evidence being adduced, and argument of counsel heard, and the court having maturely considered the same, it is ordered, adjudged, and decreed that the complainant's bill be dismissed, and the same is hereby dismissed, with costs."

Some further proceedings took place, but at last the decree was made absolute.

The complainant appealed to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This action was commenced in a district court of the state, and was removed by the defendant to the circuit court of the United States under the twelfth section of the Judiciary Act of 1789.

James C. Ford, the defendant, being the owner of a plantation and slaves in the Parish of Carroll, State of Louisiana, on 11 March, 1835, sold and transferred the same to Nicholas W. Ford, of Louisville, Kentucky, for the consideration of \$80,000 the payment of which was secured by a mortgage upon the property sold. A subsequent mortgage was also given by N. W. Ford and wife, dated 10 June, 1837, to the defendant, to secure him against several heavy liabilities he was under for him, and in which mortgage was included some \$32,000 of the original purchase money then remaining unpaid.

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On 26 November, 1839, N. W. Ford sold and transferred all his interest and estate in the plantation and slaves to William Ford, Jr., for the consideration of \$116,207.41, to secure the payment of which, the property sold was mortgaged by the vendee.

On 12 May, 1841, William Ford, Jr., resold and conveyed back to Nicholas W. Ford the plantation and slaves for the same consideration which he had agreed to pay for them, and which was paid by delivering up and canceling the securities given at the original purchase.

And on the same 12 May, 1841, Nicholas sold and transferred the plantation and slaves back to the defendant, from whom he had originally purchased them, for a large consideration, made up of a balance remaining due upon the first mortgage and liabilities he was under of Nicholas, and the payment of which he had assumed.

The interest and estate of the defendant in this plantation and slaves, under the title thus derived, are involved in the result of this suit. I have not gone into the particular facts and circumstances attending these several sales and transfers of the property, as the view we have taken of the case, and upon which we shall place our decision, renders it unnecessary to a proper understanding of the question.

The claim of Stockton, the plaintiff, is as follows.

On 3 December, 1839, one William B. Pryor recovered a judgment in the Commercial Court of New Orleans against N. & E. Ford & Co., of which Nicholas W. Ford was a member, for \$7,442.74, with interest at five percent from 4 December, 1837, and costs.

On 2 January, 1841, this judgment was filed and recorded in the office of the registry of mortgages and became a lien on the real estate and other immovable property of Nicholas W. Ford. And on 7 February, 1842, the firm of Way & Bainbridge recovered a judgment against William B. Pryor for \$718.12, with five percent interest from 22 April, 1837, and costs. An execution upon this judgment against Pryor was issued to the sheriff on 26 February, 1842, who seized all his interest in the judgment he had recovered against N. W. Ford; and, on 17 March following, in pursuance of such seizure, and after public notice according to law, sold the said judgment to Stockton, the plaintiff in this suit, for \$300, he being the

highest bidder; and on 19 April conveyed the same to him by deed.

The suit before us was instituted by the plaintiff under a title thus derived to this judicial mortgage for the purpose of foreclosing the same and calling upon James C. Ford, the

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defendant, to pay the amount of the judgment, principal and interest, or that a sale of the mortgaged premises be ordered.

It will be seen from the foregoing statement that the sale and transfer of the plantation and slaves in question by N. W. Ford to William Ford, Jr. took place on 26 November, 1839, and the judgment of Pryor against him was filed with the recorder of mortgages on 2 January, 1841, although recovered on 3 December, 1839, some seven days after the above conveyance.

It further appears also that on 12 May, 1841, William Ford, Jr. resold and transferred the property to N. W. Ford, who on the same day conveyed it to the defendant.

The plaintiff insists, therefore, that this judicial mortgage of Pryor against N. W. Ford, to which he had derived title under the sheriff's sale, became a lien upon the property, 1st, on the ground that the conveyance of 26 November, 1839, was made in fraud of the rights of judgment creditors, but, if not, 2d, that it became a lien from the time of the reconveyance to N. W. Ford, on 12 May, 1841, as he then became reinvested with the title.

The view we have taken of the case renders it unimportant to enter upon an examination of either of these questions, and we shall assume that the judgment was a lien upon the interest of N. W. Ford upon one or the other of the grounds above stated.

On 12 March, 1840, William B. Pryor assigned this judgment against N. W. Ford to Dr. Jones, to secure him for responsibilities he had assumed for the former, he agreeing to pay over the balance, if any remained after satisfying them. Dr. Jones

is a witness in the case, and testifies that the judgment was assigned to him by Pryor as an indemnity for large sums of money which he had paid and was liable to pay for him as surety, and that he had paid for him demands exceeding the amount of the said judgment for which he had no other satisfaction or security. That Pryor took the benefit of the Bankrupt Act of 1841. That soon after the assignment of the judgment to him, he placed on file in the office where the judgment was entered notice of the said assignment, and that the plaintiff had full knowledge of the fact.

These facts are confirmed by the testimony of Pryor, who is also a witness in the case.

The suit was not commenced by Way & Bainbridge against Pryor until 15 January, 1842, nearly two years after this assignment of judgment of Pryor against N. W. Ford to Jones. The assignment, as we have seen, was made upon full consideration, without any concealment, or, for aught that appears,

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intent to hinder or delay creditors; and was well known to the plaintiff long before he became the purchaser at the sheriff's sale. It passed the legal interest in the judicial mortgage out of Pryor, and vested it in Jones, as early as 12 March, 1840, and we are wholly unable to perceive any ground of equity in the plaintiff, or those under whom he holds, for disturbing it through a judgment against the assignor rendered nearly two years afterwards.

The sheriff's sale therefore could not operate to pass any interest in it to the plaintiff.

After the parties had proceeded to issue upon the pleadings, the plaintiff applied and obtained leave to withdraw the replication and amend his bill, and in that amendment he set forth, that on 17 February, 1842, the recorder of mortgages had entered on the mortgage book in his office a satisfaction and discharge of the judicial mortgage, which at that date was the property of Pryor; that afterwards it had become the property of the plaintiff by virtue of the sheriff's sale and

conveyance, and charges that the entry of satisfaction was illegal and void, as the judgment was then under seizure by the process of attachment in the suit of Way & Bainbridge against Pryor; that Pryor had no right to release the judgment; that he never received payment or satisfaction of the same, and that the discharge of record was fraudulently procured by Jones at the request of James C. Ford, the defendant, and that Jones had no interest or property in the same.

No answer was put in to this amendment, and the allegations were taken as confessed by the defendant.

This branch of the case has occasioned some embarrassment, and it is not readily perceived why the solicitor for the defendant should have omitted to put in the proper answer to the allegations, or have allowed them to be entered as confessed.

It will be seen, however, that the object of the amendment was to get rid of the entry of satisfaction of the judicial mortgage of record, which had been entered by the recorder of mortgages in due form, and which, while it remained, afforded a complete answer to the title set up by the plaintiff under the sheriff's sale, but which, of itself, was not essential, as it respected the ground of defense set up by the defendant. That rested upon the assignment from Pryor to Jones of 12 March, 1840. There is no charge made in the amendment of fraud in this assignment, nor any impeachment of its validity, except as may be inferred from the allegation that Jones was not the owner of the judgment, which is stated by way of showing that he possessed no authority at the time to cause the satisfaction to be entered.

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The defendant had set up in his first and supplemental answers, expressly, as one of the grounds of his defense, this assignment of the judgment from Pryor to Jones, and from Jones to himself; and that the plaintiff had full knowledge of the same. The fact, therefore, was at issue on the bill, answers, and replication, and unless it had been directly impeached in the amended bill, no further answer was necessary to enable the defendant to maintain it by the proofs.

This being the state of the pleadings at the time of the amendment of the bill, the admission that the entry of satisfaction of the judgment by the recorder of record was made without authority and void did not materially affect the ground and posture of the defense. For while the pleadings were such as enabled the defendant to maintain the force and validity of the assignment by the proofs, he was in a situation to defend himself against the claim of the plaintiff, independently of the question in respect to the entry of satisfaction.

If the amended bill had charged that the assignment had been made in fraud of the rights of creditors, and the charge had been taken as confessed for want of an answer, the question would have been very different. But there is no such allegation.

Indeed it is somewhat remarkable that neither in the original bill, nor in the amendments for there were two amendments, is there to be found a charge impeaching the good faith or validity of this assignment, although its existence was well known to the plaintiff, and while it remained, it was fatal to his deduction of title under the sheriff's sale.

In any view, therefore, that can be properly taken of the case, the plaintiff has shown no right or interest in the judicial mortgage which he seeks to enforce against the plantation and slaves in question. The whole interest had passed to the defendant.

There is another ground of defense set up in the pleadings, and supported by the proofs, which has not been satisfactorily answered. And that is that the plaintiff was the attorney of Pryor in the judgment against N. W. Ford, employed to enforce its collection, and while holding this relation to him, and after the assignment of Jones to the latter, he became the purchaser in his own name, without communicating the fact to his client, and obtaining his consent. Holding this relation to Jones at the time of the purchase, it was his duty to have advised him of the seizure and sale, so as to have enabled him to prevent a sacrifice of the judgment on the sale, and having not only neglected to do this, but having purchased the judgment

himself, a court of equity will fasten upon the purchase a trust for the benefit of the client.

The defendant therefore, standing in the place of Jones, would, upon clear principles of equity, have a right to demand of the plaintiff the title acquired at the sheriff's sale to the judicial mortgage, on paying the purchase money. And if the purchase was made in bad faith, and with the intent to speculate at the expense of the rights and interests of the client, using the knowledge derived from that relation for this purpose, the remedy might not be too strong even to set aside the sale, and relieve the property from the encumbrance without the terms mentioned.

It is true, this is not the case of an attorney purchasing property under an execution which he has issued on a judgment, the usual case in which a court of equity has interfered, and declared the purchase to have been made in trust for the client. But the principle is the same. He had the charge of the judgment, and was entrusted with the management of it for the purpose of collection, and can be allowed to do no act in the absence of the client, and without his consent concerning it, by which he may derive an advantage at the expense of the client.

Instead of the judgment, suppose the plaintiff had the charge and management of a plantation and slaves for his client, and an execution should come against them under which they were seized and sold; can it be doubted, if purchased in by the attorney in the absence of the client, and without his consent, that he could not hold the property discharged of the trust growing out of the relation existing between the parties? We suppose not. A court of equity, from the mere fact of such relation, would fasten upon the purchase a trust, without any inquiry into the motives or intentions of the attorney in making the purchase, and compel him to give up its benefits and advantages on the reimbursement of the purchase money. Neither fraud nor imposition need be shown. The client may, at his election, treat the act of done for his benefit.

There are few of the business relations of life involving a higher trust and confidence than that of attorney and client, or, generally speaking, one more honorably and faithfully discharged; few more anxiously guarded by the law, or governed by sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it.

But it is unnecessary to pursue this branch of the case, or to

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place our decision upon it, as the ground already taken, and stated more at large, affords a full and conclusive answer to the claim set up by the plaintiff.

The decree of the court below 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 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.