Doss Vs. Tyack

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Appellant : Doss

Respondent : Tyack

Judgement :

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Doss v. Tyack

55 U.S. (14 How.) 297

APPEAL FROM THE DISTRICT COURT OF THE

UNITED STATES FOR THE STATE OF TEXAS

SYLLABUS

A court has a right to set aside its own judgment or decree, dismissing a bill in chancery, at the same term in which the judgment or decree was rendered, on discovering its own error in the law or that the consent of the complainants to such

dismissal was obtained by fraud.

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A verdict on an issue to try whether a sale was fraudulent, finding the same to be fraudulent, will not he set aside on a certificate or affidavit of some of the jurors, afterwards made as to what they meant.

A Chancellor does not need a verdict to inform his conscience when the answer denies fraud in the abstract, whilst it admits all the facts and circumstances necessary to constitute it in the concrete.

A statement of the facts is contained in the opinion of the Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

A short history of the facts of this case, extricated from the numerous allegations of the pleadings and the mass of testimony contained in the record, will better exhibit its merits than a more formal abstract of the pleadings and proofs.

The appellees, who were complainants below, entered into articles of agreement with Samuel Newell, one of the respondents below, on the 25th of September, 1847, in which they engaged to form a co-partnership under the form and style of William Tyack & Co., in New York, and Stewart, Newell & Co., in Galveston, Texas. "The nature of the business to be transacted by said firm to be a commission, general, and auction business." The parties each to contribute towards the capital stock the sum of five thousand dollars within ninety days; the capital to be augmented as the business required, Newell,

"in consideration of his expense and labor in paving the way for the contemplated business as well as his influence in the State of Texas, to be entitled to one-fourth of the profits, and the balance to be equally divided between the three partners. Tyack and Murray to take charge of the business in New York, and Newell in

Galveston."

At the time these parties entered into this contract of partnership, their several ability to perform their agreement of advancing capital and supporting the credit of the firm, as shown by the pleadings and evidence, would appear to be as follows: Tyack was worth, in all, probably twenty thousand dollars; Murray had nothing, and owed about five thousand dollars; Newell, while resident in Texas, "had become interested in a claim belonging to Alexander Edgar to a league of land" on which it was supposed that the City of Galveston was built. He had come to New York at this time with a power of attorney from Edgar to form a stock company of persons who were to have an interest in this litigated claim. He had divided it into one thousand shares, to be sold at one hundred dollars each, payable in installments. He was to have half of all the money received for the stock, over twenty thousand dollars. A few persons had been persuaded to subscribe for some of this stock, and

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among others, Tyack and Murray had each agreed to take a few shares, and Tyack was appointed treasurer of the company under the name of "The Galveston Land Company." Newell's property or capital consisted in the anticipated profits of this speculation and some stock in another company, called the "Wilson Joint Stock Land Company."

The partners soon afterwards commenced business on about four or five thousand dollars, advanced by Tyack. Murray had nothing, and Newell's stocks would produce nothing in the market; those who had before subscribed for it, refusing to pay, on the plea or suspicion that it was good for nothing, as the citizens of Galveston had probably a better title to the land than the company. Thus the source from which Newell's capital was anticipated wholly failed.

In the meantime, a stock of goods was purchased for the house in Texas, costing about twenty thousand dollars, for the payment of which Newell had drawn bills on Tyack & Co. for some seventeen thousand dollars, which Tyack had accepted in

expectation of remittances of cotton or other produce from Texas, by Newell, to meet the bills at maturity. The business expected to be transacted by Tyack & Co. in New York, was the disposal of these consignments from the Texas house of cotton and other merchandise purchased with the funds of the firm in Texas.

In March, 1848, the acceptances in New York being near maturity and the consignments received from Newell to meet these large liabilities, amounting only to about eight hundred dollars, Tyack, to avoid impending bankruptcy if possible, called together the creditors of the firm and made a statement of its situation. In consideration of the creditors' agreeing to give further time on the acceptances about to mature, Tyack & Murray executed a power of attorney to William E. Warren, an agent chosen by the creditors, authorizing him to take possession of the property and effects of the firm in Texas and secure them for the benefit of the creditors. Warren was authorized by the creditors to act for them and to collect, secure, or compromise their claims in any way he thought best, with instructions to proceed to Texas and examine into the state of the firm, and if it was found that there was any probable prospect that the firm could eventually pay their debts, to make any reasonable arrangement for that purpose and suffer Newell to continue the business; on the contrary, if Newell could hold out no such prospect or if he was found to be wasting the goods of the firm and appropriating them to any other purpose than the regular mercantile business of the firm, the agent was instructed to get possession, by all legal means, of the

partnership assets and hold them or dispose of them in the best manner for the interests of the creditors and all concerned.

In pursuance of this authority, Warren proceeded to Galveston. He there found the assets in Newell's possession insufficient to pay the debts, and that the firm was hopelessly insolvent, and moreover that Newell had appropriated a portion of the assets of the firm to the payment of his personal debts incurred in his land stock speculations, and was unwilling to comply with any reasonable terms of compromise to secure the creditors or save his partner, Tyack, from insolvency

and ruin.

Warren then instituted proceedings in the state court on behalf of Tyack and the creditors and obtained an injunction and a writ of seizure against Newell, on which the sheriff took possession of the property of the firm. On 10 July, 1848, on motion of Newell's counsel, the court for some reason set aside the injunction and writ of seizure. The counsel for Tyack and the creditors immediately discontinued their proceedings in the state court and commenced proceedings in the district court of the United States. While the bill for that purpose was being prepared and application being made for an injunction and the appointment of a receiver Newell and one Peter McGreal proceeded in hot haste from the courthouse, got possession of the goods from the sheriff, and had the following instrument of writing executed:

"Received, Galveston, July 10, from S. W. Doss, of Brazoria, the following amounts: two thousand dollars in good notes, mortgages, liens, and judgments, and seven thousand seven hundred and fifty-three dollars in lands, full payment of the stock of goods, wares, and merchandise now in our store in Galveston."

"STEWART NEWELL"

"Recap. -- Cash, $2,000; Notes, $2,000; Lands, $7,753 -- Total, $11,753."

"In presence of John Warrin, Isaac D. Knight."

No notes, judgments, or liens were in fact assigned by McGreal to Newell, nor any conveyances of land made, but McGreal gave his written promise to assign and convey securities and lands to that amount within thirty days. The production of the two thousand dollars cash was also dispensed with, as the parties appear to have been in too great haste to be particular. The answer of Newell attempts to account for the cash as follows:

"This defendant states that the said first payment in cash of $2,000, mentioned in said receipt, was secured and made to this defendant by Peter McGreal, Esq., the agent of said Doss; that a portion of said sum of $2,000, to-wit, about $1,200, was

paid by the said McGreal, agent as aforesaid, to Benjamin C.

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Franklin, Joseph A. Swett, and John B. Jones, in pursuance of and in accordance with an order given by this defendant to said McGreal for that purpose; that forty-two dollars and fifty cents were paid upon the order of this defendant to J. A. Sauters for rent of said store due by said firm; and the balance, to-wit, about seven hundred and fifty dollars, was directed by this defendant to be paid over or secured to Isaac D. Knight, to be by him held to the use of the firm of S. N. & Co., to be paid over for the said use upon the order of this defendant in like manner as the said book debts and other choses in action assigned to said Franklin, as above mentioned."

What right Franklin, Swett, and Jones had to receive this money, or how or why it was paid to them, if it was paid, or how Knight, the brother-in-law of Newell, became a trustee for the creditors of the firm the answer does not disclose.

McGreal appears also to have treated Newell with the same unbounded confidence which Newell had reposed in him. He took the goods on trust as to quantity and quality, required no invoice or schedule, being content with one which the sheriff had made, and immediately commenced to pack them up and seek for assistance and means for carrying them off. The transaction commenced after twelve o'clock in the day, and by twelve o'clock at night, a large portion of the goods were put on board the sloop *Alamo,* which set sail before morning. In the meantime, the bill in this case had been filed and a receiver appointed, who, on the following day, 11th July, was enabled by means of a writ of assistance to arrest the sloop and get possession of the goods.

It is unnecessary to enumerate all the charges of the bill, and the answers thereto, as it is amply sufficient for the purposes of the decision in this case that the facts we have already stated were either admitted by the answers or undeniably proved.

The plaintiff in error, Stephen W. Doss, who claims to be the owner of the goods thus alleged to have been purchased by Peter McGreal was made a party to the

suit. Both he and Newell deny in their answer all fraud in the transaction, and Doss avers

"that the said transaction was made in the regular mode of conducting such business and at a time when there was no lawful restraint existing to prevent the sale and delivery of the goods."

On this case, the court below, at the March term, 1850, rendered a decree for the complainants dissolving the partnership, setting aside the sale to McGreal or Doss as fraudulent, and ordering the receiver to pay over the proceeds of the goods which had been previously sold by order of the court to the creditors of the firm.

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But in order rightly to apprehend the points relied on by the counsel for appellants in claiming a reversal of the decree, it will be necessary to state some of the intermediate proceedings in the case as exhibited by the record. During the pendency of the suit, Newell and McGreal had gone to New York and persuaded Tyack & Murray to revoke the power of attorney given to Warren and to execute one to the respondents' counsel authorizing them to dismiss the bill, and a motion was made by them for this purpose in August, 1848. This motion was resisted on the ground that the firm was wholly insolvent; that the power to Warren was given on a contract with the creditors and for a valuable consideration, and was therefore irrevocable, as it would be a fraud in Tyack to dismiss the proceedings for the benefit of the creditors after the great trouble and expense incurred by them for the purpose of protecting Tyack from ruin. Notwithstanding these objections, the court ordered the suit to be dismissed, but, some days after at the same term, vacated and set aside this order or decree on proof that the revocation of the power to Warren and the order given to discontinue or dismiss the proceedings were obtained from the complainants by gross misrepresentation and fraud. Afterwards an issue was ordered on prayer of respondents' counsel to try the question of fraud. This issue was tried before a jury, which rendered a verdict that "the sale was fraudulent." Whereupon, the respondents moved for a new trial on

the ground that the verdict was given "under a misconstruction and misunderstanding of the charge of the court." This motion was founded on an affidavit of some of the jurors that

"on their retirement they did not inquire into the right and power of Doss to purchase, nor of the question of fraud on Doss' part, but only into the right and power of Newell to make the sale."

We are now prepared to examine the points relied upon for the reversal of this decree.

They are 1st, that the court had no power to set aside the order or decree dismissing the bill unless, on a new and original bill filed for the purpose; 2d, that on this certificate of the jury the court should have granted a new trial on the question of fraud.

1. As regards the first point, we perceive no error in the action of the court except in their first order dismissing the suit. It did not require an original bill to authorize the court to vacate an order or decree at the same term in which it was made on discovering that they have committed an error or that the consent of the complainants to such dismissal was obtained by the fraud of the respondents, or their agents. In fact, under

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such circumstances, it cannot be said that the act was done by the consent or will of the complainants at all. The court, in vacating the decree, was correcting an error both of fact and of law, and during the term at which it was rendered, it had full power to amend, correct, or vacate it for either of these reasons.

2. The second point is equally without foundation. It is true that the answers of the respondents denied fraud in the abstract, but they admitted all the facts and circumstances necessary to constitute it in the concrete. The general denial of the answer only showed that the definition of fraud was much narrower in the estimation of the respondents than in that of courts of law and equity. In this case,

a verdict was wholly unnecessary to inform the conscience of the chancellor, and the verdict being perfectly correct, the court very properly refused to set it aside on any representation from jurors thus obtained.

Any argument to vindicate the correctness of the verdict and the decree of the court below after the exhibition of the merits of this case which we have given would be entirely superfluous.

The decree of the district court of Texas is therefore

" *Affirmed.* "

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Texas 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 district court in this cause be and the same is hereby affirmed, with costs.