

Stephens Vs. Cady

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Court : US Supreme Court

Decided On : 1852

Appeal No. : 55 U.S. 528

Appellant : Stephens

Respondent : Cady

Judgement :

Stephens v. Cady - 55 U.S. 528 (1852)

U.S. Supreme Court Stephens v. Cady, 55 U.S. 14 How. 528 528 (1852)

Stephens v. Cady

55 U.S. (14 How.) 528

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

Where the copyright of a map was taken out under the act of Congress, and the copperplate engraving seized and sold under an execution, the purchaser did not acquire the right to strike off and sell copies of the map.

The court below decided that an injunction to prevent such striking off and selling could not issue without a return of the purchase money. This decision was erroneous.

A copyright is a "property in notion, and has no corporeal tangible substance," and

Page 55 U. S. 529

is not the subject of seizure and sale by execution. It can be reached by a creditor's bill in chancery, but in such case the court would probably have to decree a transfer in the mode pointed out in the act of Congress.

The facts are stated in the opinion of the Court.

MR. JUSTICE NELSON delivered the opinion of the Court.

The bill was filed by the appellant in the court below to restrain the defendant from printing and publishing a map of the State of Rhode Island and Providence Plantations in violation of the complainant's copyright.

The facts are briefly these:

The complainant, on 23 April, 1831, took out the copyright of a map, the title of which is as follows:

"A Topographical Map of the State of Rhode Island and Providence Plantations, surveyed trigonometrically and in detail by James Stephens, topographer and civil engineer, Newport, R.I., 1831, the right whereof he claims as author, in conformity with the act of Congress entitled 'An act to amend the several acts respecting copyrights,' "

and since then has been engaged in printing, publishing, and vending the said maps by virtue of the copyright thus obtained. In March, 1846, a judgment was recovered against him in the Common Pleas of Bristol County, Massachusetts, for \$194.23, upon which an execution was issued, and the copperplate engraving of the map in question seized and sold and bid off by the defendant for the sum of

\$245, he being the highest bidder. Having thus become entitled to the property in the engraving, he claimed the right to print and publish the maps, and in pursuance of this supposed right he had been engaged in printing, publishing and vending the same.

On the hearing upon the bill, answer, and proofs, the court below differed in opinion as to the effect of the sale of the copperplate engraving of the map, but agreed that no injunction could issue without a repayment of the purchase money, which was refused by the complainant, whereupon the court dismissed the bill with costs.

The single question in the case is whether or not the property acquired by the defendant in the copperplate at the sheriff's sale carried with it as an incident the right to print and publish the map engraved upon its face.

Page 55 U. S. 530

Upon this question the court below divided in opinion, but finally agreed in dismissing the bill.

The appellee has not followed the case into this Court, and we have not, therefore, been favored with the grounds and reasons relied on for sustaining the decree; nor have we been furnished with the reasons of the court for the same. The ground upon which the decision was ultimately placed -- namely the refusal of the complainant to refund that purchase money -- is certainly not satisfactory, for if the copyright of the map or any right to print or publish the same passed with the purchase of the plate as incidental, as there is nothing in the facts of the case to invalidate the sale, the title became complete in the purchaser and could not be rightfully interfered with. But if otherwise, then there was no ground for imposing the repayment of the purchase money as a condition to the relief prayed for; the injunction should have been awarded and the defendant directed to account.

But from the consideration we have given to the case, we are satisfied that the property acquired by the sale in the engraved plate, and the copyright of the map

secured to the author under the act of Congress, are altogether different and independent of each other, and have no necessary connection. The copyright is an exclusive right to the multiplication of the copies for the benefit of the author or his assigns, disconnected from the plate or any other physical existence. It is an incorporeal right to print and publish the map, or, as said by Lord Mansfield in *Millar v. Taylor*, 4 Burr. 2396, "a property in notion, and has no corporeal tangible substance."

The engraved plate and the press are the mechanical instruments or means by which the copies are multiplied, as the types and press are the instruments by which the copies of a book are produced. And to say that the right to print and publish the copies adheres to and passes with the means by which they are produced would be saying, in effect, that the exclusive right to make any given work of art necessarily belonged to the person who happened to become the owner of the tools with which it was made, and that if the defendant in this case had purchased the stereotyped plates of a book, instead of the engraved plate, he would have been entitled to the copyright of the work, or at least to the right to print, publish, and vend it, and yet we suppose that the statement of any such pretension is so extravagant as to require no argument to refute it. Even the transfer of the manuscript of a book will not at common law carry with it a right to print and publish the work without the express consent of the author, as the property in the manuscript and the right to multiply the copies are two separate and

Page 55 U. S. 531

distinct interests. 4 Burr. 2330, 2396; 2 Eden 329; 2 Atkyns 342; 2 Story 100.

Lord Mansfield observed in *Millar v. Taylor* that

"No disposition, no transfer of paper upon which the composition is written, marked, or impressed, though it gives the power to print and publish, can be construed a conveyance of the copy, by which he means copyright, as appears from a previous part of his opinion, without the author's express consent 'to print

and publish,' much less against his will."

Now it seems to us that the transfer of the manuscript of a book by the author would of itself furnish a much stronger argument for the inference of a conveyance of the right to multiply copies than exists in the case of a transfer of the plate in question or of the stereotype plates as the ideas and sentiments -- or in other words the composition and substance of the work -- is thereby transferred. But the property in the copyright is regarded as a different and distinct right, wholly detached from the manuscript or any other physical existence, and will not pass with the manuscript unless included by express words in the transfer.

The copperplate engraving, like any other tangible personal property, is the subject of seizure and sale on execution, and the title passes to the purchaser the same as if made at a private sale. But the incorporeal right, secured by the statute to the author, to multiply copies of the map by the use of the plate, being intangible and resting altogether in grant, is not the subject of seizure or sale by means of this process -- certainly not at common law. No doubt the property may be reached by a creditor's bill and be applied to the payment of the debts of the author the same as stock of the debtor is reached and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors. 20 J.R. 554; 5 J.Ch. 280; S.C., 4 *id.* 687; 1 Paige 637. But in case of such remedy, we suppose, it would be necessary for the court to compel a transfer to the purchaser in conformity with the requirements of the copyright act in order to invest him with a complete title to the property. The first section of that act provides that the author of any map, chart &c., his executors, administrators, or legal assigns, shall have the sole right of printing, publishing, and vending the same during the period for which the copyright has been secured. And the seventh section forbids any person from printing, publishing, or selling the map or chart, under heavy penalties, without the consent of the proprietor of the copyright, first obtained in writing, signed in the presence of two credible witnesses. Act of Congress, Feb. 3, 1831.

An assignment, therefore, that would vest the assignee with the property of the copyright according to the act of Congress must be in writing and signed in the presence of two witnesses, and it may, I think, well be doubted whether a transfer even by a sale under a decree of a court of chancery would pass the title so as to protect the purchaser unless by a conveyance in conformity with this requirement. 6 B. & Cranch 169; 1 Car. & P. 558; R. & M. 187; D. & K. 215.

It is unnecessary, however, to express an opinion upon the point. It is sufficient for the purposes of this case to say that the right in question is wholly independent of and disconnected from the engraved plate, and that there is no foundation for the defense set up that it passed as appurtenant to the sale and transfer of the property in the engraved plate from which the copies of the map were struck off.

For these reasons we are of opinion that the decree below, must be

Reversed with costs and the proceedings remitted with directions that a decree be entered for the complainant in conformity with this opinion.

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 Rhode Island 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 reversed with costs, and that this cause be, and the same is hereby remanded to the said circuit court with directions to enter a decree therein in conformity to the opinion of this Court.