**Secombe Vs. Steele**

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**Court** : US Supreme Court

**Decided On :** 1857

**Appeal No.** : 61 U.S. 94

**Appellant** : Secombe

**Respondent** : Steele

**Judgement** :

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**Secombe v. Steele**

**61 U.S. (20 How.) 94**

*ERROR TO THE SUPREME COURT*

*OF THE TERRITORY OF MINNESOTA*

## SYLLABUS

When a transcript of a record of another court was attached to the answer as an exhibit, and portions of it particularly referred to, and the record of the entire case pleaded, a decree, certified by the clerk, which had been executed by the parties,

must be considered as part of the record, although it had not the signature of the judge. The signature of the judge is not the only evidence by which a decree can be authenticated.

Property was agreed to be sold, and the payment was to be made by a deposit of the price in one of two banks in Boston, and a certificate delivered to the vendor. The vendee made the deposit in another bank in Boston, and tendered the certificate to the vendor, within the time limited, and the vendor having refused to receive it, he tendered the purchase money and interest, and that being refused, he filed his bill for a specific performance, and paid the money into court. *Held* under the circumstances to be sufficient.

Creditors of the vendor, who recovered judgments and sold the property, pending a suit for a specific performance, in which the purchase money had been paid into court, are not necessary parties to the suit, nor are the purchasers at the sheriff's sale under such judgments.

Under a statute of Minnesota, the court of chancery might divest the title of the defendant in the land without requiring him to make a conveyance.

By stipulation of counsel, Secombe was made the representative of numerous other parties engaged in a common cause.

The chronological history of the case was this.

In the latter part of 1851, suits were pending between Steele and Arnold W. Taylor with regard to their respective interests in a parcel of land near St. Anthony's Falls, of which they were tenants in common.

On the 17th of January, 1852, Taylor executed his bond of conveyance of the property to Steele for the consideration of twenty-five thousand dollars, one thousand of which was to be paid in cash, and the remaining twenty-four to be deposited to the credit of Taylor, within sixty days, in the Merchants' or Suffolk Bank, in Boston.

On the 19th of January, 1852, this bond of conveyance was

recorded in the proper office, under the following provisions of the Minnesota Revised statutes, chap. 47, 215:

"SEC. 1. All bonds, contracts, or agreements, concerning any interest in lands in this territory, made in writing under seal, attested by one or more witnesses, and acknowledged before some person authorized by law to take acknowledgments of deeds, may be recorded in the office of the register of deeds of the county where the land lies."

"SEC. 3. Each and every bond, contract, or agreement, made and recorded according to the provisions of the first section of this chapter, shall be notice to, and take precedence of, any subsequent purchaser or purchasers, and shall operate as a lien upon the lands therein described, according to its import and meaning."

One of the questions which arose in the case was with reference to the import and meaning of the bond.

It was alleged by Steele that on the 17th of March, 1852, he tendered to the Suffolk Bank, and also to the Merchants' Bank, in Boston, the sum of twenty-four thousand dollars, and requested a certificate of deposit therefor, but that each of the banks refused to receive the money. In consequence of such refusal, he deposited the money in the Bank of Commerce, at Boston, and received a certificate of deposit from that bank. On the 5th of May, 1852, he tendered this certificate to Taylor, who refused to receive it or to execute a deed of conveyance.

On the 25th of May, 1852, Steele filed a bill in equity, that form of proceeding not having been then abolished, praying for a specific performance of his contract with Taylor, and paid into court the sum of $24,240. He also obtained an injunction prohibiting Taylor from selling or encumbering the property &c.; Taylor answered the bill, and moved to dissolve the injunction, which motion was overruled, and the case stood for hearing upon bill and answer in July, 1852.

During the winter of 1852-1853, whilst the cause was pending as above described, Secombe and other creditors of Taylor obtained judgments against him, sued out executions which were levied upon the property included in his bond to Steele, and at the sheriff's sale the plaintiffs in error became purchasers, receiving deeds for their respective purchases.

In March, 1853, Secombe and the other purchasers, petitioned to be admitted as parties to defend the suit against Taylor, which petition was granted, and a certain time given for the filing of their answers.

In April, 1853, Steele moved to vacate this order and dismiss the petitions.

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Affidavits were filed on both sides, and on the 4th of May, 1853, the order was vacated, and the petitions dismissed.

From this order, Secombe took an appeal to the supreme court of the territory.

On the same 4th of May, a decree was made by the court, whereby Taylor was ordered to execute conveyances to Steele, and the sum of $24,240, which had been deposited in court, was ordered to be paid to Taylor. This decree was founded on the consent of Steele and Taylor, filed in court.

Pending the above appeal, Steele instituted the suit now under the consideration of this Court against Secombe and fifty-three other persons, who claimed under the sheriff's sales. It was an action at law, brought under a local statute, by way of petition. The plaintiff was in possession, and brought the suit against the persons who claimed an estate or interest in the property. The petition was constructed like a bill in chancery, and, after reciting the facts in the case, concluded thus:

"Wherefore the plaintiff demands judgment, determining the title to the said real estate so conveyed to him by the said Arnold W. Taylor to be in the plaintiff, and requiring the defendants, respectively, to release their said adverse claims to estates or interests therein to the plaintiff,"

&c.;

The defendants answered; the plaintiff demurred; the court sustained the demurrer, and gave the defendants leave to file an amended answer.

The amended answer introduced the record of the former suit; when the plaintiff moved to strike out all that part of the answer, and demurred to the residue. The court sustained the motion and demurrer, and gave judgment for the plaintiff, which on appeal was affirmed by the supreme court of the territory.

A writ of error brought the case up to this Court.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The defendant in this Court (Steele) instituted a suit in the District Court of Ramsey County, Minnesota Territory, against fifty-four defendants, to determine the validity of their "claim," "estate," or "interest," in certain real property at St. Anthony's Falls in that county, of which he was possessed and in which he claimed to have an estate in fee simple under certain conveyances which are appended to his complaint. This complaint shows that, in 1849, the plaintiff and Arnold W. Taylor were tenants in common of a parcel of land which includes the property in dispute, and so occupied it until 1852. A portion was laid off into town lots, some of which were sold; expensive mills and other improvements were projected and partially completed on it, and controversies arose and suits were pending between them when the parties, in January, 1852, came to an agreement of sale. By this agreement, Taylor contracted to sell to the plaintiff his interest in the real property unsold, and the money and securities taken for the lots sold, for the sum of twenty-five thousand dollars, and upon the condition that the plaintiff should acquit him from the payment of a certain demand, and assume his liabilities on

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certain contracts for labor and building materials. Of this sum, one thousand dollars were to be paid presently, and the remainder was to be paid in sixty days from the date, at the Merchants' or Suffolk Bank, at Boston, and a certificate of deposit furnished to Taylor at St. Anthony's Falls, and in case of a default, the deposit of one thousand dollars was to be a forfeit. But if the payment was made in the manner stipulated, conveyances were to be executed by Taylor; and meanwhile he was to remain in the possession of the mill. The conveyances referred to in these articles were not executed until May, 1853, and purport to have been made in obedience to a decree of the District Court of Ramsey County, in a suit commenced by Steele against Taylor.

The complaint of Steele against the fifty-four defendants is that they claimed an "estate," "interest," or "right," in that property, have from time to time declared that they were owners thereof, and have executed conveyances for a portion, and offer to sell or dispose of other parts, contrary to the right of the plaintiff.

The object of the suit is to relieve the title of the plaintiff from the mischief of these adverse claims; to quiet his possession by means of a decretal order requiring the defendants to release them, or, in case of their failure to do so, that the judgment of the court may stand and be recorded in its stead. This proceeding is authorized by the revised statutes of Minnesota, ch. 74, sec. 1.

The twelve persons who are plaintiffs in this Court, and were defendants in the district court, appeared there, and severally claimed title to parcels of land included in the conveyances of Taylor to the plaintiff. Their claims respectively rest upon the facts, that between November, 1852, and April, 1853, judgments were rendered against Taylor in the district court, upon which executions issued, and levies and sales were made of those parcels before May, 1853, in the regular course of judicial proceeding. At these sales, the defendants were either purchaser or derive title from such persons.

The defendants aver that their title is paramount to that of the plaintiff, for that the plaintiff is not entitled to any benefit from the articles of agreement executed by Taylor, in January, 1852, and then recorded, because he failed to comply with the

obligation to pay twenty-four thousand dollars as agreed to by him.

And to avoid the recitals in the deeds, to the effect that they were executed under a decretal order of the court, they say that in May, 1852, the plaintiff filed a bill in the district court, to compel Taylor to a specific performance of the contract of

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January preceding. That upon the bill, the judge made an order for the payment of the twenty-four thousand dollars into court by Steele, and, upon the fulfillment of this flat, that an injunction should issue to restrain Taylor from selling, conveying, or encumbering the property or in anywise intermeddling with it. That an injunction and subpoena issued, and that Taylor appeared, answered, and unsuccessfully moved to dissolve the injunction, in July, 1852. That no other act was done by the plaintiff until April, 1853, when the rights of the defendants had attached by those purchase from the sheriff. That in March, 1853, the defendants applied to the district court to be made defendants in the cause, which application was finally unsuccessful, and that the plaintiff and Taylor then fraudulently closed their controversy by a decree rendered by consent, under which the conveyances were made, and that their object was to defeat the claims of these defendants.

That, by this arrangement, the terms of the contract of January, 1852, were not adhered to, and that the twenty-four thousand dollars were not paid as stated in the deed.

It was a question in the district court, as well as in this Court, whether the decree and the agreement leading to it that form a part of the record here properly belong to the case. The defendants in the district court maintained that it was pleaded by them. They are found in an exhibit to the answers -- an exhibit which purports to be a transcript from a record in the Supreme Court of Minnesota, as furnished on an appeal from the District Court of Minnesota by the defendants, upon the decree disallowing their claim to be made defendants. Portions of this transcript are referred to in the answers as forming material papers in the chancery suit, and the whole suit is referred to in the answers to support its allegations, and it is

specifically set up and pleaded. We think, therefore, that the record of that suit, as it appears in the exhibit, must be taken as authentic in deciding upon the sufficiency of the answer as a bar to the plaintiff's complaint. The decree purports to have been made by the court; it is formal, and disposes of the cause, and is only defective in not having the signature of the judge. But it comes from the legal custody, has been accepted by the parties and acted on by them, and was certified to the supreme court of the territory as a paper in the cause. We do not regard the signature of the judge as indispensable to its authenticity. The statute that directs the signature must be considered as directory, and other evidence to establish its verity as a record of the court may be considered.

In the district court, the plaintiff moved to strike out portions



of the answer for insufficiency and on other grounds, and demurred to the residue. His motion and demurrer were sustained, and a final decree rendered for the plaintiff. This decree was affirmed on appeal to the supreme court, and the defendants in that court prosecute their writ of error to this Court. The statutes of Minnesota prescribe:

"That the court must in every stage of an action disregard any error or defect in the pleadings and proceedings which does not affect the substantial rights of the adverse party, and no judgment can be reversed or affected by reason of such error or defect."

The question to an appellate court in the present case is do the answers of the defendants, as pleaded by them, disclose a valid claim to the property in dispute, so as to bar the petition of the plaintiff for relief? No objection is taken to the validity of the contract of January, 1852, between the parties, Steele and Taylor. The record of that contract is notice to subsequent purchasers, and Steele, by the statutes of the territory, was entitled to have "precedence of" them, and "a lien upon the land, according to the import and meaning of the contract." Rev.Stat. ch. 47, sec. 3.

It is not denied that the plaintiff paid one thousand dollars at the execution of the contract, nor that the twenty-four thousand dollars were paid within sixty days into a bank at Boston -- a bank of solvency and credit -- nor that a certificate of deposit within a reasonable time afterward was offered to Taylor, at St. Anthony's Falls; nor that, upon his refusal to take the latter, the money and interest were immediately tendered to him; and, upon a farther refusal, that relief was sought from a court of chancery, whose order for the payment of the money into court was promptly complied with. The precise grounds of complaint are that neither the Merchants' nor Suffolk Bank was made the depository of the money, and a certificate from one of them has never been tendered to Taylor, and that he has the right to rely upon the letter of his contract. No specification has been made of any injury or inconvenience suffered by him as a consequence of the deposit having been made in the Bank of Commerce, rather than the banks mentioned in the agreement. And the plaintiff avers that the only reason for the change was the refusal of those banks to give a certificate of the kind mentioned.

At law, if there is an express agreement for the payment of the purchase money, and the delivery of the conveyance of the land by a particular day, and at a particular place, the parties will be bound by it, and time will be of the essence of the contract. But, in equity, the estate bargained and agreed to be sold becomes the property of the purchaser as soon as the

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agreement is concluded. It will descend to his heirs at his death, or may be devised by him, while the purchase money vests in the vendor, and forms a part of his personal estate. In the ordinary case of the purchase of an estate, the assignment of a particular day or a specified place for the perfection of the title is considered as merely formal, the general object of the contract being the sale of an estate for a given sum, and the stipulation signifying that the purchase shall be completed promptly, and in a reasonable manner, regard being had to the circumstances of the case, and the nature of the title and property. Time may be made of the essence of the contract by express stipulation, or it may become essential by considerations arising from the nature of the property or the character

of the interest bargained. And the principle of the court of equity does not depend upon considerations collateral to the contract merely, nor on the conduct of the parties subsequently, showing that time was not of the essence of the contract in the particular case.

But it must affirmatively appear that the parties regarded time or place as an essential element in their agreement, or a court of equity will not so regard it. *Hiperall v. Knight,* 1 Y. & C. 416. In *Parkin v. Thorald,* 16 Beav. 59, the Master of the Rolls said:

"A contract is undoubtedly construed alike both in equity and at law; nay, more -- a court of law is the proper tribunal for determining the construction of it. But courts of equity make a distinction in all cases between that which is matter of substance and that which is matter of form, and if it find that by insisting on form the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form and thereby defeat the substance. For instance, A has contracted to sell an estate to B, and to complete the title by the 25th October; but no stipulation is introduced, that either party considers time of the essence of the contract. A completes the title by the 26th; at law, the contract is at an end, and B may bring an action for the nonperformance of the contract and obtain damages for the breach, but equity holds that unless B can show that the delay of twenty-four hours really produced some injury to him, he is not to be permitted to bring this action or to avoid the performance of the contract -- not, certainly, on the ground that the 25th October was not a part of the contract, but on the ground that it is unjust that B should escape the performance of a contract which has been substantially performed by A by reason of some omission in a formal but immaterial portion of it."

Upon a view of the chancery record, our conclusions are that the plaintiff, in good faith, attempted a literal performance

of his contract with Taylor; that the deposit of the money due, in a bank of solvency and credit, other than those named in the contract, did not inflict an injury upon Taylor, and the offer of its certificate of deposit, *prima facie,* was a substantial performance of its requirements. That his subsequent offer of the money and the interest that had accrued, and, on the refusal of Taylor to receive it, his prompt application to chancery, and payment of the money into court, relieve the plaintiff from every imputation of laches or delay. The district court expressed an opinion corresponding to this, in July, 1852, in denying the motion to dissolve the injunction, and this was a virtual decision of the cause in that court.

These transactions occurred before the judgments against Taylor, under which the land was afterwards sold, were rendered by the district court. The district court had the parties before it, and held the defendant Taylor under restraint, by injunction, and the purchase money in its custody. It had been empowered by a statute of the territory

"to pass the title to real estate by a decree, without any other act to be done on the part of the defendant, when, in its judgment, it was the proper mode to carry its decree into effect."

Rev.Stat.Minn., 466, sec. 33. But before the transfer to the plaintiff had been made, judgments were obtained and docketed against Taylor, which were "a lien upon all the real property of the debtor in the county owned by him at the date of the judgment, or afterwards acquired." The influence of these judgments, and of the levy of the executions upon the land described in the agreement of January, 1852, and the sale under those executions, remains to be considered. The twelfth of the "Ordinances in chancery" of Lord Bacon is that no decree bindeth any that cometh in *bona fide* by conveyance from the defendant before bill exhibited, and is made no party, neither by bill nor the order; but where he comes in *pendente lite,* and while the suit is in full prosecution, and without any color of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermission of the suit, or the court made acquainted with, the court is to give order upon the special matter according to justice. The rule has been applied with steadiness to all cases of transfer during the progress of a cause, notwithstanding

the hardship of individual cases, from considerations of public policy and convenience. Suits would be interminable, if the rights of the parties could be disturbed by mesne conveyances, and a necessity imposed for the introduction of other parties upon the record. The apparent exception to the rule arises when an event occurs which deprives the party on the record not only of his interest in the subject of

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the suit, but also of his faculty to comply effectively with the decree of the court. In such a case, additional parties are necessary to enable the court to make an operative decree. The court of chancery ordinarily acts *in personam,* and, in cases like the present, perfects the title of the purchaser by requiring the vendor to execute a title conformably to the agreement. But in cases of bankruptcy and insolvency, the bankrupt or insolvent is stripped of his rights of property and of his capacity to defend suits in which he is a party. In such cases, the assignees are commonly made parties, Dan'l Pr. 328; but there are opposing authorities -- *Cleveland v. Boerun,* 23 Barb. 201. And it has been decided that a purchaser under an execution issued on a judgment rendered *pendente lite,* need not be made a party in such a case. *Scott v. Coleman,* 5 Mon. 73

The statute we have cited from the Code of Minnesota enlarges the powers of the court of chancery of that territory, and enables it to act *in rem.* It may pass the title without any act of the defendant. The bill, subpoena, and injunction, placed the property wholly under the control of the court of chancery and new parties were not requisite to enable the court to vest the title in the equitable claimant.

This principle is not peculiar to courts of chancery, but the maxim that *"pendente lite nihil innovetur,"* is applied in real and mixed actions by the common law. 2 Dana 25; 9 Cowen 233.

Was there a valid exercise of the jurisdiction of the court, and did the decree pass the title to the purchaser? Had the plaintiff any duty to perform, in regard to the application of the purchase money, in the registry of the court? Some authorities

affirm that a purchaser of the legal title at a judicial sale immediately succeeds to the rights of the debtor, and that the equitable claimant under an executory contract becomes responsible to him for the purchase money remaining unpaid. *Mayer v. Hinman,* 17 Barb. 137; 16 Serg. & R. 18. Other authorities recognize the right of the purchaser to the benefit of the contract from the time that the equitable claimant has notice of the sale and conveyance by the sheriff. *Mayer v. Hinman,* 3 Kiernon 180; 2 Ired.Eq. 507; 4 Madd. 506, note; while other well considered cases deny that the purchaser at the sheriff's sale obtains a title which can be interposed to impede the progress of the legal title to the purchaser by articles, or operates as a transfer of his debt for the unpaid purchase money from his vendor to the claimant under the judgment. *Chinn v. Butts,* 3 Dana Ky. 547; *Lodge v. Lysely,* 4 Simon 70; *Whitworth v. Gauvain,* 3 Hare 416; *Scott v. Coleman,* 5 Mon. 73. The case reported in 3d Dana was a contest between two

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purchasers -- one under an executory contract, and the other under a judgment against the vendor while a part of the purchase money remained unpaid. The holder of the sheriff's title recovered in an ejectment, and the questions decided arose on a bill for relief filed by the defendant upon his elder equitable title. The court said that

"the purchase of the entire legal title, with notice of an outstanding equity, arising from a previous sale of the land by the same vendor to a stranger, does not *per se* transfer to the purchaser any right, legal or equitable, to any portion of the unpaid consideration remaining due to the vendor from the first buyer, and if there should be any extraneous ground for an equitable substitution, it should be asserted and shown by the purchaser before the stranger holding the prior equity had made full payment to the vendor. If there be such an equity, it is against the vendor, and not against the debtor, and whether it exist or will ever be asserted the debtor cannot be presumed to know."

Without attempting to reconcile these cases or to discover whether that is possible, it is evident that the present case does not fall within the limits of either of

them. The right of the plaintiff to precedence over the judgment creditor, or the purchaser under his execution, does not depend upon the exercise of the extraordinary jurisdiction of the court of chancery and is not confined by the rules under which that court administers that jurisdiction. His priority is a legal right, reposing upon the legislative authority. Before the judgment creditor had established his debt, the plaintiff had acquired possession of the property and had paid his money into court. His purchase money was thus paid. If the purchasers from the sheriff acquired any title to that money by their purchase of the land, it is evident that it should have been asserted by a direct appeal to the court, and not by an adversary proceeding at law for the land. If a person *pendente lite* takes an assignment of the interest of one of the parties to the suit, he may, if he pleases, make himself a party by bill, but he cannot by petition pray to be admitted as a party defendant; all that the court will do is to make an order that the assignor shall not take the property out of court without notice. Dan'l Ch.Pr. 329; *Wiswall v. Simpson,* 14 How. 52.

We do not consider that the act of Taylor in consenting to a decree, or the act of the plaintiff in accepting one, is evidence of any fraud or of a conspiracy against the defendants in this suit. The decree was a consequence of the opinion of the court upon the cause as presented by the pleading, on the motion to dissolve the injunction, and so far as the equities of the parties are to be considered, the decree embodies them.

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There is no other specification of fraud, and the general charges of fraud, unaccompanied by a statement of the facts constituting the fraud, have no effect or influence.

We are of opinion that there is no error in the record, and the judgment of the Supreme Court of Minnesota territory is

*Affirmed.*