Lawrence Vs. Tucker

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Appeal No. : 64 U.S. 14

Appellant : Lawrence

Respondent : Tucker

Judgement :

Lawrence v. Tucker - 64 U.S. 14 (1859)
U.S. Supreme Court Lawrence v. Tucker, 64 U.S. 23 How. 14 14 (1859)

Lawrence v. Tucker

64 U.S. (23 How.) 14

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

Where a mortgage was given to secure the payment of a note for $5,500, and such advances as there had been or might be made within two years, not to exceed in all an indebtment of six thousand dollars, and advances were made, the

mortgage was good to cover the advances and the note for $5,500.

The parties to the transaction so understood it, and acted upon it accordingly.

Page 64 U. S. 15

In respect to the validity of mortgages for existing debts and future advances, there can be no doubt. This Court has made three decisions directly and inferentially in support of them.

The nature of the mortgage and the circumstances under which it was given are set forth in the opinion of the Court, and need not be repeated.

Page 64 U. S. 22

MR. JUSTICE WAYNE delivered the opinion of the Court.

We have been unable to find anything in this record to authorize us to change or modify the decree made by the circuit court in this case.

Andrew Lawrence filed his bill in that court, for the Northern District of Illinois, against Hiram A. Tucker, to redeem the furniture of a hotel in the City of Chicago, called the Briggs House, upon which Tucker has a mortgage.

On the 1st of September, 1856, John J. Floyd and George

Page 64 U. S. 23

H. French, who then were the keepers of that hotel, wishing to have a current business credit with Tucker and firm of H. A. Tucker & Co., and the bank named in the mortgage, executed, under the name and firm of Floyd & French, to Hiram A. Tucker, a mortgage of the furniture of the hotel to secure a note of Floyd & French, made to Tucker, for $5,500, and such advances of money as there had been or might be made within two years, by H. A. Tucker, H. A. Tucker & Co., or the Exchange Bank of H. A. Tucker & Co., not to exceed in all an indebtment of six

thousand dollars in addition to the sum for which their note was given. The note was dated on the 1st of September, the day on which the mortgage was made, payable one day after date, with interest at the rate of ten percent per annum. The note was to be held by Tucker as a collateral security for such advances as have just been stated, and the amount of the note also. Under this arrangement, successive advances were made to Floyd & French on their checks or by discount of their notes until sometime in October, 1857, when they ceased.

Tucker, during this time, continued to hold the note for $5,500. He also held several other promissory notes of Floyd & French, as appears by the exhibits, C, D, E, G, H annexed to Tucker's answer to the complainant's bill. All of these notes except that for $2,000 are drawn payable to H. A. Tucker; all of them are prior in dates to other mortgages upon the same furniture, except the note just mentioned for $2,000, and that was a renewal of a note for a loan made on the 26th September, 1857, prior to the date of the mortgages made to Briggs & Atkyns. The mortgage to Briggs was made on the 19th November, 1857, by Floyd & French, and one Ames, who had been taken into their firm. It was given to secure debts due to Briggs and liabilities he had assumed for them, and also for such advances of money as Briggs might thereafter make to them, with a power of sale on default. When Briggs took this mortgage, he knew that Tucker had a prior mortgage on the same furniture, and he states in his evidence that he knew advances of money had been made upon it by Tucker for which he knew it stood as a security.

On the 12th of January, 1858, Floyd & French and Ames made a third mortgage of the same property to Henry Atkyns as trustee, with a like power of sale, to secure debts mentioned in it. Both of these mortgages refer to Tucker's mortgage as an existing encumbrance upon the furniture &c.; Briggs and Atkyns had then, of course, notice of Tucker's mortgage.

Atkyns sold the furniture under his power of sale on the 27th February, 1858; Briggs sold under his power of sale on the 12th March following. Lawrence

became the purchaser at both sales. Briggs sold to him expressly subject to the mortgage of French & Floyd to H. A. Tucker, and Lawrence admits, by a stipulation in the record, that when he purchased the property under the mortgages, he had notice that either the defendant Hiram A. Tucker or H. A. Tucker & Co. held the notes against Floyd & French, as they are set forth in the defendant's answer, and that the amount was claimed to be due upon them, as it is set out in the answer.

Upon referring to that answer and its exhibits C, D, E, G, H, we find that the only securities now claimed to be due are, with one exception, notes of hand given by Floyd & French, payable to the order of H. A. Tucker alone, precisely within the mortgage, and that the note of December 18, 1857, payable to H. A. Tucker & Co., for the sum of two thousand dollars, payable at the counting house of H. A. Tucker & Co., in Chicago, was for an actual loan of money, and that it was the renewal of a former note for the same sum dated the 26th September, 1857.

We have, then, the admission of the complainant that when he purchased under the mortgages of Briggs & Atkyns, he knew the particular items constituting the outstanding unpaid debt of Floyd & French to Hiram A. Tucker and H. A. Tucker & Co. for advances. One of these notes, dated the 14th October, 1857, was for $1,000, exhibit C; another, dated 22d October, 1857, exhibit D, was for $3,000; the third, exhibit E, dated July 11, was for $450; exhibit G, of the same date, was a note for the sum of $5,000; and exhibit H, dated the 18th December, 1857, was for $2,000.

Floyd, who did the financial business of the firm of Floyd

& French, testifies that the notes just mentioned were given for advances, but he claims a credit of $1,500 on the note, exhibit D, and states that the note for $450, exhibit E, had not been given for money advanced, but that it and another note for the same amount were given for the interest for one year on the note for $5,500. Floyd also states that the note marked exhibit I, for $5,500, was signed by himself

when he signed the mortgage, and that he personally made the negotiation with H. A. Tucker & Co.

It is further stated by him that the aggregate amount of all the advances which had been made by the defendant to his firm upon the faith of the note and the mortgage since the first of September, 1856, amounted to "from fifty to a hundred thousand dollars," and that the sum now remaining due was "somewhere in the vicinity of ten thousand dollars." He verifies the notes named in the exhibits, C, D, E, G, H, with the originals; confirms the statement in exhibit A of the discounts which his firm had received under the note and mortgage; and adds that when the note and mortgage were given, his firm then owed to H. A. Tucker & Co. twenty-five hundred dollars, which was paid on the 7th September, 1856, and repeats in his cross-examination what he had said in his examination in chief concerning the amount of the discounts and cash received from H. A. Tucker & Co. under the note and mortgage.

It must have been upon the testimony of this witness that the court below gave its decree.

But we have not referred to it with the view of testing the correctness of the sum allowed to the defendant, as the condition upon which the complainant might redeem the mortgage -- though, having made the computation, we find it to be correct, with a small mistake. Our object has been to show that the parties to the original transaction understood it alike, and acted upon it accordingly; that there never was a difference between them, as to the character of the mortgage and its purpose, and that it was intended to be a security for and a lien upon the property mortgaged for future advances, to the extent of the sum provided for in it. So also Floyd &

French represented it to be in their transactions with others, when they found it convenient to their business to give other mortgages upon the same property for the security of other creditors.

We consider it to be a mortgage for future advances, that they were subsequently made in conformity with its provisions, and that the proofs that they were so, were rightly received by the court below to substantiate them. There is neither indirectness nor uncertainty in the terms used in the mortgage, to make it doubtful that it was intended to cover the note for $5,500 and for future advances. It is stated in terms that it was intended for that purpose. The note, though expressed to be an existing indebtedness at the date of the mortgage, secured to be paid by a promissory note, payable one day after date, is associated with the advances to be made to Floyd & French to the amount of $6,000; but it is proved that the note and mortgage were in fact taken as a security for advances thereafter to be made, and that it was done without any other purpose than to get a credit extended to them of eleven thousand five hundred dollars, instead of advances only to the amount of $6,000. It is objected that the difference makes the transaction subsidiary.

An objection of this kind was made in the case of *Shirras v. Caig,* 7 Cranch 34, but this Court then said it is true the real transaction does not appear on the face of the mortgage; the deed purports to have been a debt of thirty thousand pounds sterling, due to all of the mortgagees. It was really intended to have different sums due at the time to particular mortgagees, advances afterwards to be made, and liabilities to be encountered to an uncertain amount. After remarking that such misrepresentations of a transaction are liable to suspicion, Chief justice Marshall adds:

"But if, upon investigation, the real transaction shall appear to be fair, though somewhat variant from that which is described, it would seem to be unjust and unprecedented to deprive the person claiming under the deed real equitable rights unless it be in favor of a person who has been in fact injured and deceived by the misrepresentation."

In this case, the complainant has not been

deceived, and the variance between the alleged indebtedness and that advances were to be made afterwards gives to his suit no additional force or equity.

No proof was given by the complainant that he had been injured or deceived by it into making his purchase under the mortgages of Briggs and Atkyns and that cannot be presumed in his behalf. In fact, there is not an averment in the complainant's bill in favor of the equity of his demand which is not met and denied in the defendant's answer and which has not been disproved by competent testimony. We do not think there is anything in the objection that the mortgage to H. A. Tucker to secure future advances by the firm of H. A. Tucker & Co. cannot stand as security for advances made after the admission of new partners into that firm. The cases cited in support of this objection do not sustain it, and we have not been able to find anyone that does. They relate exclusively to stipulations for an advancement of money to a co-partnership after a new member has been taken into the firm.

In respect to the validity of mortgages for existing debts and future advances, there can be no doubt if any principle in the law can be considered as settled by the decisions of courts. This Court has made three decisions directly and inferentially in support of them: *United States v. Hooe,* 3 Cranch 73; *Conrad v. Atlantic Insurance Company,* 1 Pet. 448; *Shirras v. Caig,* 7 Cranch 34. Tilghman, C.J., says in 5 Binney 590, *Lyle v. Ducomb,*

"There cannot be a more fair, *bona fide,* and valuable consideration than the drawing or endorsing of notes at a future period for the benefit and at the request of the mortgagors, and nothing is more reasonable than the providing a sufficient indemnity beforehand."

Mr. justice Story declared, in *Leeds v. Cameron,* 3 Sumner 492, that nothing can be more clear, both upon principle and authority, than that at the common law a mortgage, *bona fide* made, may be for future advances by the mortgagee as well as for present debts and liabilities. I need not do more upon such a subject than to refer to the cases of the *United States v. Hooe,* 3 Cranch 73, and *Conrad v. the Atlantic Insurance company,* 1 Pet. 448.

We affirm the decree of the circuit court in this case, and shall remand it there for execution.