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Mead Vs. Ballard

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 290

Appellant : Mead

Respondent : Ballard

Judgement :

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Mead v. Ballard

74 U.S. (7 Wall.) 290

ERROR TO THE CIRCUIT

COURT FOR WISCONSIN

SYLLABUS

1. A grant of land, "said land being conveyed *upon the express understanding and condition* " that a certain institute of learning then incorporated "shall be *permanently located* upon said lands," between the date of the deed and the

same day in the succeeding year, is a grant upon condition, a condition subsequent.

2. Such permanent location was made and the condition was thus fulfilled when the trustees passed a resolution locating the building on the land, with the intention that it should be the permanent place of conducting the business of the corporation. And this notwithstanding that the building erected in pursuance of the resolution was afterwards destroyed by fire, and the institute subsequently erected on another piece of land.

Mead brought ejectment in the court below against Ballard to recover certain land which the ancestor of him (Mead) had conveyed for a full consideration, on the 7th September, 1847, to Amos Lawrence, of Boston, in fee. The deed contained the usual covenants of warranty, and also a clause expressed in these words:

"Said land being conveyed upon the express understanding and *condition* that the Lawrence Institute of Wisconsin, chartered by the legislature of said territory, *shall be permanently*

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located upon said lands, and on failure of such location being made on or before the 7th day of September, 1848, and on repayment of the purchase money without interest, the said land shall revert to and become the property of said grantors."

On the 9th of August, 1848, the board of trustees of the Lawrence Institute passed a resolution locating the Institute on the land described in the deed. Contracts were made for the necessary buildings, which were commenced immediately, and they were finished and the institution in full operation by November, 1849. These buildings cost about $8,000, but were burned down in the year 1857 *and never rebuilt.* It was also said that in 1853, a larger building, called the University, was erected on an *adjoining* tract.

In 1851, Lawrence sold to one Wright part of the tract which had been conveyed, as above stated, to him, and in 1853 Wright sold it to Ballard. Mead now, in 1865, being sole heir of the original grantor and alleging that the facts constituted an infraction of the condition on which the land had been conveyed, made a tender, through an agent, to Lawrence, of the amount originally paid by Lawrence for the tract -- depositing the money in Boston "where he could get it at any time he chooses" -- and brought this ejectment.

The jury, under charge of the court that if the Institute was located on the tract on or before the 7th of September, 1848, and if the directors then proceeded to erect a building which was used by it in its business, the plaintiff could not claim a forfeiture, found for the defendant; and the case was brought here on exceptions by the plaintiff.

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MR. JUSTICE MILLER delivered the opinion of the Court.

The plaintiff, who sues as heir-at-law of the grantors, maintains

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that the condition contained in the deed from Mead to Lawrence, is a condition subsequent which has not been performed, and having tendered the money received by them, he now claims the right to recover the land.

It must be conceded that the language of the deed amounts to a condition subsequent, and as no point was made in the trial as to the sufficiency of the tender, the only question before us is whether the condition was performed.

That condition was that a permanent location of the Institute on the land should be made between the date of the deed and the same day of the succeeding year. The location, then, whatever may have been its character, was something which could have been done and completed within one year. If it was done within that time the plaintiff's rights of reverter was gone. If it was not done within the year, he could

refund the money and recover the land. His right, on whatever it depended, must have been complete on the 7th day of September, 1848, for within that time the condition was to be performed.

The thing to be done was the location of the Institute. Did this mean that all the buildings which the institution might ever need were to be built within that time, or did it mean that the officers of the institution were to determine, in good faith, the place where the buildings for its use should be erected? It is clear to us that the latter was the real meaning of the parties, and that when the trustees passed their resolution locating the building on the land, with the intention that it should be the permanent place of conducting the business of the corporation, they had permanently located the Institute within the true construction of the contract.

Counsel for the plaintiff attach to the word "permanent," in this connection, a meaning inconsistent with the obvious intent of the parties, that the condition was one which might be fully performed within a year. Such a construction is something more than a condition to locate. It is a covenant to build and rebuild; a covenant against removal at any time; a covenant to keep up an institution of learning on that land

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forever, or for a very indefinite time. This could not have been the intention of the parties.

We are of opinion that the testimony shows, in any view that can be taken of it, that the condition was fully complied with and performed, and with it passed all right of reversion to the grantor or his heirs.

The rulings of the circuit court to which exceptions were taken were in conformity to these views, and its

Judgment is affirmed.

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