

Cocks Vs. Iazard

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 559

Appellant : Cocks

Respondent : izard

Judgement :

Cocks v. Iazard - 74 U.S. 559 (1868)

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Cocks v. Iazard

74 U.S. (7 Wall.) 559

APPEAL FROM THE CIRCUIT

COURT OF LOUISIANA

SYLLABUS

A bill in equity, by the owner of real estate sold at public judicial sale will lie against a person who, at such sale, has made untrue representations, which prevent other persons from bidding and by which he has so, himself, got the property at an

undervalue. The original owner is not confined to seeking relief through the summary modes such as motion to set aside the sale, which it was within the power of the court from which the execution issued to grant. [Slater v. Maxwell](#), 6 Wall. 276, affirmed.

During the late rebellion, one Anderson, by a proceeding in what was known as "the Provisional Court of Louisiana" -- a court established by proclamation of the President in October, 1862, when the insurrection which had prevailed in Louisiana, had temporarily subverted and swept away the judicial authorities of the Union, and which, by the terms of its constitution, was to last only until "the restoration of the civil authority" -- brought some sort of suit against one Cocks.

The suit proceeded to execution, and, on execution, the marshal of the said Provisional Court exposed to public sale certain real estate owned by Cocks in New Orleans and worth \$15,000. Cocks was a resident of Mississippi,

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and knew nothing of the suit, execution, or exposure to sale. At the sale, one Izard, his tenant, who was there, made a bid of \$1,500, giving out and letting it be understood that he was bidding for account of Cocks and in his interest. Persons, who were at the sale thus refrained from bidding from a wish not to compete, and, competition being so prevented, the property was knocked down to Izard at the sum bid by him.

Izard acknowledged these facts soon after the sale, and promised to reconvey on receiving the money which he had advanced. He afterwards refused to do this.

Cocks now filed a bill in the court below, setting forth the above facts, that Izard had received in rents, in two years, \$2,500; and praying an account and reconveyance.

Izard demurred, and the court below, sustaining the demurrer, dismissed the bill. Cocks appealed.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

It was decided by this Court, in *Slater v. Maxwell*, * that where a judicial sale is impeached for fraud, or unfair practices, of officer or purchaser, to the prejudice of the owner, a court of chancery is the proper tribunal to afford relief, and this decision only reaffirmed a well established doctrine of equity jurisprudence. The present case is within this rule, and the court below manifestly erred in sustaining a demurrer to the bill.

The complainant puts his case for relief on two principal grounds. The necessities of this case do not require us to examine and decide the first point thus raised by him, for the second, if the averments of the bill are true, affords ample ground to give the complainant the desired relief.

The bill charges that Cocks, a citizen of the State of Mississippi, was the owner of a valuable dwelling house and lots in the City of New Orleans occupied by Izard as his tenant, which were seized on judicial process and ordered to be sold. It does not appear in what way the court acquired jurisdiction of the case, but it is fair to presume it was through a proceeding by attachment, as the complainant avers he was without the state and did not know of either the judgment, execution, levy, or sale.

In this condition of things, the sale took place and Izard bought the property for a sum of money hardly equal to its yearly rental value. This he was enabled to accomplish by unfair practices which operated to prevent persons who were in attendance at the sale and desirous of purchasing from bidding.

These practices were of a character well calculated to deceive, for it is easy to see that fair-minded men, knowing the owner of the property to be absent, would be inclined

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to put faith in the declarations of his tenant that if he purchased, it was on account of his landlord, whose interests he wished to protect, and would be disinclined to

interfere with the arrangement.

Can it then be doubted, if these things are true, that the conduct of the defendant deprived the complainant of the advantage which he would have received from a fair sale of his property at which there would have been competition among persons both able and willing to buy?

The law will not tolerate any influences likely to prevent competition at a judicial sale, and it accords to every debtor the chance for a fair sale and full price, and if he fails to get these in consequence of the wrongful interference of another party who has purchased his property at a price greatly disproportioned to its value, equity will step in and afford redress either by setting aside the proceedings under the sale or by holding the purchaser to account.

The defendant in this case has behaved badly, and cannot be allowed to enjoy the fruits of his unfair dealing. The complainant had a right to expect, after reposing enough confidence in him to rent him a dwelling house, that he would not, in his absence, turn against him and use this very relation to his prejudice. It may be that at the time of his purchase, the defendant intended to carry out his promises, for after the sale he admitted his obligation to do so, but his cupidity, in the end, got the better of him, as he now asserts an adverse title in himself.

It is insisted that the complainant should have availed himself of the summary mode by petition or motion to the court to have had the sale set aside and resale ordered, but this objection cannot prevail. It is needless to inquire whether he could have obtained his object in this way, as by not pursuing it he did not forfeit his right to sue in equity, and the defendant has surely no right to complain, for he has now ample opportunity to make defense and vindicate his integrity.

The decree of the Circuit Court of the United States for

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the District of Louisiana is reversed and the cause is remanded to that court, with directions to proceed in conformity with this opinion.

|74 Wall. 559ast|

* [73 U. S. 6](#) Wall. 276.

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