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Lewis Vs. Hawkins

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Court : US Supreme Court

Decided On : 1874

Appeal No. : 90 U.S. 119

Appellant : Lewis

Respondent : Hawkins

Judgement :

Lewis v. Hawkins - 90 U.S. 119 (1874)
U.S. Supreme Court Lewis v. Hawkins, 90 U.S. 23 Wall. 119 119 (1874)

Lewis v. Hawkins

90 U.S. (23 Wall.) 119

APPEAL FROM THE CIRCUIT COURT FOR

THE WESTERN DISTRICT OF ARKANSAS

SYLLABUS

1. Where a party agrees to sell land to another and as consideration therefor the vendee gives his promissory notes payable at a future date named, and the vendor gives his bond conditioned that on the payment of the notes, he will convey

the premises in fee to the vendee, but makes no deed, the legal estate remains, until the payment of the purchase money, in the vendor, and he has, by the law of those states where such liens are recognized, a "vendor's lien." The vendee has an equitable title only -- one indeed which he can sell or devise, but one which if the purchase money is unpaid, he cannot sell so as to exclude the vendor's right to have payment of it. Any purchaser from the vendee who assumes to pay the notes takes the same title that the vendee had -- that is to say, an equitable title, the land being still charged with the payment of the purchase money.

2. A discharge of such purchaser from the vendee under the Bankrupt Act, will relieve such purchaser from paying the notes, but it will not give

him a legal title in fee to the lands. That title, subject to the equity of the vendee or of the purchaser from him, remains in the vendor.

3. A statute of limitations barring suits for the recovery of real estate after a certain lapse of time does not apply to a case like that above described. The vendee or the purchaser from him stands in the relation of a trustee to the vendor for the unpaid purchase money, or, as the matter is looked upon in some states, stands in that of a mortgagee, against whom the statute does not run.

4. If the notes are not paid, the vendor may apply by bill in equity against the vendee and the purchaser from him, tendering a good deed, and ask that they pay the purchase money at short date or be foreclosed from setting up any right to the land, and that it be sold and the proceeds applied to paying the purchase money.

5. Where confessedly the title of a party claiming land as owner and who has agreed to sell is denied by the vendee and a dispute has taken place about title, so that a tender of a deed would be a useless ceremony, costs on a bill filed to enforce the payment of the purchase money must abide the result of the suit.

6. If the purchaser from the vendee be dead, leaving a widow his executrix, and heirs-at-law to whom with her his real estate has descended, they ought to be

made parties defendant to any bill to foreclose.

The case was thus:

A statute of limitation in Arkansas, passed January 4th, 1851, [Footnote 1] enacts that no suit at law or in equity for the recovery of real estate shall be brought after the lapse of seven years from the time when the cause of action accrued.

This statute being in force, Lewis, in November, 1853, agreed to sell to Hawkins certain real estate; Hawkins, for the consideration money giving to Lewis his two promissory notes, each for the sum of $500, payable one on the 1st of February, 1855, and the other on the 1st of February, 1856, and Lewis at the same time giving to Hawkins his bond in the penal sum of $2000, binding him, Lewis, upon the payment of the two notes to Hawkins, to convey in fee simple the premises so sold.

It did not appear that this bond authorized Hawkins to take possession of the property sold, or that he did so.

Page 90 U. S. 121

In October, 1855, Hawkins sold and conveyed the land to one Hamiter, Hamiter, as a part of the consideration, assuming the payment of the notes which Hawkins had given to Lewis. Hamiter went into possession of the premises and occupied them with his family until May, 1866, when he died, leaving a widow and nine children his heirs-at-law, and whom, with the widow, he made his devisees, the widow being made his executrix. The widow and her family had occupied the premises ever since Hamiter's, the husband's, death.

Nothing having been paid by anyone upon the two notes, Lewis sued Hawkins, and on the 11th of August, 1860, recovered a judgment against him for $1,201. The judgment remaining also wholly unpaid, Lewis filed, in August, 1871, a bill against Hawkins and the widow and executrix of Hamiter (his children and heirs-at-law not, however, being made parties) to enforce the payment of the notes and

interest against the land.

The bill alleged that the complainant had always been and still was willing to perform the agreement on his part, and offered to execute and bring into court, to be delivered to the defendants, or either of them lawfully entitled thereto, a deed conveying the land in fee simple in accordance with the condition of the title bond on being paid the purchase money due, with the interest. And alleged further that the complainant, since the second note fell due, had duly tendered to Hawkins a deed of conveyance and demanded the payment of the amount due for the purchase money thereof, but that Hawkins refused to accept the deed and to pay the purchase money.

The prayer of the bill was that the equity of redemption of the defendants, and of all persons claiming through them or either of them, might be barred and foreclosed and that the defendants be compelled to pay to the complainant the amount due to him for the land with interest, the complainant being ready and willing to execute and deliver to the defendant Hawkins, or his assigns, a deed for the land in fee simple with warranty of title, and that in case the

said defendants would not pay the said purchase money by a short day to be named, the premises might be sold and the proceeds applied to the payment of the decree to be rendered for the purchase money.

Both defendants answered.

The answer of Hawkins denied that any tender of a deed as alleged in the bill had been made to him, and he set up as a defense his discharge in bankruptcy.

Mrs. Hamiter, the widow, relied upon the already-mentioned statute of limitations of Arkansas, which bars suits at law and in equity for real estate after the lapse of seven years from the time the cause of action accrued.

The depositions of both Lewis and Hawkins were taken. The former stated that the tender alleged in the bill had been made, the latter that no such tender had ever

been made.

The court below dismissed the bill for want of equity, and from that, its decree, Lewis, the complainant, brought the case here.

MR. JUSTICE SWAYNE delivered the opinion of the Court.

Upon the execution of the notes and the title bond between Lewis and Hawkins, Lewis held the legal title as trustee for Hawkins, and Hawkins was a trustee for Lewis as to the purchase money. Hawkins was *cestui que trust* as to the former and Lewis as to the latter. [Footnote 2] The seller under such circumstances has a vendor's lien, which is certainly not impaired by withholding the conveyance. The equitable estate of the vendee is alienable, descendible, and devisable in like manner as real estate held by a legal title. The securities for the purchase money are personalty, and in the event of the death of the vendor, go to his personal representative. [Footnote 3] It does not appear that the title bond authorized Hawkins to take possession, or that he did so. If there were no such authority, and he entered into possession, he held as a licensee or tenant at will. [Footnote 4] The vendee cannot in such cases dispute the title of his vendor any more than the lessee can dispute that of his lessor. [Footnote 5] Any other person coming into possession under the vendee, either with his consent or as an intruder, is bound by a like estoppel. [Footnote 6] Hamiter, having bought and assumed the payment of the purchase money stipulated to be paid by Hawkins, took the property subject to the same liabilities, legal and equitable, to which it was subject in the hands of Hawkins. [Footnote 7]

The discharge in bankruptcy released Hawkins from personal liability for his debt, but the statute of limitations cannot avail to protect the land from the vendor's lien upon it,

for the purchase money which Hawkins agreed to pay, and which Hamiter, when he bought the land, assumed and agreed to pay for him.

We have already shown that as between Lewis and Hawkins there was a trust which embraced the purchase money and fastened itself upon the land. The debt did not affect his assignee personally, but, as we have shown also, it continued to bind the land in all respects as if the transfer had not been made. The trust was an express one. Its terms and purposes were evinced by the title bond, and the promissory notes to which that instrument referred.

"As between trustee and *cestui que trust,* in the case of an express trust, the statute of limitation has no application, and no length of time is a bar. Accounts have been decreed against trustees extending over periods of thirty, forty, and even fifty years. The relations and privity between trustee and *cestui que trust* are such that the possession of one is the possession of the other, and there can be no adverse possession during the continuance of the relation. . . . A *cestui que trust* cannot set up the statute against his co- *cestui que trust,* nor against his trustee. These rules apply in all cases of express trusts. [Footnote 8]"

"As between trustees and *cestui que trust,* an express trust, constituted by the Act of the parties themselves, will not be barred by any length of time, for in such cases there is no adverse possession, the possession of the trustee being the possession of the *cestui que trust.* [Footnote 9]"

The same principle applies where the *cestui que trust* is in possession. He is regarded as a tenant at will to the trustee.

"Therefore, until this tenancy is determined, there can be no adverse possession between the parties. [Footnote 10] The relation, once established, is presumed to continue unless a distinct denial or acts or a possession inconsistent with it are clearly shown. [Footnote 11] "

Page 90 U. S. 127

In many of the cases it is held that the lien of the vendor under the circumstances of this case is substantially a mortgage. [Footnote 12] It is well settled that the possession of the mortgagor is not adverse to that of the mortgagee. In the case last cited, it is said that to apply the statute of limitations "would be like making the lapse of time the origin of title in the tenant against his landlord." That the remedy upon the bond, note, or simple contract for the purchase money is barred in cases like this in no wise affects the right to proceed in equity against the land. As in respect to mortgages, the lien will be presumed to have been satisfied after the lapse of twenty years from the maturity of the debt, but in both cases, laches may be explained and the presumption repelled. [Footnote 13] The principles upon which this opinion proceeds are distinctly recognized in *Harris v. King.* [Footnote 14] That case alone would be decisive of the case before us. The considerations which apply where the vendor in such cases resorts to an action of ejectment were examined by this Court in *Burnett v. Caldwell.* [Footnote 15]

The bill avers the tender of a deed by the complainant to Hawkins before the bill was filed. The answer of Hawkins denies the allegation. The testimony of Lewis sustains the bill; that of Hawkins the answer. The averment is not established. Except as to the costs, the point is of no significance. If the tender of a deed had been properly made, and there had been no unjustifiable resistance to the taking of the decree by the complainant, to which he is entitled, he would have been required to pay all the costs. There being a contest, and it appearing that a tender would have been without effect, the costs must abide the result of the litigation. [Footnote 16]

There is manifest error in the decree, but the bill is defective in not making the heirs-at-law of Hamiter parties,

Page 90 U. S. 128

unless there is some statutory provision of the state of Arkansas which obviates this objection.

If necessary, the bill can be amended in the court below.

Decree reversed and the cause remanded with directions to proceed in conformity with this opinion.

[Footnote 1]

Gould's Digest, chapter 106, 2.

[Footnote 2]

1 Story's Equity 789; 2 *id.* 1212; 1 Sugden on Vendors and Purchasers 175; *Swartwout v. Burr,* 1 Barbour 499; *Champion v. Brown,* 6 Johnson's Chancery 402.

[Footnote 3]

2 Story's Equity 1212.

[Footnote 4]

Suffern v. Townsend, 9 Johnson 35; *Dolittle v. Eddy,* 7 Barbour 75.

[Footnote 5]

Whiteside v. Jackson, 1 Wendell 422; *Hamilton v. Taylor,* 1 Littell's Select Cases 444.

[Footnote 6]

Jackson v. Walker, 7 Cowan 637.

[Footnote 7]

1 Story's Equity 789; 1 Sugden on Vendors and Purchasers (Perkins's ed.) 175; *Champion v. Brown,* 6 Johnson's Chancery 402; *Muldrow's Executors v. Muldrow's Heirs,* 2 Dana 387; 2 Harris & Johnson 64; *Shipman v. Cook,* 1 Green's Chancery 254.

[Footnote 8]

Perry on Trusts 863.

[Footnote 9]

Hill on Trustees 264*.

[Footnote 10]

Id., 266*.

[Footnote 11]

Whiting v. Whiting, 4 Gray 236; *Creigh's Heirs v. Henson,* 10 Grattan 231; *Spickerneln v. Hotham,* Kay 669; *Garard v. Tuck,* 65 English Common Law 249; *Same Case,* 8 Manning, Granger & Scott 231; *Decouche v. Savetier,* 3 Johnson's Chancery Reports 190; *Anstice v. Brown,* 6 Paige 448; *Kane v. Bloodgood,* 7 Johnson's Chancery 90.

[Footnote 12]

Lingan v. Henderson, 1 Bland's Chancery 236; *Moreton v. Harrison, id.,* 491; *Relfe v. Relfe,* 34 Ala. 504.

[Footnote 13]

Moreton v. Harrison, supra.

[Footnote 14]

16 Ark. 122.

[Footnote 15]

76 U. S. 9 Wall. 290.

[Footnote 16]

Keisselbrack v. Livingston, 4 Johnson's Chancery 144; *Hanson v. Lake,* 2 Younge & Collier 328.

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