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Crosby Vs. Buchanan

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Decided On : 1874

Appeal No. : 90 U.S. 420

Appellant : Crosby

Respondent : Buchanan

Judgement :

Crosby v. Buchanan - 90 U.S. 420 (1874)
U.S. Supreme Court Crosby v. Buchanan, 90 U.S. 23 Wall. 420 420 (1874)

Crosby v. Buchanan

90 U.S. (23 Wall.) 420

APPEAL FROM THE CIRCUIT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

SYLLABUS

1. A., in 1812, made a deed to V. conveying to him valuable estates, V. by a separate instrument, agreeing that if A. would, within five years, pay to him a certain sum ($14,500), he would convey to A.'s children, then infants, a part of this

estate and convey also to them a part of certain other estates. Soon afterwards, V. acknowledged that A. had paid to him a large part ($11,600) of the money to he paid.

On proceedings in equity many years afterwards in the circuit court of the United States, the children, now become of age, prayed for

lst. A cancellation of the deed by A. as having been fraudulently procured by V.

2d. That if this would not be decreed, then, on payment by the children of the balance with interest, for a specific performance by V. of his contract to convey the two parts of the estates which he had agreed to convey, if $14,500 were paid in five years.

3d. If the court would make neither of these decrees, then that it would decree that V. should refund with interest the $11,600 purchase money that had been paid to him.

The circuit court in 1853 refused to decree a cancellation of A.'s deed, refused also to decree that V. should specifically perform his agreement to convey, but as to the return of the $11,600 purchase money paid, the court said that it could not pass on that matter, proper parties not being before the court, and made no decree about it. Proper parties came in, and after hearing, the court refused to order a return of the purchase

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money, and, finally, A.D. 1872, dismissed the bill by A.'s children. *Held* that no "final decree" in the sense of the statute which authorized appeals from the circuit court to this Court in the case of final decrees in equity was made in 1858, nor indeed before 1872; and that the decree then entered brought up the whole case -- that is to say, brought up the question of cancellation, the question of specific performance, and the question of return of purchase money.

2. Where the transactions out of which a case now before the Court arose occurred sixty-five years ago -- litigation about them having been going on all the

while -- and the particular one before the Court was begun thirty-five years ago, the Court declared it to be high time that the case was ended, and that the court was not inclined to add to its length of years by looking after matters of mere form (objections of which were apparently now first made) in order to avoid substance.

3. In a court of conscience, deliberate concealment is equivalent to deliberate falsehood. When a living man speaks in such a court to enforce a dead man's contract with himself against parties who he knows are ignorant of the facts, he must be frank in his statements unless he is willing to take the risk of presumptions against him.

4. Accordingly where a party who has never been in possession comes into equity to enforce a deed for valuable estates made twenty-five years before by the parents (now dead) of the persons now proceeded against, and which persons, when the dead was executed were young infants, has his bill answered by them, they stating that they were very young when the transactions relied on occurred, and that they had no personal knowledge about them, denying generally the allegations of the bill, suggesting many grounds for serious doubt as to their truth, and demanding of the claimant full and express proof of the fairness of the deeds and of the full payment of the alleged considerations thereof and of the circumstances of the execution of the deeds, it behooves the complainant, so far as he possibly can, to give such information, and if he shelter himself behind the mere execution of the deeds themselves, saying in his pleadings that he "cannot suppose that it will he necessary for him to allege or prove the payment of the consideration acknowledged in solemn form by the parties to the said deeds until the fairness of the transaction and fullness of consideration is impugned by proof," the court will hold that he has come before it with hands not clean if, in the progress of the case and as things are developed, it turns out that he had agreed to reconvey part of the property, with other property, upon payment of a certain sum and that he has acknowledged payment of a part of the sum, though he have agreed to convey only in case the sum were all paid within a certain time, and though he now aver that in point of fact the acknowledgment was made on a supposition that the person to whom it was paid would pay certain debts which he

failed to pay, &c.; And the court will accordingly order the deed to him to be cancelled, and will not help him to obtain payment of even such minor claims as perhaps he really and justly had.

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William King, of Abingdon, a village of Washington County, in the southwest corner of Virginia -- a man possessed of valuable brine springs at Saltville, close by it, and of other large estate -- died in 1808 childless, leaving a wife and eight brothers and sisters, among the brothers one named Samuel, and among the sisters one named Hannah, married to John Allen. He left also a nephew, William King, Jr.

By his will he devised the bulk of his estate, valued at about $500,000, to his nephew (the said William King, Jr.), on a condition which, as things turned out, proved impossible. The fact of the impossibility of the condition led at once to litigation, and in 1830 and 1836, the will in two different suits was the subject of construction in this Court.

It was held in the first suit, [Footnote 1] that the whole estate was devised to William King, Jr. (the nephew), subject to the life estate of the widow, but as it belonged to a court of chancery to determine whether he took the estate to his own use or in trust for the heirs of the testator, that question was left undecided. Accordingly, a bill in chancery was filed to test that question, and in that case, the second one, this Court decided that he did take in trust for the heirs. [Footnote 2]

Samuel King and Mrs. Hannah Allen, the wife of John Allen, thus each became entitled to an eighth part of the estate. Samuel King lived at Somerset, a place in Pulaski County, in the southeast corner of Kentucky, Allen and his wife at Saltville. The two places were perhaps two hundred miles apart.

Independently of any general interest acquired as just mentioned by Samuel King in his brother William's estate, the brother by his will had made a special provision

for him thus:

"I leave to the said Samuel, in case of personal application to

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the manager at Saltville, or to my executors at Abingdon, on the 1st day of January annually, $150. If not called for on that day, to be void for that year. Receipt to be personally given."

The testimony of different witnesses thus described Samuel King.

One said:

"He was notoriously and incorrigibly intemperate, though not often in such a condition that he could not go about."

Another said:

"I do not recollect that I ever saw him where spirituous liquors were to be had that he did not drink to excess."

A third:

"He was generally intoxicated -- that is to say, generally speaking, when I saw him he was so."

A fourth:

"If I ever saw him sober, I have no recollection of the fact. He was in the habit of constantly drinking."

This Samuel King, as the testimony further showed, was not only intemperate but was always considered very poor. One witness, Mr. Fox, of Somerset, Clerk of the County Court of Pulaski, Kentucky, thus testified:

"To the best of my recollection, he was at all times in a manner destitute of any property or credit. I well recollect that he applied to me as often as three times to

borrow the sum of $5, each time, as he said, to defray his expenses to Abingdon, Virginia, where he was going to draw his legacy coming to him from the estate of his brother William King, which sums I lent him, he promising to refund the amounts upon his return, which, however, he never refunded."

Mr. Benjamin Estill, a lawyer, long resident in Abingdon, Virginia, said:

"He was believed to be totally insolvent for three years before his death, which event took place in 1812. I have seen him several times in Abingdon applying for his annuity, and understood that he came on foot from Somerset in Kentucky, where he lived. "

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Besides being poor and given to drinking spirituous liquor in excess, there was testimony about him thus, and there was no testimony to contradict it.

One witness said:

"I always considered him as a very wild and visionary man, incapable of making bargains to any amount when he had been drinking, and especially when there was any intricacy in the transaction."

Another said:

"I never saw him at any time in a condition when he could contract or trade to any advantage to himself or his family."

Additional witnesses confirmed this account of him, one saying:

"I never saw him after the death of his brother that I thought him capable of transacting business of any kind. He ought to have had a guardian, and if he had been in the North, would have had one."

We have mentioned that one of the heirs of William King, of Abingdon, was his sister Hannah, married to John Allen.

Allen's character was thus testified to.

One witness said:

"John Allen's general character as to correctness of dealing in money matters was bad. I am not able to say whether Samuel King was an easy subject for fraud. But Allen's general character was such that he would take advantage of any man if an opportunity offered, and he would do it so smoothly that the person imposed on would consider him a friend."

A second one said further:

"I was well acquainted with John Allen, and knew no good of him. I though him capable of committing frauds of any enormity."

In addition to these two persons, connected, as we have said, by marriage with one another and by their common right to participate in the large estate of William King, there appear d a third person, a principal actor in the controversies

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the subject of this report. His name was John Vint, and he was entitled "of Washington City in the District of Columbia."

Vint was an Englishman who came to the United States in 1800. His relation to the parties connected with this suit begins about the year 1810, when he is found in intimate relations with Allen, but the mode of origin of his said relation was nowhere distinctly shown nor with any detail. His name was connected in the present case with large transactions. How far property was traced with distinctness as being really his, so as to enable him to purchase in the way, as it will be seen in the sequel, that he alleged he truly did purchase in this case, will appear by the testimony which follows.

One witness said:

"I never saw him till he and John Allen came to purchase a negro girl I owned. I knew nothing of his pecuniary condition. I was acquainted with Allen before. I sold them the girl. They never paid me."

Another witness, one Russell, said:

"In November, 1810, Mr. Vint had a store in the house of Mr. John Allen and had there a considerable quantity of goods, which were said to be Vint's, but I do not recollect that I ever heard either Allen or Vint say that they belonged to Vint. I was frequently at the store. The shelves were pretty well filled with a good display. I heard it spoken of about that time that Vint had sold out to Allen. Previous to that time, Allen was frequently embarrassed, but as respects the condition of property I am not informed."

A third witness, Francis Smith, an attorney at law who had married the widow of William King in 1811 but who testified that he had no interest whatever in the result of the suit, confirmed the view of these two witnesses:

"Previous to September 5, 1812, there were placed in my hands for collection large claims on Allen. I know that he was hard pressed long before in his pecuniary affairs, and that he was never able to purchase and pay $11,600 for any property.

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He had nothing, and was able to purchase nothing. About this time, I frequently saw both Allen and Vint. They were sometimes in jail and sometimes out. I thought both of them without property or means."

A fourth witness, one Stout, however, testified in rather an opposite way. He said:

"I recollect the sale by John Allen to John Vint of his interest in the estate of William King, for the sum of about $18,000. I understood from John Allen that at the time of the sale he owed to him, Vint, a small sum, about $2,000, and that the balance of the purchase money was paid by Vint in goods, which Allen afterwards told me he had received. I farther know of my own knowledge that Allen did

receive a great many goods from Vint."

However, as stated *infra, see* p. 90 U. S. 433 , by Vint himself, this sum of $18,000 was not a true consideration.

We now return to Samuel King, already mentioned as intemperate, poor, and visionary. We have stated that he lived in Kentucky and was obliged to come in the beginning of each year, in person, to Saltville or Abingdon to give his personal receipt for the $150 left to him by his brother's will. He came for the last time in January, 1812, when he claimed payment for two years.

A witness, resident at Abingdon, thus testified:

"When he came to Abingdon, he came to Allen's; Allen kept a public house. He came there drunk, riding a little chunk of a pony and dressed in a common dress. He was almost always drunk during the time that he was there. When he got to Abingdon, he was asked by Allen's family how he had paid his expenses from Kentucky, and whether he had put up at private houses or at taverns? He said that he had put up at any place that he could get in at, and told the persons with whom he put up that he would pay them on his return, for that he would get this year two years' payment. Allen told him that he could get but one, for that he had not come for the last year's payment at the right time, and that under the terms of the will it was gone. Allen's family told me that he was a poor man, and Mrs. Allen, his sister, told him in my presence to return to

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his family, for that they would suffer in his absence. I thought him to be deranged from intemperance, and this opinion was entertained by the family of Allen generally."

Having got payment for either one or for two years, King set off on his pony to go back to his home in Kentucky. He arrived at the house of a man named Pridemore, about sixty miles from Abingdon, to stay all night, and "while there," according to the language of a person who saw him, appeared

"during the evening to be very uneasy, going frequently to the door in a state of alarm, and saying that he feared a man by the name of John Allen and other persons who were following him from Abingdon, and that he would be assassinated."

In the morning, his hat and boots, pocket book and saddle bags were in his room, but the himself could not be found, and was never again seen or heard of. For some time grave suspicions of murder rested both upon Pridemore and upon Allen. But it finally rather appeared that King had gone out of the house in the middle of the night under the influence of mania *a potu,* and wandering through the forests thereabouts had fallen into a rapid stream, swollen by recent rains, and was lost among the gorges of the mountains which rise in that region. The whole matter, however, remained much a mystery.

His pony, saddle bags, pocket book, hat, and boots were sent back to his brother-in-law, Allen by whose wife the saddle bags and pocket book were opened and examined. They contained papers but no money.

The unfortunate man himself left, at the time of his death, three children, aged respectively about one, three, and five years.

Allen died not long after, also leaving several children, all young.

We come now more particularly to certain facts of this case.

It seemed plain enough that on the 16th of November, 1810, Allen and wife executed a deed by which, for the professed "consideration of $18,901.27, current money, to them in hand paid," they conveyed to Vint all the right and interest

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which the said Allen in right of his wife, and also which his said wife had in the estate of the said William King, that is to say one-eighth part of that estate; and also a certain fifth part of the eighth of the estate which came to Samuel King as one of the heirs, which fifth the deed recited that the said Samuel had conveyed to Allen who was to reserve it as a compensation to counsel, for services in the suits

already mentioned at the beginning of the report of this case (page 90 U. S. 422), brought to establish in effect an intestacy, and the rights of the heirs.

This deed had apparently been witnessed on the day of its date, November 16th, 1810, in the ordinary way, by three witnesses, but was not then acknowledged, proved, or recorded. On the 27th of April, 1812, fifteen months after the date of its execution, and as was specified on it, "at the request of Allen," its execution was attested *de novo* by two other witnesses. On the 7th of May following, it was proved for record in the way required by the laws of Virginia.

The scrivener who drew the deed testified that he drew it carefully, the transaction being large, but that he knew nothing about the true consideration of it.

It seemed further plain enough that on the 1st of January, 1811, Samuel King had executed a deed by which, for the professed "consideration of the sum of $10,000 to them in hand paid," he and his wife had transferred to this same Vint four-fifths of their interest in the estate of William King, brother of the said Samuel, the remaining fifth having, as the deed declared, been conveyed by them to Allen in the way already mentioned, as compensation to counsel in attending to the suits to establish the rights of the heirs.

The wife's execution of this deed, as it was produced, was by a mark. The execution of this deed was not witnessed, nor did the deed itself state where it had been executed -- that is to say, whether in Virginia (at Abingdon or Saltville), where Allen lived, or at Somerset, in Kentucky, where King and his wife, the grantors, lived. But it appeared that on the 29th of January, 1811 -- that is to say twenty-eight days after the day stated in the instrument as the date of its execution --

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the instrument had been acknowledged by King and his wife in Somerset, Kentucky, where King and his wife lived, and by King then given to the recorder there for record, and afterward by the recorder returned to King, Vint not anywhere appearing in this transaction.

Pulaski County, in Kentucky, in which state the lands conveyed by this deed did not lie, was not the proper place for the record of the deed of King and wife to Vint. The deed was not proved in Washington County, Virginia, where the lands did lie, till the 25th of September, 1837.

With this statement by way of *proscaenium,* we will now state the pleadings and further developments in the case:

In January, A.D. 1825, during the pendency of the litigation in some of its forms about the estate of the original owner of it, William King, who, as we have already said, died in 1808, a bill was filed in the circuit court of the United States by some of the heirs to obtain a partition of the lands not encumbered by the widow's life estate, and on the 25th of April, 1836, after the last of the decisions in this Court, an order was entered appointing commissioners to make this partition. These commissioners afterwards made a report and, among other things, assigned to the children and heirs of Samuel King and the children and heirs of Hannah Allen, the wife of John Allen, one-fourth the property divided.

On the 24th of September, 1838, Vint filed an original bill against the heirs of Samuel King and the heirs of Allen and wife, in which he set forth substantially that each had become owners of one-eighth of the estate of William King, of Abingdon, and then alleged that he was the owner in fee of their interest in the estate. He stated that his title to the Allen interest and one-fifth of the King interest was obtained by the already mentioned deed from Allen and wife, dated November 16th, 1810, in which, for the consideration of $18,901.27, they conveyed the same to him; and that his title to four-fifths of the King interest was by the already-mentioned deed from King and wife, dated January 1st,

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1811, in consideration of $10,000, executed and recorded in Kentucky. Of both these deeds, their tests, probates &c.;, he appended copies to his bill. But he appended nothing else; nor did he state or intimate in the bill or by anything appended to it that the transactions were in reality in the least other or different

than what a reader would infer from reading the two instruments themselves. He stated rather, on the contrary, that he did not desire a suspension of the proceedings in partition any further than was necessary to protect his rights, and *that he was willing to accept the lands set off to the heirs as and for his share.* And the prayer of the bill was to the effect that he might be substituted for these heirs in the partition proceedings, *and that whatever was assigned to them might be adjudged to him.*

In September, 1839, all the defendants answered the bill and in substance stated that they were every young when the transactions referred to occurred, and that they had no personal knowledge as to the matters in controversy. They denied generally all the allegations in the bill adverse to their interests, and suggesting many serious grounds of suspicion against the validity of the claim of Vint, demanded from him full and express proof of all the material averments of his bill, and especially for proof *of the fairness of the deeds, and of the full payment of the consideration thereof, and of the circumstances of the execution of the deeds and the alleged payments.* The death of the widow of William King, the original owner, was also suggested, and the heirs of Samuel King stated that they had conveyed their interest to a certain Findlay.

On the 19th of September, 1839, Vint filed his supplemental bill, making Findlay a party and also alleging the death of the widow and asserting his right to the interest of Samuel King and Hannah and John Allen in the property devised to her for life and assigned to her for dower. In this supplemental bill he stated as follows:

"Your orator cannot suppose that it will be necessary for him to allege or prove the payment of the consideration, acknowledged in solemn form by the parties to said deeds, until the

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fairness of the transaction and fullness of consideration are impugned by proof; but your orator asserts the payment of a full and fair consideration for their interests, which were then wholly contingent. Indeed, your orator was reduced

from affluence to poverty by this very consideration paid for said interests. The deed from Allen and wife was duly admitted to record in the Circuit Court for Washington County, Virginia, on the 7th day of May, 1812, and the deed from Samuel King was duly admitted to record in the County Court of Pulaski County, Kentucky, where said Samuel King resided, on the 29th day of January, 1811, and on the 25th day of September, 1837, upon proof of the genuineness of said King's signature, the said deed was admitted to record in the County Court of Washington County, Virginia. . . . Your orator did not deem it necessary to prosecute his claim by suits until the suits should be determined in which the question was made whether William King, son of James King, took under the will of William King as devisee of his real estate, or whether it descended and passed to his heirs at law. It was, moreover, useless, and would have been premature to have asserted your orator's claim in the salt works and dower property until the life estate should be determined. Your orator is advised that he has been guilty of no laches from lapse of time, since he is in full time for the partition, which has not yet been made of any part of the estate."

To this supplemental bill Findlay answered, setting up his title under the conveyance from the heirs of Samuel King and insisting upon several defenses not now material to be stated.

After the filing of the supplemental bill, much testimony was taken. On the 7th of February, 1840, Francis Smith, who married the widow of William King, the original owner, gave his deposition, and in it furnished a copy of a contract, as follows:

"This agreement, entered into this 6th of April, in the year of our Lord 1812, between John Allen of the County of Washington, in the State of Virginia, of the one part, and John Vint, of the City of Washington, in the District of Columbia, of the other part, witnesses that the said John Vint, for and in consideration of the sum of $14,450, to be paid the said John

Allen in the manner hereinafter mentioned, the said John Vint doth covenant and agree to transfer, make over, and convey to the children which the said John Allen now has and to such other children as he may have with his present wife Hannah, one-half of all the interest which he, the said John Vint, may have in the estate of William King, deceased, by a conveyance from John Allen and Hannah, his wife, bearing date the 16th of November, 1810, and also by another conveyance from Samuel King and his wife, bearing date the first day of January, 1811, reference thereto being had will more fully appear. It is further agreed that the said John Allen and the said John Vint shall contribute equal portions of the expenses which may necessarily be incurred in the prosecution of suits for the recovery of the estate aforesaid; but until the payment by the said John Allen to the said John Vint of the sum of $14,450, the said John Vint shall not be compelled to convey one moiety of his interest in the estate aforesaid to the children of the said John Allen by his present wife Hannah, and should the said John Allen fail to make the payment to the said John Vint of the sum aforesaid, for and during the term of five years from this date, then and in that case it is further agreed between the parties that this agreement shall be void and of no more effect than if it had not been entered into. Whereunto we have set our hands and fixed our seals the day and year above specified in the presence of:"

"JOHN ALLEN [SEAL]"

"JOHN VINT [SEAL]"

"M. SHUGART"

"DAVID STOUT"

And afterwards a receipt as follows was discovered:

"Received of John Allen the sum of $11,600, it being in part pay of a contract entered into, it bearing date the 6th day of April, 1812, it being on account of the estate of the deceased William King. It being for the benefit of the said Allen's heirs, the 7th April, 1812."

"$11,600 JOHN VINT"

This same witness, Francis Smith, testified further that having heard from Vint that John Allen with whom he, Smith, had a quarrel, was about to perpetrate through forgery a fraud upon him, he got Vint to make a certain

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affidavit. This affidavit was annexed to Smith's deposition, and, in the part material to this case, was thus:

"This day came John Vint before me, John Gibson, a justice of the peace for Washington County, Virginia, and made oath, that on the 16th November, 1810, he purchased *from John Allen* all his interest in the estate of William King, deceased, and after that purchased from *said Allen all the interest of Samuel King in said estate,* for which he was to have given, and did give, said Allen credit on a debt due from him to his affiant for $10,000; but that said Allen then stating that he wished the receipt executed by this affiant to be for a larger sum than the sum really given in order to promote his credit to the northward by the largeness of the payment he was making his creditors, this affiant agreed thereto, and executed his receipt for about $8000 more than the sum he was to give. Thus the business stood until April, 1812, when this affiant entered into another contract with said Allen in writing of that date, by which contract he sold and agreed to convey to the children of John Allen by his wife Hannah, one-half of all his interest in William King's estate upon the payment by John Allen to this affiant of $14,000."

"JOHN VINT"

"Subscribed and sworn to before me this 5th September, 1812."

"JOHN GIBSON"

Other testimony was from time to time taken in the cause, and finally, in December, 1842, the heirs of Hannah and John Allen filed their cross-bill, in which they stated that since the filing of their answers, they had learned other facts most material in their character and having an important bearing upon their rights and

interests. They averred that these facts,

"though necessarily well known to complainant [Vint], since he was an actor and is the only surviving actor in the transaction, he has thought fit, from motives which cannot easily be misunderstood, to suppress."

After referring to their extreme youth at the time the transactions occurred and other circumstances likely to prevent their becoming acquainted with the facts, they set forth the foregoing contract and receipt, which had then recently been discovered in their search after the truth of the case. They

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then charged that the failure of Vint to bring these matters to the knowledge of the court was such a fraud on them as must deprive him of the aid of a court of conscience in the premises, and claimed that under the circumstances of this case, the payment of the balance of the purchase money due upon the contract should be presumed. They prayed:

1st. For a cancellation of the deed from Allen and wife to Vint; or,

2d. If that could not be granted, a specific performance of the contract; or,

3d. A return of the purchase money shown by the receipt to have been paid.

To this cross-bill Vint answered in September, 1843. He denied all charges of fraud and improper suppression of truth, and then said:

"The respondent fairly purchased and paid for the interest of John Allen and Hannah, his wife, and of Samuel King, in the estate of William King, deceased, and by deeds duly executed the said parties regularly conveyed their interest to him. For these deeds reference is here made to the exhibits filed by this respondent to his original bill. Sometime after these purchases and the execution of said conveyances, it is true that this respondent did make with John Allen the contract of the 6th of April, 1812 [given *supra,* pp. 90 U. S. 431 -432], but Allen did not pay him the purchase money within five years or at any time, and having

failed to do so, the contract became void. He admits the execution of the receipt and alleges that beyond this there could be no pretense of any payment. He denies that he received all the money mentioned in that. He recollects distinctly that as part of the sum embraced in the receipt, a draft on John Jelf for $2,333 was included, and that it was protested and never paid. A part of the sum also was made up of debts of Vint, which Allen assumed to pay for him but never did pay."

He then said:

"The contract on which the $11,600 aforesaid purports to have been paid and the receipt for that sum, were not retained by this respondent in his hands, as the complainants would seem to indicate, but were handed over to John Allen, and as the said

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Allen and his heirs are interested in the said papers, this respondent supposed that they would take care of them, and at all times have them at their command. This respondent has certainly never had the said papers under his control, and this having been the case, it seems extraordinary to him that the complainants should gravely charge him with improperly concealing contracts and papers which they must have known were never in his possession."

On the 17th of April, 1844, Findlay filed his cross-bill against Vint, in which he asked that the deed from Samuel King to Vint might be set aside for fraud. In this bill he charged that the deed was obtained by the fraudulent combination of Vint and John Allen to divest King of his interest in the estate, and stated that proof had already been made in the case that Vint had said he purchased this interest from Allen. He then stated that the actual consideration for the deed was $6,000, payable in ten equal annual installments, for each of which a note was given. That none of these notes had been paid, and that Vint had nine of them in his possession. He charged that they were unfairly obtained by Vint, and probably in consequence of his dealings and combination with Allen. He called for an answer under oath.

To this cross-bill Vint filed an answer on the 8th of April, 1845, in which he adopted as part of it the answer which he had before filed to the cross-bill of Allen's heirs. He denied that the deed to him was obtained by fraud. He said that he could not undertake to say with certainty whether or not John Allen exerted any material agency in bringing about the sale by King, but denied all fraudulent combination for that purpose. He admitted that no money had been paid by him to King, and that the consideration was as stated in the cross-bill, and he appended copies of the ten notes. All of them were payable in negroes, in Abingdon, at cash price. The three first falling due were payable to King *or his order.* The others to the *children of King by Patsey, his wife.* The execution of all was witnessed by John Allen. A receipt as follows was produced and made part of his answer:

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"January 1st, 1811. Received of John Vint three notes, each $600, and seven notes to my heirs, each of them $600, and likewise a conveyance of all my right and title to the estate of my deceased brother, William King. Now let it be understood that I am to forward to John Allen of Abingdon said conveyance to said Vint, all my right and title to said estate, legally and completely done by me and my wife, or else said notes, in number, ten, amounting to $6,000, payable by installments, as the said notes will show, all of them and each of them to be void and of no effect if the conveyance is not forwarded in three months. If so, the notes to be good."

"SAM. KING"

"Attest:"

"JOHN ALLEN"

"HANNAH ALLEN"

He then said that in pursuance of this agreement, King did execute the deed in Kentucky, and that under it he claimed title. He then said that Allen procured from King nine of the ten notes and delivered them to him, and that the amount of these

notes was included in the receipt for $11,600, stated on p. 90 U. S. 432 , as part pay of the contract between himself and Allen of the 6th of April, 1812, and that he received the notes in good faith from Allen supposing that Allen had obtained them fairly from King. *The notes were yet unendorsed by anyone.*

One of them -- one of the three payable to King, and the one that first fell due -- was assigned by endorsement made on it by King, and dated January 2, 1811, to Allen and by him to one Sheffey, who had been counsel for the heirs in their suits about the property of William King.

He appended to his answer three exhibits intended to show the state of accounts between him and Allen April 6, 1812. They are not necessary to understand the case as relied on by the Court, which rests its judgment, as will be seen hereafter, on the leading facts of the case already disclosed. But they are specially adverted to in the argument of counsel for the defendants -- the heirs of Mrs. Allen -- who relied not only on the leading facts of the case but on the details of it, which, as they conceived, explain and heighten the effect of the leading facts. They are, therefore, here inserted:

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EXHIBIT No. 1

ABINGDON, April 6th, 1812

JOHN ALLEN TO JOHN VINT, DR.

To my note given to Francis West, for. . . . . $ 300.00

Interest up till this date 42.00

Do. three notes: one to J. Harper, one to R. Preston,

and one to J. McCrab, amounting to $1133.34, which

I lent my name for. At that time, Mr. Allen had the

money in his own hand. 1,133.34

Interest on the above. 56.60

Do. one note of mine which gave to Mr. Allen in favor

of Samuel King for $600, which I paid Mr. Allen 1st

June, 1811; the said note was due the 1st day of

January, 1812 . . . . . 600.00

Interest on the above note 34.00

Do. I paid Mr. Allen the sum of. 166.00

$2331.94

JOHN VINT

I acknowledge the above accounts to be just and true.

JOHN ALLEN

" *EXHIBIT No. 2"*

"This agreement, made June 20th, 1812, between John Allen and John Vint, witnesseth that the said Allen and Vint did agree on a settlement on the 12th of June, 1811, that the said John Vint did pay John Allen in full for notes, mentioned. [The four notes to West, Harper, Preston, and McCrab, mentioned in the Exhibit No. 1, were here specified]; *and one note drawn by the said Vint in favor of Samuel King, for $600, due the 1st day of January, 1812.* The above notes, amounting to $1,733.34, which I, John Allen received pay in full for the above in full, from John Vint, on the 12th June, 1811."

"Now if the said Allen pay and discharge the within debts, with all costs and interest accruing thereon, it will be good; if not, the said Allen doth agree that if the said Vint have to pay any of the within moneys, then it is further agreed that the said Vint is to be paid out of the estate of William King, deceased, the first that is recovered by law."

"JOHN ALLEN"

"JOHN VINT"

" *EXHIBIT No. 3"*

"April 21st, 1812. This is to certify that I received of John Vint one mare, for $166, on the 26th of October, 1811; also,

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ditto, at error in calculating interest, to the amount of $200, the above sums amounting to $366, which sum is to be discounted out of the said Vint's receipt which he gave to my heirs on the account of the estate of William King, deceased."

"JOHN ALLEN"

Vint died in 1847, and the cause was afterwards duly revived, one Buchanan, his executor, being made a party in his stead.

The testimony being closed the cause was heard, and on the 24th September, 1853, a decree rendered:

1st. Annulling the deed from King to Vint and ordering a reconveyance; declaring that no conveyance was ever made by King to Allen of the one-fifth of his interest; adjudging costs in favor of Findlay and the heirs of King against Vint's representative.

2d. Denying the prayer of the cross-bill of Allen's heirs for a rescission of the deed from Hannah and John Allen to Vint; denying the prayer for a specific performance of the contract of April 6th, 1812.

3d. And ordering that the personal representative of John Allen be made a party, with a view to the determination of the question presented by the further prayer of the cross-bill for a return of the purchase money paid upon this contract. The ground of this last order was that the court did not have before it all the parties necessary for the purpose of making a final disposition of the whole cause.

On the 21st of November, 1872, the cause was again heard and the cross-bill of Allen's heirs finally dismissed. From that decree this appeal was taken by Crosby and others, Allen's heirs, the heirs and representatives of King being satisfied, of course, with what had been done in respect to them and neither they nor the representative of Vint making an appeal.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The first question we are to determine is as to the extent of our power over the several orders and decrees of the court below. The appellees claim that it is confined to an examination of the question of the return of the purchase money paid upon the contract of April 6th, 1812, while the appellants insist that the appeal reaches back and includes the decree of September 24th, 1853, so far as it relates to that part of the case in which they are interested. All agree that our inquiries are limited to the Allen title. The King title was disposed of adversely to the appellees in 1853, and they have not appealed.

In 1853, the court determined that it would not decree a cancellation of the Allen deed, and would not order a specific performance by Vint of his contract. This determination it caused to be recorded, but at the same time declared that it could not then make a final disposition of the whole cause, because it did not have before it all the parties necessary for that purpose. In 1872, when the cause was ready for final hearing, the court accepted this recorded opinion

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as settling the rights of the parties, so far as it went, and then proceeded to consider the question which had not been determined. Upon this hearing, that question was decided against the complainants in the cross-bill, and then a final decree was entered denying the relief asked by the defendants. This ended the case in the court below.

Cases cannot be brought to this Court upon appeal in parcels. We must have the whole of a case or none. The court below must settle all the merits before we can accept jurisdiction. Appeals will lie, as has been frequently held, when nothing remains to be done except to enforce and give effect to what has been decreed, but until all the rights of the parties have been finally passed upon and settled, this cannot be the condition of a cause. Nothing must be left below when an appeal is taken but to execute the decree.

That was not the condition of this case in 1853. An appeal then would have left the question of the return of the purchase money undetermined. The rights of the parties as presented by the pleadings were not all settled. The powers of the court below were not all exhausted. If the remaining question had been settled in accordance with the prayer of the cross-bill, the present appellants might have been satisfied and the appeal saved.

We are therefore of the opinion that the decree of 1853 was not final so far as it respects the Allen title, and that the appeal brings up the whole of that part of the case for our consideration.

It is first insisted by the appellants that a court of equity has no jurisdiction of the case, and that for this reason the bill should now be dismissed.

So far as we can discover from the record, this objection is raised here for the first time. The transactions out of which this case arises occurred sixty-five years ago or thereabouts. The estate of William King has been the subject of litigation in some form or other during all that time. This particular suit was commenced thirty-six years ago and more. It is high time it was ended. At any rate, we

are not inclined to add to its length of years by looking after mere form in order to avoid substance.

This brings us to the case upon its facts. The record is voluminous, but to our minds the controlling facts are few. In a court of conscience, deliberate concealment is equivalent to deliberate falsehood. When a living man speaks in such a court to enforce a dead man's contract with himself against parties who he knows are ignorant of the facts, he must be frank in his statements unless he is willing to take the risk of presumptions against him.

In this case, Vint waited until both Allen and his wife were dead before he attempted in any manner to assert his claim. This he had the legal right to do. His laches is not a bar, but it is still a fact, and when it is remembered that some of the parties he is now pursuing were not born until after his rights, if any he has, accrued, this silent fact has all the effect of positive statement.

The rights of Samuel King's heirs are not before us for adjudication, but the facts upon which their rights depend cannot easily be separated from those we must consider.

Allen and Vint seem to have been almost inseparable when the transactions we are to pass upon occurred. King was a man of intemperate habits. His brother, William King, from whom the property in controversy came, made provision in his will for the payment to him of the sum of $150 annually, so long as he lived, in case he applied for it personally to the manager of the salt works at Saltville or the executor of the will at Abingdon on the first day of January in each year. His personal receipt was required, and the payment for the year was to be forfeited if not called for on the day.

He lived in Kentucky, and Allen and Vint at Abingdon. His contract to sell to Vint bears date January 1, 1811. That was the day he was required to be at Saltville or Abingdon to receive his annuity. The contract was witnessed by Allen and wife, and the notes given for the purchase money, all bearing that date, were witnessed by Allen.

The note first falling due was assigned by him to Allen on the 2d of January, 1811, the day after its date. From these admitted facts the conclusion is irresistible that King was in Virginia when the contract was made, and that Allen must have been cognizant of it, if not active in bringing it about.

In January, 1812, King was again at Abingdon. While there, he stayed at Allen's house. In the month of February or the forepart of March, he started for his home in Kentucky. He stopped for the night at a house about sixty miles from Abingdon, and was never afterwards seen. He left his saddle bags at the house where he stopped, and these were afterwards taken to Allen's house and opened by Allen's wife. When opened, they were found to contain his clothing and a pocket book. In the pocket book were papers, but no money.

The deed from the Allens to Vint bears date November 16, 1810, and was executed by Mrs. Allen on that day. It was not proved for record until May 7, 1812. Its execution appears first to have been attested by three witnesses, and then, on the 27th April, 1812, at the request of Allen by two more. The presumption is therefore that it had not been delivered before that time.

On the 6th April, 1812, Vint made his contract for the conveyance to Allen's children of one-half of the property covered by the two deeds. On the next day, Vint executed his receipt for the payment of $11,600, part of the purchase money. Part of this payment consisted of nine out of the ten notes given by Vint for the purchase of the King interest. It cannot for a moment be doubted that Allen had no title to these notes and that Vint knew it. So far as appears by the testimony, none of them was endorsed when surrendered, and seven out of the nine were payable to the children of King. The disappearance of King caused much excitement at the time, and was extensively known. The persons at whose house he stopped for the night had been suspected of his murder. Allen was poor, and in the summer following, he and Vint were in jail together for debt. In the face of all these circumstances it is impossible to believe

that Vint told the truth when in his answer to the cross-bill of Findlay he stated that he received the notes "as he believed from one who had a right to their possession, and whose right to transfer them to him was unquestionable."

As has been seen, Allen's deed could not have been delivered until after the 27th April, 1812. The presumption is therefore that payment for the property had not been made previous to that time. Allen was not a man to be trusted, even by Vint, with so large a payment as the nominal consideration required without a delivery of the deed. The deed had been drawn with great care, as the scrivener testifies, because the transaction was important. If the contract had been fully consummated in good faith at its date, there can scarcely be a doubt that the deed would have been at once perfected and proved for record. This, as we think, disposes of the theory that the property had been paid for by Vint with his stock of goods in 1810. Vint did not set up any such claim in any of his answers, and most assuredly he would have done so if it had been true. Besides that, no satisfactory testimony has been adduced in support of the claim. The only witnesses who testify upon the subject speak very indefinitely, and one of them makes some statements which are directly contradicted by well established facts. In September, 1812, Vint himself stated, in an affidavit

"That on or about the 16th November, 1810, he purchased from Allen all his interest in the estate of William King, deceased, and after that, purchased from Allen all of the interest of Samuel King in said estate, for which he was to give and did give credit on a debt due from him to affiant for $10,000."

There is nothing here about a payment in goods, and besides, according to the affidavit, the King purchase entered as much into the credit as did that of the Allen interest.

But still more important is the absolute refusal of Vint to disclose the facts in his answers when directly called upon to do so. It is true that he need not make the statements unless he chose. The law under the form of pleadings in

this case did not compel him to be more specific, but it can raise presumptions against him if he is not. He may, if he pleases, rest his case upon the acknowledgment of payment expressed in his deeds, but if he does, he must take the chances of being overcome by other facts and circumstances which repel the presumption arising from such evidence. In this case, the circumstances are emphatic. He slept upon his rights for a quarter of a century; he waited for every actor in the premises except himself to die; in all the litigation affecting his interests, he never appeared so long as there was one alive who could speak against him from actual knowledge of the facts, and during all the time he permitted his adversaries to assume and represent his title.

But we are not inclined to pursue this inquiry further. To our minds it is clear that in April, 1812, when the transaction upon which the rights of the parties depend were completed, it was well understood by all that the original interest of Mrs. Allen in the estate of her brother had been in some form secured to her children. It is quite possible it may also have been understood that Vint was to have a lien upon it by way of security for the payment of some debt owing to him; but it is certain, as we think, that it was never intended he should hold it as owner.

When, therefore, Vint came into court and asserted his absolute title as against the ignorant heirs of these deceased contracting parties, and willfully concealed his contract for a reconveyance and the receipt which belonged to it, he came with unclean hands and must suffer the consequences. He does not excuse himself for this attempted fraud by pleading defect of memory, but claims boldly that he was not required to tell all he knew; that his duty was at an end when, selecting his own facts, he presented his own case. It is true he had the right to select that way of coming into court, but, having deliberately made his selection, he ought not to be surprised if he finds that he is received with suspicion. Honesty of purpose prompts frankness of statement. Concealment is indicative of fraud.

If Allen and Vint were the only parties interested in this

controversy the case would be different. They have been partners in fraud, and neither can claim a preference over the other on account of honesty of purpose or fairness in dealing. But Allen's interest in the property was only that of a tenant for life. The real owner was his wife, and upon her death, her children succeeded to her rights. It is the title of these children that Vint now attempts to defeat. By his own admissions in commencing his proceedings against them, he concealed the truth. He thus in effect confesses that he relied to some extent for his success upon their ignorance. After years of groping in the dark, they were able to confront him with the facts, and, as we think, to defeat the case he has attempted to make against them.

Decree reversed and the cause remanded with instructions to enter a decree dismissing the bill of the complainants and granting the prayer of the cross-bill for a cancellation of the deed from Allen and wife to Vint.

[Footnote 1]

Finlay and Mitchell v. King's Lessee, 3 Pet. 346.

[Footnote 2]

King v. Mitchell, 8 Pet. 326.

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