

Bissell Vs. Heyward

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Appeal No. : 96 U.S. 580

Appellant : Bissell

Respondent : Heyward

Judgement :

Bissell v. Heyward - 96 U.S. 580 (1877)

U.S. Supreme Court Bissell v. Heyward, 96 U.S. 580 (1877)

Bissell v. Heyward

96 U.S. 580

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF SOUTH CAROLINA

1. A. made his will, appointing C. his executor and devising his real property in South Carolina to B. for life, and after the determination of that estate, to C., in trust to support certain contingent remainders in fee. A. afterwards entered into a contract to sell the property to D., who entered into possession, and paid a part of the purchase money. A. died without receiving the balance or making a

conveyance, and C. duly qualified as his executor. *Held* that a bill by B. against C. and D. to compel the specific performance of the contract would lie.

2. A tender of payment must, to stop interest or costs, be kept good. It ceases to have that effect when the money is used by the debtor for any other purpose.

Page 96 U. S. 581

3. A decree or a judgment, when rendered upon a contract payable in Confederate treasury notes, should be for a sum equal to the value of those notes, not in the gold coin, but in the legal tender currency of the United States at the time when and the place where they were payable.

4. Such notes can in no proper sense be regarded as commodities merely.

William C. Heyward, who was seised in fee of certain lands in the State of South Carolina, made his last will and testament, bearing date Jan. 20, 1852. So much thereof as relates to them is as follows:

"I give to my brother, Henry Heyward, of New York [here is a description of the lands] for and during the term of his natural life, and, after the determination of that estate, I give the same to my friend, William C. Bee, and his heirs, to prevent the contingent remainders hereinafter limited from being barred, in trust, nevertheless, during the lifetime of my said brother, to apply the income thereof to his use and benefit, and from and after his decease I give the use of the same estate, real and personal, to his eldest son, Henry Heyward, Jr., if then living, until he attains the age of twentyone years, and if he should survive his father and attain the age of twentyone years, to him and his heirs forever, but in case the said Henry Heyward, Jr., should not survive his father and attain the age of twentyone years, then I give the whole of the said estate, real and personal, after the decease of my brother, Henry Heyward, for the use of the person who may thereafter, from time to time, sustain the character of heir male of the body of my said brother, Henry Heyward, as such term was used in the common law before the abolition of the rights of primogeniture, until such person shall attain the age of twentyone years or the

expiration of twentyone years from the death of my said brother, whichever may first happen; and, after the happening of either of those events, to the then heir male of the body of my brother, absolutely and forever."

On the eighteenth day of Jane, 1863, William C. Heyward contracted to sell, for \$120,000, said lands, to John B. Bissell, who took immediate possession of them, which he has ever since retained. On July 31, following, he paid \$20,000 of the purchase money. During that year, and before the completion of the purchase, Heyward died and said Bee, appointed the executor of his will, duly qualified as such. Owing to the civil war

Page 96 U. S. 582

and other causes, matters remained unaltered in their main features until March, 1870, when said Henry Heyward, a citizen of New York, filed his bill against said Bissell and said Bee, citizens of South Carolina, to compel the specific performance by Bissell of his agreement to purchase. The answer of Bissell admits the agreement and his possession of the property and his payment of \$20,000, and alleges that he was provided with the means of paying the balance of the purchase money, that neither said William C. Heyward, nor, since his death, said Bee tendered him a conveyance, and that he was willing to pay when he should receive a valid conveyance; that he sold sixtythree bales of cotton, for cash in Confederate notes, and on Feb. 11, 1864, tendered the said balance, in said notes, to the executor, who declined to receive them on the ground that he could not make a good title. Bee, in his answer, admitted the tender to him by Bissell and his refusal to accept it on the ground that he was advised that he could neither make a title nor safely accept payment in Confederate currency. It was admitted on the hearing below that said money was tendered at that date in such currency, that the parties through whom a good title could be made lived in New York, and that after Bee's refusal to accept the notes tendered, Bissell used them for other purposes.

It does not appear by the pleadings, the evidence, or the agreed statement of facts on file whether Henry Heyward, Jr., who was living when the bill was filed and had

then attained the age of twentyone years, is now living. There is neither allegation nor proof of his death.

The court decreed that Bissell should perform his contract of purchase, and pay, in United States currency, a sum equal to the value of \$100,000 in Confederate currency on June 18, 1863, the day of sale, with interest thereon until Feb. 11, 1864, from and after which day he should pay interest only on such a sum as was the value of \$100,000 on said 18th of June, less its value on said 11th of February, said values and interest to be ascertained by the clerk of the court to whom the cause was referred, as master, to state and report the same; that upon Bissell's making the payment as stated and reported, that the clerk, "as master to said William C. Bee, executor of William

Page 96 U. S. 583

C. Heyward," convey the premises in fee simple; but that, upon his failure so to pay, the master should sell the property at public auction for cash.

Said Henry Heyward died before the execution of the decree. On Nov. 23, 1874, Zefa Heyward, his wife, Zefita Heyward, his daughter, and Frank Heyward, his son, filed their bill of revivor, reciting the original bill, the proceedings thereunder, the reference to the master, the death of said Henry -- leaving a last will and testament, which was duly proved before the surrogate of the county of New York -- their appointment to execute the same, and that said Zefa alone took upon herself the execution thereof, and qualified accordingly, and praying that the bill might be revived. This bill was duly served; no answer was made, and an order of revivor was entered accordingly.

The master subsequently reported that the balance found by him to be due upon the contract was \$28,353.50, and that, in reaching that result, he compared the value of the Confederate currency in which the contract was payable with United States paper currency at the date of the contract and of the tender. He found that on the 18th of June, 1863, \$1 in United States currency was worth \$5.20 in Confederate currency, and that on the 14th of February, 1864, the value was \$1 to

\$13.01. The court confirmed the report, Dec. 15, 1874, and decreed that the interlocutory decree previously rendered be carried into execution. Bissell thereupon appealed to this Court, Bee declining to join in the appeal.

Page 96 U. S. 585

MR. JUSTICE HUNT, after stating the case, delivered the opinion of the Court.

It is objected that there is a fatal defect of parties complainant. The point of this objection is that Henry Heyward and William C. Bee were not able together to make a title that ought to be satisfactory to Bissell, and hence that the decree should be reversed.

Page 96 U. S. 586

The will of William C. Heyward took effect only upon his death. Until the occurrence of that event, the devisees therein named had no more title to or interest in the property in question than if their names had not been mentioned in the will. If he had consummated his contract with Bissell by executing a deed of the property, this would have worked an absolute revocation of the devise as to this property. The execution of the contract (with the partial payment thereon) was a transfer in equity of the title of the land to Bissell, leaving in the representatives of William C. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part. By the terms of the will, this legal title was vested in William C. Bee, the trustee to preserve remainders.

Henry Heyward was tenant for life, and as such offered to convey to Bissell,

"by feoffment, and livery of seisin, and to procure the release of right of entry and action by William C. Bee, the remainderman for preserving contingent remainders,"

and he avers in his bill that this would have made a good and effectual conveyance of the legal estate.

Bee held the legal title under the will, and his title to the legal estate continued in force as long as the remainders were contingent, and there is nothing in any part of the record showing that such was not the condition of the title when Heyward offered to convey, and that it is not so at the present time.

Chancellor Kent says, Com., vol. iv. p. 256,

"The trustees are entitled to a right of entry in case of a wrongful alienation by the tenant for life, or whenever his estate for life determines in his lifetime by any other means. The trustees are under the cognizance of a court of equity, and it will control their acts and punish them for a breach of trust, and if the feoffment be made by the purchaser with notice of the trust, as was the fact in *Chudleigh's Case*, a court of chancery will hold the lands still subject to the former trust. But this interference of equity is regulated by the circumstances and justice of the particular case. The court may, in its discretion, forbear to interfere, or it may and will allow, or even compel, the trustees to join in a sale to destroy the contingent remainder if it should appear that such a measure would answer the

Page 96 U. S. 587

uses originally intended by the settlement."

To this he cites many authorities.

We think this objection is not well taken.

Was there error in the amount decreed to be paid?

One of the statements of fact in the case sets forth that Bissell tendered the money; and fails to state that he deposited it or in any manner set it apart or appropriated it for the purpose of the tender. The other states that he used the money he had thus provided. The legal effect is the same. To have the effect of stopping interest or costs, a tender must be kept good, and it ceases to have that effect when the money is used by the debtor for other purposes. *Roosevelt v. The Bull's Head Bank*, 45 Barb. (N.Y.) 579; *Giles v. Hart*, 3 Salk. 343; *Sweatland v. Squire*, 2 id. 623.

The defendant insists that the value of the Confederate notes should be reduced to gold or sterling exchange, which would still farther depreciate their value.

This objection cannot be sustained. By the laws of the United States, all contracts between individuals could then be lawfully discharged in the legal tender notes of the United States. These notes, and not gold or sterling exchange, were the standard of value to which other currencies are to be reduced to ascertain their value. [Knox v. Lee](#), 12 Wall. 457; [Thorington v. Smith](#), 8 Wall. 1; [Dooley v. Smith](#), 13 Wall. 604; Rev.Stat.So.Car., p. 285.

Confederate notes, although without the authority of the United States, and indeed in hostility to it, formed the only currency of South Carolina at the date of the transactions in question. United States currency was unknown except when found upon the person of the soldiers of the United States taken and held as prisoners.

Confederate notes can in no proper sense be treated as commodities merely. The contract in question was made payable in terms in dollars, but both parties agree in writing that Confederate note dollars were intended. The \$20,000 was paid in Confederate notes, and when the defendant tendered his \$100,000, he tendered it in Confederate notes as dollars, and he obtained them by selling sixtythree bales of cotton for Confederate dollars. *Stewart v. Salamon*, [94 U. S. 434](#) .

Decree affirmed.