Loring Vs. Palmer

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Loring v. Palmer - 118 U.S. 321 (1886)
U.S. Supreme Court Loring v. Palmer, 118 U.S. 321 (1886)

Loring v. Palmer

Argued March 18-19, 1886

Decided May 10, 1886

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

A series of letters and agreements passing between the parties interested, all relating to the same property, which, when read together, show a purpose in all the parties to create a trust respecting it and which express and define that trust and the parties and their respective interests creates a trust fully expressed and clearly defined within the meaning of the statute of the Michigan which enacts that "express trusts" may

"be created . . . for the beneficial interest of any person or persons when such, trust is fully expressed and clearly defined on the face of the instrument, creating it."

When a conveyance of land is made to two or more persons and the deed is silent as to the interest which each is to take, the presumption will be that the interests are equal. This rule applies to two or more *cestuis que trust,* beneficiaries under a common deed of trust, and prevails in Michigan.

The statute of Michigan which enacts that

"every disposition of land . . . be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other to the use of or in trust for such person, and if made to one or more persons, in trust for or to the use of another, no estate legal or equitable shall vest in the trustee"

does not apply to a trust not expressed in the deed, but created by an independent instrument or instruments, executed at a different time or times from the execution of the deed.

This is a suit in equity brought by Charles H. Palmer, the appellee, against Elisha T. Loring and Charles A. Welch, the

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appellants, to obtain a conveyance of one undivided third part of the N. 1/2 of the N.W. 1/4, and of the N.W. 1/4 of the S.W. 1/4, § 23, T. 56 N., R. 33 W., Houghton County, Michigan, containing in all 120 acres, on the ground that the lands were bought from Thomas F. Mason for Loring, Palmer, and William B. Frue, and the

title taken by Loring in trust for himself and his associates. The material facts are these:

From the year 1856, and perhaps before, Palmer, Loring, and Frue had been engaged in the purchase of lands in the upper peninsula of Michigan, in the formation of mining corporations, and in the purchase and sale of mining stocks. Frue resided at the time in Houghton County, which was in the upper peninsula, Palmer at Pontiac, Michigan, and Loring at Boston, Massachusetts, but Palmer spent much of his time at the peninsula, and in its vicinity. During all the time, the purchases were generally made, and the titles, both of lands and stocks, taken in the name of Loring, as trustee for all the parties in interest. Among other lands purchased in this way were some which were afterwards put into the Ossipee Mining Company, a mining corporation promoted by these parties, with a capital stock consisting of 20,000 shares, of which Loring and Frue each owned 2,250, and Palmer 2,220.

Under these circumstances, Palmer and Frue met Thomas F. Mason of New York at Houghton, and negotiated with him for the purchase of the lands in question. The price was to be $20,000, payable, $5,000 down, $7,500 in six months, and $7,500 in eight months, with interest at the rate of seven percent per annum on the last two sums. No contract was executed at the time, as Mason preferred a form which he had at home, and the matter was postponed until he got there, with the understanding that Loring should execute the formal contract in New York, and pay the $5,000. A memorandum of the transaction was, however, made at the time, and assented to by both parties. This memorandum has been lost, but the testimony shows that it was substantially the same as the contract made with Loring, hereinafter referred to, except that either "Charles H. Palmer and William B. Frue" were named as vendees, or "Charles H. Palmer and his associates."

The same day this occurred Palmer wrote from Michigan to Loring, in Boston, as follows:

"KEARSARGE MINING COMPANY"

"CALUMET, MICH., June 18, 1868"

"E. T. Loring, Esq."

"Dear Sir: I have this day bought of T. F. Mason the following lands in the Hecla section 23, namely, the north half of the northwest quarter, and the northwest quarter of the southwest quarter -- in all, 120 acres -- for $20,000; $5,000 down, $7,500 in six months, and $7,500 in eight months, with seven percent interest on the last two sums. I had the contract drawn up and was ready to pay him the $5,000 down, but as he had just come from Ontonagon, and the boat was to leave in two hours, he preferred to return to New York, and write such a contract as he had given Hurlburt on his purchase, and have you execute the contract and pay him the $5,000. He will then send you the contract, and I want you to see it carried out in all respects. Mason agrees that if you are away or do not do this, he will send it to me to do, and to carry out as I have agreed to do. Mr. Mason has given me his word, in the presence of Frue, that all this shall be done as he agreed, and that I shall have the land, making his word as good as his deed. There was not time to do this before Mason left, and I want you to treat him in this matter without doubting him at all. I will write you again this evening, and send the contract I had drawn up. He has a copy of it, with the terms, as I have stated. This matter is very important. The purchase will add to the Ossipee five dollars per share at once in actual value. I do not want anything said of this at all. You will see by this that we shall get a division with the Hecla so as to get what will make a mine out of it by itself. We can make the Calumet vein by this over 3,200 feet in length. The purchase is very important. I send this by the hands of Randall, and will write again tonight by mail. Do not mention this. If you can, I would go to New York and see Mason and close this at once. In no case will this be neglected. It is a fortune to us, if well handled. Mason has the contract which

I drew up, and will show it to you. But this will tell you what is to be done. I give a sketch of the land. When I present the whole matter, you will see how important it is to us. We can take from Hecla from 1,550 to 2,305 feet in length, and still give them out of this purchase double the amount of mining value that we get from them. The fact is, this ground bought is worth more to them than the ground next to Ossipee. It is for this reason that I do not want anything said till we have fully considered this matter together, and see how we shall open it to Shaw. This is a rough sketch of the land bought. The vein is nearer to it than I have given the dotted lines, as if made to divide between them. Hecla would be free then to give us 100 acres, 50 of which would carry the vein, and we should give them 100, all of which would carry the vein. You will see the importance of this matter, and that we should not say anything till we consult. The Hecla is rich, and we can make the Ossipee as rich."

"Truly yours,"

"CHARLES H. PALMER"

The next day he wrote again as follows:

"KEARSARGE MINING COMPANY"

"CALUMET, MICH., June 19, 1868"

"E. T. Loring, Esq."

"Dear Sir: I have drawn a map of the land bought of Mason. The Hecla owns all in the section but the 40 and 80. You may say that Shaw will not do anything about it. We can wait as long as he can, as we have enough to mine till the Hecla needs some of this land. The least I would take now would be the 80 next the Ossipee, through which the lode runs, and most likely with the right of mine perpendicular to the vein in the direction of the line, A B. I do not think best now to say anything to Shaw about this. I have given on the other side the land in the Calumet section 14, bought by Hurlburt. I could have bought this a year ago last winter for $40,000, including the 120 now bought. If I had done so, we could now have this land in 23

for nothing, as Shaw will have to buy Hurlburt out even at $100,000. Stanton, who now has the Huron, is intending to buy Hurlburt out in 14, and I wish you would see him when he returns, and urge him to do it. Hurlburt

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bought of Mason some 1,200 acres of land in 14, 15, 11, 22, and 28. If Stanton can get the land in 14,480 acres, and the land in 22, on the east half, I should like it, as the land in 22 is desirable for us. Hurlburt offered the land in 14 to Stanton for Huron stock. This would be a good thing for Stanton. I shall write Stanton on this subject. This matter is not to be talked about. I had a long talk with Stanton, and he is inclined to buy it. He has let Hurlburt have money."

"I send the duplicate of the contract I gave Mason. Mason is to write a contract like his contract with Hurlburt, and send to you. Mason talked this matter over with Frue and myself, and says we shall have this land as agreed, and that his word is as good as his deed. I trust nothing will be left undone to carry this out, any you had better go to New York and see it done. We shall get out of Hecla all I have indicated. The land we would exchange is more convenient on surface and underground for them than what they would give us. It will be under their machinery and improvements. This is a great thing for Ossipee. You had better telegraph me as soon as this is done, as I shall be most anxious about it. I wrote you today and sent by Randall, and I write this by mail. I shall put a note on this for Burr to open in case you should be absent. On the $5,000 to be paid down, pay interest if Mason wants it. If Burr reads this, I wish him to see all is done which he can do. Send the $5,000 in case you are not there to execute the papers, saying that you will execute them and return them soon as you get home, as they can be sent to you. I do not want anything by which Mason can get out of this. He agreed that if there was any hindrance on your part, to send them to me to execute."

The S. P. is doing finely, 30 tons a week. Today 50 ton shave been shipped, and by Monday morning there will be at the smelting works 60 tons unsmelted. I think we have a sure thing in the S. P. We must make a family concern of Ossipee, and I would not sell any stock in it. We can make it put on its own importance. This we

will do. I see this matter clearly. I write in haste, and do not read over.

"Truly yours,"

"CHARLES H. PALMER"

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"Be particular to say nothing about Stanton's wishes. We need not buy any Hecla unless upon good time and satisfactory prices. We shall have a Hecla of our own. I think the S. P. will improve upon what she is now doing. The 40 acres is less than 350 feet from line of vein. In case you want us to raise $5,000 here, write us or telegraph, and we will use it for the mine."

Enclosed in this was a copy of the memorandum made while Mason was in Michigan. After the receipt of these letters, Loring wrote and perhaps telegraphed to Palmer approving the purchase.

On the 25th of June, Loring also wrote W. Hart Smith, of New York, as follows:

"OFFICE OF THE SOUTH PEWABIC COPPER COMPANY"

"31 Kilby Street"

"BOSTON, June 25, 1868"

"W. Hart Smith, Esq., *Treas.,* New York"

"Dear Sir: I received letter this morning from Mr. Palmer, who is very desirous I should see Mr. Mason before leaving for the lake, which I intended doing on Saturday; therefore telegraphed you this morning, requesting to be advised as soon as Mr. Mason returned, which I will thank you to do by telegraph at the earliest date, as this may enable me to leave here on Saturday evening's boat, and see Mr. Mason on Monday morning, if not before."

"Truly yours,"

"E. T. LORING"

Smith was the treasurer of the Quincy Mining Company, of which Mason was president. On the next day, June 26, Mason in New York, wrote T. Henry Perkins, in Boston, as follows:

"T. Henry Perkins. Esq."

"Dear Sir: I send herewith contract for sale of 120 acres of land, which I wish you to [_____] Mr. Loring and have him execute, either for himself or Mr. Palmer (I made the trade

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with Palmer). Fill in the name of whichever Mr. L. desires, and deliver over to Mr. Loring, upon his paying you $5,000. If Mr. Loring is not prepared to comply, you will not press the matter, but return the papers. I was tempted to sell by the offer, but perhaps I made a mistake; probably I might obtain more from the Hecla Company by holding long enough. Mr. Palmer requested the transaction kept private for the present, so you will please say nothing about it."

" * * * *"

"Truly yours,"

"THOS. F. MASON"

Between the date of this letter and June 29th, Perkins filled the blanks in the contract with the name of Elisha T. Loring, trustee, and Loring signed it as trustee. He also made the down payment of $5,000, which was remitted by Perkins to Mason so that he got it in New York on the 29th, and on the same day Palmer, in Michigan, received from Loring, in Boston, a telegram dated the 27th, stating that the contract had been closed, and that he would start for Lake Superior the same day.

The following is a copy of the contract which was thus executed:

"This agreement, made the eighteenth (18) day of June, 1868, between Thomas F. Mason of the City, County, and State of New York, of the first part, and Elisha T. Loring, trustee, of the City of Boston, County of Suffolk, State of Massachusetts, witnesseth, that said party of the first part, in consideration of the sum of twenty thousand dollars to be paid as hereinafter mentioned, hereby agrees to sell unto the said party of the second part all the following described premises, to-wit: situated in the County of Houghton and State of Michigan, the north half of the northwest quarter, and the northwest quarter of the southwest quarter, of section twenty-three, in township fifty-six north, of range thirty-three west; which said premises the said party of the second part hereby agree to purchase and

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pay for in manner following, to-wit: the sum of five thousand dollars on the execution and delivery of this instrument, the sum of seventy-five hundred dollars at the expiration of six months from the date thereof, and the sum of seventy-five hundred dollars to be paid eight months after the date thereof, with interest on the sum of fifteen thousand dollars at and after the rate of seven percent per annum, from the date of this instrument till the same shall be paid."

"It is further agreed between the parties to this instrument that said Mason the party of the first part, will receive the said sum of fifteen thousand dollars, or any part thereof at any time prior to the dates of payment hereinbefore mentioned, and that, upon the payment of the entire sum of fifteen thousand dollars and interest, the party of the first part shall make, execute, and deliver to the party of the second part, or his assigns, a proper deed for the conveying and assuring to him the fee simple of said premises, free from all encumbrances, which deed shall contain a general warranty, and the usual full covenants."

"It is further agreed that said party of the second part shall be entitled to immediate possession of said lands and premises herein described, and shall pay all taxes or assessments of every name and nature assessed and imposed on said lands and premises after this date."

"It is further hereby expressly understood and agreed that the said terms of payment mentioned in this contract are hereby made material, and that the failure to pay any of said installments or interest on the days named for the payment thereof shall render this contract absolutely null and void, and that any installment paid before such failure shall, by such failure, be forfeited, and that, whatever amount may be paid, any failure of payment of any of said installments and interest, as the same shall fall due and become payable, shall make this contract absolutely void, and all rights, interests, or titles under this contract shall be forfeited, and all and every equity and right in the said party of the second part, his heirs or assigns, shall thereby determine and become void. The clause in this contract mentioned relative to the execution of a deed of the

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said party of the second part, being, by the agreement of the parties hereto, expressly made subject to the agreement of forfeiture in case of any failure of payment of said installments and interest, as the same shall fall due and become payable."

It is further understood and agreed that each and every of the stipulations hereinbefore in this contract mentioned shall apply to and bind the heirs, executors, administrators, or assigns of the respective parties.

"In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written."

"THOS. F. MASON"

"E. T. LORING, *Trustee* "

"Sealed and delivered in presence of --"

"WM. HART SMITH, as to signature of T. F. Mason."

"H. F. ATWOOD, as to signature of E. T. Loring, Trustee"

On the 22d of June, Palmer telegraphed from Michigan to Loring that he had paid $5,000 for him, Loring, there, and asking that he pay the same amount to Mason and execute the contract. This was Frue's money, and it was afterwards so treated by all the parties. The remainder of the purchase money was paid by Loring when it became due, and as soon as the payments were made in full, Mason conveyed the property as called for by the contract.

No moneys were paid by Palmer to Loring with particular instructions to use them in paying for the land, but Loring had, for some years, been acting as the financial agent of Palmer in Boston, and the accounts as stated by the master show quite a considerable balance of interest in favor of Palmer at the end of the years 1867 and 1868, respectively. At first the credits to Palmer were principally from the sales of stocks, but during the years 1867 and 1868 they were mostly the proceeds of the discounts of Palmer's notes, endorsed by Loring. In the latter part of the year 1868, the credit of both the parties seems to have been somewhat impaired, and there was considerable difficulty in raising money to meet maturing obligations. The first installment on the contract with Mason fell due December 18, 1868, and there were notes of Palmer

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which had been discounted maturing about the same time to a considerable amount. To raise the means to meet these maturing obligations, Palmer, at the request of Loring, sold stocks of his own, from which $15,000 in money was realized. The sale was negotiated before the installment on the contract fell due, but the price was not paid until December 21st, $5,000, and December 28th, $10,000. All this money was paid over promptly to Loring for Palmer's credit, and the accounts stated by the master show that on the 31st of December, there was a balance due from Loring to Palmer of $17,059.25, and that there was a balance of interest account in Palmer's favor for the year of $775.55. In this statement of the account, no charge is made against Palmer for any share of the purchase money under the Mason contract. On the 18th of February, 1869, when the last installment to Mason fell due, the accounts show a balance in favor of Palmer of something more than $10,000. Between that time and March 20th, this amount

was substantially all used in payment of Palmer's maturing notes, but on the last date, Palmer sold other stocks, from which $8,000 in money was realized, and put to his credit. After that, in August, other notes were paid, and at the end of the year there was a balance against Palmer of $1,065.18, though the interest account for the year showed a balance in his favor of $302.35. Here, the transactions between the parties seem to have stopped, but on the 15th of March, 1872, Loring sold stocks of Palmer which he still held in his hands, from which $12,975 was realized, and afterwards, during the year, other sales were made, so that on the 31st of December, 1872, the accounts show a balance in favor of Palmer amounting to $15,964.45, which included a balance of interest account in his favor since the last statement of $637.96.

In the statement of the accounts to this time, for some reason, no charge was made against Palmer for certain stocks purchased in 1867, the price of which was $6,275, nor for any part of the Mason purchase, but the amount otherwise to his credit with Loring was sufficient to pay these items in full, principal and interest, and still leave a balance due Palmer at the date of the decree amounting to $527.52.

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On the 16th of March, 1869, Loring at the request of Palmer, endorsed on a copy of the contract with Mason a declaration as follows:

"BOSTON, March 16, 1869"

"Whereas, Thomas F. Mason has deeded to E. T. Loring, in trust, the lands described in the within document, and received therefor in payment the sum mentioned therein, with the interest, therefore be it known, for value rec'd, I hereby acknowledge that C. H. Palmer, or Wm. B. Frue, one or either of them, jointly or separately, are the owners of the undivided one-fourth part of said lands, and I hereby obligate myself, heirs, and executors to account to said Palmer, or his assigns, for one-fourth part rec'd for the lands in question, whenever a sale shall be made of the same."

"ELISHA T. LORING"

"Witness: JAMES MOORE"

This represented the interest paid for with Frue's $5,000, and Palmer obtained it at Frue's request, so that he (Frue) might have something to show for his interest in the land. Afterwards, on the 22d of May, 1869, Loring conveyed to Frue an undivided one-fourth of the property, and he claims no further interest.

On the 22d of February, 1869, Loring wrote Palmer as follows:

"I therefore deem it my duty, and as an act of courtesy toward you, to notify you that whatever additional proportion you wish to secure for yourself in section 23, it will be necessary for you to remit the amount of the cost of such additional portion as you desire prior to the 20th of March; otherwise I shall consider as mine, and retain, the three-fourths interest in section 23 which I have paid for."

In October, 1871, Loring sued Palmer for a balance claimed to be his due on general account, and the bill of particulars showed the amount demanded to be large. Nothing was claimed for payments on account of the Mason purchase. This suit was pending until June, 1874, when it was discontinued, and on the first of July, 1875, Loring conveyed the

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land to Welch in trust for him, Loring, and his children. This suit was begun December 20, 1875. The circuit court rendered a decree in favor of Palmer, and from that decree this appeal was taken.

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MR. CHIEF JUSTICE WAITE, after stating the case as above reported, delivered the opinion of the Court.

The question which meets us at the outset is whether the trust in favor of Palmer, on which the case depends, has been sufficiently established. A statute of

Michigan provides that

"Express trusts may be created for any or either of the following purposes:"

" * * * *"

"5. For the beneficial interest of any person or persons, when such trust is fully expressed, and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title."

2 Howell's Ann.Stat. § 5573, p. 1448.

The trust relied on is an express trust, and it relates to lands in Michigan. Consequently it must be established according to this statute, which it is contended requires proof of the creation of the trust by a written instrument that shall clearly express and fully define on its face the rights of the respective parties thereto. It is not enough, as is claimed, to show the existence of the trust by writing. The proof must be that it was originally created by a written instrument sufficient in form. In the view we take of the case, it is unnecessary to inquire whether this is the true rule or not, for in our opinion, the evidence is sufficient to meet all these requirements.

We do not understand it to be denied that the letters of Palmer to Loring under date of June 18 and June 19, the memorandum of the agreement made in Michigan at the time of the negotiations by Palmer and Frue with Mason for the purchase, and which was sent by Palmer to Loring in the letter of June

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19, the telegram and letter from Loring to Palmer before the contract between Mason and Loring, trustee, was executed, the letter from Loring to Smith, under date of June 25, the letter from Mason to Perkins under date of June 26, and the contract between Mason and Loring may all be read together as one instrument for the purpose of establishing the trust. If, upon the face of these writings thus read and construed together in the light of the circumstances which surrounded the parties at the time, a trust is fully expressed and clearly defined for the

beneficial interest of Palmer, then his case has been made out so far as the creation of the trust is concerned.

We begin, then, with the fact that Loring, Palmer, and Frue had been operating together for some years in buying mining lands, forming mining corporations, and selling mining stocks. Very generally the titles, both of lands and stocks, had been, during all the time, taken and held in the name of Loring, as trustee for all concerned. Each party paid for his own share of the purchases, but Loring was the principal capitalist, and both Palmer and Frue relied on him to raise money for them to meet their obligations when necessary. This particular purchase was set on foot by Palmer and Frue, and it was of a kind of property in which the parties had been in the habit of dealing. It adjoined or was near to other property in which they were all largely interested at the time, and which they were jointly engaged in advancing in value. The writings are to be read and construed in the light of these facts. The contract of purchase, as reduced to writing and finally executed, is in the name of Loring, trustee. This on its face implies that it was made by him for the beneficial interest of others besides himself, in whole or in part. Standing alone, it does not "clearly define" the trust which it apparently created, but, taken in connection with the correspondence which preceded it, and out of which it confessedly arose, no room is left for doubt that it was made for the benefit of the three persons who had been so long operating together in that kind of property. Palmer, in his letters acquainting Loring with what he and Frue had done in Michigan toward the purchase, says:

"It is a fortune to us if well handled; . . . when I present the whole"

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matter, you will see how important it is to us. We can take from Hecla from 1,550 to 2,305 feet in length, and still give them out of this purchase double the amount of mining value that we get from them. The fact is, this ground bought is worth more to them than the ground next to Ossipee. It is for this reason that I do not want anything said till we have fully considered this matter together, and see how

we shall open it to Shaw. . . . Hecla would be free then to give us 100 acres, 50 of which would carry the vein, and we should give them 100, all of which would carry the vein. You will see the importance of this matter, and that we should not say anything until we consult. The Hecla is rich, and was can make the Ossipee as rich.

And again:

"We shall get out of Hecla all I have indicated. The land we would exchange is more convenient on surface and underground for them than what they would give us. It will be under their machinery and improvements. This is a great thing for Ossipee."

It is said, however, that Frue does not appear to have been included as one of the beneficiaries. He was one of those who had been operating together, and Palmer, in his letter, speaks of him as having been present when the negotiations were had with Mason in Michigan. The language on this subject, in the letter of June 19th, is "Mason talked this matter over with Frue and myself, and says we shall have this land as agreed, and that his word is as good as his deed," and besides, in the memorandum of the agreement, made at the time of the negotiation, either Palmer and Frue were named as vendees, or Charles H. Palmer and his associates, which, under the circumstances, would imply the same thing.

Again, it is said that the individual interests of the respective beneficiaries are not stated, and therefore that the trust is not sufficiently defined to meet the requirements of the statute; but the rule in Michigan, as well as in all other states where the principles of the common law prevail, is that where a conveyance of lands is made to two or more persons, and the instrument is silent as to the interest which each is to take, the presumption will be that their interests are equal. *Campau v. Campau,* 44 Mich. 31, 34; *Eberts v. Fisher,* 44 Mich. 551, 553.

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Under this rule, the purchase by Loring as trustee was for the equal benefit of the three parties in interest, and the trust therefore inured in that way. Without doubt it

was expected that each of the parties would pay for his own interest and that, as between themselves, neither should be bound for the other; but that is a matter the effect of which need not now be considered, as Palmer has paid for his share in full. There is nothing whatever on the face of the papers to indicate that at the time the contract was made and the trust created, it was expected that one should have a greater interest in the purchase than another.

Finally, it is claimed the letters show that the purchase was made for the Ossipee Company, and not for Loring, Palmer, and Frue individually. We cannot so read what was written. The Ossipee Company had been promoted by these parties. They had bought the land which was made the basis, in whole or in part, of its organization. They were at the time of the purchase from Mason the three largest stockholders. The Ossipee was a corporation, and it nowhere appears that these parties, or either of them, had ever been authorized to make the purchase on its account. There is no doubt that all the parties expected to handle the property with a view to an enhancement of the value of Ossipee stock, but there is nothing whatever to indicate that the corporation was to be in any way directly interested in the purchase. The land might have been, and undoubtedly was, necessary to the complete success of the company, but it was nevertheless, when bought, the property of the purchasers, who occupied no such trust relations to the company as to make their purchase inure directly to its benefit; and besides, the company is not now seeking to charge them as trustees. Palmer does indeed say in his letter to Loring: "The purchase will add to the Ossipee $5 per share at once in actual value," and

"we must make a family concern of Ossipee, and I would not sell any stock in it; we can make it put on its own importance; this we will do; I see this matter clearly,"

and "we shall have a Hecla of our own," but this does not make Ossipee the purchaser, or the direct beneficiary under the trust as thus created and defined. The

expectation of an indirect benefit to their investments in Ossipee was undoubtedly great, but nothing occurred to bind the company to the purchasers or the purchasers to the company.

We conclude, therefore, that the original trust in favor of Palmer for a one-third interest in the property has been sufficiently established.

It is contended, however, that if the conveyance was made to Loring as trustee for himself and Palmer and Frue, then, under the statutes of Michigan, the legal title vested at once in the beneficiaries, and the remedy of Palmer is at law, and not in equity, because he holds the legal title to his share, and not an equitable title merely. The statute referred to is as follows:

"§ 5567. Sec. 5. Every disposition of lands, whether by deed or devise hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of or in trust for such person, and if made to one or more persons, in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee."

2 Howell's Ann. Stat. 1446.

This, it has been held, abolishes all express passive trusts in Michigan, but allows express active trusts when created in accordance with § 5573, cited above. *Burdeno v. Amperse,* 14 Mich. 96; *Ready v. Kearsley,* 14 Mich. 227; *Steevens v. Earles,* 25 Mich. 44; *Thompson v. Waters,* 14 Mich. 234; *Goodrich v. Milwaukee,* 24 Wis. 430. But here the conveyance under which Loring took the title that he has since conveyed to Welch did not create the trust in favor of Palmer. That was done by the original contract of purchase from Mason read in connection with the contemporaneous correspondence between the parties, and the object of this suit is to charge Loring as trustee under that contract, and to compel him and his grantee to perform the trust which was then created. There is nothing on the face of the deed to Loring to show that Palmer is the person for whom Loring took title in trust. The legal title did not therefore vest in him by that

conveyance. All he has is the equitable title which he acquired under the contract of purchase, and his purpose now is to compel

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Loring to convey to him the legal title to his share which passed from Mason when the contract was performed and the deed executed to him in accordance with its provisions. This is relief which a court of chancery alone can afford. So far as this record shows, Mason knew nothing of the particulars of the arrangement between Loring, Palmer, and Frue as to their respective interests. It is true the contract was made with Loring as trustee, but that is all. The terms of his holding are nowhere explained, and Mason performed his duty toward all who were interested when he conveyed to Loring in accordance with the terms of the contract. The deed was intended to and did vest in Loring the legal title in trust for whomsoever it might concern. This suit is prosecuted to establish the fact that Palmer was one of the persons concerned, and to charge Loring accordingly.

The trust having thus been established, and the jurisdiction of a court of equity over the subject matter of the suit sustained, it remains only to consider whether the trust which was originally created has been abrogated by abandonment or laches. The last payment to Mason was made February 18, 1869, and this suit was not brought until December 20, 1875.

This branch of the case is presented to us very differently from what it was to the court below when the interlocutory decree was rendered, and the cause referred to a master to ascertain how much was due from Palmer to Loring upon the purchase money paid to Mason. It was then supposed that Palmer had no money in the hands of Loring which could be used to pay on the land when the deferred installments fell due. The court then found that no part of the proceeds of the smelting stock or the Hecla stock was applied to such payment, and that all went into Palmer's general account, with his consent. It now appears that when each of the installments was paid, or very soon thereafter, Palmer had, or ought to have had, a balance to his credit much more than sufficient to meet his share of what was due. The testimony shows very clearly that neither of the parties had a correct

understanding of the state of their accounts with each other at the time. Palmer kept no books of his own, and those of Loring were not at all reliable.

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Loring always claimed that Palmer was largely in his debt, and Palmer does not seem to have had then any means of showing the contrary. His own credit was exhausted, and Loring had possession of all his securities. Consequently, when Loring called on him to pay by the 20th of March, he did not abandon his claim, but he sold his Hecla stock, and paid the proceeds to his general credit, and waited for time to show whether this was enough to preserve his interest or not. He gave no special direction for its application, but, under the circumstances, the law will apply it to the only debt he then owed to Loring, and that was his share of this purchase money. Loring, by keeping the charge for the purchase money out of his accounts, cannot deprive Palmer of his right to the application of his credits. In a couple of years or so, Loring began his suit, and this was kept pending until 1874, when it was discontinued. Loring says in his answer this was because he had "ascertained that Palmer was utterly irresponsible and worthless." Now it turns out that when the suit was abandoned, he was himself in debt to Palmer, and that all the time he had securties in his hands which were largely in excess of any amount he had paid for Palmer on the land or otherwise. Under these circumstances, it is impossible to say that the evidence makes out a case of actual abandonment, or that Palmer has been guilty of such laches as to bar him of the equities which are now so clearly shown to have existed in his favor all the time. His delay in bringing the suit is to be construed in connection with the uncertainty that existed as to the true situation of his accounts. Loring must have known that Palmer relied on him to keep the accounts, and having himself been guilty of such glaring errors in his statements and in his claims, Palmer is not to be charged alone with the fault of delay. The same explanation applies to his failure to respond more definitely to the letter of Loring under date of February 22, if there was in fact any such failure. He did, however, by the sale of his Hecla stock, put Loring in funds to an amount sufficient to meet his entire share of the purchase money, and that too on the very day he was required to do so by this letter of Loring. This renders it unnecessary

to consider the conflicting testimony on the subject of the letter.

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The explanation also applies to the correspondence in reference to the declaration of trust in favor of Frue, under date of March 16, 1869. It is clear that if Palmer had known the actual condition of the accounts at the time, he would promptly have claimed his rights, and that, to say the least, Loring was as much responsible for this uncertainty as Palmer. If the land had not in fact been paid for by Palmer, the delay in bringing the suit or otherwise asserting the claim with distinctness would have looked upon very differently. As it is, it does not make out a defense by Loring to the enforcement of the trust which has been so clearly established.

The decree of the circuit court is

Affirmed.