Dunnica, William F. vs. Coy, John et al 1856 Chariton Co. 11th Cir. 212/9

Old 73/21

Affirmed

John Coy indebted to D; upon gaining property & slaves at dad's death C sold it to brother Collins in attempt to defraud D.; Collins sold back to C in name of Prewitt

Property sold as that of Coy after D obtained judgment & D bought land

D asks court to set aside phony contract; can't b/c no sheriff's deed included so no conveyance indicated

Glasgow Mo. Nov 28 1855.

Dear Sir

I desire a writ of error issued to the Circuit Court of Chariton County on the part of the Plaintiff in the Case of William F Dunnica vs. Collins Coy, John Coy & others. Please issue the writ so that we can get it up by the January Term of the Court. If the fee for the writ is demanded in advance please ask Col Davis to attend to it and I will settle it with him, or I will send the Amount down when the Col Returns from home.

Yours Truly
T Shackelford
atty for Plff

Mr Dunscomb
Clerk of Supreme Court.

Wm. F. Drummond

vs } Precipe

Collins Coy et al

filed Dec. 1 1855

Wm. E. Drummond

Clerk

Shackleford

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the eleventh Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Chariton County, in the Judicial Circuit aforesaid wherein William F. Dunnica was plaintiff and Collins Coy, John Coy, Elizabeth Coy and John Prewitt were defendants

in an action of manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court; so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the first day of December in the year of our Lord one thousand eight hundred and fifty five

Wm E Dunscomb

[illegible]ecated the within wr[illegible] of Error by making [illegible] out a full and perfect transcript of the record & proceedings had in the within entitled cause

Given under my hand and the seal of said court at office this 10th day of January AD 1856

Thomas T Ellcott Clerk
Chariton Circuit Ct
Missouri

Dennis
vs
Wm Wright of Error
Coy et al

Filed in my office
January 1st 1856
T T Ellcott Clk

I acknowledge that notice of the issuing of the within writ has been served on me this 21st day of January A.D. 1856

J. V. Turner
Attorney for Defendants

Pleas before the Honorable James A Clark Judge of the Eleventh Judicial Circuit, at a Circuit Court continued and held at the Court house within and for the County of Chariton in the State of Missouri on Wednesday being the 21st day of November AD 1855

State of Missouri County of Chariton, Sct

Be it remembered that heretofore to wit on the first day of November AD 1855 there was filed in the Office of the Clerk of the Circuit Court within and for said County a petition which is in the words and figures following to wit—

Petition

William F Dunnica Plaintiff
against
John Coy
Elizabeth Coy
Collins Coy
John Prewitt Defendants

In the Circuit Court of Chariton County November Term 1855

The plaintiff states that on or about the twelveth day of February AD 1853 the defendant John Coy executed to him a promissory note for the sum of One hundred and Eighty & $\frac{38}{100}$ dollars or thereabouts bearing date as aforesaid due twelve months after date, That after the execution of said note the said John Coy became entitled to an interest

in some Slaves and other personal property as one of the Children of Frances Coy deceased, That his said interest was worth as this plaintiff is informed and believes about the sum of four hundred dollars That the said John Coy was at the execution of said Note and at the time he became entitled to an interest in said Slaves, and other personal property insolvent and had no visible means or property whereby his Creditors could by process of law obtain Satisfaction of their debts, That in order to defraud hinder and delay his Creditors being at the time largely indebted to other persons as this plaintiff is informed and believes and as charges, and to this plaintiff as above Stated, sold his interest in the said estate of his mother to the defendant Collins Coy who had full knowledge of the fraudulent intent and purpose of the said John Coy who was his brother, That as a part or whole consideration of said Sale the said Collins Coy sold to said John Coy the following described real estate lying and Situated in the County of Charlton and State of Missouri to wit: the South West quarter of the North West quarter of Section No

Twenty six (26) Township No fifty three (53) Range No Eighteen (18) also the North west quarter of the South west quarter of Section No Twenty six (26) Township No fifty three (53) in Range Eighteen (18). That the said Collins Coy for the purpose of aiding and assisting the said John Coy to defraud hinder and delay his creditors made a title bond for said property or real estate to the defendant, John Prewitt in trust for the defendant Elizabeth Coy & her minor children who are unknown to this plaintiff and he cannot make them parties to this petition. That this plaintiff believes that said defendant Prewitt accepted said trust were knowing that the consideration for the same passed from said John Coy and that the same was made for the purpose of defrauding the creditors of the said John Coy. The plaintiff further states that he believes and so charges that the making and executing the said ~~the said~~ agreement was entered into between the said Defendants by a fraudulent combination and colusion in order to defraud the creditors of the said John Coy and to prevent them from obtaining their just debts from him by process of law.

The plaintiff further states

that on the 24th day of March AD 1854 he obtained a Judgment in the Circuit Court of Chariton County against the said John Coy. That the Note above described was the foundation of the action on which said Judgment was obtained and that the Judgment was for the sum of one hundred and Eighty one Dollars & fifty eight Cents or thereabouts for his debt and the sum of six dollars and sixty cents damages and the sum of Sixteen & $\frac{20}{100}$ dollars for his Costs which said Judgment is herewith presented to the Court and asked to be taken as a part of this petition that on the first day of April 1854 a writ of execution was issued on said Judgment directed to the Sheriff of Chariton County who levied the same on the above described real estate as the property of John Coy who was then in possession of the same and that at the September Term 1854 of the said Court the said land was offered by the Sheriff at public Sale according to law at which public Sale the plaintiff became and was the purchaser of said land or the interest of the said John Coy for the sum of fifteen & $\frac{50}{100}$ dollars and is legally

5 entitled to the possession of the same
The plaintiff therefore asks the
Court that the defendants answer
the allegations and the said Collins
Coy be compelled to disclose the
Consideration for the sale of the said
land to said John and whether
the said Contract was not to and
with the said John and to disclose
whether there is still any purchase
money due and how much, and
the plaintiff asks the Court to
set aside the pretended contract
made to the ~~defendant~~ defendant John Prewitt
in trust as aforesaid, That the
said Collins Coy be compelled
to convey the said land to the plain-
-tiff and that the said John Coy
give the possession of the said land
to the plaintiff, and that the
plaintiff have also a Judgment
against the said John Coy for the
sum of forty dollars per year for
the use and occupation of said land
from the time of sale to the time of the commence-
-ment of this Suit and that he be
granted such other and further
relief as he may be entitled to
and upon such terms as the Court
shall direct & his costs

Shackelford Attorney
for Plaintiff

affiant William F. Damron the plaintiff

having been duly affirmed says he believes the above petition and the matters therein as stated are true

W J Dunnica

Subscribed and affirmed to before me this 31st day of October A D 1855

Witness my hand & Official Seal

(Seal)

J Shackelford
Notary Public
Howard Co Mo.

On which said Petition there was issued by the Clerk of the Circuit Court within and for the County aforesaid a writ of Summons which is in the words and figures following, to wit

State of Missouri County of Chariton ss
State of Missouri

Writ

To the Sheriff of the County of Chariton - Greeting: We command you to Summon John Coy, Elizabeth Coy, Collins Coy and John Prewitt of the County of Chariton if they be found in said County that they be and appear before the Judge of our Circuit Court at the next term thereof on the first day of said term to be begun and held at the Court house in the Town of Keytesville within and for said County of Chariton on the 3rd Monday in November next to being the 19th day of said month A D 1855 Then and there to answer the petition of the plaintiff

7 William F Dunnica in a civil action and have you this and there this writ
Witness Thomas F Elliott Clerk
(Seal) of the said Court at office this
1st day of November A D 1855
Thomas F Elliott Clerk

On which said writ is the Sheriffs return in words and figures following to wit:

Shff. return

"I certify that I executed the within Summons by delivering to John Coy a certified copy of the within Petition and Summons, and also by delivering to Collins Coy, and John Prewitt each a copy of the within Summons on the 2nd day of November 1855 in Chariton County Mo

Robertson Moore Sheriff
Shffs fees $3.00 of Chariton County
By A Moore his Deputy

And afterwards to wit at a circuit Court continued and held for the County of Chariton aforesaid at the court house in the town of Keytesville on Tuesday being the 20th day of November A D 1855 an order was made by said court in said cause which is in the words and figures following to wit:

Ot file Dem.

"This day came the defendants aforesaid by their attorney and presented their demurrer to the plaintiffs petition which on motion is ordered to be filed"

Which said Demurrer is in the words and figures following to wit:

" Wm F Dunnica, Plaintiff
against
John, Elizabeth & Collins
Coy & John Prewitt Defendants

In the Circuit Court Chariton County

Demurrer

Defendants demur to plaintiffs petition 1st because there is a defect of parties defendant in said petition in this that the defendants Elizabeth & Collins Coy & John Prewitt are improperly joined with defendant John Coy in a demand for rent against said John Coy alone. whereas if the said John Coy is liable for said rent as alleged he ought to have been sued alone therefor & in this that the said John Coy is improperly joined with the other defendants in a proceeding to set aside the alleged agreement in which agreement he is according to the plaintiffs allegation in no wise interested & claims no interest

2. Because there is a misjoinder of an alleged cause of action against the defendant John Coy alone, with an alleged cause of action against the other defendants alone

3. Because the petition does not state facts sufficient to constitute a cause of action against the defendants jointly

J V Turner atty for Defts "

And afterwards to wit at same term of said court on Wednesday being the 21st day of said November AD 1855 an order was made by said court in said cause which is in the words and figures following to wit:

order Sus. Demurrer

"This day came the parties aforesaid by their attorneys and the Demurrer heretofore filed in this cause coming on to be heard and argued by counsel, whereupon it is ordered by the court that said demurrer be sustained, and that the defendants recover against the plaintiff all their cost by them about their defence in this behalf expended, and have thereof execution; to which opinion of the court in sustaining said demurrer the plaintiff by his counsel excepts."

State of Missouri County of Chariton Set

Certificate

I Thomas J Elliott Clerk of the Circuit court within and for the County aforesaid do hereby certify that the foregoing pages from one to nine inclusive contains a true full and perfect record of the proceedings had in a cause wherein William F Dunnica is plaintiff and John, Elizabeth & Collins Coy and John Prewitt are defendants as fully as the same remains of record in my office, Witness my hand and the seal of said court at office this 10th day of January 1856

Thomas J Elliott Clerk

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Bill Cost

D T Elliott clerk	$11.85
R Moore Sheriff	3.60

15~~8~~ ~~45~~

Wm F Dunnica - p.e.

vs } Record

John Coy ~~et al~~,

Collins Coy, Elizabeth

Coy & Jno. Prewitt

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filed January 26 1856

Wm E Dunncomb

Clerk

Charlton

11th

In the Supreme Court.
July Term 1856.
William T. Dunnica Plaintiff
against } Error to Charles City County.
Collins Coy & others Defendant.

The Plaintiff assigns Error as follows.
1st That the Circuit Court committed error in sustaining the demurrer of the defendants and dismissing the Plaintiffs Petition

Shackelford
for Plaintiff

Error to Chancery Ct

William F. Duncan
vs
Collins Coy & others.

assignment of Error

filed July 9 1856
Wm E Duncan
Clerk

In the Supreme Court of Missouri
July Term 1856.

William T Dunnica Plaintiff
vs. } Writ of Error to Chariton Co.
Collins Coy & others Defendants

Plaintiffs Brief =

This was an action commenced in the Circuit Court of Chariton County to recover the possession of a tract of land from John Coy one of the defendants & damages for detention &c = The Petition alledges that Plaintiff obtained a judgment against John Coy on a note - That John Coy at the time of the execution of the note was insolvent and indebted to plaintiff and other persons - That he subsequently became entitled to an interest in some Slaves belonging to the Estate of his Mother, which he sold to defendant Collins Coy. That ~~and~~ as a consideration for said sale purchased of Collins Coy the land in Controversy, That in order to defraud his Creditors caused a deed or agreement to be made whereby the said Collins Coy was to convey the land to Defendant John Pickett for the use and benefit of the defendant Elizabeth Coy and her Children, She being the wife of Said John Coy That said Conveyance was made to defraud the Creditors of John Coy with full knowledge of the said Codefendants, That afterwards said plaintiff obtained a judgment against Said John Coy who had no other property on which to levy execution, That he was in possession of Said tract of land which was sold by

the Sheriff under said execution and the plaintiff became the purchaser, The Plaintiff asks that the Conveyance of Collins Coy to John Prewitt for the use of Elizabeth Coy be set aside and that Collins Coy disclose the consideration of said Sale, That the Court decree ~~that~~ the possession of said land to plaintiff and damages from time of Sheriffs Sale against John Coy — To this petition the Defendants demurred which was sustained by the Court and the petition dismissed and the plaintiff sued out his writ of error.

To reverse the Judgment of the Circuit Court the plaintiff relies on the following points and authorities =

1st The suit being in the nature of a Bill in Equity for a discovery and to set aside a fraudulent conveyance, even under the former practice of Courts of equity, the Court having obtained Jurisdiction for the above purpose They will further entertain the bill for the purpose of complete relief — See Story's Equity Jurisprudence Vol 1st page 88 & following

2nd The objection that the intervention of a Jury is required to assess the damages is not valid under the New practice act which abolishes the distinctions between Courts of Law & Equity and there can now be no good objection to a party's asking a fraudulent Conveyance to be set aside and a judgment for Possession and Damages against a fraudulent ~~grantee~~ party

3 It ought to be the object of the Court to avoid multiplicity of suits and it is not perceived that the petition of the plaintiff is objectionable

able on account of Multifariousness

Shackelford

Atty for Plaintiff =

Errondo Chanton Co.

W f Dunnicio

vs

Collins Coy & others.

Plaintiffs Brief

filed July 9 1854

Wm E Dunscomb

Clerk

In the Supreme Court of Missouri July Term 1886

William F. Dunnica, Plaintiff
vs.
John, Elizabeth & Collins Coy & John Prewett, Defendants

Error to the Charlton Circuit Court.

The said defendants by J. V. Tilman their attorney come & say that there is no error either in the record & proceedings aforesaid or in giving the judgment aforesaid; & they pray that the Court may proceed to examine as well the said record & proceedings as the matters aforesaid assigned for error, & that the judgment aforesaid, in manner aforesaid given, may be in all things affirmed.

J. V. Tilman
Atty. for Defendants

W. F. Dunnica
vs } Kinderin
Error
John Coy & others

filed July 15 1856
Wm E. Duncan
Clerk

No 50 - Dunnica against Coy & others

This judgement will be affirmed - but we proceed on grounds - altogether different from those that have been suggested to us in the briefs -

We decided at our last Fall term at St Louis, in the case of Rankin against Rankin, that where a father purchased land, with his own ~~[illegible]~~ money, in the name of a child - in order to defraud his creditors, that there was a resulting trust to the father - in favor of the creditors, - which was subject to sale under our execution laws - And in that case the land was accordingly sold - and conveyed - by Sheriff deed to the plaintiff - who filed his petition - stating these facts - and upon a trial and verdict, he obtained a judgement - vesting the legal title in him - and for the possession and damages - And at the same term ~~[illegible]~~ in the case of Eddy against Baldwin, we applied the same doctrine to a case, where the alleged fraudulent purchase of the land, sold under execution, was made by the husband - in the name of a stranger as trustee - upon expressed trusts - in favor of the wife

According to these decisions, it would seem, that if the facts be in the present case, as stated in the petition — and the plaintiff has completed his purchase, by taking the sheriffs deed — for the land bought — he would have become the beneficial owner of the property and might have filed his petition — to have the alleged fraud tried — and the trustee decreed to convey the legal title to him — and for the possession of the land — and an account of the rents that has accrued since the purchase — But the fatal defect in the petition is — ~~[illegible]~~ it is not shown that the sheriff had ~~[illegible]~~ executed a deed to the plaintiff and which of course was ~~[illegible]~~ necessary to complete the purchase — and transfer to the purchaser ~~[illegible]~~ the rights of the judgement debtor in the land. There may have been an accidental omission on the part of the pleader — or it may be that the deed has never been ~~[illegible]~~ made but however the truth may be, ~~[illegible]~~ we must assume upon this demurrer, that there was no conveyance — and therefore the plaintiff was not entitled to the relief ~~[illegible]~~ he asked —

Although a judgement creditor may before proceeding to a sale of land, alleged to have been fraudulently conveyed, go

into equity — for the purpose of having the question of fraud then tried — and the land sold under a decree for that purpose — and the proceeds applied to the payment of his debt, yet the petition does not seem to have been framed with any view to that kind of relief, and we are not perhaps at liberty to treat it as such, after the party's averment of the execution sale, even if the allegations of the petition were otherwise sufficient — to entitle the plaintiff — to the other relief prayed —

The judgment upon the demurrer must therefore be affirmed — and the party will then of course complete his purchase by taking a deed — and may afterwards institute such fresh proceedings as he may deem appropriate to his case

The judgment is affirmed

A Leonard

No 50

Dannica

agst

Coy & others

Mus fees including copy

$8.90

Opinion

Leonard

Judge

affirmed

filed Febr. 27 1857

Wm E Dunscomb

Clerk

Wm. T. Dunnica,
vs.
John, Elizabeth & Collins Coy
& John Brewitt

Error to Charlton Circuit Court.

Dunnica filed his petition alleging substantially that John Coy issued to him a promissory note & afterwards acquired an interest in certain slaves & other personal property, & being insolvent conveyed his interest in such property to Collins Coy to defraud creditors & received in part payment certain land which Collins, in order to assist John in defrauding his creditors, obligated himself to convey to Brewitt in trust for Elizabeth Coy & her minor children; that the plaintiff obtained a judgment on the note, on which an execution was issued under which the land was sold to the plaintiff, as the property of John Coy. The prayer is for a discovery; & that the "pretended contract" with John Brewitt be set aside; that Collins Coy be ~~required~~ compelled to convey the land to plaintiff; that John Coy be required to give possession of the land to plaintiff; & that the plaintiff have judgment against him for use & occupation. The petition was demurred to on the grounds 1st that there is a defect of parties defendant, in this that the other defendants are improperly joined with John Coy in a demand against him alone, for rent; & in this that said John Coy is improperly joined with the other defendants in a proceeding to set aside an alleged agreement in which, according to the allegations, he is in no wise interested & claims no interest; 2d that there is a misjoinder of an alleged cause of action against John Coy alone, with an alleged cause of action against the other defendants alone; 3d that the petition does not state facts sufficient to

constitute a cause of action against the defendants jointly. The demurrer was sustained & judgment was thereon rendered ~~rendered~~ against the plaintiff, to reverse which he brings the case here by writ of error.

J. V. Turner for defendant, insists on these positions.
1. It is wholly immaterial with the other defendants & especially with Collins Coy, whether John Coy be required to pay the rent demanded of him or not, & they are improperly joined in an action for the recovery thereof against him; & it is alike immaterial with John Coy, whether the alleged agreement be set aside & the land deeded to plaintiff or not, as, in any view of the case, he has not (nor is it alleged that he claims) any interest in the land: whatever interest he may have had having passed to the plaintiff by virtue of the Sheriff's sale. For this misjoinder of different supposed causes of action against different persons the petition was bad. Robinson &c. vs. Rice &c. 20 Mo. R. 229.
2. The proper remedy for the recovery of the possession of the land from John Coy was in an action in the nature of ejectment against him alone. Laughlin vs. Stone 5 Mo. R. 43
3. If, as alleged, the exchange of the slaves for the land was fraudulent & void as to creditors, the title to the slaves, so far as creditors are concerned, is to be regarded as remaining in John Coy, subject to his debts, & the title to the land, as remaining in Collins free from the debts of John, just as if the exchange had not been made. Act of 1845 "Concerning fraudulent Conveyances" §2.
The plaintiff is therefore not entitled to the recovery

sought. He must look to the slaves. Collins Coy is entitled to hold either the land or the slaves; & his creditor can not take the land while the other creditors are at liberty to take the slaves.

4. If the contract with Prewett be set aside as fraudulent, then the title to the land will remain in Collins Coy, for the further reason that the alleged sale to John Coy, not being in writing, was void under the Statute of frauds.

Dunnica
vs Defts Brief
John Coy & others