Henderson, George v. Dickey, James et al. 2 of 2 520/2B

635/6

March, 1869

Plaintiff purchasers for value

Def. heirs

Father of Sarah Dickey claimed

Claim - O'Brien, the servant, was sent to him on it.

App	Resp
Dickey	Henderson
Sarah Dickey	
Tob Warr	
Dennis O'Brien	

Bates: Reversed - Remanded

Dryden dissents

George Henderson's Heirs
v
James Dickey

In Supreme Court,
No 326. October Term 1860
Appeal from St Louis Land Court

And the said James Dickey (by Beatty & Woodson his attorney) comes here into the Supreme Court, and says that in the record and proceedings aforesaid, and in the rendition of the said judgment, manifest error hath been committed by the said Land Court, to the great damage of the said James Dickey, the defendant below and appellant here, in this to wit:

1. That the said Land Court gave judgment for in favor of the said plaintiffs against the said defendant, whereas, according to the law & equity of the case, judgment ought to have been given for in favor of the said defendant, against the said plaintiffs.

2. No such judgment as was given, is warranted by the facts in the record, if all of the said facts were admitted or proven to be true, in manner & form as stated in the plaintiffs' petition

3. The Court erred in refusing to grant the Defendants' motion for a new trial,

upon

upon the grounds & reasons set forth in the said motion.

4. The Court erred in allowing the plaintiffs, against the will of the defendant, to falsify the petition, in a material statement — in this, that the petition states that Bowlin conveyed the land in question to Taylor, for a valuable consideration paid by Taylor, and the Court allowed the plaintiffs to prove by the testimony of one Wafson, that Taylor paid nothing to Bowlin for the land, but that he, Wafson, paid Bowlin the consideration, and claimed, for himself, a resulting trust in the land.

5. The Court erred in receiving the testimony of John W. Wafson to prove that he, Wafson, was equitably entitled to the land conveyed by Bowlin to Taylor, as having bargained with Bowlin for the land, and paid the consideration and caused the conveyance to be made to Taylor, for the purpose of delaying or hindering his, Wafson's creditors.

6. The Court erred in receiving illegal evidence on the part of the plaintiffs against the will of the defendants.

7. The Court erred in basing its judgment upon a finding of issues vaguely & insufficiently, so as not to warrant the judgment rendered.

All which the said James Dickey is ready to verify, Wherefore, for the errors aforesaid and other errors apparent in the record, he prays that the said judgment may be reversed & held for naught, and that he may be restored to all that he has lost thereby.

By Atty.

Bailey & Woodson

Supreme Court. no.
October Term 1860

George Henderson's heirs
vs
James Dickey.—

Assignment of Errors—

Filed 24 Oct. 1860.
Wm. S. Glanville
Ck.

And the said Respondent say there is no such error
Clerk & Shepley
Pr Respondent—

[4]

Henderson et al
vs
Dickey

In the Supreme Court

Statement of the Case

The plaintiffs brought their suit against the defendants stating that they were the grantees of one Wasson (wife) for certain lots & Blocks in Carrondalet that Wasson derived his title from one Taylor the father of the defendant Jane Dickey wife of defendant Dickey & the only heir of said Taylor; that Taylor in making the conveyance to Mrs Wasson had misdescribed the lots making the description confused ambiguous & erroneous; that he intended to convey Block E & the South East quarter of H. The petition recites the conveyances from Carrondalet until they came to Bowlin & the deed of Bowlin & wife to Mrs Wasson as also the deed of Wasson & wife to Henderson.

The answer admits that Bowlin had title by mesne conveyances from Carrondalet to Block E & also the South East quarter of Block H: that he conveyed them to Taylor: that Taylor intended to convey to Mrs Wasson by his deed to her the South East quarter of Block H. but says it was a donation from Taylor to Mrs Wasson

Upon the trial among other testimony the plaintiff called John N Wasson as a witness who proved That he purchased the land of James B Bowlin & took the deed in the name of Taylor (witness paying the purchase money) as he was then embarrassed: That finding Taylor was getting into bad habits he tried to induce him to convey them to him: That he would only convey them to his Wassons receipt: that Wasson did not have the deed with him but gave the description of the lots to the justice who wrote the deed as he recollected it & that both he & Taylor supposed them to be a correct description of the lots conveyed by Bowlin to Taylor: That he afterwards conveyed said lots to Anderson in payment of rent he owed Anderson for a farm he occupied

The Court after hearing other evidence & documentary proof clearly establishing that Taylor had no other lots or Blocks in Farmdale except the lot & Block in controversy & the inaccuracies & misdescriptions in the deed & that it was intended to convey said Block E & the South East quarter of Block H, gave judgment for plaintiff.

Brief

I The defendant seems to rest their ground for reversal upon three propositions.

1st That admitting every thing stated in petition to be true. The plaintiffs could not recover –

2d The facts as found did not warrant the finding

3d That Wasson should not have been admitted to prove that Taylor paid Boutin nothing for the land conveyed to Taylor by Boutin but all was paid for & purchased by Wasson & that Taylor held it for him & also that he ought not to be permitted to prove that he Wasson caused the conveyances to be made to Taylor for the purpose of hindering & delaying creditors of Wasson –

These propositions we say

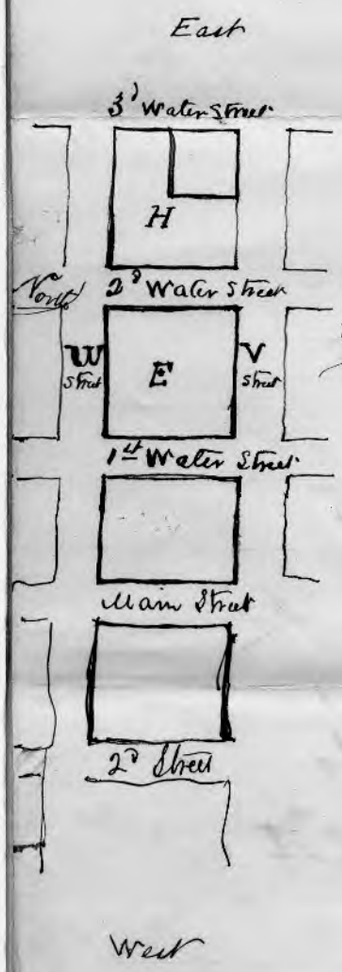
II. That a court in Chancery will always interfere (where others rights have not vested) in reforming an instrument & making it carry out the obvious intent of the grantor

1 Story Eq. Jurisprudence

Sec 152. 153. 154, 155. 156 –

III. The facts as proved all tended to the one point that it was intended to convey the Block E & the South East quarter of Block H

As there are no opposing counsel we are at a loss to conjecture as to why the facts proved do not constitute a clear case of a misdescription when the grantor intended to convey the land described in the petition. Indeed but little else than the deeds themselves was needed to show this & with the admission of the answer nothing.



The subjoined plat shows the position of the Block E & the South East quarter of Block H

It is admitted by the answer that Taylor intended to convey the South East quarter of Block H. Then there was another lot or Block of 300 feet that he attempted to convey the land no other lot than that. The descriptions that are there show this to have been the lot intended to be conveyed. It with the S. E quarter of Block H was agreed to be conveyed. Mason bought the lot from Bowlin

III. The evidence of Wasson was admissible

1st as to the facts that Taylor paid nothing to Bowlin for the land but he paid it. There is no conflict between the allegations of the petition that Bowlin conveyed to Taylor for a valuable consideration paid by Taylor to him & the statements of the witness. It was brought in to show that the land held by Taylor or that conveyed by Taylor to Mrs Wasson were identical. It was altogether an immaterial issue as the plaintiffs were granted for values from Wasson & wife & the only issue as between pltffs & defendants could be as to the identity of the lots in controversy with those conveyed by Taylor to Mrs Wasson

2d That the testimony of Wasson as to being equitably entitled to the land in controversy as having bargained with Bowlin for it & paid the consideration ought to have been rejected because he admits that he had it conveyed to Taylor because he was then in embarrassed circumstances

This is not a suit between parties to that transaction. There is no proof that

Henderson knew any thing about these transactions. He simply took a deed from Wasson & wife & paid a valuable consideration therefor & proved that the land described therein was described in such an uncertain rambling manner that it was difficult to say exactly what it did convey. Plaintiffs were entitled if the facts were as they alleged to have the mistake as to boundaries & description corrected, and it made no difference as far as they were concerned what were the transactions between Taylor & Wasson.

It not a bill asking that the court would decree a title from Taylor to Wasson, because Taylor has already made that conveyance, and if a mistake has been made & can be shown there is no reason why even as between Taylor & Wasson, a decree should be made correcting that error. But the case does not so stand. Under the evidence we court would hesitate as to finding that there had been good & valuable consideration paid by Henderson to ~~Tay~~ Wasson (& there was no reasonable doubt of even of the state of accounts between Wasson & Taylor) So that Henderson stands here asking that the deed under which he holds having paid value shall be reformed.

Since writing the above we have seen the

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Brief for appellants

The counsel seems to have fallen into a curious mistake as to the localities of the streets & Block especially as he had Judge Barada's testimony before him & the deed of Bowlin & wife to Taylor. His plat as far as the location of 2d water street & 3d water street is entirely different from what the witness & the deed of Bowlin make them. He makes them identical with Second street & third street

The deed which is asked to be reformed is in these words (as far as Block E is concerned ~~is in these~~ page 52 of Record) "a certain Lot messuage "or parcel of ground situated being & lying in "the town of Carondalet known & designated on the "plat or survey of said town as Lot No H or "Block H South East quarter containing three "hundred feet F.M. square and bounded as follows "to wit East by Second ~~Street~~ water street, South "by ½ "V Street West by first water street and "north by N" (or U. it cannot be told which) "street"

Now the deed of Bowlin to Taylor page 23 of record describes it as "four ~~lots~~ in one block "being a block 300 feet square French measure & bounded "as follows East by second water (street), South by V street "West by first water street & North by W Street —"

And so Barada locates it. and states distinctly that all the streets named water streets are between Main Street & the river. That the first one East of

Main Street is first Water Street. the second one East of Main Street was second water Street. and so on. and that the Block is called E which is bounded West by first water Street North by "W" Street East by Second water street & South by V Street which is just as the petition stated it to be except that in copying the amended petition the street North of Block E is stated to be U instead of W the copyist mistaking the letter. It is not perceived how the authorities cited by Mr Catts bear upon this case. In the deed were two inconsistant calls. & mistaken calls. but with a plat before one. it would need very little evidence to show what the land was that was intended to be conveyed. The deed of Bowlin to Taylor coupled with the fact that he owned no other land there would be sufficient but

In the Supreme Court

Henderson Tal

n

Dickey

Statement & Brief for Pff. Appellee

Glover & Shepley Attys.

Filed March 30. 1882

A.W. Mead

Clk

with the other evidence in the case makes the conclusion irresistable —

Glover & Shepley
Attys

Henderson
v
Dickey

Petition for rehearing by Geo ver & Shepley attorneys for Henderson heirs

The undersigned counsel for the pltff respectfully represent that they think the Court has erred in the conclusion to which they have arrived in the above case and proceed to state briefly the grounds of their opinion.

It is fully conceded in the opinion of the Court just delivered that the alledged mistake was proved as to both the conveyances.

The fact that Taylor made the deeds — that there was no other property owned or claimed by him which he could possibly have intended to convey, is of itself enough to warrant the Court in saying "the evidence preponderated in favor the pltff"

This admission we will

assume as conclusive that this court considered the the finding of the Land Court correct on the question of mistake as alledged.

The court after this admission in regard to the weight of testimony proceed to present the case as if it were one between Wilson and Taylor - remark that a court of equity interferes to correct a mistake only for the furtherance of justice - that tho the fact of mistake appears ever so plainly unless its interference is necessary to prevent the perpetration of fraud or some injustice no relief can be granted - that the party asking relief must stand upon some equity superior to that of the party against whom he asks it

All which we admit is properly stated by the Court. Nothing is plainer.

"The court say equity is remedial to those only

who come upon an actual consideration." And as applied to this species of case we also concede the justice of this remark.

Proceeding to apply the above principles to the case — the opinion proceeds to say — the conveyances by Taylor were without any valuable consideration — that the conduct of Mosson showed no meritorious consideration, on the contrary the title was held by Taylor in fraud of Mossons creditors — all of which we will now admit to be true — what then?

why the Court concludes and there being no other obligation on Taylor to convey than such as those circumstances imposed there is no reason for the interference of a court of equity. This conclusion is what we deny and moved most respectfully

ask to examine in a reargument

The statement of the case by the court omits the material facts on which the pltffs equity depends.

Those material facts are that Wogson sold to Henderson and that Henderson was a creditor of Wogson and paid Wogson a valuable consideration for the land in dispute.

And the question we respectfully submit was not whether Wogson could have sued Taylor to perfect this title but whether Henderson could do it.

The Court has considered the case as if this was a suit of Wogsons. There is the error. Now we respectfully propose to prove if a reargument is allowed to demonstrate the following propositions

(1) That the title to this property was in Taylors hands fraudulently if you please for the benefit of Wogson—

(2) That under this state of things Wolfson had power legally to sell it — and his sale would convey and did convey to Henderson the title to the lot. A deed — fraudulent towards creditors is also fraudulent and void as to "purchasers" from the real owner. Wolfson put this property in Taylor hands "to keep for him." Wolfson afterwards sold the property to Henderson in payment of a debt due Henderson from Wolfson. We will show that in this case Taylor was bound to release to Henderson he being a purchaser for value from Wolfson.

This is our first proposition.

"Where a father in failing circumstances purchased property in his own name and had the deed made to his children — and afterwards the father sold the same property the purchaser held it" 12 Mo R 169 Here Wolfson bought the property in Taylors name, He afterwards sold it for a valuable consid

eration to Henderson. Thereby Henderson became the owner of the property. That is the effect of the statute. The authorities to this effect are numerous. Had the purchaser been at Sheriff the right of the purchaser would have the same 23 Mo R 579 4 Kent 464 says "a bona fide purchaser for valuable consideration is protected whether he purchases from the fraudulent grantor or grantee. This is holding that the valuable consideration paid by Henderson to Wolfson the property in fact being Wolfsons gives H the aid of equity to hold the land.

(3) The will contend and demonstrate as we think that as Wolfson was the real owner of the land — and by his deed to Henderson made Henderson the real owner — the right of Henderson to come into a court of equity to perfect his title from any flaw

or defect was suspect.
If the valuable consideration paid by him to Mosson gave him the ownership of the bond why would it not compell Taylor to convey.

We will prove uncontrovertibly that every fraudulent holder of property is bound to release it in equity to any purchaser who has bot the same for value from the fraudulent debtor who was secreting it or from the Sheriff. This is the rule when the fraudulent holder has never attempted to convey the property

Now if by the valuable consideration paid to Mosson by Henderson Taylor was bound in equity to release to Henderson, how is it that Taylor ceases to be bound because he Taylor attempted to

convey:

The error of the court is that it assumes that Taylor is not bound to reconvey because he did not receive any valuable consideration. That means very clear is not the rule — If Wogson paid no valuable consideration to Taylor Henderson did to Wogson — and Taylor knew Henderson was doing so on the faith of the deeds: but if he did not Taylor was bound to convey the property he held fraudulently to to Henderson

(4) But while Taylor held this property for Wogson he was under moral legal and equitable obligation to surrender it to Wogson's creditors or purchasers from Wogson — when such purchasers for value comes no court ever holds that proof a valuable consideration paid to the fraudulent holder shall be brought — the valuable consideration paid to the real owner of the

property or even the presence of a creditor will set the court in motion to force a release —

of course it will authorize the court to remove clouds and perfect the title

The decision of the court in this case is that if A buys property pays the title in B and then sells the property to be for value B is not bound to release and if he attempts to release and fails by mistake he can keep the property from the purchaser for value because nothing is paid to him.

see 2 Harrington 225 —

We have no time to refer to books — we pledge ourselves to maintain the above propositions. We most respectfully but most earnestly pray the court to allow a reargument of the

case,

There was no evidence of any possession in the deft on which to ground a defence by limitation

The pltff was not seeking to take the case out of the statute and hence there is no importance to be attached to the time of discovery of the mistake

//

The opinion of the court is very hard upon the pltff in affirming there was no reason for the interference of the court in the case cutting off the privilege of an amendment supposing a decree for the land can not be grounded on the ground of fraud

//

All of which respectfully submitted

Glover & Shepley
for Henderson
pltff

Henderson
v
Dickey
Motion for rehearing
Overruled
Filed June 2 d. 1864
A. W. Mead
Clk

The grounds assigned for a rehearing are inapplicable to the case. They assume that the suit is one to subject Wasson's land to the payment of his debts, whereas the whole object of the suit is to correct a mistake in a deed from Taylor to Mrs Wasson & if there was a defect in the deed to her it was patent & her purchaser acquired no superior right to hers by paying value with notice of the defects

Henderson
u ⅔
Dickey

This suit was begun July 18th 1857.
The petition stated that on the 14th day of October 1842 Joseph D Taylor conveyed to Elizabeth Warson a lot of ground described as block "H", in Caundelet and that block "E" was intended to be conveyed by Taylor and that the mis-description was the result of misapprehension accident and mistake, that Warson and her husband on the 30th October 1845 conveyed said Block E to the plaintiff; that Taylor had died leaving one only child his heir who was named Sarah the wife of the defendant Dickey and that Dickey and wife (by a tenant O'Brien) held possession of said Block E, and prayed that the mistake in the deed from Taylor to Warson might be cor-rected and Dickey and wife compelled to release to the plaintiff all their right in said Block E and for the possession of Block E and for com-pensation for the use thereof by the defendants.
The defendants admitted possession of Block E and denied that by the deed from Taylor to Warson he intended to convey Block E and also set up the lapse of time as a bar.
The petition in a second count, stated that there was another deed made by Taylor to

Mrs Warson in which there was also a mistake and prayed the same sort of judgment as to it. – The defendants denied having possession of the lot mentioned in the second count or making any claim to it.

There is no allegation in the petition as to the time when the alleged mistakes were discovered; nor was any evidence given by either party, at the trial, directly upon the ~~question~~ subject of the time of the discovery of the alleged mistakes. There was no evidence of possession by the defendants of the lot described in the second count.

The evidence as to the fact of mistake was somewhat conflicting, but preponderating in favor of the plaintiff.

The petition charged that the conveyances by Taylor to Warson were made for a valuable con-=sideration.

The principal witness of the plaintiffs to show ~~the~~ ~~that~~ the fact of mistake was John W Warson the husband of Taylor's grantee Mrs Warson and ~~he~~ he himself originally purchased from Judge Bowlin the lots in Carondelet and had them conveyed to Taylor to keep till he (Warson) could get out of his difficulties – that the understanding between Taylor and himself was that when he got out of difficulties Taylor would convey the lots to him, – that Taylor paid Bowlin nothing for the lots – that Taylor refused to convey the lots to him

but agreed to convey them to his wife who was Taylor's sister, and that he (witness) procured the deeds to be written and took a justice of the peace to Taylors and Taylor then made the deeds and that nothing was given to Taylor for the deeds.

The justice of the peace who took Taylor's acknowledgment of the deeds also testified that he understood from both Taylor and Warson that Taylor held the lots for Warson — that he understood that Taylor held the lots in trust or for security for Warson. It was also testified that Warson was in embarrassed circumstances, — that he was generally pretty hard run.

The case as made in proof certainly does not conform to that stated in the petition. A court of equity interferes to correct a mistake in a written instrument, only for the furtherance of justice and it is not under any obligation to correct a mistake although the fact of mistake appear ever so plainly unless it also appear that its interference is necessary to prevent the perpetration of a fraud or some injustice, and the party asking relief ~~of a court of~~ must stand upon some equity superior to that of the party against whom he asks it. Regularly Equity is remedial to those only who come in upon an actual consideration, and therefore there

should be some consideration, equitable or otherwise, express or implied. (1 Story's Eq Juris: & 793 §176). In this case the conveyances by Taylor were without any ~~express~~ valuable consideration, and the circumstances detailed by the witness Warson did not imply any equitable or meritorious consideration, but on the contrary show that Taylor held the title to the lots ~~if not actually~~ in fraud of the rights of Warson's creditors or at least under ~~such~~ suspicious circumstances. And their being no other obligation upon Taylor to convey than such as those circumstances imposed there is no sufficient reason for the interference of a court of equity to reform the defective deeds.

(Fonblanques Eq 122, Book 1 Ch 2 Sec 13)

Grider v Graham 4 Bibb 70

Deally's heirs v Murphy – 3 Marsh 475

Judgment reversed & cause remanded

Barton Bates

Judge Bay concurs.

I think as between the plaintiffs who were purchasers for value,

but agreed to convey them to his wife who was Taylor's sister, and that he (witness) procured the deeds to be written and took a justice of the peace to Taylors and Taylor then made the deeds and that nothing was given to Taylor for the deeds.

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Judgment reversed & cause remanded
Barton Bates
Judge Bay concurs.

I think as between the plaintiffs who were purchasers for value,

and the defendants standing as the heirs and in the place of Taylor the grantor in the deeds proposed to be reformed, the defendants ought not to be permitted to say these deeds which on their face purport to be founded on a valuable consideration are voluntary — I see no reason why the judgment should not be affirmed. —

Sydney

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Henderson

vs.

Dickey

Reversed & remanded

Filed June 20. 1864

A. W. Mead

Clerk

Rule

Henderson & al: ——— Respondents
vs: } In Supreme Court.
Dickey & al: ——— Appellants
Statement of the Case

In 1842 one Jos. D Taylor deceased by two deeds on the same day conveyed to one Elizabeth Watson the "south east quarter" of all his right title & in and to lot or "Block E. as known and designated on the plat or map of Town of Carondelet.

Afterwards in 1848 said Watson by deed conveyed the south east quarter of Block E. and all of the Block E. in said Town to one George Henderson.

Taylor died having an heir and only child Jane — who married one James Dickey — who in behalf of his wife in 1856 took actual possession of Block E. as part of the real estate of said Taylor who at his death was claimant and owner thereof as purchaser from one Boutin and wife.

In 1827 said Henderson filed his Petition in St Louis Land Court against Watson & wife Boutin & wife. Dickey & wife and their tenant O'Brien — stating in substance as follows.

That Taylor in 1834 for a valuable consideration purchased of Boutin & wife Block E. and south east quarter

of Block H. in all "five lots" in said Town: and by deed became owner thereof.

That in 1842 for a "valuable consideration" said Taylor conveyed by two separate deeds of even date said five lots to said Elizabeth Warson: who in 1848 by deed conveyed the same to him Henderson.

That instead of conveying said five lots - Joint Block E. and South east quarter of H. through "mistake" & he Taylor conveyed Block H and "the south east quarter thereof. And on account of this "mistake" as charged and no other cause - Henderson prays - thus

1 - That Dickey & wife as legal representatives of Taylor convey to Henderson said five lots in Block E. and H or that the Land court vest in him the legal estate of the same:

2 - And that said - Dickey & wife and their tenant O'Brien be ejected and actual possession of said five lots of land be surrendered up to Henderson.

Dickey & wife and their tenant O'Brien answer - and say -

1 - That said Taylor died seized as of - own right of Block E. and in right of his child and heir Mrs Dickey they entered and took possession of said Block of land -

2 - They disclaim all right and title

or possession of the Block H or any part thereof at any time:

3- They deny any mistake &c. as charged in the two deeds from Taylor to Mrs Warson - But insist said deeds were intended to convey Taylors right title &c. in said Block H - and particularly the south east quarter thereof:

4- They plead lapse of time and the statute of limitation of ten years (of 1855) as a bar to the recovery - as prayed -

5- They plead and insist there is no cause of action stated in the Petition

In the progress of the case in the Land court - the same was dismissed as to Bowlin & wife - And Mrs Dickey died and as to her the same was abated - And as to Warson & wife judgement by default - Henderson died and suit revived in the name of his two sons or heirs:

The case was submitted to the court for trial - which found "all the issues" - in favour of respondents - vested the right title &c. of Dickey & wife in respondents - and ordered that Dickey and O'Brien be turned out of possession of Block E - And appellants pay all cost of suit &c.

Appellants in due form &c. filed motion for new trial &c. which was

the consideration thereof paid by Warson and not Taylor - whereby Taylor became Trustee in fraud &c. for use of Warson

That in 1842 - Taylor became a lost and silly drunkard - And to save the five lots of ground from the creditors &c. of Taylor - the wife of Warson was substituted as the fraudulent Trustee of Warson - who paid not one cent to Taylor for the lots of ground -

That in 1848. Warson being as pretended - indebted to Henderson for rent of land &c. $250 - He obtained a conveyance from Mrs Warson at the instance of her husband - for five lots - but not the real estate named in the deed from Taylor to her -

Hence two propositions are presented for consideration upon the Petition & proof - and in regard thereto we suggest -

I - That there is no cause of action stated in Petition - to reform the deeds of 1842. Because - there is no averment - that the mistake &c. was mutual - or in other words - that Taylor intended to convey Block E - and south east quarter of Block H - And that Mrs Warson intended to receive and accept the same - For in the absence of fraud or bad faith - the rule of law is that the mistake must be certain and mutual - on the part of the parties in order to reform a written contract or deed - See 1 - Story Eq. Juris. Sec: 151 - to 156 - and cases cited

II. That a latent ambiguity in a deed may be explained by parol evidence in order to identify an estate in land or the person who may receive the same where doubt in that regard is created by parol proof -- But such parol evidence to explain the words of a deed must be certain and manifest and have no doubt on the mind of the court as to the meaning of the words used in the deed - and the object to which they refer. But parol proof can never be introduced to ascertain and establish the intention of the parties as an independent fact - the great matter in all such cases - what does the written deed or contract speak? not what the grantor intended to speak - or in other words - what is the meaning of the words used - If the rule were otherwise endless confusion and ruin would attend the affairs of men - in regard to real estate - written deeds would become the plaything of parol - and the statute of frauds a mockery in the hands of fools and knaves - see - Case of Hammond vs. Ridgeley - 5. Harris & Johnson Rep. 245 - 254 - and case of Jackson vs. Parkhurst 4. Wend. Rep. 369 - 373 - Addison on Con. p. 848

III. That to reform a written deed is based

on the idea that the words of the deed do not speak the truth. or as applied to this case - Taylor conveyed one tract - Block H - when in fact he intended to convey Block - E - each designated on map of Town of Carondelet - and separated from each other by streets - and which was directly incorporated in the deeds from Taylor - which form part of Petition - Hence the result of such reformation if made operates to cancel cancel those deeds and create a new estate in Mrs Warson or assignee - in Block E - Hence this proceeding is in fact and truth one to enforce a specific performance of a parol contract - which is evidenced by an inoperative deed - therefore the proof - in that regard is the vital matter - and comes up in the second proposition above stated - upon which we suggest -

That the rule of law is fixed - that a party plaintiff who claims the right of specific performance of an executed or executory contract - must clearly manifest to a court of equity - That he and those under whom he claims - acted in good faith that he and they by implication or otherwise are free from all fraud and bad faith - That the contract which is prayed to be "reformed" or "enforced" - is based on a valuable consideration - not voluntary that it is certain and mutual in

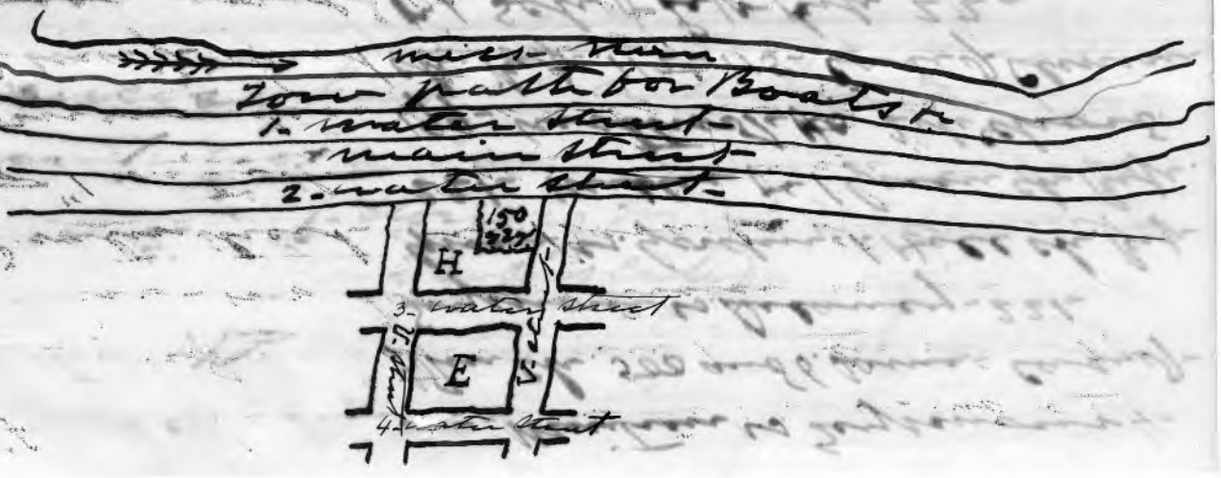
Mintren vs. Seymour 4-
John ch. 500 and 6. same - Case of
Seymour vs. Delancy - 221 -
Green vs. Gordon - 1. Hill ch. Rep
221 - Miller & 1 Green ch. Rep.
199 - Westbrook &c. 2 McChord
ch. Rep. 112 - 115 - Case of Clinean
& 1 Sch. & Lep. Rep 22 -

IV - But to shew the entire want of certainty -
and conglomerated confusion of cause
of mistake &c in execution of deeds of
Taylor to Mrs Warson in 1842 - we refer
to Petition map of Carondelet Barrada
and Warson evidence. Thus -
Petition states the cause of mistake to be -
"That immediately west of Block E was
" first water street - and that east of
" said Block was second water street -
" and that south was V. street - and that
" ~~south~~ north was U. street -
And Barrada with map in hand
states - "That in 1834 - the street imme-
" diately north of V. street was W. and 1st
" water street was the first street east of
" main street - and second water street
" was east of first water street and so
" on - And Block E is bounded on the west
" by 1st water street - east by 2d water street -
" north by W. street - and south by ~~2d water~~ 2d V.
" street - The streets have been changed
" from letters to names - but there
" never was any change in names
" of Blocks - And the lots in dispute
" are situate in lower part of the Town

And a deed from Trustees of said Town to our Stine was read against the objection & exception of appellants which recites - which was an error.
"That the Town had sold & conveyed
" to him a Lot known as Block E.
" containing 300 square feet bounded
" north by V. street - South by lands of
" Davis & Powell - east by 2d water street -
" and west by 1st water street."

Certainly here is an abundance of uncertain evidence of a confused identity of Block E. not the least accord with the petition. But in order to manifest the strange and singular difference in allegation and proof we sketch pen draft of Block H. and southeast quarter thereof named in deeds of Taylor: And Block E. and adjacent streets &c with this remark &c in way of explanation.

That Miss. river runs in front of Town south - 8th main water streets &c run parallel with river - And U. V. W. &c. streets run at right angles from the river - Thus



Mintren vs. Seymour 4-
John ch. 500 and 6. same - Case of
Seymour vs. Delancy - 221-
Green vs. Gordon. 1. Hill ch. Rep.
221- Miller &c. 1 Green ch. Rep.
199- Westbrook &c. 2 McChord
ch. Rep. 112-115- Case of Clinton
&c. 1 Sch. & Lefr. Rep. 22-

IV- But to shew the entire want of certainty-
and conglomerated confusion of cause
of mistake &c. in execution of deeds of
Taylor to Mrs. Warson in 1842- we refer
to Petition map of Carondelet Barrada
and Warson evidence. Thus-
Petition states the cause of mistake to be-
"That immediately west of Block E was
" first water street- and that east of
" said Block was second water street-
" and that south was V- street- and that
" ~~south~~ north was U. street-"
And Barrada with map in hand
states- "That in 1834- the street imme-
" diately north of V. street was W. and 1st
" water street was the first street east of
" main street- and second water street
" was east of first water street and so
" on- And Block E is bounded on the west
" by 1st water street- east by 2d water street-
" north by W- street- and south by ~~2d water~~ 2d V-
" street- The streets have been changed
" from letters to names- but there
" never was any change in names
" of Blocks- And the lots in dispute
" are situate in lower part of the Town

It will be seen I give the river - and tow path - not the lots between 1 water street & main - nor those between main and 2d water street - see Barada statement "1 water street is east of main &c" And common sense would say without aid of map that the street nearest the river would be water street - then main 2d - 3d 4th and so on, west from the river and not east in and over the river; And as part of our argument we file or annex certified map in pencil of Carondelet - and this court must know the fact as judges - that the town is on the west side of the river - which runs south -

The deeds from Taylor to Mrs Warson bound Block H - "east by second water street - south by V. street - west by first water street - (which is in with 3d water street.) north U or W - street - The other deed bounds same lot or Block H - south by V. street east by 3. water street - north east and south west by balance of said Block - Hence these deeds - are more correct than the Petition - Barrada and Stone's deed - Both deeds call for Block or lot H - U - and V - and 2d water street - which are correct - not so with Petition or proof - which are all up side down - description &c

V - But the fact appears in the deed of Boulin & wife - that she owned the Block E - in her own right - and he owned south east quarter of Block

H in his own right - But his wife by certificate & acknowledgement only relinquished her right & dower in the lands named in the deed - see deed record &c.
Hence the title of Block E remains in in Mr Bowlin - and she is no party to the suit - this fact appears in Petition - deed made part - thereof and proof - we ask how can Henderson recover possession of the land and eject respondents, "the old rule that plaintiff must recover on the strength of his title and not the weakness of his adversary - has been subverted by the wise and learned Land Court.

VI. Again lapse of time and statute of limitation was plead as a bar: the rule of equity is that he or she who sleeps on his rights will be allowed to sleep on -
And there being no cause assigned in the Petition for the delay of 15 years - the same was bad - on its face and should have been dismissed
But our statute of 1855 in this matter is direct and positive which is -
"No action for recovery of possession "of any land - shall be had or main- "tained by any person unless it be

"that the plaintiff - his ancestor predecessor grantor or other person under whom he claims - was seized or possessed of the premises in question within ten years - before the commencement of such action" - see Digest of Laws 1855 - p 1045 -

And as under our system of jurisprudence seizen & possession are one and the same thing - And as by the pleadings and proof - Wanson and wife or either of them - or their assignee Henderson never did have seizen in law or fact of the Block E - their right of action was dead many years - before 1857 - their right of action if any they had accrued in 1842 -

And it will not do for the respondents to respond and say - that their right to comest the deeds for mistake was an equity they should account for delay - But this equity is entirely a different matter from a suit at law to recover in nature of an ejectment -

Therefore in conclusion we sum up our points - thus -

1 - There is no cause of action stated in Petition -

2 - And if any it is barred by lapse of time and statute of limitations

3. That the proof in support of the wild and bad Petition is more confused and uncertain than the latter. Specific performance of contract or to correct "mistake" in same requires clear certain and definite allegation & proof.

4. That the estate of inheritance in Block E is in Mr Boulin and she is no party to this suit and same should have been dismissed.

5. That a court of equity will not aid the fraudulent efforts of Watson & wife to cheat their creditors. See 2 Story Eq. Juris. Sec: 1520 p. 1021 and cases cited Johnson vs. Smith 27 Mo. 591.

6. We ask a reversal of judgment of Land court

Broadhead & Cates
attys for appt.

C

In Supreme Court

Henderson & al.
vs.
Dickey & al.

Statement and Brief of appellants

Broadhead & Cates - attys

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