CASES DETERMINED

IN THE

SUPREME COURT OF THE UNITED STATES.

FEBRUARY TERM, 1812.

Hudson and Smith *v.* Guestier. (*a*)

Rehearing.

This court will not rehear a cause, after the term in which it was decided.[1]

On the first day of the term, *Harper* moved for, and obtained a rule to show cause why this case, which was decided at February term 1810, should not be reheard. The motion was grounded upon a statement of facts which was filed.

March 12th. When this rule was mentioned again by *Harper*, he was informed—

By the Court, that the case could not be reheard, after the term in which it had been decided.

General Rule.

February 10th. *Winder*, requested information from the court whether the general rule which directs that only two counsellors should be heard on each side of any cause in this court, was intended to prevent the division of a cause into distinct points, and the hearing of two counsellors on each point.

(*a*) February 3d, 1812. Present, Washington, Livingston, Todd, Duvall and Story, justices. The Chief Justice did not attend until Thursday, February 13. He received an injury by the over-setting of the stage coach, on his journey from Richmond.

[1] Browder *v.* McArthur, 7 Wheat. 58; Washington Bridge Co. *v.* Stewart, 3 How. 413; Peck *v.* Sanderson, 18 Id. 43. Nor in any case, unless desired by some member of the court, who concurred in the judgment. Brown *v.* Aspden, 14 Id. 25. For the practice, on a motion for a rehearing, see Public Schools *v.* Walker, 9 Wall. 603.

WASHINGTON, J. (The chief justice being absent), informed the bar, that the court considered the rule as inflexible, whatever may be the number of points or parties in a cause.

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*2] *FITZSIMMONS and others *v.* OGDEN and others. (*a*)

Equity.

He who has equal equity, may acquire the legal estate, if he can, so as to protect his equity.[1]

THIS was an appeal from the decree of the Circuit Court for the district of New York, sitting in chancery, entered, by consent, *pro formâ*, to bring the case before this court.

The material facts, as stated by Washington, Justice, in delivering the opinion of the court were as follows:

For the purpose of securing certain of his creditors, Robert Morris, on the 14th of February 1798, conveyed to the appellants, as trustees for those creditors, a certain tract of land, lying in Ontario county, in the state of New York, containing 500,000 acres, described by certain bounds. Previous to this, he had made conveyances to sundry persons of considerable portions of this tract, and amongst others, to the defendants, S. Ogden, J. B. Church and to G. Cottringer, under whom the heirs of Sir William Pulteney claimed, of which the appellants had full notice. He had also, by different conveyances, granted to the Holland Company more than three millions of acres of land, purchased (as this tract of 500,000 acres had been) from the state of Massachusetts, all in the same county and adjoining the land in question.

On the 8th of June 1797, a judgment, at the suit of Talbot & Allum against Robert Morris, was docketed in the supreme court of the state of

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(*a*) February 4th, 1812. Present, WASHINGTON, LIVINGSTON, TODD, DUVALL and STORY, Justices.

[1] It is a general principle in courts of equity, that where both parties claim by an equitable title, the one who is prior in time, is deemed the better in right; and that where the equities are equal in point of merit, the law prevails. This leads to the reason for protecting an innocent purchaser, holding the legal title, against one who has the prior equity; a court of equity can act only on the conscience of a party; if he has done nothing that taints it, no demand can attach upon it, so as to give any jurisdiction. Strong as a plaintiff's equity may be, it can, in no case, be stronger than that of a purchaser, who has put himself in peril, by purchasing a title, and paying a valuable consideration, without notice of any defect in it, or adverse claim to it; and when, in addition, he shows a legal title from one seised and possessed of the property purchased, he has a right to demand protection and relief. Brown *v.* Chiles, 10 Pet. 210, BALDWIN, J. Where the equities are equal, the court will not deprive a party of a legal advantage, which his vigilance has conferred upon him, by a purchase of the legal title. Philips *v.* Cramond, 2 W. C. C. 441; Reed *v.* Dickey, 2 Watts 459. But this doctrine only applies where the legal title has been conveyed, and the purchase-money fully paid. Villa *v.* Rodriguez, 12 Wall. 338, SWAYNE, J.; Union Canal Co. *v.* Young, 1 Whart. 431; Chester *v.* Bishop, 1 Barb. Ch. 105; Peabody *v.* Fenton, 3 Id. 451. But the court will not permit the party having the subsequent equity to protect himself, by obtaining a conveyance of the legal title, after he has taken actual or constructive notice of the prior equity. To protect a party as a *bonâ fide* purchaser, he must show not only an equal equity in himself, by reason of his having actually paid the purchase-money, but that he had also clothed his equity with the legal title, before he had notice of the prior equity. Grimstone *v.* Carter, 3 Paige 436–7; Union Canal Co. *v.* Young, *ut supra.* And it is not sufficient, that the defendant has purchased, in good faith, what he erroneously supposed was the legal title. Gaines *v.* New Orleans, 6 Wall. 716.