

Syllabus.

patent, might be corrected in equity, much more when there was fraud and imposition.

If, by the case as made by the bill, Spence's claim had covered all the land patented to Minor, it would present the question, whether the United States could bring this suit for Spence's benefit. The government, in that case, would certainly have no interest in the land when recovered, as it must go to Spence without any further compensation. And it may become a grave question, in some future case of this character, how far the officers of the government can be permitted, when it has no interest in the property or in the subject of the litigation, to use its name to set aside its own patent, for which it has received full compensation, for the benefit of a rival claimant. The question, however, does not arise here, for half the land covered by the patent would revert to the United States if it was vacated, and, as between the United States and Minor it was one transaction evidenced by one muniment of title, the question does not arise; certainly not on demurrer to this bill.

The result of these considerations is, that the first and second questions are answered in the affirmative; the third, fourth, sixth and seventh in the negative; and the fifth is immaterial.

The decree of the Circuit Court is reversed, and the case remanded for further proceedings not inconsistent with this opinion.



WEAVER & Others v. FIELD & Others.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF LOUISIANA.

Submitted January 6, 1885.—Decided April 13, 1885.

In a suit to foreclose a mortgage on land in Louisiana, given to secure the payment of negotiable promissory notes to their holder, it was held, on the facts, that the plaintiff was never the owner of the notes, as against the mortgagor, or those holding the land under him by deeds in which they assumed the payment of the notes and mortgage.

Opinion of the Court.

Bill in equity to foreclose a mortgage. The facts are stated in the opinion of the court.

Mr. J. D. Rouse and *Mr. William Grant* for appellants.

Mr. R. H. Marr for appellees.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

This is a suit in equity brought by Daniel Weaver, in April, 1881, in the Circuit Court of the United States for the Eastern District of Louisiana, against Spencer Field, Senior, Spencer Field, Junior, and Frederick T. Field. The bill prays that the defendants be decreed *in solido* to pay to the plaintiff the amount of three promissory notes, made by Spencer Field, Senior, to his own order, and indorsed by him, dated November 1, 1873, one for \$2,000, at one year, one for \$1,500, at two years, and one for \$1,500, at three years, with interest at the rate of eight per cent. per annum from maturity; and that certain land covered by a mortgage, of even date with the notes, given by Field, Senior, to one Williams, to secure the payment of the notes to their holder, be sold, and the notes be paid out of the proceeds. The other two Fields are made parties as having successively become grantees of the land, and assumed, each in the deed to himself, which he executed, the payment of the notes and the mortgage. Weaver having died in July, 1881, the suit was revived in the names of the appellants, as his heirs, in February, 1882.

The bill avers that Weaver is the holder and owner of the notes. The answer of the three defendants, filed in June, 1882, avers that Weaver never was the owner of the notes, and never the holder of them for value or in good faith; that the notes and mortgage were made by Field, Senior, for the sole purpose of enabling him to raise money for his own purposes by the sale, or discount, or other use, of the notes; that the mortgage was made in favor of Williams, or any future holder, in order to facilitate the use of the notes; that Field, Senior, was not indebted to Williams; that Williams gave no consideration for the notes, and was merely the nominal mort-

Opinion of the Court.

gagee, without interest ; that the notes were never the property of Williams, nor did he ever have them in his possession with the knowledge or consent of Field, Senior ; that, from the date of the notes, they remained in the possession of Field, Senior, until he used them, and delivered them to one Folger, as security for a loan ; that, when such loan was paid, Folger returned the notes to Field, Senior, who retained them in his possession until on or about June 8, 1874, when he deposited them with Weaver, to be used, if practicable, to raise money for the uses and purposes of Field, Senior ; that, after the notes had so been deposited, and while they were in the possession and custody of Weaver, Weaver caused Williams to pledge the notes to him, Weaver, as security for the note of Williams for some \$2,000 ; that Williams had no power to make such pledge, and the same was a mere nullity, for the reason that Williams did not have the notes in his possession, and they did not belong to him, at the time the pledge was made ; that the notes, at that time, belonged to Field, Senior, and were in the custody and possession of Weaver, to whom the facts with respect to the ownership and the possession of the notes were necessarily known at the time the pledge was made ; that Field, Senior, did not, at any time after the notes were so returned to him by Folger, negotiate them, or issue or deliver them to any person for value ; that, by reason of the premises, the notes and mortgage were extinguished and became of no effect ; and that Weaver never had, nor have any persons deriving title from him, any right or cause of action against the defendants, or any one of them, on the notes or the mortgage.

There was a replication, and proofs were taken, Field, Senior, and Williams being witnesses for the defendants. The bill was dismissed by a decree which states that the court considered that, by the undisputed evidence of Field, Senior, and Williams, and the circumstances of the case, it was shown that the notes in suit, after being issued and delivered to Folger, were taken up by, and came into the possession and ownership of, the maker, and were thus, under the laws of Louisiana, extinguished by confusion ; that Weaver had notice of all this ; and that, by the extinguishment of the notes, the mortgage fell.

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Without reference to the ground stated by the Circuit Court as that on which it dismissed the bill, we are of opinion that the dismissal was proper. The matters of fact averred in the answer, as above set forth, are established by the evidence. It is shown that Weaver never acquired any title to the notes as owner, or as holder of them as security for any indebtedness from Field, Senior, to him; and that he received them from Field, Senior, as agent, to raise or advance money on, for, or to Field, Senior, and failed to do so, and retained them tortiously, and without the assent of Field, Senior. When Weaver first, in February, 1878, took legal proceedings to enforce the mortgage, Field, Senior, in the petition in the suit he brought against Weaver, in March, 1878, more than three years before Weaver died, to restrain Weaver's proceedings, denied that Weaver held or owned the notes, and alleged, in substance, the same facts set up in the answer in the present suit. We have carefully considered the argument on the facts made on the part of the appellants, but do not deem an extended opinion upon them necessary. The property in the hands of the grantees was bound only to the extent it was bound in the hands of the mortgagor, and only to respond to a lawful holder of the notes.

Decree affirmed.

DOE v. HYDE, Assignee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF CALIFORNIA.

Submitted March 31, 1885.—Decided April 13, 1885.

D, a creditor of a bankrupt, holding two securities therefor, after being cited in a proceeding commenced against him by the assignee in bankruptcy, by petition, to obtain the delivery of the two securities, as being unlawfully in his possession, delivered up one of them to the assignee, in July, 1871. In November, 1872, the assignee sued D to recover the other security, and in 1877 it was decided in that suit that D was entitled to hold it. There being a deficiency on the debt, and the assignee having collected the security delivered to him, D, in 1879, sued the assignee to have its proceeds applied