

Levy v. Arredondo.

himself the performance of the condition therein mentioned, as at any time since.

Evidence was taken by both parties, and the claim of the petitioners was confirmed by the superior court of Florida, at July term 1837. The United States prosecuted this appeal.

The case was argued by *Butler*, Attorney-General, for the United States. No counsel appeared for the appellees.

WAYNE, Justice, delivered the opinion of the court.—This is an appeal from a decree of the superior court of East Florida, confirming a land-claim. It differs only from the case of the *United States v. Z. Kingsley*, decided by the court at this term (*post*, p. 476), in this : that the conditions upon which the appellee was to have a property in the land petitioned for, was limited to performance within six months from the date of the governor's decree. It was not performed. Nor was any attempt made to perform it by the appellee, in his lifetime, or by his representatives, after his death. No sufficient cause for non-performance is shown, within the time limited, nor afterwards ; to bring it within those rules of justice and equity, which this court has said shall be applied in its construction of the 8th article of the treaty of February 1819, with Spain ; on its consideration of grants made upon consideration. For the reasons stated in the case of *Kingsley*, *217] the court is of *opinion, that the decree of the court below in this case, should be reversed, and it is ordered accordingly.

BALDWIN, Justice, dissented.

THIS cause came on to be heard, on the transcript of the record from the superior court for the district of East Florida, and was argued by counsel: On consideration whereof, it is the opinion of this court, that the petitioner has not fulfilled the condition of the grant ; and that, therefore, the grant or concession is null and void ; and that the petitioner has no right or title to the land. Whereupon, it is now here decreed and ordered by this court, that the decree of the said superior court in this cause be and the same is hereby reversed and annulled ; and that this cause be and the same is hereby remanded to the said superior court, with directions to enter a decree in conformity to the opinion of this court.

*218] *MOSES E. LEVY, Appellant, v. FERNANDO DE LA MAZA ARREDONDO and JUAN DE ENTRALGO, Appellees.

Florida land-claims.

In the superior court of East Florida, the complainant filed a bill, claiming compensation for the non-performance of certain contracts for the sale of lands in East Florida, referring to the contracts, the contents of which were stated to be set out in the bill of the complainant ; which was replied to by the defendants. The contracts were not proved in the cause, by testimony ; nor was the non-production of them duly accounted for, nor secondary evidence of the contents thereof, so far as practicable, given before the superior court. The supreme court, for this defect and imperfection in the proceedings, had not sufficient evidence before them to found any final and satisfactory decree ; the decree of the court of appeals of East Florida, and the decree of the superior court of East Florida, was, therefore, reversed, and the cause remanded to the court of appeals, to allow the pleadings to be amended, and the documents referred to, or the contents of the same, to be duly authenticated and proved, &c.

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APPEAL from the Court of Appeals of Florida.

This case was argued on the merits, by *Preston* and *Thompson*, for the appellant ; and by *Jones*, for the defendant.

The court considered, that a certain contract between the appellant and Fernando de la Maza Arredondo, of 22d January 1822, and a contract between the complainant and Joseph M. Arredondo, of 13th July 1824, which had been referred to in the proceedings in the courts below, and which were not in the record, were necessary to the decision of the cause, made the following order ; which was delivered by—

WAYNE, Justice.—The court has had this case under frequent consultation, since the argument of it, and as there is much diversity of opinion among the judges, in regard to the effect which the contract of the 22d January 1822, between the complainant and Fernando M. Arredondo, Jr., and also in regard to the effect which the contract of the 13th July 1824, between the complainant and Joseph M. Arredondo, would have upon the rights and equities of the parties ; and it being considered, from the manner the complainant has set out those contracts in his bill, and from the manner they are replied to by the defendant, Arredondo, that they are substantially exhibits in the *cause which should have been annexed by the complainant to his bill ; and which the superior court of the eastern [*219 district of Florida might have called for, before it proceeded to make any decree in the cause ; it is determined by this court, without giving any opinion upon the decision of the court of appeals of Florida in the cause, to reverse that decree, and also to reverse the decree of the superior court of East Florida, in the cause upon which it was carried up by appeal to the court of appeals : and both of the same are hereby reversed ; and the court remands the cause for further proceedings ; making it obligatory upon the complainant to produce, on the trial, the contracts of the 22d January 1822, and that of the 13th July 1824, or satisfactorily to account for the same : with liberty to the parties in the cause to use, on such trial, the evidence already taken, and to adduce such other evidence as either may offer in proof of their respective equities ; and to amend their bills and answers ; including any answer which the defendant, Entralgo, may offer to make to the complainant's bill, upon such terms as the court below may impose, upon any application made by Entralgo, or his counsel, to set aside the order *pro confesso* against him.

THIS cause came on to be heard, on the transcript of the record from the court of appeals for the territory of Florida, and was argued by counsel : On consideration whereof, it is the opinion of this court, that the contract of 22d January 1822, between the complainant and F. M. Arredondo, Jr., and also the contract of 13th July 1824, between the complainant and F. M. Arredondo, from the manner in which they are set out in the bill of complainant and replied to by the defendant, are such exhibits as ought to have been annexed by the complainant to his bill in the superior court for the district of East Florida, and ought to have been proved as evidence in the cause, or the non-production thereof duly accounted for, and secondary evidence of the contents thereof, as far as practicable, given, before the superior court of the territory of Florida proceeded to render any decree in the prem-

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ises ; that for this defect and imperfection in the proceedings, this court have not sufficient materials before them whereon to found any final and satisfactory decree ; and that justice requires that the cause should be opened in the court below, for further proofs, as well in regard to the documents aforesaid, as in regard to any other evidence which may further establish the merits *220] of the case on either side. It is therefore ordered, adjudged *and decreed by this court, that the decree of the said court of appeals of the territory of Florida, and also the decree of the superior court of the said territory, be and they are hereby reversed and annulled. And it is further ordered, adjudged and decreed by this court, that the cause be remanded to the said court of appeals, with directions to allow the pleadings in the said cause to be amended by the parties ; the documents aforesaid, or the contents thereof, to be duly authenticated and proved ; and such other proceedings in the cause to be had, as to justice and equity shall appertain. And the said court of appeals is either to cause such further proceedings aforesaid to be had before itself, or the cause remanded to the said superior court for the same purposes, as the one or the other course may be proper, or may be required by the constitution of the said courts, and the laws and practice appertaining thereto. And it is also decreed, that each party pay his own costs in this court.

BALDWIN, Justice, dissented.

*221] *N. ROGERS & SONS, Plaintiffs in error, v. JAMES BATCHELOR and others, Administrators of ABEL H. BUCKHOLTS, Deceased.

Debt.—Partnership.

An action of debt was instituted in the district court of the United States, on an obligation under the hands and seals of two persons ; the action was against one of the parties to the instrument. The laws of Mississippi allow an action on such an instrument to be maintained against one of the parties only.¹

The funds of a partnership cannot be rightfully applied, by one of the partners, to the discharge of his own separate pre-existing debts, without the express or implied assent of the other parties ; and it makes no difference, in such a case, that the separate creditor had no knowledge, at the time, of the fact of the fund being partnership property.²

Whatever acts are done by any partner, in regard to partnership property or contracts, beyond the scope and objects of the partnership, must, in general, to bind the partnership, be derived from some further authority, express or implied, conferred upon such partner, beyond that resulting from his character as partner.

The authority of each partner to dispose of the partnership funds, strictly and rightfully extends only to the business and transactions of the partnership itself ; and any disposition of those funds, by any partner, beyond such purpose, is an excess of his authority as a partner, and a misappropriation of those funds, for which the partner is responsible to the partnership ; though in the case of *bona fide* purchasers, without notice, for a valuable consideration, the partnership may be bound by the acts of one partner.

If one partner write a letter in his own name, to his creditor, referring to the concerns of the partnership, and his own private debts to those to whom the letter is addressed, the letter not

¹ *Amis v. Smith*, 16 Pet. 303 ; *Coffee v. Planters' Bank*, 13 How. 183.

² *McKinney v. Brights*, 16 Penn. St. 399 ; *Geery v. Cockcroft*, 1 J. & Sp. 146. See *Wiley v. Allen*, 26 Ga. 568, where this case was dis-

sented from, so far as it holds, that want of knowledge on the part of the separate creditor, that the fund was partnership property, did not affect the right of partners ; and as not distinguishing between money and other property.