
Williams, Trustee, v. Oliver et al.

tiff. That turned upon the decision as to the right of the plaintiff to the fund under the insolvent proceedings, as permanent trustee of Gooding, and whatever might have been the opinion of the court upon the other question, the result of their judgment would have been the same.

For the reason, therefore, that this case falls directly within the decision of *Gill v. Oliver's Executors*, and is not distinguishable from it, the case must take the same direction, and be dismissed for want of jurisdiction.

Order.

This cause came on to be heard on the transcript of the record from the Court of Appeals of the state of Maryland for the Western Shore, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that this cause be, and the same is hereby, dismissed, for the want of jurisdiction.

NATHANIEL WILLIAMS, AS PERMANENT TRUSTEE FOR THE CREDITORS OF JOHN GOODING, AN INSOLVENT DEBTOR, v. CHARLES OLIVER, ROBERT M. GIBBES, AND THOMAS OLIVER, EXECUTORS OF ROBERT OLIVER, AND JOHN GLENN AND DAVID M. PERRINE, TRUSTEES.

The decision in the preceding case of Williams, Trustee, v. Oliver's Executors, again affirmed.¹

THIS case was also, like the preceding one, brought up from the Court of Appeals of Maryland, by a writ of error issued under the 25th section of the Judiciary Act.

The circumstances of the two cases were the same. In both, Winchester was the trustee who sold the share to Oliver, and the same act of Assembly applied to both. The judgment and *reasons of the Court of Appeals covered both [*126 cases, and they were argued in this court together by the same counsel.

Mr Justice NELSON delivered the opinion of the court.

This case involves the same principles as the case of Williams, permanent Trustee of James Williams, already decided;

¹ See *Citizens Bank v. Board of Liquidation*, 8 Otto, 141.

Dorsey v. Packwood.

and we refer to the opinion there delivered for our decision in this case.

The case is dismissed for want of jurisdiction.

Order.

This cause came on to be heard on the transcript of the record from the Court of Appeals of the state of Maryland for the Western Shore, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that this cause be, and the same is hereby, dismissed, for the want of jurisdiction.

GREENBERRY DORSEY, COMPLAINANT AND APPELLANT, v.
SAMUEL PACKWOOD.

An agreement, whereby the purchaser of a plantation "bound himself to transfer to his son-in-law one half of the plantation, slaves, cattle and stock, as soon as the son-in-law should pay for one half of the cost of said property, either with his own private means, or with one half of the profits of the plantation," was deficient in mutuality. The son-in-law was not bound to render any services nor pay any money. It was a *nude pact*.¹

It was not an alternative obligation upon the son-in-law, because the election to pay his half out of the profits would have been merely paying with another man's money.

Even if the agreement possessed mutuality, there was no performance, or offer of performance by the son-in-law for twenty-seven years.²

Moreover, fifteen years after the agreement, when the plantation was likely to prove a ruinous purchase, the son-in-law abandoned and released all his claim.³

THIS was an appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

¹ Want of mutuality is fatal to a claim for specific performance. *Bronson v. Cahill*, 4 McLean, 19. So is gross inadequacy of consideration. *Surget v. Byers*, Hempst., 715.

² In an action for specific performance, the complainant must show performance or an offer to perform, his part of the agreement. *Colson v. Thompson*, 2 Wheat, 336. *S. P. Boone v. Missouri Iron Co.*, 17 How., 340; *Denniston v. Coquillard*, 5 McLean, 253; *McNeil v. Magee*, 5 Mason, 244; *Kendall v. Almy*, 2 Sumn., 278. And see *Mason v. Newell*, 2 Chic. L. N., 1. Delay, on complainants' part, amounting to laches, will defeat

the action, especially if the value of the property has changed and new interests have intervened. *Harkness v. Underhill*, 1 Black, 316; *McNeil v. Magee*, 5 Mason, 244; *Mason v. Wallace*, 4 McLean, 77; *Holt v. Rogers*, 8 Pet., 420.

³ Where a father agreed to give to the intended wife of his improvident son a lot of ground, upon her agreement to build a house thereon with her own money, specific performance was decreed, possession of the lot having been given and the house erected. *Neale v. Neale*, 9 Wall., 1. See *Dean v. Nelson*, 10 Wall., 170.