
Amis et al. v. Myers.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of New York, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be, and the same is hereby reversed, with costs, and that this cause be, and the same is hereby remanded to the said Circuit Court with directions to award a *venire facias de novo*.

*492] *HENRIETTA AMIS, EXECUTRIX, AND WILLIAM PERKINS, EXECUTOR, OF JUNIUS AMIS, DECEASED, APPELLANTS, v. DAVID MYERS.

Where a complainant filed a bill on the equity side of the Circuit Court, for an injunction to prevent the sale of slaves which had been taken in execution as the property of another person, the evidence shows that they were the property of the complainant, and the Circuit Court was directed to make the injunction perpetual.

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

Junius Amis filed his bill under the following circumstances:

The respondent, David Myers, having obtained a judgment against William D. Amis, issued execution thereon and caused to be seized seven slaves. The complainant, Junius Amis, thereupon filed his bill, claiming these slaves as his property, and praying an injunction to arrest the sale of them. He made David Myers and W. F. Wagner, the marshal, parties defendant to the bill. The injunction was afterwards granted.

David Myers appeared and filed his answer. He admitted the issuance of the execution as alleged, and he admitted the marshal's seizure of the property as alleged, and the advertisement for sale under the process; but he denied the complainant's title, and denied all interest in him, legal or equitable, concerning the said slaves. And the defendant further charged that these slaves were purchased by William D. Amis, of Nathaniel Hill, in New Orleans, for the sum of five thousand dollars; that they were delivered to him and taken by him to the plantation on which he resided, in the parish of Madison, where they remained until the levy aforesaid.

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The Circuit Court, upon the final hearing upon bill, answer, depositions, and proofs, dissolved the injunction, and dismissed the bill with costs. The complainant appealed to this court, and, having died, his executor and executrix were made parties.

It was argued by *Mr. Gould* and *Mr. Lawrence*, for the appellants, and by *Mr. Baxter*, for the appellee.

There being no point of law involved in the case, the reporter does not deem it expedient to insert the arguments upon the question of ownership, as shown by the evidence.

Mr. Justice CAMPBELL delivered the opinion of the court.

The plaintiff filed his bill in the Circuit Court of the United States for the Eastern District of Louisiana, to restrain the sale of certain slaves taken in execution of a judgment of that court, in favor of the defendant against William D. Amis.

*The case of the plaintiff is, that the slaves are his lawful property, and are not subject to the execution [*493 of the defendant. The defendant denies this allegation and insists that the property in the slaves is vested in his debtor.

The evidence shows that the slaves were purchased in New Orleans, by the defendant in the execution. He provided the purchase-money by procuring the acceptance and discount of a draft at thirty days date, by a mercantile firm, upon the promise of sending funds for its payment at its maturity. He was disabled from doing this by the occurrence of facts that are detailed in the evidence, and the plaintiff, for his relief, caused the draft to be paid by his own factor, and agreed to take the slaves as his property.

The bill of sale, given to the defendant in execution, did not contain the name of the vendee, but a blank space was left for the insertion of the name. When this arrangement took place, the plaintiff's name was inserted and the paper given to him. The slaves have been at his plantation, and although William D. Amis resides there, no act of mastership is shown, and he denies having any interest in the slaves.

We think this testimony establishes the case of the plaintiff.

It is proper to notice that this case is not one of equitable cognizance. The plaintiff had a clear and adequate remedy at law, under the Code of Practice of Louisiana. C. P., 298, § 7.

It is not usual for this court to take an exception of this nature on its own motion and where no objection has been

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made by the defendant; but this case is one so clearly beyond the limits of the equitable jurisdiction of the Circuit Court, that the fact is noticed that it may not serve as a precedent.

The decree of the Circuit Court is reversed, and the cause remanded, with directions to enter a decree to perpetuate the injunction.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed, with costs, and that this cause be, and the same is hereby remanded to the said Circuit Court, with directions to perpetuate the injunction granted in this cause.

*194] *JOSEPH GUITARD, FREDERICK STEUDEMAN AND
MARY HIS WIFE, AND GEORGE BROWN AND JULIA
HIS WIFE, PLAINTIFFS IN ERROR, v. HENRY STODDARD.

The act of Congress, passed on the 13th of June, 1812, (2 Stat. at L., 748,) entitled An act for the settlement of land claims, in Missouri, confirmed the rights, titles, and claims to town or village lots, out lots, common field lots, and commons, in, adjoining, and belonging to the several towns and villages therein named, (including St. Louis,) which lots had been inhabited, cultivated, or possessed, prior to the 20th of December, 1803.

This confirmation was absolute, depending only upon the facts of inhabitation, cultivation, or possession, prior to the day named. It was not necessary for the confirmee to have received from the Spanish government a grant or survey, or permission to cultivate the land.¹

In 1824 Congress passed a supplementary act, (4 Stat. at L., 65,) making it the duty of claimants of town and village lots to designate them by proving before the recorder the fact of inhabitation, the boundaries, &c., and directing the recorder to issue certificates thereof. But no forfeiture was imposed for non-compliance, nor did the government, by that act, impair the effect and operation of the act of 1812. Claimants may still establish, by parol evidence, the facts of inhabitation, &c.

In the act of 1812 the surveyor was directed to survey and mark the out boundary lines of the towns or villages, so as to include the out lots, common field lots, and commons. This was done. Whether a claimant can recover land lying outside of this line, or whether the evidence in this case is sufficient to establish the plaintiffs' title, this court does not now decide.

¹ FOLLOWED. *Parker v. Overman*, 18 How., 137; *Glasgow v. Hortiz*, 1 Black, 601.