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*Farrelly et al. v. Woodfolk.*

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TERENCE FARRELLY, EDWARD O. MORTON, ET AL., HEIRS AND REPRESENTATIVES OF FREDERIC NOTRIBE, APPELLANTS, *v.* WILLIAM W. WOODFOLK.

The rule with respect to final and interlocutory decrees, which is applied to the preceding case of *Beebe et al. v. Russell*, again affirmed and applied.

THIS was an appeal from the Circuit Court of the United States for the eastern district of Arkansas, sitting in chancery.

The bill was filed by Woodfolk, a citizen of Tennessee, against the heirs and representatives of Frederic Notribe and others, for the purpose of obtaining a title to certain lands. The court decreed that the defendants should procure the legal extinguishment of the lien and encumbrance which existed upon the lands, and convey them to the complainant. The decree also contained a reference to a master, with the instructions which are stated in the opinion of the court. The defendants appealed to this court.

The case was submitted by *Mr. Pike* for the appellants, and *Mr. Meigs* for the appellee.

Mr. Justice WAYNE delivered the opinion of the court.

This case having been submitted to the court upon printed arguments, we find from an examination of the record that the appeal has been prematurely taken from an interlocutory and not a final decree.

After reciting such facts in the case as the court deemed to be necessary for understanding the subject-matter of controversy, and the court's directions in respect to the rights of the complainant, the court then orders that the cause shall be referred to the clerk of the court as a special master in chancery, to take and state an account of the sum for which the lands are bound under the mortgage exhibited in the pleadings in the cause; and also to take and state an account, showing what money and property Morton and his wife, and Mary T. Notribe, widow of Frederic Notribe, have severally received, and are entitled to receive, which were of the estate of Frederic Notribe at the time of his death; and a further account, showing what portion of said estate, if any, remains to be administered, setting forth all particulars thereof as far as practicable, and if necessary to the due execution of this order. And the master is directed to call for and examine on oath any of the parties to this suit, and also to take testimony of witnesses touching any of the matters aforesaid, and to make report to

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this court. This is so obviously an interlocutory decree, that we do not think it necessary to examine it in detail, to show that a further and final decree is necessary, to give to the complainant any of the advantages to which the court in its previous directions has declared him to be entitled.

For the reasons given in the opinion in the case of Roswell Beebe et al., appellants, *v.* William Russell, we therefore direct this cause to be dismissed for want of jurisdiction.

ARCHIBALD BABCOCK, APPELLANT, *v.* EDWARD WYMAN.

Parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a mortgage or deed of trust.

In the present case, parol evidence, taken in conjunction with corroborating circumstances, shows that the deed was not intended to be absolute.

The statute of limitations is not applicable, because the possession was not adverse.

So, also, the trustee is not protected by the statute, although he sold the land and received the proceeds six years before the bill was filed, because it was his duty to apply those proceeds to the reduction of the interest and principal of the debt due to him when the deed was made.

[MR. CHIEF JUSTICE TANEY AND MR. JUSTICE DANIEL DID NOT SIT IN THIS CAUSE.]

THIS was an appeal from the Circuit Court of the United States for the district of Massachusetts, sitting in equity.

The bill was filed by Edward Wyman, a citizen of Missouri, and an assignee of Nehemiah Wyman, by a deed of conveyance made in 1853. The facts of the case are particularly stated in the opinion of the court, and need not be repeated.

The decree of the Circuit Court was as follows, viz:

This case having been heard on the bill of complaint filed therein, and upon the answer of the defendants thereto, and upon the proof exhibited by the respective parties, and the parties having been heard by their counsel, this court doth declare the conveyance of Nehemiah Wyman to said defendant, bearing date the twentieth day of November, in the year one thousand eight hundred and twenty-eight, to have been a mortgage to secure the debts, the amount whereof is named in said deed, as the consideration of the same; and that, at the times of the sales of the lands in said conveyance set forth by the defendant, the assignor of the complainant had the right to redeem the same; and doth declare that the absolute sales and conveyances by defendant of said land to bona fide purchasers for valuable consideration, without notice, was a constructive fraud upon the rights of the assignor of complainant; and that therefore he became entitled, as against the