

Chilton vs. Braiden's Administratrix.

ascertain who these bond-holders are, about which we presume there will be little difficulty, and to notify them to come in and share in the fruits of the decree, on paying their proportion of its expense.

For this purpose the case is remanded to the Circuit Court, with instructions to proceed in accordance with this opinion.

CHILTON *vs.* BRAIDEN'S ADMINISTRATRIX

1. Purchase-money is treated by Courts of Equity as a lien on the land sold where the purchaser has taken no separate security, and this is on the principle that one who gets the estate of another should not in conscience be allowed to keep it without paying for it.
2. This rule applies with as much force to the case of a purchase by a married woman as to any other case.
3. The disabilities imposed upon married women are intended for their protection, and the law will not allow them to be used as the means of committing fraud.

Appeal from the Circuit Court of the United States for the District of Columbia.

The appellee, Margaret Lyons, administratrix of Elizabeth Braiden, deceased, on February 12th, 1857, filed her bill in the Circuit Court of the District of Columbia for the sale of part of square No. 226, in the City of Washington, to enforce the payment of the purchase money due therefor, against Agnes R. Hazard, a married woman,—who had purchased on the credit of her separate estate. O. E. P. Hazard, her husband, and Sam'l Chilton, her trustee, were joined with her as defendants.

The bill sets forth the sale of the property to Agnes R. Hazard—as shown by the recitals of the deed—the conveyance to Chilton, as trustee for her—and avers that the purchase money is due and unpaid. Mrs. Hazard filed her answer, admitting the sale and conveyance, but denying that “the sum of \$6,000 re-

Chilton vs. Braiden's Administratrix.

mains due and unpaid," and "she shows to the Court that she fully satisfied the said Elizabeth in her life time with the said purchase money, and, in proof thereof, she exhibits with her answer, and will prove it when it shall be necessary to do so, the receipt of the said Elizabeth to her, bearing date the 12th day of September, 1856, whereby she acknowledged the payment to her, said Elizabeth, of the sum of five thousand eight hundred and fifty dollars in full of respondent's purchase of house and lot of her, sold on the 21st March, 1856,"—she cannot state when, where, or how, the said purchase money was paid and satisfied to said Elizabeth Braiden,"—"she cannot state positively, of her own knowledge, that any sums of money were paid to her," and contends "that it is not material whether or not the whole amount of the sum of \$6,000 was paid said Elizabeth, if she voluntarily gave a receipt in full." In this answer she relies on the receipt entirely, not stating any specific amount as having been paid. She denied the allegation of the bill, that her separate estate had no real existence, but failed to answer the interrogatories propounded mainly for the purpose of showing that she could not have paid for the property from her separate estate. Exceptions being filed, the Court required her to answer the interrogatories. In her amended answer, she says some payments were made, but she does not know how much, "the whole matter being conducted by her husband, who held her separate estate." She again set up the receipt as an absolute defense. In answer to interrogatories she declared that she did not know how much was paid by her husband. The husband also answered, and so did the trustee. The plaintiff filed the general replication. The cause was set for hearing. The controversy was, whether or not the purchase money had been satisfied and discharged, which necessarily involved the genuineness of the receipt.

The Court directed issues to be made up and tried before a jury on the law side of the Court. A jury was duly impaneled, and found for the plaintiff *that the receipt set up was not the genuine receipt of Elizabeth Braiden.*

The cause coming on for final hearing, the Court passed a

Chilton vs. Braiden's Administratrix.

decree that all the purchase money was due and ordered a sale of the property for the payment of it. The case came before this Court on an appeal from that decree.

Mr. Carlisle, of Washington City, for Appellants

Mr. Stone, and *Mr. Bradley*, of Washington City, for Appellee.

Mr. Justice GRIER. When one person has got the estate of another, he ought not, in conscience, to be allowed to keep it without paying the consideration. It is on this principle that Courts of Equity proceed as between vendor and vendee. The purchase money is treated as a lien on the land sold, where the vendor has taken no separate security. In the present case this lien has not been defeated by alienation to a *bona fide* purchaser, or any subsequent lien of creditors. The issue taken in the answer concerning the respondents' ability to pay out of her separate estate is wholly immaterial except to give probability to the allegation that she had paid the consideration. The only defense taken in the answer to the claim of the bill is an alleged receipt in full or discharge for the purchase money.

The deed does not acknowledge the payment of the consideration, and the answer admits that no consideration was paid at the time of its delivery. The issue between the parties turned wholly on the genuineness of a receipt or discharge purporting to have been executed and delivered by Elizabeth Braiden on the 12th of September, 1856. The Court ordered an issue to try this question at law, and the jury found "That Elizabeth Braiden did not execute and deliver said receipt or discharge, and that it was not the genuine receipt of said Elizabeth Braiden." The Court, in the exercise of their discretion, refused to grant a new trial of this issue. As it appears to us that the evidence justified the verdict, we see no error in the decree of the Court. It did not condemn the defendant to pay the consideration out of her separate estate, but orders the houses to be sold to pay the purchase money, unless before a certain time the defendant shall pay the amount due.

Curtis's Administratrix vs. Fiedler.

Neither the answer of the party, nor the argument of counsel, allege any good reason, why a married woman should be permitted to take property without paying for it, more than another. The disabilities thrown round her by the law, are for her protection—not to enable her to commit fraud.

Decree affirmed, with costs.

CURTIS'S ADMINISTRATRIX vs. FIEDLER.

1. An importer from whom a collector exacted illegal duties could not under the Act of 1839, maintain assumpsit to recover back the excess, unless the suit was brought before the officer paid the money into the treasury.
2. The Act of 1845 gave the right of recovering back, such excessive duties to all importers who had paid or might thereafter pay them, under protest in writing, with the grounds of objection distinctly set forth.
3. Whether this latter act, has a retroactive operation, so as to include the case of a person, from whom excessive duties were exacted before its passage. *Quere?*
4. But it is certain, that a party whose claim for excessive duties is not recoverable under the Act of 1839, and who seeks to recover under the Act of 1845, cannot avail himself of the latter statute, without bringing himself within its terms, by showing that he made proper protest at the time of payment.
5. A party imported iron and hemp at the same time, entered them together, and made a general protest against the duties charged in the entry, without discrimination of the packages and stating no ground of objection, except that the charge was illegal. *Held*, That such a protest utterly fails to meet the requirements of the Act of 1845.
6. The importer must indicate by his protest, the distinct and definite ground of his objection to the charge, and show his intention to reclaim the excess.
7. This distinctness is required, that the officers may know to what amount of risk and responsibility they expose the Government by taking the duties in the face of the objection.