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*Randall vs. Howard.*

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## RANDALL vs. HOWARD.

1. The owner of mortgaged land made "a friendly arrangement" with the mortgagee to buy it in, ostensibly for his own use, but with the understanding that he was to hold it for the use of the mortgagor, as if no sale had been made. This was done to defeat the claim of a third party; and with that view the mortgagor confirmed the sale. The mortgagee and purchaser afterwards claimed the land as his own. *Held*, That the mortgagor cannot sustain a bill in equity to restrain the mortgagee from selling the land, and to enforce the understanding made before the sale.
2. Neither party can enforce against the other a contract made between themselves to injure a third person, in fraud of the law.
3. Nor will the character of such agreement be changed by showing that the claim of the third party, whose rights were to be affected by it was also fraudulent.
4. Where it appears on the face of a bill, that an agreement concerning an interest in lands set up by complainant is in parol, the defence of the Statute of Frauds may be taken advantage of on demurrer.
5. This Court has no jurisdiction on appeal to annul, revise, or change the decree of a State Court of general jurisdiction, having complete control of the parties and of the subject matter of controversy.
6. Where there is error in the proceedings of such a Court, a review can be had in the appellate tribunals of the State.
7. Where the decree is sought to be perverted and made the medium of consummating a wrong, the Court, on petition, or suppletal bill, can prevent it.

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

The appellants in this case filed their bill of complaint in the Circuit Court of the United States, for the District of Maryland, on the 18th of February, 1859, against the appellee, to which he demurred, and the Court sustained the demurrer. The case

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came before the Supreme Court on appeal from this decree. The allegations of the bill are stated in the opinion of the Court.

*Mr. Mayer*, of Maryland, for Appellants.

*Mr. Evans* and *Mr. Gale*, of Maryland, *contra*.

Mr. Justice DAVIS. This is a bill in equity filed in the Circuit Court of the United States for the District of Maryland by the appellants against the appellee, who interposed a demurrer, which was sustained by the Court below, and an appeal was taken to this Court.

The bill states substantially, that the complainant, John Randall, Jr., was on the 6th of April, 1854, largely indebted to the defendant, to secure which indebtedness both of the complainants executed a mortgage on lands in Cecil County, Maryland, which lands were held in trust for the complainant Letitia's benefit for life. That soon after the mortgage matured the defendant filed his bill in the Cecil County Circuit Court for foreclosure and sale; and, on answer filed, a decree was passed on the 15th of October, 1855, for the sale of the mortgaged lands, time being given until 9th of October, 1856, to bring the money into Court. That in April, 1856, in order to defeat an attempt (charged to be fraudulent) by other parties to obtain possession of part of the lands mortgaged, it was agreed that the defendant with the assent of the complainants should petition the Court for an immediate sale, which was done, and the time for sale changed, and a friendly arrangement was made with the defendant that he was to buy the property ostensibly for himself, but was really to hold it in security for the decreed indebtedness, upon the satisfaction of which the purchase was to enure to the benefit of the complainant Letitia. That the sale took place on 14th October, 1856, and the defendant was the purchaser, (the "friendly arrangement" continuing,) and that the property sold for less than its value on account of the general understanding that the sale was merely a formal one and not meant to divest the estate of the complainants. That the sale was ratified with

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out objection from the complainants, under the assurance from the defendant that the property should, notwithstanding the ratification, stand as a security for the amount decreed, which was to be paid by instalments. That to perfect the form of sale, and to make it conform to the ostensible title of the purchaser, the complainants rented the property of the defendant. That having obtained an apparent title, the defendant has fraudulently determined to act as if he was the real owner, and is claiming the right to sell, and that through threats he extorted an agreement from the complainants, which was framed and meant to involve them in the recognition of his title. That the defendant, in furtherance of his object to oppress, has, by legal though irregular process, through the Sheriff of Cecil County, dispossessed the complainants.

The prayer of the bill is to restrain the defendant from disposing of the lands, and for the sale of so much of said lands as may be necessary to pay off the defendant according to the understanding prior to the purchase, and that the residue of the lands be conveyed to Mrs. Randall. There is also a prayer for general relief.

There are two questions presented by this record :

1. Upon the facts stated in this bill, are the complainants entitled in equity to the relief prayed for ?
2. Has this Court jurisdiction ?

The statements of this bill are vague and uncertain, frequently argumentative, and very rarely plain and direct. The whole bill lacks definitiveness. Agreements, friendly arrangements understandings, and fraudulent devices are freely spoken of, but the character of the agreements and the nature of the devices we do not learn. The bill seeks to establish a trust for the benefit of Mrs. Randall, growing out of certain proceedings in the Circuit Court of Cecil County, Maryland. Are the complainants in a situation to enforce the trust, if one is established? We think not.

The following allegations contain the charges relied on in the bill to establish the trust :

“And your orator and oratrix state and charge, that about

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April, in the year 1856, in consequence of a fraud being attempted against your complainants, through devices involving the possession of part of the land mortgaged as aforesaid, it was deemed proper for counteracting said fraud, that, on a petition to be filed by said Howard in the case of said decree, your complainants should assent to a sale, (under friendly arrangements between said Howard, and then rendering such sale merely formal and nominal,) taking place forthwith, instead of being deferred to the period (the next October) provided by the decree.

And your complainants aver, that under their answer to such petition, which was filed, the time for the sale was by decree thus changed, and under the friendly arrangement and understanding aforesaid, and which was to the effect that said Howard was to become purchaser of said mortgaged property at a sale under the decree, but really to only hold it for securing the payment of the mortgage and decreed indebtedness as aforesaid, upon satisfying which the property it was understood should enure, as provided by the terms of the said trust, for the benefit of your oratrix."

These allegations, stripped of their indefiniteness and vagueness, mean simply this, that the parties to this bill, in order to counteract a claim set up by other parties for a portion of the mortgage lands, combined together, through the aid of the Court, to shorten the time of sale, and to cover up the real ownership of the property.

A fraudulent agreement was entered into to defeat, as is charged, "a fraud attempted against the complainants." If the claim set up was a fraud on the rights of the complainants, does that consideration change the character of the agreement which was made to defeat that fraud? Manifestly not. The whole complaint of the bill is that the defendant will not execute the agreement thus fraudulently made, and the object of the bill is to compel him to do it.

A Court of Equity will not intervene to give relief to either party from the consequences of such an agreement. The maxim "*in pari delicto potior est conditio defendentis*" must prevail.

It is against the policy of the law to enable either party, in

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controversies between themselves, to enforce an agreement in fraud of the law, or which was made to injure another. Story's Equity, vol. 1, sec. 298; *Balt. vs. Rogers*, (2 Paige, 156); *Wilson vs. Watts*, (9 Gill, 356).

There are several other grounds decisive against the relief prayed for. We will, however, notice but one other. There is no averment in the bill that the defendant ever agreed in writing to hold the lands in trust for Mrs. Randall. In fact it is manifest from the whole bill that the agreement was a mere matter of conversation between the parties, and that no memorandum in writing was ever made. Inasmuch as it concerns an interest in lands, and is in parol, it is void by the Statute of Frauds, and appearing as it does on the face of the bill, the defence of the Statute of Frauds may be taken advantage of on demurrer. *Walker et al. vs. Locke et al.*, (7 Cushing, 90).

2. Has this Court jurisdiction. A conflict of jurisdiction is always to be avoided. Mr. Justice Grier, in *Peck vs. Jenness*, (7 Howard, 624), says: "That it is a doctrine of law too long established to require a citation of authorities, that where a Court has jurisdiction it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding on every other Court.

"These rules have their foundation not merely in comity, but on necessity. For if one may enjoin the other may retort by injunction, and thus the parties be without remedy, being liable to a process for contempt in one if they dare to proceed in the other."

The bill in this case brings in review various matters passed on in the progress of a suit by the Cecil County Circuit Court, a Court of general jurisdiction having complete control of the parties and of the subject matter of controversy.

It seeks to annul a sale of lands made by virtue of a decree of the Cecil Court, sitting as a Court of Equity in a cause depending between these same parties; to affect the distribution of the proceeds of the sale; to enjoin the defendant from making any disposition of the lands purchased by him; to disturb his

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possession; to invalidate his title, and to have the mortgaged property resold.

This is a direct and positive interference with the rightful authority of the State Court.

If there was error in the proceedings of the Court, a review can be had in the appellate tribunals of the State. If, as is charged, the decree is sought to be perverted and made the medium of consummating a wrong, then the Court, on petition or suppletal bill, can prevent it. If, as appears by the proceedings, the surplus money arising from the sale is still undisposed of, then the whole case is under the control of the Court, and no suppletal even is needed to prevent the wrong.

The decree dismissing the bill is affirmed.

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NEBRASKA CITY *vs.* CAMPBELL.

1. Municipal Corporations upon which the duty is imposed to construct and repair, or to keep in repair streets and bridges, and upon which is also conferred the means of accomplishing such duty, are liable for any special damage arising from their neglect to perform it.
2. In an action for damages sustained by such neglect, evidence showing the business in which the plaintiff was engaged, its extent and the consequent loss arising to him from his inability to prosecute it, is relevant and pertinent, as enabling the jury to fix, with some certainty, the direct and necessary damages resulting from his injuries.

Error to the Supreme Court of the Territory of Nebraska.

John T. Campbell brought his action against Nebraska City in the Court of the Second Judicial District for Otoe County, and alleged in his petition that the defendant, being a municipal corporation, had, by its charter, the title and control of the streets, alleys, squares, wharves, and other highways and public grounds within its limits, and was bound to keep them in repair.