

MISSISSIPPI AND MISSOURI RAILROAD COMPANY v. CROMWELL.

A court of equity is not bound to shut its eyes to the evident character of a transaction where its aid is sought to carry into effect an unconscionable bargain, but will leave the party to his remedy at law.

APPEAL from the Circuit Court of the United States for the District of Iowa.

The facts are stated in the opinion of the court.

Submitted by *Mr. George G. Wright* and *Mr. R. P. Lowe* for the appellant, and by *Mr. John N. Rogers* for the appellee. •

MR. JUSTICE BRADLEY delivered the opinion of the court.

The bill in this case was filed in the court below by the appellee, Cromwell, against the appellants, the Mississippi and Missouri Railroad Company, and Muscatine County, of the State of Iowa, to compel the former to transfer to the complainant on its books, and to issue to him a certificate for, seventeen hundred and fourteen shares of its capital stock standing in the name of Muscatine County, which stock the complainant claims to have purchased at an execution sale made by the marshal of the United States for the District of Iowa.

It is conceded that one James F. Harrison of New York, in October, 1867, recovered a judgment in the Circuit Court of the United States for the District of Iowa against Muscatine County, for \$6,500, upon the coupons attached to certain bonds issued by that county in 1854, being a portion of \$150,000 of bonds issued in payment of its subscription for said stock; and that under an execution on said judgment in October, 1868, the marshal assumed to levy on said stock, and on the 23d of December, 1868, sold the same at public auction in the city of Des Moines; and that the complainant, Cromwell, became the purchaser for the sum of \$50; and that the marshal executed to him a bill of sale accordingly.

The appellants question the validity of the levy made by the marshal, on the ground that the stock was not located in Iowa, but in the city of New York, and could not be levied on in the district of Iowa. Without attempting to decide this point, we

will proceed to the examination of other grounds of defence more directly bearing upon the title to equitable relief.

The certificates of the stock had been deposited, in June, 1866, with the Union Trust Company in the city of New York, in pursuance of an agreement by which the stockholders and bondholders of the Mississippi and Missouri Railroad Company had arranged for a formal judicial sale of the railroad of said company under the foreclosure of a mortgage to the Chicago, Rock Island, and Pacific Railroad Company. By this agreement, the stockholders consenting and depositing their stock as aforesaid were to receive sixteen per cent of the par value thereof, either in money or in the bonds of the Chicago, Rock Island, and Pacific Railroad Company; making the amount to be received by the county of Muscatine for its stock about \$27,400, with interest from Dec. 1, 1865. The deposit of the stock held by the county under this arrangement entitled it to this sum. In this state of things, certain creditors of the railroad company (including said Harrison) filed a bill in the Circuit Court of the United States for the District of Iowa, claiming that the arrangement was a fraud on their rights, and that the sixteen per cent which the stockholders had stipulated for ought to be given up to them in payment of their demands as far as it would go for that purpose. This claim was sustained by the court; and a decree to that effect was made in May, 1868, before the issuing of Harrison's execution under which the stock was sold. The total amount of the sixteen per cent reserved to the stockholders, after deducting their share of the expenses, was \$541,000; and the total amount of the claims of creditors, to which the money was by the said decree appropriated, was nearly \$800,000,—more than sufficient to absorb the whole of it.

Now, as the stock of the Mississippi and Missouri Railroad Company, by the foreclosure and sale of all its property under the mortgage, had become completely valueless, if it had not ceased to exist for any purpose except the perception of the sixteen per cent before mentioned, and as that sixteen per cent was also entirely absorbed and taken away by the outside creditors of the company under this decree, it would appear that the subsequent levy on and sale of the stock belonging to Muscatine County was a vain and useless transaction. The

property of the company was gone; its franchises were gone; the amount which the stockholders had arranged to realize was gone; and consequently the stock could have been nothing but an empty name, and the attempt to keep it afloat for speculative purposes is not such as should recommend it to a court of equity. The parties to such a transaction ought at least to be left to their remedies at law. A court of equity should have no sympathy with any such contrivances to gain a contingent or speculative advantage, if any such is to be gained.

On the other hand, if, as intimated by the counsel, there is a contingency of obtaining the sixteen per cent appropriated to this stock by the arrangement made between the two railroad companies (now amounting to over \$32,000), the case stands on no better grounds to recommend it to the special interposition of the court. This result cannot be attained without in some way depriving the county of Muscatine of that sum. If by payment of the county bonds, or in any other way, the sixteen per cent becomes liberated from the decree, the county will be equitably entitled to the money, unless Cromwell, the appellee, has a better equity. To him it will be a windfall, like a prize in a lottery. He paid no adequate consideration to entitle him to claim it as a matter of equity. If the law gives it to him, he should seek his remedy at law. Equity will not lend its aid to any such games of hazard. The levy on the stock and the formal sale of it by Harrison, after having with other creditors obtained a decree for appropriating the sixteen per cent due on it, was evidently not done for the honest purpose of making his debt by the sale, or he would not have allowed it to be sold for fifty dollars. The object must have been to get, by the forms of sale, some ulterior unconscionable advantage by the possession of the stock. The purchaser, Cromwell, stands in no better position. He comes into court with a very bad grace when he asks to use its extraordinary powers to put him in possession of thirty thousand dollars' worth of stock for which he paid only fifty dollars. The court is not bound to shut its eyes to the evident character of the transaction. It will never lend its aid to carry out an unconscionable bargain, but will leave the party to his remedy at law. This has been so often held on bills for specific performance,

and in other analogous cases, that it is unnecessary to spend argument on the subject.

Decree reversed, and cause remanded with directions to dismiss the bill of complaint.

PHILLIPS AND COLBY CONSTRUCTION COMPANY v. SEYMOUR
ET AL.

1. A., who had undertaken to build a railroad for a company, entered July 18, 1872, into a sealed contract with B. for building a hundred and sixty miles of the road. The contract, among other things, provided that B. should complete the first section, of forty miles, on or before the first day of September then next ensuing; the third section, of twenty miles, by the fifteenth day of that month; the fourth section, of twenty miles, on the fifteenth day of the following November; the fifth section, of twenty miles, on the fifteenth day of December; and so on; the whole to be completed May 1, 1873. Payment was to be made to B. as the work progressed, the 15th of each month, on monthly estimates, by the engineer of the railroad company, of the work done the previous month, except fifteen per cent after the completion of forty miles, which was to be retained as security for the performance by B. until the work should be completed, and to be forfeited to A., and applied to any claim for damages which he might sustain by the failure of B. to have the stipulated work completed at the time specified. Fifteen per cent of the estimates on the first forty miles, and a liquidated sum of \$15,000 agreed to be paid for extra work on that section, were to be retained as security for the completion of the first sixty miles. B. failed to finish any portions of the work by the specified time; but A., although authorized by the contract to declare it forfeited, excused the failure, paid B. the estimate for the work then done, and permitted him to proceed with the work. B. continued to do so until A. failed to pay the large sums due him by the estimates for work done in October and November. B. then learned from A. that the latter was unable to pay those estimates, and would probably be unable for a time to pay future monthly estimates. B. thereupon ceased to do any further work, and brought this suit. *Held*, 1. That the declaration of B. was sufficient on demurrer, as it averred, in substance, that from the time he entered upon the performance of the contract in July, 1872, until the fifteenth day of December of that year, when A. wholly failed to make the stipulated payment for the work then actually done, he, with a large force and with suitable equipments along the whole line of the road, had prosecuted the work with all the energy and skill that he possessed, and that A. had expressed satisfaction at the manner in which the work was done. 2. That A. so far waived absolute performance on the part of B. as to consent to be liable on his covenant for the contract price of the completed work, but did not waive his right to whatever damages he may have sustained by the failure of B. to perform