JACKSON v. LUDELING et al.

Case No. 7,139.
{2 Woods, 254.}[1]

Circuit Court, D. Louisiana. April Term, 1876.

REAL PROPERTY—IMPROVEMENTS BY POSSESSOR IN BAD FAITH—COMPENSATION—RULE IN LOUISIANA—INTEREST AND RENTS.

Under the jurisprudence of Louisiana, a possessor in bad faith is entitled to compensation for improvements and betterments put upon the land by him which have been accepted by the owner, together with interest on the amount expended therefor, and is chargeable with the rents and profits with interest.

{See note at end of case.}

{This was a bill in equity by Henry R. Jackson against John T. Ludeling and others.} Heard upon exceptions to the master's report.

A decree was made in the case by the supreme court of the United States, at its October term, 1874. The case is reported in 21 Wall. {88 U. S.} 616, and the decree of the supreme court is found on pages 634, 635. The decree reverses the decree of the United States circuit court for the district of Louisiana, by which the bill was dismissed, and reinstates the ease, recognizes the mortgage executed by the railroad company to John Ray to secure its first mortgage bonds as a valid lien upon the property of the railroad company, and maintains the rights of the bona fide bondholders; it declares the title under which the defendant Ludeling and his associates claimed the property of the railroad company to be fraudulent and void, enjoins them from setting up any claim under their pretended title to the said property, or in any manner disposing of the same, and remits the cause to this court with instructions to direct an account to be taken of all the property of the railroad company, and to appoint a receiver thereof, and to order the property covered by the mortgage to be sold for the benefit, first, of all the bona fide bondholders secured by the mortgage, and secondly, for the benefit of other creditors of said company, and of its stockholders. The fifth and last clause of the decree is in these words: "And it is further ordered and decreed that the defendants do account for all money and property received by them out of the property so sold to them or any of them, or from its profits or income, receiving in their account such credits as under the circumstances of the case by the law of Louisiana they are entitled to, and that they pay and deliver to the receiver whatever on such accounting may be found due from them." Under this clause of the decree an order of reference was made to F. A. Woolfley, Esq., as master commissioner, who on January 17, 1876, filed his report. According to the report the gross earnings of the railroad, received by the defendants Ludeling and his associates, and the proceeds of the sale of lands the property of the railroad company, also received by the defendants, amounted to $939,124.41, and the master finds that Ludeling and his associates were properly

chargeable with that sum. On the other hand the master reports that said Ludeling and his associates have produced an account showing that they have expended in construction and repairs for the purpose of putting the railroad in such condition that it could be operated, the sum of $748,154.88, and for maintenance and running expenses the additional sum of $777,647.72. These two last mentioned sums amount to $1,525,802.60. The master further reports that Ludeling and his associates exhibit an interest account upon the excess of their expenditures over their receipts made up at the rate of eight per cent., per annum, amounting to $361,531.38. From this it appears that they claim a balance due them, over and above all receipts from the railroad property of $948,209.57. Although it does not appear by the master's report, the fact is that Ludeling and his associates claim the further sum of $136,206.28 for interest paid by them on money borrowed to put the railroad in running condition. The report says: "The excess of actual expenditures over actual receipts is $586,677.99, disregarding the interest account. I have not examined these accounts and vouchers with a view to pass upon their absolute validity, or whether they are claims to be recognized for any other purpose than to answer the matter referred. The fifth paragraph of the decree directs the said defendants to show what money has come into their hands as income and profits, and to account for such part of it to the mortgagees as they are

entitled to. The testimony shows sufficiently that the railroad was not in a condition to yield income or profit, without large expenditures, and that the expenses of management to earn income and profits were nearly equal to the receipts. The evidence shows satisfactorily that there was no income or profits from the road which equalled the necessary outlays for construction, management and maintenance, and I therefore think the complainants are not entitled to claim remuneration under that paragraph of the decree." This suit was commenced in 1806, and most of the improvements upon the road, made by defendants, have been made since that date.

Exceptions were filed to the report by both the complainants and the defendants. The main questions raised by these exceptions were the following:

1. It having been decided by the supreme court of the United States that Ludeling and his associates were possessors in bad faith, whether they, under the jurisprudence of Louisiana, are entitled to payment for the improvements and repairs by them placed upon the property, accounting at the same time for income and profits derived from the property.

2. Whether, having accounted for the income and profits of the property while in their hands, the defendants are entitled to interest on the money expended by them in improvements and repairs.

These questions, mainly the first, were argued by counsel of the parties both orally and by brief.

J. A. Campbell and H. M. Spofford, for complainant.

I. Generally the doctrine of the courts of this country is, that neither at law nor in equity is the owner of a valid and legal title to lands to be subjected to a demand for ameliorations or improvements made without his consent by an occupant without title, and in bad faith. Green v. Biddle, 8 Wheat. {21 U. S.} 1; Carver v. Jackson, 4 Pet. {29 U. S.} 1; Kenney v. Browne, 3 Ridg. App. 462–531; Gillespie v. Moon, 2 Johns. Ch. 602; Bump, Fraud. Conv. 573; Morris v. Terrell, 2 Rand. {Va.} 6; Gunn v. Brantley, 21 Ala. 633; Story, Eq. Jur. § 799 and note; Will. Eq. Jur. 311.

II. The rule of cases decided in Louisiana is, that the bona fide possessor alone is the object of the protection of the courts in respect to the rents and profits, and the reclamation of the value of improvements. Civ. Code, arts. 503, 508; Gibson v. Hutchins, 12 La. Ann. 545; Boatner v. Ventriss, 2 La. 173, 8 Mart {N. S.} 657; Roberts v. Brown, 15 La. Ann. 698; Herriot v. Broussard, 4 Mart {N. S.} 260; Thompson v. Kilcrease, 14 La. Ann. 340, 342; Roberts v. Brown, 15 La. Ann. 698; Williams v. Booker, 12 Rob. {La.} 253; French v. Bach, 26 La. Ann. 731; Beard v. Morancy, 2 La. Ann. 347; Anselm v. Brashear, Id. 403; Hollon v. Sapp, 4 La. Ann. 519; Jones v. Wheelis, Id. 541; Brugere v. Slidell, 27 La. Ann. 70; Gaines v. New Orleans {Case No. 5,177}; Same Case, 15 Wall.

[82 U. S.] 624. See, also, Pothier du Droit de Proprieté, No. 350, Denisart, 1, 3, p. 700, § 21; 38 Dalloz, Jur. Gen. t. 38, p. 242 et seq., Nos. 428, 444.

III. The defendants are not third possessors under article 3407 of the Civil Code. 3 Trop. Priv. et Hyp. No. 784; 25 Merten, tit. "Privèlége de Creance," § 5, pov. 2.

IV. Under article 508 of the Civil Code, the possessor is only entitled to the value of the materials which remain upon the land, together with the cost of the workmanship. Cannon v. White, 16 La. Ann. 85, 91.

The result of the comparison of the several articles of the Code, and the decisions upon them by the supreme court of Louisiana, show that the possessor in bad faith, whose title and possession are fraudulent and whose improvements were made after suit brought, is not entitled to claim for improvements against the injured owner.

John Ray, for defendants, cited article 12, Code 1808; article 500, Code 1825; and article 508, Rev. Code 1870; Labrie v. Filiol, 4 Mart [La.] 557; Pearce v. Frantum, 16 La. 414; Lowry v. Erwin, 6 Rob. [La.] 192; Kellam v. Rippey, 3 Rob. [La.] 138; Wilson v. Benjamin, 26 La. Ann. 587; Williams v. Booker, 12 Rob. [La.] 253; Piron v. Bach, 10 La. Ann. 13; Heirs of Slidell v. Gonthier, and Heirs of Slidell v. Vanderstacken. The last two cases not published. Op. Book 44, La. Sup. Ct. pp. 653, 654; Stanbrough v. Wilson, 13 La. Ann. 494.

W. H. Hunt on the same side.

I. It is a principle of the Civil Code that "no man should enrich himself at the expense of another." Civ. Code, arts. 508, 2299, 2301, 2314, 3124, 3125, 3407.

II. The decisions of the supreme court of Louisiana with reference to the rights of possessors in bad faith, with few exceptions, have concurred in the enforcement of this principle. See cases cited by Mr. Ray. Also, Hill v. Bowden, 3 La. Ann. 258; Eastman v. Harris, 4 La. Ann. 194; Rhodes v. Hooper, 6 La. Ann. 355; Doles v. Cockrell, 10 La. Ann. 541; Haynes v. Harbour, 14 La. Ann. 239; D'Armond v. Pullen, 13 La. Ann. 137. Upon a review of all the decisions of the court upon this subject, it will appear that they uphold with a steadiness, only once and for a brief period shaken, the doctrines laid down in the Code and derived from the civil law, that all possessors of property who have incurred useful and necessary expenses in its preservation and improvement are entitled to reimbursement.

III. The Spanish law on this subject is identical with that of Louisiana. 44th law, 28th title, 3d partidas.

IV. The law of France recognizes to the fullest extent the claims urged in behalf of

defendants. 2 Marcadé, p. 114; Id. p. 412, V; 2 Boil. p. 672, Com. sur. art. 555, Code Nap. Demolombe, Com. sur. art. 555, 9 Code Nap. p. 629, § 679, and No. 695, p. 666; Merlin, 1 Repertoire de Juris, verbo "Amélioration"; 5 Pothier (par Jupin; Brass. Ed.) Nos. 344, 345; 5 Larombiére, Obl. 676, 677; 1 Fr. Mourlon, 698, No. 1463; Robert v. Courtin, Sirey (1840) 66; Godard v. Valette, Journal de Palais, I, 1844, p. 399.

V. The claims of complainants as mortgage creditors are subjected to the same equitable right of reimbursement to the third possessor. Rev. Civ. Code, art. 3370, which is identical with article 2173, Code Nap.; 3 Trop. Priv. et Hyp. No. 835, 1836; Rev. Civ. Code, 3399; Code Prac. arts. 62, 68, 74; Walker v. Dunbar, 9 Mart. {La.} 682; Moore v. Allain, 10 La. 495; Rev. Civ. Code, art. 3408.

VI. But whether the right to reimbursement be measured according to the law that defines the rights of third possessors against mortgage creditors in a hypothecary action, or according to the law that defines the rights of third persons against the owners in a petitory, or any other action, is of little practical importance. The right of reimbursement is substantially the same under the law of Louisiana. Voet, cited in 1 Trop. Priv. et Hyp. § 264.

WOODS, Circuit Judge. There seems to have been on the part of counsel no attempt to reconcile the conflicting decisions of the supreme court of this state upon the questions at issue. I am relieved from the task of attempting to reconcile these decisions. The question, what is the jurisprudence of this state upon the points in controversy, has been before this court, and has been passed upon by it. In the case of Gaines v. New Orleans {Case No. 5,177}, it was held by Mr. Circuit Justice Bradley, after a careful and laborious examination of the decisons of the supreme court of Louisiana, that under the laws of this state, possessors in bad faith are entitled to compensation for improvements which they have erected, if accepted by the owner. And in that case, the court confirmed the report of Master Weller, which charged the city of New Orleans, which had been held to be a possessor in bad faith, with the value of the rents of the property in controversy, with interest on the rents from the date of their receipt, and credited the city with the expenditures made by it for repairs, both before and after suit brought, and with interest on the cost of the repairs, thus holding that when a possessor in bad faith had enjoyed the property, receiving its profits, and had made improvements and repairs, he must account for the reasonable rent with interest, but was entitled to have his expenditures refunded with interest. In his opinion, the circuit justice said: "I have come to the conclusion that it would be equitable and just to set off the profits derived by the city from the draining machine for the past thirty-five years, against the cost of constructions and repairs, and to charge the city with the rents of the buildings and land, less the ordinary repairs of the buildings, amounting, as shown by the report, to the sum of $125,266.79." The decree of

this court just referred to was taken to the supreme court of the United States by appeal, and the case is reported in 15 Wall. [82 U. S.] 624.

From the statement of the case as made by the reporter, I take this extract (page 627): "The city, it was estimated, had received from increased taxation of other property during the term embraced by the order (including interest) $208,825. Now this particular lot of land, it was testified, was originally worth $200. The buildings erected by the city, independent of the machinery, cost $18,000. The putting up of the machinery was finished July 1, 1835 or 1836 (some witnesses testifying to one year and some to another), and it was testified that a fair rental of the land and building was $2,400 a year; the expense of repairs, $500 per annum. The master accordingly charged the city on this basis:

Rental value from July 1, 1835, to November 1, 1870		$84,800 00
Interest on the rents at 5 per cent.		72,800 00
		$157,000 00
And allowed the city expenses of repairs	$17,166 68	
Interest on repairs	15,166 55	
		32,333 21
And thus made the city chargeable with the difference		$123,266 79

Mr. Justice Hunt, in delivering the opinion of the supreme court, after quoting articles 500, 501, 3414 and 3415 of the Civil Code, proceeds to say: "The case of the present defendant is an instance where the works were done by one who was sentenced to make restitution, and who was expressly adjudged to possess mala fide. Mrs. Gaines therefore had the right to keep the improvements upon reimbursing their value and the price of the workmanship, or to compel the city to demolish and remove them. In the opinion of the judge upon the circuit, he uses this language: 'Whilst the profits and advantages of the draining machine are uncertain and indefinite in amount there is no doubt of their reality, nor, if we place any reliance upon the estimates, is there any doubt of their being amply sufficient to reimburse the city for all its expenditures, including even the rent with which it is charged.' It is evident," says the supreme court, "from this statement that there has already been allowed to the city a sum not only equal to the value of the improvements if they were demolished, but of their actual cost. The city has therefore no cause of complaint, and the point under consideration must be held against it." An examination of the report made in the case by Master Weller, and which was confirmed by the supreme court

of the United States, shows that the city of New Orleans, a possessor in had faith, was allowed the amount expended in permanent improvements and interest thereon, and for necessary repairs and interest thereon, and was charged with the value of the rents, and interest on the same.

I shall follow in the case on trial, this decision of the supreme court of the United States so far as it is applicable. The defendants claim interest at the rate of eight per cent. per annum. No reason is shown why interest should be computed at a higher rate than five per cent. per annum, the legal rate in Louisiana, when there is no contract fixing a different rate. It appears from the report of Master Woolfley, that the gross receipts of Ludeling and his associates from the earnings of the road and the sale of lands, exceeded the amount expended by them for maintenance and repairs by the sum of $161,476.69. The complainants are entitled to be allowed this sum in their accounts with Ludeling and his associates, with interest to be calculated at five per cent., upon an average sum for an average length of time; and there should be allowed Ludeling and his associates their necessary expenses in improvements and betterments put upon and still remaining upon the road, with interest upon such expenses from the date when the expenditures were respectively made, at the rate of five per cent., per annum. Without passing, therefore, in detail, upon the exceptions of the parties to the master's report, it will be recommitted to the master, with instructions to ascertain and report to the next term of this court the amount of the necessary expenses incurred by the defendants Ludeling and his associates, in the improvements and betterments put upon said railroad, and still remaining thereon, allowing interest at the rate of five per cent. per annum on such expenses, from the date they were incurred up to the date of filing the report; and he will report what sum ought to be added for interest to the said balance of $161,476.69, the amount by which the gross receipts exceed the expenditures, for maintenance and running expenses.

[NOTE. It appears that upon the second report of the master a decree was entered that the defendants are entitled to the sum $488,109.54 on account of betterments and improvements and for interest, and that they are chargeable with certain other sums. From this decree both parties appeal, the complainants insisting, among other things, that no allowance should be made to defendants for improvements, that the allowances were too large, etc. Defendants, on the other hand, insist that the allowances are insufficient, that certain accounts are incorrectly stated.

[Upon consideration of the case by the supreme court, Mr. Justice Bradley delivered an opinion sustaining the decree of the circuit court upon the main proposition,—i. e. the right of a possessor in bad faith to improvements in the state of Louisiana. He draws the distinction very clearly between the civil and the common law upon this point, showing that by the civil law, and following the same into the decisions of the Louisiana supreme court, a possessor in bad faith is entitled to the value of his improvements, provided the

owner accepts or uses them. If he does not, then the possessor in bad faith must have a reasonable time within which to remove his improvements, if the same is possible. The decree of the circuit court is reversed upon the amount of the award, the learned justice holding that the same should have been only $347,361.61. In this case Mr. Justice Field dissents, holding that a possessor in bad faith is not entitled to any compensation at all for improvements. Says the learned justice: "I know of no law and no principle of justice which would allow them anything for expenditures upon property they wrongfully obtained, and wrongfully withheld from the owners, who were constantly calling for its restitution." 99 U. S. 513.]

[1] [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]