

were principally in Montgomery county, in Maryland; that the deed was made a few months prior to the marriage, but pending the treaty; that Burgess lived in Ann Arundel county, in Maryland, and was not present at the execution of the deed; that the witnesses never heard from him that he knew of the deed, but that after the marriage he was frequently heard to say that the slaves were the property of his wife, and he wished her to sell them, and sometimes drove them away from his plantation; that the deed was destroyed by fire, together with the dwelling-house of the trustee, who had become, and still remained, insane.

Upon this evidence THE COURT (THRUSTON, Circuit Judge, absent), at the motion of R. S. Coxe, for plaintiff, instructed the jury that if they should believe from the evidence that the deed was made without any valuable consideration passing from the grantee to the grantor, and before her marriage, without the privity or knowledge of her intended husband, then the said deed is void as to him and his administrator, the plaintiff, and does not constitute any bar to this action. To which instruction the defendant excepted. And at the prayer of Brent & Brent, the defendant's counsel, the court instructed the jury that if they should find from the evidence that the deed of trust was made by the defendant several months before her marriage, and that after her marriage her husband, the said Basil Burgess, 1244 frequently declared that the slaves named in the deed of trust were not his, and that he had no control over or right to them, but that they belonged exclusively to his wife, it is competent for the jury to infer that such declarations were made in reference to the said deed of trust, and that it was made with his knowledge and assent. To which instruction the plaintiff excepted.

THE COURT, also, at the prayer of the defendant's counsel, instructed the jury that if they should be satisfied by the evidence that the defendant,

before her intermarriage with the said Basil Burgess, and during the treaty for the marriage, executed and delivered a deed of bargain and sale to Hanson Gassaway, in the usual form, acknowledging the payment of a sum of money, and acknowledging that the defendant had, for such consideration, bargained and sold the said slaves to the said Hanson Gassaway, to have and to hold the same in trust for the separate use of the defendant, notwithstanding her coverture, and without any control of her husband, and that one of the said slaves was, at the time of executing and delivering the said deed, delivered to the said Hanson Gassaway, in the name of the whole, then the said deed is a bar to the marital rights of the said Basil Burgess, and the plaintiff cannot recover in this action, unless the said deed was made without privity or assent of the said Basil Burgess. To which instruction the plaintiff also excepted.

Mr. Coxe cited Clancy, Marital Rights, 62, 614; Carleton v. Dorset, 2 Vern. 17.

Mr. Brent cited Orr v. Pickett, 3. J. J. Marsh. 279; Jenkins v. Morton, 3 T. B. Mon. 30; 1 Tuck. Bl. Comm. 110; Countess of Strathmore v. Bowes, 1 Ves. Jr. 28.

Verdict for defendant.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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