

"The very fact of the court having ordered the sale of the interest of the defendant Adam Remer in the said premises, necessarily involves the conclusion that the court found and decreed that Janet R. Remer held said premises in trust for Adam Remer, for the use of his creditors; otherwise, there would have been no interest of Adam Remer in the said premises to be ordered sold."

I will, however, say that if Janet Remer was not brought before the court by publication of notice, so as to divest her of her title to the property, then the judgment against Adam Remer, and the order that the land attached be sold to satisfy that judgment, gave the purchaser, Duncan McKay, no title to the land in question; for, by the laws of Iowa, the husband has no interest in the lands of his wife which can be sold on execution during his wife's life; but the execution goes further than the judgment, and directs the sheriff to make the amount of the judgment and costs out of the lands attached, and the sheriff's deed purports to convey the land in question to McKay,—not Adam Remer's interest in it,—so that this sheriff's deed is a cloud upon the title of the land, even if the judgment or decree only directed the sale of Adam Remer's interest in it, because the sheriff, who was McKay's agent, sold and conveyed more than the judgment directed. There was no decree for the sale of the land or Janet Remer's interest therein, but only a decree for the sale of Adam Remer's interest in the land; and hence the sheriff's deed, purporting to convey the land to Duncan McKay, is, in my estimation, not voidable for error, but is wholly void, as not being founded on any decree or judgment. But there is this further reason why this deed should be set aside: Duncan McKay and Adam and Janet Remer lived in the same town in Illinois. McKay could have brought suit on her note, and if he recovered a judgment against Adam Remer, and could not collect it by execution, he could have filed a creditors' bill against Mrs. Remer, and, by personal service, brought her into a court of equity, and had the question determined whether she held this land by a conveyance so unconscionable as to make it chargeable with her husband's debts. But the secret proceeding resorted to so shocks the sense of justice as to require this deed to be set aside on that ground alone. A decree may be entered in accordance with this opinion.

HULL et al. v. CHAFFIN et al.

(Circuit Court of Appeals, Eighth Circuit. February 20, 1893.)

No. 168.

1. RES JUDICATA—TRUSTS.

In 1840, for a consideration paid by the husband of C., a deed of land was executed to a trustee in trust for C., which by mistake vested only a life estate in C., remainder to her children, or, in default of children, to her right heirs; the intention being that a fee should be vested. Thereafter an action was brought to reform the deed, in which the trustee and other parties to the deed, but not the contingent remainder-men, were made parties. Before final decree therein, the husband of C. died. *Held*, that the trust became executed by the statute of uses, and the trustee had no further duties to perform, and the decree thereafter entered was not binding on the contingent remainder-men; they not being represented in the action. 49 Fed. Rep. 524, affirmed.

2. RESULTING TRUSTS—FRAUD OF AGENT.

H., while acting as confidential agent in charge of property, both under C. and the trustees under C.'s will, acquired full information of a defect in C.'s title, and the intention of C. and of the trustees to acquire the outstanding title, or to contest its validity, but secretly purchased such title in the name of another, and by his connivance caused the tenants of the property to attorn to the person to whom the outstanding title had been conveyed. *Held*, that he would not be allowed to profit by his purchase, but would be treated in equity as holding the title for his principals. 49 Fed. Rep. 524, affirmed.

3. SAME.

Nor will the heirs of an attorney who was jointly interested with H. in the purchase, and conducted all the negotiations with full knowledge of H.'s relations to C., stand in any better position than H. 49 Fed. Rep. 524, affirmed.

4. TRUSTEES—DUTIES AND LIABILITIES.

The testamentary trustees under C.'s will were given full power to sell, mortgage, and lease, and reinvest the proceeds, in their discretion. *Held*, that they had power to buy in an outstanding claim as a cloud on their title, and could maintain the action against H. and the others to charge them as constructive trustees, and in such action defendants would be charged with the rents and profits, and credited with all expenditures for taxes, insurance, and improvements, and the sums expended in purchasing the outstanding interests. 49 Fed. Rep. 524, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri. Affirmed.

Statement by SHIRAS, District Judge:

The proceedings in this case were brought in the United States circuit court for the eastern district of Missouri, for the purpose of settling the title to certain realty forming part of block 144, in the city of St. Louis; the complainants, John C. Chaffin and Edwin O. Childs, trustees under the will of Edwin Chaffin, and Caroline A. Chaffin, claiming that the realty, in right and equity, belonged to Edwin Chaffin in his lifetime, and that whatever apparent title thereto was held by Leon L. Hull, William Clark, or the widow and heirs of Samuel Hermann, deceased, was in fact held by them in trust for complainants, who represented the right and interest of Edwin Chaffin. Upon the final hearing of the case in the circuit court, it was decreed that all the right, title, and interest acquired by Leon L. Hull, William Clark, or Samuel Hermann to the realty in the bill described was obtained and held by them in trust for the complainants, John C. Chaffin, and Edwin O. Childs, testamentary trustees under the will of Edwin Chaffin, deceased, and that, upon reimbursing the defendants for all sums of money paid by them in procuring the execution of the conveyances to them, the complainants should be entitled to a decree vesting the title held by said defendants in complainants; it being further held that the defendants should account for all rents and profits by them received, and be credited for all expenditures for taxes, insurance, repairs, and improvements in connection with the property. An accounting was had before a master, who found that there was a balance due to the defendants amounting to \$738.55; and, this sum being by complainants paid into court, a final decree was rendered, in effect, vesting the title of the realty in the complainant trustees, to reverse which the defendants took an appeal to this court.

Joseph S. Laurie and Seneca N. Taylor, for appellants.

Edward Cunningham, Jr., for appellees.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

SHIRAS, District Judge, (after stating the facts.) The questions at issue between the parties to this suit have been very fully and

ably presented by counsel in the briefs and arguments before this court, and, with the assistance thus afforded us, we have considered the several errors assigned on behalf of appellants, but we find therein no sufficient ground for reversing the decree appealed from. We concur in the views expressed by the circuit court of the facts and the law applicable to the case, and these are so clearly and aptly stated in the opinion filed in that court, and reported in 49 Fed. Rep. 524, that we deem it unnecessary to enter upon a restatement thereof. Affirmed.

LEAVITT v. WINDSOR LAND & INVESTMENT CO. et al.

(Circuit Court of Appeals, Eighth Circuit. February 29, 1893.)

No. 181.

1. PARTNERSHIP—WHAT CONSTITUTES—CONTRACT.

Where a contract provides that one of the parties shall contribute the use of a theater building, and is to pay certain expenses incident to the use thereof, and the other party shall contribute his time and skill in the management and conduct of the business, and is to pay a fixed sum per month for lighting and heating the building, a fixed sum for rent, and the "lessor" is to receive "as additional rent one half of the net annual profits accruing from the business of the theater," and each party is to pay one half of the losses of the business, this contract constitutes them partners, notwithstanding that it uses the terms "lessor" and "lessee."

2. SAME—EQUITY JURISDICTION.

One partner may obtain an injunction in equity to restrain his copartner from violating his rights under the contract of partnership, even when the dissolution of the partnership is not asked.

3. CONTRACTS—CONSTRUCTION—ACTS OF PARTIES.

The court will follow, in construing a contract, the construction placed on the contract by the parties themselves; and, where a contract provides that a theater should be operated as "a strictly first-class place of amusement," the court, in order to determine whether there has been a breach of this condition, will take, as a standard of "first-class attractions," one which the parties themselves thought first-class.

4. SAME—PERFORMANCE.

A contract between the lessor and lessee of a theater, in effect, made them partners in the theater business; the lessee, however, to have sole management thereof, and the lessor to have "no control, authority, or voice" therein. *Held*, that it was no breach of the contract, justifying a re-entry by the lessor, that the lessee did not personally attend to the management of the theater building, but was looking after the business elsewhere.

5. SAME—ESTOPPEL.

The lessor could not question the efficiency of the local manager and treasurer, who had immediate charge of the theater, when, having re-entered for alleged breach of the conditions of the lease, he had himself retained them in their positions.

6. SAME.

It was no breach of the contract, justifying a re-entry, that the lessee's employees did not, on one occasion, open the box office for an hour after the advertised time, or that they, on one occasion, without his knowledge, speculated in seats, by selling tickets outside the box office, accounting for them at the price fixed by the manager for that attraction, especially when such employees had been appointed on the recommendation of the lessor, and were also retained by him after his re-entry, with a full knowledge of the facts.