

SECOND UNITARIAN SOC. v. GRANT et al.

(Circuit Court, D. Maine. February 28, 1893.)

No. 395.

TRUSTS—PURCHASE OF TRUST ESTATE—LIABILITIES OF PURCHASER.

Where a person purchases the trust estate for the benefit of the cestui que trust, having actual knowledge of an existing decree of a competent court that the trustee conveyed to the cestui que trust on being reimbursed for his expenditures in administering the trust, the purchaser stands in the shoes of the original trustee, and cannot incorporate in his deed to the beneficiary a condition not warranted by the original trust.

In Equity. Bill by the Second Unitarian Society in Portland against Josephine F. Grant, Mary E. Paine, William E. Greeley, Dorothea Greeley, and Hugh P. Greeley, to quiet complainant's title to certain real property. Hannah B. Greeley was made guardian ad litem for William E. Greeley, Dorothea Greeley, and Hugh P. Greeley. Heard on amended bill, answer, and replication. Decree for complainant.

The Second Unitarian Society in Portland, Me., held the legal title to two-thirds in common and undivided of the land occupied by it for purposes of worship, the legal title to the remaining one third being in one Samuel Winter, who held in trust for the said society. Winter, with two others, had bought the property for the uses of the society, and given their joint note therefor. The other two promisors on the note conveyed to the society their interest in consideration of their outlay, and the administrators of Winter were decreed by the supreme judicial court of Maine to do likewise with his interest, on the same terms. William E. Greeley, a member of the parish, thoroughly familiar with these facts, was appointed, together with the parish committee, to purchase the outstanding one-third interest, which was accordingly sold to Greeley by the administrators of Samuel Winter's estate, acting under license from the probate court. The society thereupon tendered to Greeley the purchase price and his charges and costs in making the purchase, and demanded a release of all his interest in the property. He refused this, but gave a deed conditioned upon the continuous use of the property by a Unitarian society; in case of breach the property to revert to Greeley's heirs. The society accepted this deed with a formal protest, which was entered on the parish records. In the year 1890 the society allowed the property to be used as a Presbyterian church. Greeley's heirs thereupon began an action at law in this court to recover the undivided one-third interest in the property. The Second Unitarian Society now seeks an injunction to restrain the further prosecution of the action at law, and that the heirs of Greeley be decreed to execute and deliver to complainant a quitclaim deed for their pretended interest in the property.

Thomas L. Talbot, for complainant.

Edward D. Rand, for respondents.

NELSON, District Judge. By the decree of the supreme judicial court of Maine, passed in 1837, in the suit of the present plaintiff against the administrators and heirs at law of Samuel Winter, it was declared that Winter held the estate at his decease, in trust for the plaintiff, and the decree further directed that an absolute conveyance of the estate should be made by the defendants in that suit to the plaintiff upon the repayment to the administrators of the money disbursed by Winter on account of the trust. Of this decree William E. Greeley, when he took his deed from the administrators

in 1844, had not only the constructive notice arising from the record of the decree itself, but he had actual notice also, as shown by his being a pew holder and member of the society, and by his interest in and his general acquaintance with its affairs. It is apparent also for the same reasons, and more especially by his permitting the society to occupy the estate as its own property before his deed to the society, that he bought it for the society's benefit, and with the expectation and understanding on both sides that upon repayment of the money advanced for its purchase he would convey the estate to the society in the execution and discharge of the trust. He held the title under the original trust, and evidently intended so to hold it, and to stand in Winter's place as trustee. Having been paid the money advanced, with interest, and having accepted it in full discharge of his equitable lien therefor, his deed was manifestly made in pursuance of and in execution of the trust, and for the purpose of vesting in the society all the title he held as trustee, and he had no right to impose upon the estate a condition not annexed to the trust. That the society never assented to the condition is shown by its protest, entered upon its records immediately after the conveyance by Greeley, and its continual occupancy of the estate as its own under the protest. If the entry by the defendants could have the effect to work a forfeiture, they would still hold the estate under the original trust, and would be bound to convey it to the society without condition. It is therefore decided that the conditional clause in the deed is void, and not binding on the society, and that the defendants acquired no title by their entry for breach of the condition.

Decree for the plaintiff.

HEATON PENINSULAR BUTTON-FASTENER CO. v. DICK et al.¹

(Circuit Court, N. D. Illinois, N. D. July, 1892.)

No. 870.

INJUNCTION — PROCUREMENT OF BREACH OF CONTRACT — CONTRIBUTORY INFRINGEMENT OF PATENT.

A bill alleged that complainant, owning patents for button-fastening machines, had sold the patented machines upon condition that they should be used only with fasteners made by complainant from the sale of which a profit was derived, and that defendants were manufacturing similar button fasteners, capable of and intended by them for use in complainant's machines, and were inducing purchasers of those machines to use such fasteners therein, to the exclusion of complainant's fasteners; and it prayed that defendants be restrained from making for sale, selling, or offering or advertising for sale, any fasteners, intended for use or capable of being used in the machines sold by complainant under such conditions, and from persuading or inducing vendees of such machines to purchase or use in such machines any fasteners other than those made and sold by complainants. On the bill and affidavit substantiating its charges, complainant moved for a preliminary injunction. Defendants demurred to the bill, and opposed the motion for injunction, but subsequently their counsel

¹Revised report. For former report, see 52 Fed. Rep. 667.