

JAMES T. HAIR CO. v. HUCKINS.

(Circuit Court of Appeals, Eighth Circuit. May 15, 1893.)

No. 209.

1. INJUNCTION—BREACH OF CONTRACT—ADEQUATE REMEDY AT LAW.
Injunction will not lie to restrain the breach of a contract whereby defendant agreed that for the term of five years he would use plaintiff's hotel registers in his business, and no others, for plaintiff has an adequate remedy at law; and a bill filed praying such an injunction is demurrable upon this ground.
2. SAME—REVIEW.
A decree of the lower court sustaining a demurrer to such bill, on the ground that the contract sued on is in restraint of trade, will be affirmed on appeal on the ground of adequate remedy at law, (this having been one ground of demurrer,) and the question of the validity of the contract will not be considered.

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

In Equity. This was a suit by the James T. Hair Company against Joseph Huckins to restrain the alleged violation of a contract. The court below sustained a demurrer to the bill, and complainant appeals. Affirmed.

Statement by CALDWELL, Circuit Judge:

The appellant, the James T. Hair Company, and the appellee, Joseph Huckins, entered into a contract, of which the following is a copy:

“Texarkana, May 11th, 1888.

“To whom it may concern: In consideration of the reduced rates (as given elsewhere on this leaf) at which our registers are to be supplied to us, and in further consideration of our hotels being advertised as other hotels are in the ‘American Hotel Guide,’ free of further charge to us, we have severally contracted with James T. Hair Company to use their supplies of advertising hotel register books upon our respective hotel counters. These books are to be of good material, and well made, and we agree to use them, and no other registers, exclusively, as register books upon our public hotel counters from the time we receive them until they are filled with guests’ names (in their own autographs, when possible) in the usual course of business. We also agree that we will refer our guests seeking purchases or professional services to the cards of those firms that shall be represented on the leaves of our register books from time to time, as opportunity is afforded us. We further agree to give said company notice at their Chicago office at least forty days prior to our needing additional registers under this agreement from time to time. This contract to be in force from and after date, or from the expiration of any present contract, if any now in existence, and is made for the term of five years, or while we, or either of us, are in the hotel business, if less than that time. Joseph Huckins.”

Huckins ordered and paid for hotel registers under the contract from the date thereof up to June, 1889, when he ceased to order registers from the appellant, and procured them elsewhere. Thereupon the appellant filed this bill in equity, setting out the foregoing facts, and alleging that, if the appellee continued to refuse to use its registers for the time the contract had to run, it would be damaged \$5,000.

The bill prayed “that the defendant, Joseph Huckins, his agents and servants, and each and every one of them, be restrained and enjoined pending the final hearing of this cause from further violation of his contract aforesaid, and particularly from using or causing to be used in his said hotel any register supplies other than those of your orator; that upon the final hearing of

this cause said injunction be continued until the expiration of said contract by its terms; that the defendant be decreed to pay to your orator all damages occasioned your orator by his failure to keep and perform his agreements;" and for general relief. A demurrer to the bill was sustained, and the plaintiff appealed.

William Thompson, for appellant.

L. A. Byrne, for appellee.

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

CALDWELL, Circuit Judge, after stating the facts as above, delivered the opinion of the court. According to the record, the court below rested its judgment sustaining the demurrer to the bill upon the ground "that the contract sued on is in restraint of trade, against public policy, and void," and the briefs of counsel are directed chiefly to a discussion of that aspect of the case; but we do not find it necessary to consider the question whether the contract was one in restraint of trade, and void for that reason. One of the grounds of demurrer to the bill is that the plaintiff has a plain, speedy, and adequate remedy at law. That this ground of demurrer was well taken is so plain and obvious as not to require or justify discussion or citation of authorities. Where the court renders the proper judgment it is immaterial whether the reason given for it is right or wrong. The decree of the court below is affirmed.

PATTON et al. v. GLATZ.

(Circuit Court, E. D. New York. June 15, 1893.)

1. EQUITY JURISDICTION—REMEDY AT LAW—RESCISSION OF CONTRACTS.

A bill which seeks to set aside a contract alleged to have been procured by fraud, and also prays an injunction to prevent defendant from deriving benefit from the contract pending the determination of the question of fraud, cannot be dismissed on the ground that plaintiff has an adequate remedy at law.

2. RESCISSION OF CONTRACTS—FRAUDULENT REPRESENTATIONS—PLEADING.

Plaintiff and defendant made a contract of partnership in the royalties to be derived from a patent owned by plaintiff and patents and processes claimed to be owned by defendant, the theory being that the inventions owned by both would substantially control the whole art to which they related. Plaintiff subsequently sued to annul the contract on the ground that the following representations inducing the contract were false, namely, that defendant "was in possession and control of a large number of patents" controlling processes in the art specified, and was receiving large sums in royalties. *Held*, that the bill could not be held indefinite in that it did not designate the patents which defendant falsely claimed to own, for it does not appear that defendant, in his representations, specified any particular patents.

3. EQUITY PLEADING—MULTIFARIOUSNESS.

The bill was not multifarious in that it sought to annul the contract for fraud, and also to collect royalties alleged to have been received by defendant before the date of the contract under a verbal understanding then existing.

In Equity. Bill by John Patton and Edward E. Quimby against Joseph Glatz to set aside a contract. On demurrer to the bill. Demurrer sustained, with leave to amend.

Price & Steuart, for complainants.
Briesen & Knauth, for defendant.

BENEDICT, District Judge. This case comes before the court on a demurrer to the bill, which is a bill to annul and set aside a certain contract entered into between the plaintiffs and the defendant on the 20th of February, 1890, upon the ground of fraud. The jurisdiction of the court depends upon the citizenship of the parties and the amount in controversy.

The first ground of demurrer is that the bill fails to show that the matter in dispute or claim of interest exceeds the sum of \$2,000. The bill is clearly defective in this particular, but the error may be corrected by an amendment, which will be allowed.

It is next insisted that the complainants have an adequate remedy at law, and therefore this court, as a court of equity, is without jurisdiction. This objection seems untenable. The remedy afforded by a court of equity by setting aside a contract procured by fraud is a more extensive and more adequate remedy than can be secured by an action at law. Moreover, the bill prays an injunction to prevent the defendant from deriving benefit from the contract pending the determination by the court of the question of fraud, and for a discovery.

The next ground of objection to the bill is that the allegation of fraud is indefinite and indistinct, and should be made more definite before the defendant can be called upon to answer. The contract sought to be set aside was, in substance, a contract of partnership in the royalties and moneys that might be received from a patent owned by the plaintiffs, and by patents and processes represented to be owned by the defendant; the theory of the contract being that the inventions and patents of the plaintiffs, when added to the patents and inventions owned by the defendant, would substantially control the entire art or process of concentrating soap lye in the manufacture of glycerine. The allegation of the bill is that this contract was obtained by means of false representations fraudulently made by the defendant. These representations are set forth as follows: "That the said Glatz was in possession and control of a large number of patent inventions covering and controlling processes for the concentration of soap lye in the manufacture of crude glycerine, and had licensed a number of persons who were engaged in the business of manufacturing glycerine, and was receiving from said parties large sums and royalties for said licenses, and had to pay large sums to patentees for the use of their process," when in truth and in fact he neither owned nor controlled any patents or processes such as described.

The contention of the defendant is that the bill should designate the patents which the defendant claimed to, but did not, own. I do not think the bill defective in this particular, for the reason that it nowhere appears that any particular patents were designated by the defendant. The representation made by the defendant, as charged, is simply that he owned and controlled patents in regard

to this subject-matter; that he had licensed a number of persons who were engaged in the business of manufacturing glycerine, and was receiving from them large sums in royalties, and that he had to pay large sums to patentees for the use of their processes. For aught that appears, no names were given by him, nor were any particulars stated other than were stated in the bill. According to the allegations of the bill, no such patents as he represented were owned or controlled by the defendant. If the representations made by the defendant, and by means of which he procured the contract to be annulled, were as set forth in the bill, it is not seen how the plaintiffs can do more than set forth those representations as made.

As to the point taken that the bill is multifarious because it seeks not only to have the contract of February 20, 1890, annulled by reason of fraud, but also seeks to collect royalties alleged to have been received by Glatz prior to the date of the contract, such a verbal understanding then existing, I see no objection to allowing the bill to stand as it is in this particular.

Judgment must be for the defendant upon the demurrer, with liberty to amend by showing that the matter in dispute, exclusive of interest and costs, exceeds in value the sum of \$2,000.

WALTERS et al. v. WESTERN & A. R. CO. et al.

(Circuit Court, N. D. Georgia. February 17, 1893.)

CARRIERS—BILLS OF LADING—INNOCENT PURCHASERS.

A firm of merchants in A. were also engaged in the milling business at M., on the line of defendant's railway. For their convenience, defendant established a station at M., and appointed one member of the firm its agent there. It was shown that the business of the station was practically transacted in the firm's office at A., and freight charges were settled from time to time with defendant's officials. Goods shipped by the firm at A., consigned to themselves at M., were delivered without presentation of the bill of lading, and it appeared doubtful whether, in the case of such shipments, there was ever any actual delivery of any bill of lading from hand to hand. Some of these bills of lading, after the goods were delivered to the consignees, were transferred by the firm, as collateral, to persons who had no knowledge of any irregularity. *Held*, that the defendant was liable on these bills of lading in the hands of innocent purchasers, since it was by reason of its own negligence that they came into their hands. *Friedlander v. Railway Co.*, 9 Sup. Ct. Rep. 570, 130 U. S. 416, distinguished.

In Equity. On exceptions to master's report. Intervention of H. T. Inman in the suit of William T. Walters against the Western & Atlantic Railroad Company and others. Exceptions sustained.

Mayson & Hill, for intervener.

Julius L. Brown, for W. & A. R. Co.

NEWMAN, District Judge. The case of *Friedlander v. Railway Co.*, 130 U. S. 416, 9 Sup. Ct. Rep. 570, cited by counsel for the receivers, settles conclusively the question that, where an agent of a common carrier issues a bill of lading in collusion with another person, when no goods are actually delivered, the carrier com-