

BLAIR et al. v. HARRISON et al.<sup>1</sup>

(Circuit Court of Appeals, Seventh Circuit. June 10, 1893.)

No. 64.

**1. ATTORNEY AND CLIENT—FEES—LIEN ON JUDGMENT.**

Where the amount due on a judgment recovered for the purchase price of property sold by plaintiff to defendant is paid into a court of equity for distribution, plaintiff's attorneys are entitled to receive therefrom the money due them for meritorious services rendered to plaintiff in other suits growing out of such purchase, where such services were rendered with the expectation that they would be paid for out of the proceeds of such judgment. 51 Fed. Rep. 693, affirmed.

**2. PARTNERSHIP—WHAT CONSTITUTES—EVIDENCE.**

Proof that two men owned a ranch and herd of cattle jointly, that they managed the ranch together, rendered accounts in their joint names, and referred to themselves as a company, is sufficient to show that they were copartners, although they had no articles or agreement of copartnership. 51 Fed. Rep. 693, affirmed.

**3. SAME—SETTLEMENT BETWEEN PARTNERS—RIGHTS OF CREDITORS.**

A settlement between copartners which determines their respective interests in a certain partnership fund is conclusive as to the rights of their individual creditors to that fund. 51 Fed. Rep. 693, affirmed.

**4. SAME—VACATING SETTLEMENT—EVIDENCE.**

A settlement between copartners, who are both capable men, of a business amounting to hundreds of thousands of dollars, and involving many items of account depending upon the memories of the copartners, should not be opened at the instigation of their creditors, after the death of one of the copartners, even though there is a strong *prima facie* showing of mistake in the settlement. 51 Fed. Rep. 693, affirmed.

**5. SAME—RIGHT OF PARTNER TO PLEDGE FIRM PROPERTY.**

One of two copartners cannot pledge the partnership property to secure his private debt, except to the extent of his interest therein. 51 Fed. Rep. 693, affirmed.

**6. EQUITY PLEADING—AMENDMENT.**

After the announcement of the final decision of the chancellor upon the merits of a case, it is proper to refuse to permit the pleadings to be amended, so as to meet objections which were raised at the hearing, two months before the decision was rendered, especially where such amendment would not affect the grounds on which the decision is based. 51 Fed. Rep. 693, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

In Equity. Bill in the nature of a suit of interpleader brought by John Clafin and others, composing the firm of H. B. Clafin & Co., against Jessie I. Bennett, John A. Blair, Samuel J. Garvin, John C. Harrison, Robert L. Dunman, and others. A decree was rendered in favor of Harrison and Dunman. An appeal was taken by Blair and Garvin. Affirmed.

For opinion of the lower court in this case, see *Clafin v. Bennett*, 51 Fed. Rep. 693.

A. B. Wilson, E. F. Thompson, and C. B. McCoy, (Gardiner Lathrop and John N. Jewett, on the brief,) for appellants.

Charles M. Osborn, (S. A. Lynde and S. B. Ladd, on the brief,) for appellees.

<sup>1</sup> Rehearing pending.

Before WOODS and JENKINS, Circuit Judges, and GROSSCUP, District Judge.

**PER CURIAM.** The decree appealed from is affirmed, upon the grounds stated in the opinion of Judge Blodgett in the court below.

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WOOD et al. v. PERKINS.

(Circuit Court, D. Massachusetts. August 22, 1893.)

No. 3,120.

**1. EQUITY—JURISDICTION—ABSOLUTE CONVEYANCE—TRUST ARISING UPON CONTEMPORANEOUS AGREEMENT.**

Respondent, by a written agreement, in consideration of conveyances to him of certain "mining locations," promised to pay to complainants certain stock in a "mining pool." Oral agreements between the parties provided that respondent was to form the pool, but the conveyances were absolute on their face. *Held*, that the facts created a trust, and equity had jurisdiction of a bill to enforce the delivery of the stock.

**2. SAME—SALE OF TRUST PROPERTY—PROCEEDS CHARGED WITH THE TRUST.**

Equity jurisdiction was not defeated by the fact that respondent had disposed of the stock for cash. The equitable remedy would extend to the liquidated and certain sum so received, although, in the state where the suit was brought, an action for money had and received lies for what is due in equity and good conscience.

**3. SAME—ORAL AGREEMENT—CONSIDERATION.**

Equity jurisdiction is not defeated in such a case by the fact that the trust agreement was oral, and without consideration, since the conveyances to respondent executed the verbal agreement in part, and were a sufficient consideration therefor.

**4. SAME—CONTEMPORANEOUS ORAL AND WRITTEN AGREEMENTS.**

The fact that complainant alleges two contracts—one written, and absolute on its face, the other oral, and purporting to create a trust—will not defeat the jurisdiction of a court of equity to enforce the trust, when it appears that the two contracts were parts of the same transaction.

**5. SAME—LACHES—EXPRESS TRUST.**

Lapse of time, unless exceptionally great, is no defense to a suit to enforce an express trust, when the acts charged against respondent amount to a complete breach of trust, and have been industriously and fraudulently concealed. *Speidel v. Henrici*, 7 Sup. Ct. Rep. 610, 120 U. S. 377, distinguished.

In Equity. Bill by Alvinus B. Wood and others against Thomas H. Perkins to enforce a trust. Heard on demurrer to the bill. Demurrer overruled.

Henry S. Dewey, for complainants.

Francis Peabody, Jr., for defendant.

PUTNAM, Circuit Judge. The respondent in this case received from two of the complainants, and the assignor of the other, a deed or deeds of several tracts of mineral lands on the north shore of Lake Superior. The rights, as spoken of in some places, were "mining locations," but whether strictly such, or whether the land was held, the interests were hereditaments, and partook of the realty; so that, for the purposes of the case at bar, they stand the