ALBRIGHT et al. v. OYSTER et al.

(Circuit Court of Appeals, Eighth Circuit. March 2, 1894.)

No. 355.

APPEAL—RIGHT TO APPEAL—ESTOPPEL.

Parties who, pursuant to the provisions of a decree, demand and receive a conveyance of lands from a trustee, are thereby estopped from appealing from the decree; for they cannot accept its benefits, and at the same time have a review in respect to its burdens.

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

Edward P. Johnson, for appellants.
David P. Dyer and F. S. Schofield, for appellees.

Before CALDWELL and SANBORN, Circuit Judges.

PER CURIAM. This is an application for a rehearing of a motion to dismiss the appeal in this case. That motion was granted early in this term. The decree from which this appeal was taken, which was rendered April 15, 1893, provided, among other things, that one Lloyd D. Mitchell, a trustee, that had been appointed in the place of George Oyster, deceased, should convey to the appellants a large quantity of lands, the title to which was originally involved in this suit. May 22, 1893, on the demand of the appellants, this trustee conveyed these lands to them, pursuant to the decree, and the appellants accepted the deed, and afterwards placed it on record. The next day after they obtained this deed under the decree, they took their appeal from that decree to this court. No rule is better settled than that a litigant who accepts the benefits or any substantial part of the benefits of a judgment or decree is thereby estopped from reviewing and escaping from its burdens. He cannot avail himself of its advantages, and then question its disadvantages in a higher court. It is said that the right of the appellants to the conveyance of the lands they obtained was no longer in controversy, but that the title to them had been finally decreed to the appellants. But this does not relieve the appellants from the estoppel. It was by the direction of this decree from which they now appeal that the deed to these lands was made by the trustee and received by them. They could not take the title to these lands from the trustee by virtue of the decree, even if that title was no longer in dispute, and then appeal from the decree, and contest the provisions of it that were onerous to them. We are of the opinion that the acceptance of this deed under the decree estopped the appellants from exercising any right of appeal they otherwise might have exercised. It was the receipt of a substantial benefit that they could not have obtained without the decree, and they ought not to be permitted to review the provisions of it with which they are not satisfied, after taking the benefit of those they approve. The motion for a rehearing is denied.

MABURY v. LOUISVILLE & J. FERRY CO. et al.

(Circuit Court of Appeals, Seventh Circuit. March 6, 1894.)

No. 25.

1. FERRY—REAL PROPERTY.
   A ferry franchise is real property.
2. ESTOPPEL IN PAIS—RECITALS IN AGREEMENT.
   The owners of a ferry signed articles of association which recited the interests of the different owners. In these articles, W. was stated as owning one-twelfth. At the date of the articles he owned no interest, but at the time the articles were adopted he had acquired the interest of his mother, who owned one-twelfth for life, and claimed to own it in fee. The reversionary estate in this one-twelfth was really owned by M., who signed the articles as owner of another share. At that time, and afterwards, M. always claimed to own this reversionary twelfth. *Held*, that the recital in the articles did not estop M. from asserting title to the twelfth interest after the death of the life tenant.
3. SAME—PLEADING.
   An estoppel by recitals in a contract, being a species of estoppel in pais, cannot be availed of, when not specially pleaded.
4. CORPORATIONS—ISSUE OF STOCK—DEED.
   The owner of a life estate in certain property, who claimed also to own the fee, quitclaimed the property to a corporation for an expressed consideration of certain shares of the corporate stock. The title to the reversionary estate being understood to be in dispute, the corporation issued no certificate for such stock, but paid the dividends thereon to the life tenant, and allowed her to vote it during the continuance of the life estate. *Held* that, on termination of the life estate, the corporation was not bound by its deed to deliver a certificate of the shares to the life tenant, it being proved that she did not own the reversion.

Appeal from the Circuit Court of the United States for the District of Indiana.

Action by Nora Adams against the Louisville & Jeffersonville Ferry Company to compel it to issue to her a certificate for 166⅔ shares of its capital stock, which she claimed to own. The defendant the ferry company instituted a second action in the circuit court of the United States for the district of Indiana against Mrs. Adams and Hiram Mabury, in the nature of a bill of interpleader, calling upon them to assert their respective claims to the stock which was the subject-matter of the first action. The defendants to the second action, by cross bills against the ferry company and against each other, set up their respective claims to the stock; and by stipulation the two actions were consolidated, and a joint decree entered in favor of Mrs. Adams, from which Hiram Mabury has appealed.

This suit arises out of a controversy between Nora Adams, one of the appellees, and Hiram Mabury, the appellant, regarding a one-twelfth interest in the Louisville & Jeffersonville Ferry Company, and the right to the issuance of 166⅔ shares of stock in said company, of the par value of $16,666.66⅔, representing that interest. The company stands ready to issue this stock either to Nora Adams or to Hiram Mabury, as that right may be determined in this suit. It may be said, however, that Nora Adams claims the right to the stock independently of any claim or interest which Mabury may have in the ferry property. The first suit was brought by Nora Adams in 1888 against the company, in the circuit court of Clark county, Ind., to compel the company to issue the said shares of capital stock to her. That suit was removed by the company to the circuit court of the United States for