

In *Wadsworth v. Adams*, 138 U. S. 380, 11 Sup. Ct. 303, it is stated in the syllabus, which is a summary of the doctrine as to the right of an agent to the compensation agreed to be paid him, as defined in the opinion of the court by Justice Harlan:

"It is a condition precedent to the right of an agent to the compensation agreed to be paid to him that he shall faithfully perform the services he undertook to render; and if he abuses the confidence reposed in him, and withholds from his principals facts which ought, in good faith, to be communicated to the latter, he will lose his right to any compensation under the agreement; being no more entitled to it than a broker would be entitled to commissions who, having undertaken to sell a particular property for the best price that could be fairly obtained for it, becomes, without the knowledge of the principal, the agent for another, to get it for him at the lowest possible price."

There is one other question presented to the court for its consideration by counsel for the appellant. It is contended that, although the court below considered the sale by Hall to Coulter fraudulent, yet that court should have decreed in favor of Hall the money value of his services to Gambrill, as attorney, in preserving Gambrill's title to the land. It is a sufficient answer to this question to say that the only standing that Hall had in the court of equity below was by reason of his assertion that he had an equitable interest in the proceeds of the sale of the land to Coulter, by reason of what he claimed to be an irrevocable contract with Gambrill. On his money demand he sued out an attachment in equity, under a statute of the state of West Virginia, and attacked the deed of assignment from J. H. Gambrill to R. G. Gambrill, trustee, as fraudulent and void, because made with intent to defraud him (Hall) of his interest in the proceeds of the sale of the land to Coulter.

A federal court of equity has no jurisdiction of such a proceeding by attachment in equity, as provided by the statute of West Virginia. *Cates v. Allen*, 149 U. S. 451, 13 Sup. Ct. 883, 977; *Hollins v. Iron Co.*, 150 U. S. 371, 14 Sup. Ct. 127. Numerous authorities might be cited to the same effect. The decree of the court below is without prejudice to Hall's just demands, if any he has, under the said contract. The decree of the circuit court must be affirmed, and it is so ordered. Affirmed.

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OAKFORD v. HACKLEY.

(Circuit Court, W. D. Pennsylvania. February 9, 1899.)

No. 1, September Term, 1895.

1. COAL LEASE—VALIDITY OF AGREEMENT TO EXECUTE.

Evidence considered, and *held* insufficient to justify the refusal of an owner of land to perform an agreement to execute a coal lease thereon, on the ground of fraud and misrepresentation.

2. SPECIFIC PERFORMANCE—CONTRACTS ENFORCEABLE—AGREEMENT FOR MINING LEASE.

A valid agreement, definite, and fair and reasonable in its terms, was made for the lease of a tract of coal land, to be mined by the lessee. The lease would necessarily extend through a number of years. The quantity to be mined each year was uncertain, and payment of a royalty was to be made to the owner according to a sliding scale, varying from year to year. Owing to a known fault in the vein, but the extent of

which was unknown, the total quantity of coal to be mined was very largely a matter of uncertainty. *Held*, that specific performance of the agreement would be decreed at suit of the lessee, on the ground of the inadequacy of his remedy at law for nonperformance, arising from the impossibility of determining the amount of his damages with any reasonable degree of certainty.

This was a suit in equity, by James W. Oakford against Mrs. Frances A. Hackley, to enforce the specific performance of an agreement to enter into a lease of certain coal lands owned by defendant.

Samuel B. Price, for complainant.

James E. Burr, H. W. Palmer, and Robert G. Ingersoll, for defendant.

BUFFINGTON, District Judge. This is a bill to enforce specific performance of an agreement for a lease of coal land in Lackawanna county. The bill was filed in the court of common pleas of that county, and by the respondent, a citizen of the state of New York, removed to the circuit court. The proofs show that Frances A. Hackley, the respondent, by the will of her husband, who died in the summer of 1894, became the owner in fee of 150 acres of land situate in Lackawanna county, known as the "Thomas Bell Tract," and underlaid with anthracite coal. By letter of attorney, dated August 1, 1894, Mrs. Hackley constituted Judge William H. Jessup, of the city of Scranton, her attorney. On August 30th, Judge Jessup wrote Mrs. Hackley in reference to the Bell tract as follows:

"I have had applications for the leasing of the 150-acre tract of Thomas Bell. \* \* \* It occurs to me that it would be a very good time to get the 150 acres leased now. There are not many tracts that are not under lease, and, of course, the sooner you get your tract under lease, the sooner you will be realizing from it. The borings that were made, of which I found among the papers the reports, would seem to show that quite an extensive fault exists in the tract, and under a portion of it there was no coal. As to whether any recent developments in the vicinity have changed this, it would be well for us to find out before making any definite arrangements; and, above all, it is worth more to you to have thoroughly reliable men to deal with, as it may run as long as you live, perhaps, than even to get a little better price from unreliable men, and being continually annoyed. That is my experience, and I know it was the experience of your husband, Col. Hackley; and I know, for that reason, he declined to negotiate with certain parties with reference to the property."

The reference to the report in this letter is to maps of borings which were found among the papers of Col. Hackley at the time of his death, by Judge Jessup, concerning which he testified as follows:

"The two maps of borings I told Mrs. Hackley I would bring home with me, because, in future leasing of the Thomas Bell tract, they would be important to show the parties who might desire to lease the land and the coal there was on it."

Additional letters were written by Judge Jessup to Mrs. Hackley, which were not put in evidence by either party; but on October 23d she wrote the judge as follows:

"Dear Sir: Your letter of the 16th instant, and also your telegram of yesterday, came duly to hand. \* \* \* Note what you say in regard to the Thomas Bell tract, and will be glad to receive proposals for lease, which will have my immediate attention."