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Supreme Court Reverses Itself on Quest of Party Walls--Right of the Assignee Covenantor to Sue

Anne Slifkin

West Virginia University College of Law

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almost without exception clung to it. It was thus laid down in the federal courts until recently. *Hansen v. United States*, 156 U. S. 51; *Hopt v. Utah*, 110 U. S. 574. But in 1924 a new test was formulated for the federal courts. D was accused of murder and was subjected to a severe and continuous questioning, despite the fact that he was very ill. On the thirteenth day, being exhausted, he made a confession, apparently to get rid of his questioners. Nevertheless the Court of Appeals held the confession admissible on the ground that it was not procured, by promise or threat—applying the rule as followed by the West Virginia courts. *Wan v. United States*, 289 Fed. 908. But on appeal to the United States Supreme Court the confession was held to be inadmissible. The court broke away from the orthodox rule of admissibility and laid down a simpler test. It stated that the requisite of voluntariness was not satisfied by establishing merely that the confession was not induced by threat or promise, but that it must be voluntary in fact. *Wan v. United States*, 266 U. S. 1, 14. It is submitted that this decision shows a salutary tendency to break away from the mechanical test of threat or promise, hope or fear. The proper test should be whether the circumstances attending the confession were such as to have created in any considerable degree a risk that a false confession would be made. WIGMORE, EVIDENCE, §824.

—William Thomas O'Farrell.

SUPREME COURT REVERSES ITSELF ON QUESTION OF PARTY WALLS—RIGHT OF THE ASSIGNEE COVENANTOR TO SUE.—In a deed by which the grantor conveyed half of a building to defendant, it was agreed that the dividing wall should be a party wall and that either party, or his vendee, was to have the right to extend the wall higher, and the other party, or his vendee, was to pay for half of so much of the wall as he should elect to use. The grantor conveyed the other half of the building to the plaintiff. The plaintiff built this wall up another story, placing the joists of defendant's floor in the new wall. Plaintiff then sued defendant for half the cost of the wall. Judgment for defendant below was reversed. *A. W. Cox Department Store v. Solof*, 138 S. E. 452 (W. Va. 1927).

The opinion of the court deals chiefly with the construction of the contract and assumes without discussion the right of the plaintiff, as assignee of the covenantor, to sue defendant on the covenant, a point upon which the courts of this country are in conflict. The New York courts have taken the view that when one party is contemplating the erection of a wall at the time the covenant is made, and immediately builds it, the covenant is personal and does not run with the land; but when neither party is contemplating building when the covenant is executed, and later an assignee of one builds the wall, there is created an equitable charge on the land in his favor. *Mott v. Oppenheimer*, 135 N. Y. 312, 31 N. E. 1907; *Crawford v. Kröllpfeiffer*, 195 N. Y. 185, 88 N. E. 29. In *Parsons v. Baltimore Bank and Loan Association*, 44 W. Va. 335, 29 S. E. 999, the court held the covenant did not run, but that an equitable charge was created on use of the wall by the adjoining owner, though a building was contemplated at the time the agreement was made, the court purporting to follow *Mott v. Oppenheimer*. Under the law of New York no such equitable charge would have arisen on the facts shown in *Parsons v. Baltimore Bank and Loan Association* and *Crawford v. Kröllpfeiffer*, *supra*. It is to be noted that in the principal case, at the time the agreement was made neither party contemplated building a wall. According to the New York view the covenant would not run with the land but an equitable charge would be created on the non-builder's land. Yet the court without discussion and without even citing *Parsons v. Baltimore Bank and Loan Association*, assumed the covenant ran with the land and allowed the assignee of the covenantee to recover in an action at law. Hence the court must have held that the covenant did run with the land, and that the plaintiff, when he bought from the covenantee, along with the land, got the right to enforce the covenant. This is in accord with the weight of authority in the United States. There is no difficulty as to privity of estate in the principal case because the covenant was in the deed of conveyance of half of the building to the defendant. The result of this decision as to the running of the covenant and thereby overruling the dictum of the West Virginia case cited above is to be commended.

However, one cannot so heartily commend the decision of such a controverted point of law by the mere assumption of it.

—Anne Slifkin.

REAL PROPERTY—BILL TO REMOVE CLOUD WHEN REMEDY AT LAW IS ADEQUATE.—Complainant brought a bill in equity praying the removal of a cloud from title to four hundred acres of coal the ownership of which was severed from that of the surface, and to which the complainant alleged he had legal title. Defendant was in possession of the surface under a subsequent deed to the whole. The court sustained a demurrer to the bill on the ground that the complainant had an adequate remedy at law. *Payne, Malcolm and Gallaher v. Fitzwater, et al.*, 136 S. E. 507 (W. Va. 1927).

The common law rules governing bills to remove cloud from title are in effect in West Virginia. In the case at bar the mineral was undeveloped and neither the complainant nor the defendant was in actual possession. West Virginia and Virginia have, in a long line of decisions, established the rule that in order to give equity jurisdiction to remove cloud from title the complainant must have not only equitable and legal title but actual possession of the lands in controversy. Constructive possession is not a sufficient basis to sustain a bill to remove cloud from title. *Hitchcock v. Morrison*, 47 W. Va. 206, 34 S. E. 993; *Wallace v. Elm Grove Coal Company*, 58 W. Va. 449, 52 S. E. 485; *Mackey v. Maxin*, 63 W. Va. 14, 59 S. E. 742. There is an exception in some jurisdictions to the effect that where the lands in controversy are vacant and unoccupied, constructive possession of the legal owner is sufficient. There seems to be no such exception in West Virginia. The general rule is that a bill to remove cloud can be maintained only when the complainant is in actual possession of the land. This rule however is subject to the exception that when the complainant holds the legal and equitable title and there is no adequate remedy at law available, equity will give relief, *Swick v. Rease*, 62 W. Va. 557, 59 S. E. 510; *Custer v. Hall*, 71 W. Va. 119, 76 S. E. 183; 4 POMEROY, EQUITY (3rd ed.) 1399. The court held in the principal case that ejectment furnished an adequate remedy at law. This would not have been true at common law, but West Virginia and