

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Natal Land and Colonization Company (Limited), Appellants, v. Charles Henry Good and John Cecil Bowes, Respondents, from the Supreme Court of Natal; delivered 2nd July, 1868.*

---

Present :

THE MASTER OF THE ROLLS.  
SIR JAMES W. COLVILLE.  
SIR E. VAUGHAN WILLIAMS.  
THE LORD CHIEF BARON.

THIS is an appeal against a judgment pronounced in the Colony of Natal upon what in this country would be termed a motion to dissolve an injunction. It is, in fact, a suit to remove, as it is termed, an interdict which had been granted against the Plaintiffs, the now Appellants, who sought by a proceeding in a Court of Justice in this Colony to obtain judgment against a person of the name of Crawley, in respect of the mortgage of a place called Matowaans Kop, upon which a sum of £800 had been advanced.

The circumstances are very short and simple :— Crawley opened a negotiation on the 10th of October, 1863, with the Plaintiffs, who are bankers, for a loan of £800 upon the security of this property, called Matowaans Kop, and after some correspondence, the Plaintiffs agreed to advance that money, and they did advance it upon the mortgage in question. Now it appears, when we look into the evidence, that Crawley had become the owner of this property under a conveyance to him from a person of the name of Spies, and that conveyance certainly is dated as late as the 22nd of October, 1863. But that conveyance was duly registered. There was a transcript or copy, called a grosse, of that conveyance, which was part of the title, and therefore there was nothing to show, and nothing to lead to a doubt, but that

Crawley had become lawfully possessed of and entitled to this property under that conveyance from Spies of the 22nd of October, 1863, and the Plaintiffs having agreed to advance this money on mortgage, the mortgage was accordingly executed and the property thus conveyed to them two days afterwards, on the 24th of October of the same year 1863. It appears by a letter in which the correspondence began, and it is by no means an unimportant circumstance in this case, if there really had been any question of title between these now litigant parties, that the title deeds of the property were delivered over to the Plaintiffs, the mortgagees, at the time when the transaction took place. They advanced their money, they took their mortgage, and they retained their security for more than two years afterwards. About a year after the mortgage, in the month of October, 1864, the interest upon the mortgage not having been duly paid, and after some indulgence shown to the debtor Crawley, proceedings were instituted, which would be in the nature of a suit for a foreclosure in this country, to give to the Plaintiffs the benefit of the mortgage, and to entitle them to the possession, and, if necessary, to the sale of the property; and they were about to obtain a judgment to that effect when the Respondents came upon the field and obtained an interdict or injunction to stay the judgment and execution impending against Crawley. In due time the Plaintiffs instituted this Suit, which is, in effect, a suit to dissolve that injunction or to remove that interdict, and upon the matter coming before the Court the title of the Plaintiffs is clearly proved. It is proved by the production of the conveyance from Spies to Crawley, and of the mortgage from Crawley to the Plaintiffs, with the grosse of each of these two instruments, which, upon the highest authority, we find to be the evidence or symbol of the title; and further, it was perfectly clear that both these conveyances had been duly registered; and among the evidences of title possessed and produced by the Plaintiffs, were the certificates of registration of both the conveyances,—the conveyance by Spies to Crawley, and the mortgage by Crawley to the Plaintiffs.

Then comes the question, How is the interdict to be sustained? and the only evidence before the

Court in the Colony, or before their Lordships on this Appeal, is simply that two years afterwards a judgment was obtained by the two Respondents against Crawley, which judgment finds or affirms a fraud to have been committed by Crawley in respect to the obtaining and registering the conveyance of this property from Spies to himself.

Now, the first observation which occurs is that this Judgment was not admissible in evidence. It is the only proof of the fraud, but if it were ample and sufficient proof of the fraud, it is *res inter alios acta*, and in no Court of Law or Equity in this country would it have been admitted at all, except as between the parties to it, the Respondents and Crawley, or if a foundation for it had been laid by evidence of some fraud having been committed by which the Plaintiffs could be affected. There was no proof of any such fraud, or, indeed, of any fraud at all. Yet this Judgment constituted the whole evidence in support of the interdict. If, therefore, the Judgment had been admissible, and had been evidence of a fraud committed, there was no evidence that the Plaintiffs were parties to it, or affected by it, or cognizant of it.

Under these circumstances, it certainly is somewhat surprising that any Court of Law in the world should have given effect to this Interdict and pronounced a Judgment against the right of the Plaintiffs to this property. When their Lordships look to the opinions delivered by two of the Judges, they find that independently of the supposed fraud, the case is put upon this, that in the first place, the Conveyance by Spies to Crawley is dated as late as the 22nd of October, 1863. But it appears that it happens frequently in this colony that a purchase may, in fact, have been made, though the Conveyance is not completed and registered in the Public Registry of the Colony until sometimes as much as ten years afterwards. Their Lordships know not, therefore, when this purchase was made by Crawley of Spies, and the date of the Conveyance, therefore, is of no manner of importance, and has no bearing upon the case.

It is said that the consideration appears to have been only £75; and certainly it might have attracted attention and led to some inquiry on the part of the persons about to advance their money

on this property, if they had found that it had been purchased so recently as the 22nd of October (two days before the mortgage to themselves), and for the price of £75 only. But the probability is that the fact that £75 appeared as the purchase-money in the conveyance from Spies was never known at all to the Plaintiffs themselves. It may have been known to their solicitor who prepared the deeds, but the solicitor, if he found there had been a valuation of the property at £1500 for revenue purposes and satisfied himself besides that the property was of that or of sufficient value, would not have troubled himself about the terms upon which the purchase had been effected, possibly a great many years before, when the price might have been very much less than the true value at the time of the conveyance to his clients.

Then with regard to the circumstances which are further relied upon in the opinions of the Judges of the Court below; first, that the persons concerned in the registration happened to be the agents at Pietermaritzburg of the Plaintiffs, and the further circumstance that a brother, or some other relative of Crawley, the manager, happened to be a clerk in the office of the Plaintiffs; these, unaccompanied by any evidence at all connected with the transaction itself, are really quite unworthy of a moment's attention.

The case, therefore, resolves itself into this: there is a *bonâ fide* loan, upon a mortgage, of £800 by the Plaintiffs to Crawley, and the Plaintiffs were clearly entitled to the Judgment and execution which they were about to obtain against Crawley. When their Lordships look to the evidence upon which it is sought to support this Interdict upon the part of the Respondents, they find that there is no admissible evidence of any kind whatever.

Under these circumstances, they can only advise Her Majesty to reverse the decision of the Court below, and to give effect to the Judgment under this Appeal, with costs.