

REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA.

—
VOLUME II.
—

BY WILLIAM MUNFORD.

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1814.

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, that on the twenty-first day of January, in the thirty-eighth year of the Independence of the United States of America, **LEWIS MOREL**, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following to wit:

“ Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia. Vol. II. By **WILLIAM MUNFORD**.”

IN CONFORMITY to the act of Congress of the United States, entitled “ An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned;” and also to an act, entitled “ An act, supplementary to an act, entitled an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

THERON RUDD,
Clerk of the District of New-York.

Friday,
June 14th.

Taylor against Stone.

In the case of legal rights, the principle *caveat emptor* properly applies; but equitable rights may be lost by a sale to a *bona fide* purchaser without notice.

THIS was a suit in the late high court of chancery, on behalf of *Uriah Stone* against *John Early*, *Skelton Taylor*, *Stephen Pate*, *John Pate* and *Anthony Pate*. The object of the bill was to be allowed an equity of redemption of certain slaves, of whom the plaintiff had made an absolute conveyance to the defendants *Stephen* and *John Pates*, but which conveyance he alleged was intended as a mortgage to secure the repayment of a sum of money lent him partly by them, and partly by the defendants *John Early* and *Anthony Pate*. The defendant *Taylor* was a purchaser of some of those slaves at a sheriff's sale, by virtue of an execution against *Anthony Pate*. The sale was forbidden on the ground that the property belonged to *Stephen Pate* and *John Pate*, instead of *Anthony*; but there is no evidence in the record that *Taylor*, the purchaser, had notice of *Uriah Stone's* claim at the time of his purchase. The late chancellor, on the 14th of *September*, 1803, upon his view of the evidence in the cause, declared the bill of sale for the slaves, though absolute in form, to have been in fact a mortgage, and "that this was known to *all* the defendants." He therefore decreed a restoration of the slaves in question held by each of them, an account of profits, &c. A commissioner having reported the account, and no exception being taken to his report, the present chancellor confirmed it, and entered a final decree, from which the defendant *Taylor* alone appealed.

After argument, by *Call*, for the appellant, and *Wickham*, for the appellee, the following opinion of the court (consisting of Judges BROOKE, CABELL and COALTER) was pronounced by Judge BROOKE, *Saturday, June 22d.*

The appellant claims as a *bona fide* purchaser of the slave in question at a sheriff's sale under an execution against *Anthony Pate*, one of the defendants. It does not appear, by any testimony in the cause, that he had, at the time of the sale, any notice of the equity existing between the complainant and *Anthony Pate*, if any did exist. The bill of sale from the complainant to the sons of *Anthony Pate* was absolute. The sale was forbidden on the ground that the property belonged to the sons, and not the father; but the appellant was apprized that the father was the real purchaser, and not the sons. The slaves were in *his* possession; and he was willing to incur the risk of there being any latent equity between *them*. If any had existed, he had notice, and must have lost the property. But, with respect to the equity of the complainant, founded on the alleged ground that the bill of sale was intended to operate as a mortgage, he had no notice until after the sale. The bill of sale was evidence to the contrary. In the case of *Hooe & Harrison v. Pierce's Administrator*,^(a) the doctrine seems to be settled that, in the case of legal rights, the principle *caveat emptor* properly applies; but equitable rights may be lost by a sale to a *bona fide* purchaser without notice. In the present case the complainant had parted with his legal right, and permitted his equitable claim to lie so long dormant, as, attended with other circumstances, to create considerable doubt whether it was not bottomed on a fraudulent combination to cheat the creditors of *Anthony Pate*.

The decree of the chancellor is to be reversed, and the bill dismissed as to the appellant *Taylor*.

MARCH,
1811.

Taylor
v.
Stone.

^(a) 1 Wash.
217.