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SUPREME COURT DECISIONS.

Fall Term, 1882.

Reported for the Observer by Walton M. Busbee.

Hartman & Co. vs. Spiers—Halifax.

SMITH, C. J.:

The sheriff having two judgments against defendant proceeded to appoint appraisers to allot the homestead. The defendant protested against the allotment and undertook to appeal to the county commissioners; the appeal was not entertained for want of jurisdiction; from this decision he asked an appeal to the Superior Court, but no transcript was sent up. He applied to the judge for a writ of *certiorari* directed to the commissioners for a transcript of the proceedings, which being awarded, they were certified and sent up. The cause was thereupon ordered to be consolidated with an action pending in the same court prosecuted by R. C. Burton against defendant and another, for the recovery of lands purchased under execution and from this judgment the plaintiff appeals.

The court says:

His Honor erred in so ruling as the cases are essentially unlike. The object of one being to annul and set aside an allotment of homestead as illegally made, with a view to another allotment; in the other the purpose of suit is the recovery of land claimed under execution sale, the title of which is contested.

There seem to be three classes of cases in which, under the practice, consolidation may be ordered.

1st. When the plaintiff might have united all his causes of action in one suit and has brought several, and these causes of action must be one and in the same right and a common defense is set up to all. Buie vs. Kelly, 7 Jones, 266.

2nd. Where separate suits are instituted by different creditors to subject the same debtor's estate. Campbell's case 2 Blan. (Ky.) 209.

3rd. Where the same plaintiff sues different defendants, each of whom depends on the same grounds and the same question is involved in each. Jackson vs. Shonter, 4 Cowen (N. Y.) 78.

The cause was never rightfully before the county commissioners, since the appellate jurisdiction given to the township trustees by act of 1868-69 is not transferred to the county commissioners by act of 1876-77, chapter 14, as decided.

The order of consolidation is reversed. Error.

Butler, Clapp & Co. vs. Stainback et als—Halifax.

RUFFIN, J.:

A and B while accepting the benefits of the trusts and seeking, as they are, to have distribution under it, they will not be permitted to object to the terms imposed and cannot compel other creditors, of the same class preferred, to exhaust certain other property conveyed in the trust deed and look to that as their first source of payment. There is no case to be found in which the equitable doctrine of marshalling securities has been applied, where no security was given and expressly declared to be, in exoneration of another previously given, even though other interests might be involved in the later security and it should prove to be insufficient fully to protect them all.

In Cuttle vs. Thomas, 74 N. C. 81, a judgment was not allowed to be set off by another judgment, upon the ground that it was needed to make up the parties' personal property exemption; and this, notwithstanding the equitable jurisdiction of set off cross judgments has been immemorably exerted and certainly is as firmly established on the basis of reason and appeals as strongly to the sense of justice as the doctrine of marshalling assets, on which the plaintiffs in this action relies.

Judgment reversed. Demurrer overruled.

Mayers vs. Carter and Cavenaugh—Duplin.

SMITH, C. J.:

The plaintiff derives his title by virtue of a sale under execution against Carter, who had previously executed a deed conveying the same land to his co-defendant, which plaintiff impeached for fraud. Carter and his attorney were both present at the sale, and objected to it, saying that the land was the property of Cavanaugh. The sole question presented is as to the validity of the sale, which was made on the first Monday in May, that being a month in which is held a term of the Superior Court, commencing on the third Monday, and the deed executed in pursuance thereof. The statute in force at time of sale declares "that sheriffs and other public officers selling real estate under execution shall sell the same at the court house of the county in which the property, or some part thereof, is situated, on the first Monday in every month, except the month in which the Superior Court is held therein; then the sales shall be made during the first three days of the Court, Acts 1876-7, ch. 216. The non-observance of the officer of those provisions of the statute, which are directory merely, and relate to matters in pais in the absence of participation in, or notice of the officer's disregard of the requirements, will not impair the title acquired under an execution sale. *Venire de novo.*

Brooks vs. Radcliff, 1 red. 320; Wade vs Smitherman, 70 N. C. 270; Hayes vs. Hunt, 85 N. C. 303; Biggs vs. Brichell, 68 N. C. 239, cited.

Robertson, Adm'r, vs. Dunn, Adm'r,—Halifax.

ASHE, J.:

The note in suit was never endorsed. The defendant's intestate was the holder and the plaintiff's intestate had the legal title. The two questions presented are: 1st. Has the plaintiff a right of action against the defendant. 2nd. Is his right of action barrred by the statute of limitations?

As holder, the defendants intestate had the right to bring the action and recover judgment thereon; for when the holder produces the note sued on, and offers it in evidence, it raises a presumption of fact that he is the owner, and unless rebutted, entitles him to judgment. But it is a presumption which cannot avail the holder in an action brought against him by the legal owner.

A note sued on and reduced to judgment in the name of the holder, is such a conversion in the absence of proof as to his right of possession, as will give the legal owner an action of trover against him, and the action would be barred after three years from the conversion. The legal owner, if he chooses, may waive the tort and bring an action in the nature of assumpsit, for money had and received to his use when the money has been collected, and the statute in that case bars the action, after three years from the time of the receipt of the money, or a demand therefor according to the relation of the parties. If he chooses the latter mode of redress the tort feasor cannot allege his own wrong for the purpose of carrying back the injury to a time which will let in the statute.

Judgment reversed and judgment entered in this court in accordance with this opinion,

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R. O. Burton vs. Spiers, et al. Halifax.

SMITH, C. J.:

Plaintiff demurs title to the land sued for by virtue of the Sheriff's sale under several executions against defendant, and his deed therefor. The recovery is resisted on the ground that the homestead of defendant has not been laid off and assigned to him as required by law.

The only issue submitted to the jury, the others being withheld, was "Is the defendant, Spiers, entitled to a homestead in the land and premises mentioned in the complaint, or any part thereof?" On the trial the defendants were allowed, after objection from the plaintiff was overruled, to introduce witnesses to prove what took place before the appraisers while they were estimating and laying off the exemption, the contention of the parties and the rule that controlled their action.

Held. (There may be an exemption in an equity of redemption. An exception as to the disqualification of one of the appraisers should be taken before they have discharged their official duties, and not afterwards. The fact that a lot is overburdened with trust debts, does not destroy defendant's equitable estate therein. The effort of the defendant to bring the case before a tribunal without jurisdiction cannot have the effect of arresting the action of the Sheriff in proceeding to execute the mandate issued to him.) The validity of the allotment of the homestead cannot be assailed in the collateral manner allowed by the court below, for any of the causes specified.

Error. New trial granted.

A MANIAC MOTHER.

Mrs. Seguin Kills Her Three Children and Herself.

Mrs. Dr. Edward C. Seguin, wife of the famous specialist on brain diseases, killed her three children, Edward D., 6, John Van D, 5, and Jeannette, 4, and killed herself at her home, 41 West Twentieth street, in New York City, last Wednesday, undoubtedly in a fit of insanity. The discovery of the dead was made by Mr. Seguin's brother, Dr. Amidon. Dr. Seguin was absent, and the servants said they thought Mrs Seguin had gone out to walk with the children. The long absence of the family aroused the suspicions of Dr. Amidon, and he searched the house. The dead bodies were found locked in an empty spare room at the top of the house. All the children were shot through the head and had died instantly. They had been dead for at least an hour, and were quite cold. Two pistols of heavy caliber were found in the room. Both of them had been used. The children's arms were tied behind their backs with whip cord, and they were blindfolded. It is therefore conjectured that Mrs Seguin took them to the room to play and shot them while playing blindman's buff.

Mrs. Seguin had been despondent from physical causes for some time, but she had shown no evidence of insanity. She was a small, slim woman of nervous temperament. Her domestic life was very happy, and there was no family trouble. Dr. Seguin returned home about 7 o'clock, and upon hearing the dreadful news was utterly prostrated, and is now under the care of a physician. Mrs Seguin was the daughter of a Massachusetts farmer, and, with her husband, moved in the best society. The Seguin house is a five-story brown stone front, English basement house, elegantly furnished. The room in which the murders were committed is on the fifth floor, and is scarcely ever used by the family. The three servants in the house noticed during the day that Mrs Seguin was moody—a condition she had been in for several weeks, and called by her brother, Dr. Amidon, "the blues." About 11 o'clock a. m. Tuesday she called upon her brother, and said she did not feel well and had written Dr. Henry Draper (who had been invited to dine with the family) to defer his visit. This note she asked her brother to send. He took it jokingly and told her they would all enjoy themselves. Dr. Amidon called on his sister at 3 o'clock, and was told she had gone out for a walk. He returned at 5 o'clock, but Mrs. Seguin had not yet returned. The hall boy accidentally mentioned that the door of the spare room was locked and the key gone. A sudden suspicion seized the doctor that Mrs. Seguin had gone to Central Park and drowned herself and the children. He could not explain why he thought this. He immediately went up stairs and burst open the door of the room. The oldest boy lay almost in the middle of the floor in a pool of blood. Mrs. Seguin lay entirely in the closet grasping in her right hand, a big, pearl handled Remington revolver. Inside the closet lay the boy John and the girl Jeannette. Their faces bore a peaceful, even roguish look, as though they had been killed while at play. The mother had evidently led the two youngest into the closet and locked them in while she murdered the eldest boy. The pistol with which he was shot was a target practice weapon with a barrel 11 inches long. It lay beside him, and the bullet lay on the floor, having passed through his head. The maniac then went to the closet and with a heavy 32 caliber Remington revolver, with which she afterward blew out her brains, shot the other two children.

Dr. Amidon cut the strings that bound the children's hands and laid the bodies on the bed. The police and coroner were notified at once. Nothing was found in the room to explain the motive for the terrible crime. The crazy woman had held the weapon close to the victims' heads, for the handkerchiefs on their faces had been set on fire. The face of the little girl wore a look of innocent surprise. On the table lay a box of cartridges and a third pistol. Dr. Seguin, when he returned, acted as though his faculties were gone. He caught sight of a picture of his children on the wall and broke into a horrible wailing cry, that wrung the hearts of the listeners. The physicians fear he will lose his reason. None of the servants had heard any noise. The children were loved and petted by all who knew them.

Mining in Public Schools.

Carson City, Nev., Appeal.

"Guess I won't go to school to-day," said a Carson urchin, with an Appeal in his hand. "Why not?" "Concordia has fallen off 10 cents, and I don't dare to show up until it picks up again." "What have the fluctuations of Concordia got to do with your studies?" "A good deal," answered the boy. 'My teacher has a hundred shares of the stock, and when it falls off a few cents we all catch it heavy. I keep my eye on the list, and when there's a break you bet I don't go to school. I play sick. Golly! how she busted me the time Mount Diablo went down to $2. When it was selling for $20 she was as good as pie. I was the first feller that got on to the break, and told the boys of my class that if she didn't sell there'd be the devil to pay. I heard Uncle Fraser say that it was a good short, and I never slept a wink for a week. I grabbed the Appeal the first thing every morning. When I saw her knocked down to $16 I skipped to the hills. My! how she did bang Johnny Dobson around that morning! I was in hopes that the blasted mine would pick up, but the water got in the lower levels, and I knew we were in for it. She licked somebody for every dollar it dropped. After it struck $8 it picked up a little and we had time to git. My mother's been patchin' my pants ever since the big break in Sierra Nevada, and if the market don't take a turn pretty soon I'm going to quit the public school and go to work on a ranch."