10921

Superior Court — Rockingham County.

Joseph H. Caldwell
as Administrator of
Thomas F. M. Coyle

vs

John H. Coyle & Cornelius
Coyle & others.

Case for Appeal to the
Supreme Court.

This was a petition by the plaintiff as Administrator of Thomas F. M. Coyle for a license to sell the tract of land described in the petition, situate in the said County, and to make the proceeds assets to pay the debts of his intestate. The defendants, John H. Coyle and Cornelius Coyle, sons of the plaintiff's intestate presented their affidavit, claiming said land as conveyed to them by deed of the 24th day of December, 1867, upon a valuable consideration and bona fide as to the grantor therein, and without any knowledge on their part of any intention of the grantor thereby to defeat, delay or defraud any creditor, said affidavit being in the words and figures following, to wit:

[Here insert Copy of affidavit.]

Upon the filing of said affidavit, the said John H. and Cornelius were admitted to defend and thereupon the plaintiff filed his affidavit, alleging that the deed made by his intestate to defendants John H. and Cornelius was made with intention to defraud his creditors, and with a knowledge of such intention on the part of the said John H. and Cornelius, which affidavit is in the words and figures following, to wit: [Insert Copy of affd]

CHEROKEE HISTORICAL SOCIETY 2013

In the course of the trial, the plaintiff proved that whilst the deed recited a consideration of $5000 paid for the land, the land had never been rated in market at more than $3000. and that the defendants John H. and Cornelius had themselves offered to sell the same for $3500.

In explanation of this circumstance, the defendants, John H. and Cornelius made oath that they had paid the $5000 in money, as recited in the deed; that their father, the grantor, had asked them that sum, and that they thought it was worth that sum. They declared on oath that they lived in Florida at the time of the purchase and had not seen the land afterwards, and upon learning from their agent in Rockingham that this and all lands were dull of sale, and could not be sold at the price they had paid, they instructed their agent to sell at $3500. It also appeared that before the defendants, John H. and Cornelius, went to Florida, they were well acquainted with the land, having been brought up in the immediate neighborhood where the same is situate.

The Defendants, John H. and Cornelius, to support themselves as to this difference, offered to show what the value of the land was, at and before the making of the deed and also before the war, by lists of assessment for taxable purposes. The plaintiff objected to this, and the Court sustained the objection, stating, that the defendants might show the value of the land by any competent evidence offered for that

The objection was to proving the assessment + not the value..

CHATAUQUA COUNTY NY HISTORICAL SOCIETY 2013

It appeared in the case that the grantor was insolvent at the time of the execution of the deed.

purpose and that such proof might be made by the opinion of any witness, claiming to know the value, no matter upon what that opinion was founded. The defendants excepted.

In charging the jury, the Judge said it was his duty to call attention to the rules or tests laid by law for estimating the credibility of witnesses: 1. Interest; 2. Relationship; 3. Unusual or extraordinary circumstances. He stated that interest was a powerful motive and very frequently swayed a witness. He also stated that the relationship of the grantor and the grantees could be properly considered, there being no other witnesses to the transaction, and raised in law a suspicion that should be removed by evidence. He said the evidence of the Defendants John H. & Cornelius disclosed ~~the fact~~ that the grantees had paid to their father, the grantor, $3000 as a part of the purchase money for the land, without taking a receipt therefor, or other writing, no one being present but the parties to the transaction; and remarked that the jury must say whether or not this was an unusual and extraordinary circumstance and calculated to excite suspicion; and they must also say what weight should be given to this circumstance, taken in connection with all the evidence and circumstances of the case; and that all the proofs and circumstances must be judged of by the jury.

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

Superior Court — Rockingham County

Joseph F. Cardwell as Administrator of Thos. F. M. Coyle vs. Jno. H. Coyle & Cornelius Coyle et alios

Case for Appeal to The Supreme Court

This was a petition by the plaintiff as Admr of Thos. F. M. Coyle for a licence to sell the tract of land described in the petition, and to make the proceeds assets to pay the debts of his intestate; the defendants Jno. H. Coyle & Cornelius Coyle sons of the plaintiff's intestate presented their affidavit, claiming said land as conveyed to them by deed of the 24th Decem 1867, upon a valuable consideration & bona fide as to the grantor therein, & without any knowledge on their part of any intention of the grantor thereby to defeat, delay, or defraud any creditor, said affidavit being in the words and figures following, to wit; (Here insert copy of the affidavit).

Upon the filing of said affidavit, the said Jno. H. & Cornelius were admitted to defend and thereupon the plaintiff filed his affidavit alleging that the deed made by his intestate to defendants, Jno. & Cornelius was made with intention to

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2012

defraud his creditors, and with a knowledge of such intention on the part of the said Jno. & Cornelius which affidavit is the following words & figures, to wit:
(Here insert copy of Plaintiff's affidavit).
In the course of the trial the plaintiff proved that whilst the deed recited a consideration of $5000.00/100 paid for the land the grantees had offered to sell the same through an agent at $3500.00/100 (or $4000.00/100) & relied on such offer as an indicium of fraud, amongst other alleged badges of fraud and in explanation of this circumstance the defendants Jno. & Cornelius, after first making oath that they had paid the sum of $5000.00/100 in money as recited in the deed, that their father the grantor had asked them that sum, & that they thought it worth that sum, declared on oath that they lived in Florida at the purchase and had not seen the land afterwards, & on learning from their agent in Rockingham where said land is situate, that all lands in the County including their purchase were dull of sale & could not be sold for the price they had paid, they instructed their agent to sell at $3500.00/100 & to support themselves as to this difference, they offered to show by parole, & also by lists of assessment for taxable purposes, that the land had been assessed at & before the making of the deed, & also before the war, at the

sum of $3000 m/m, which offer was objected to by the plaintiffs, & sustained by the Court and the proof rejected, to which rulings of the Court the defendants Excepted. In summing up to the jury, the judge after charging the law, legally correct called the special attention of the jury by saying "it was the duty of the Court to call attention to the rules or tests laid by law for estimating the credibility of witnesses. 1st Interest. 2 Relationship & 3 Unusual or Extraordinary Circumstances; the judge stated to the jury that interest was a powerful motive, & very frequently swayed a witness, inducing false testimony or coloring the testimony of the witness, & he advised the jury therefore to examine the Evidence of the defendants Ino & Cornelius narrowly & carefully; as to relationship the Court informed the jury that the transaction under investigation was between father & sons, & in such case there was a presumption of law against the claim of the defendants, & the jury should consider this as in connection with the first rule, each strengthing the other; as to the third rule the Court stated that there was in this case the unusual & Extraordinary circumstance of a payment of $3000 m/m Early in 1867, without taking title bond or receipt for the money but relying as claimed by the defendants

on their father's word, until the time came around for the payment of the last instalment, & as to such circumstances it was the duty of the jury to consider them, & taken in connection with the interest & relationship as before explained, the weight of the whole was augmented, & it impaired the credibility of the defendants testying in their own behalf.

It is claimed by the appellants Jno & Cornelius Coyle that the judge erred,

1st In rejecting the Evidence offered as to the assessed valuation of the lands for taxable purposes at & before the date of the deed & before the war

2nd In that, whilst the judge's charging the law was legally correct, his manner of calling attention of the jury to the three rules for estimating the testimony of the defendants, reminding them to examine their evidence narrowly & carefully, taking the presumption to be against the validity of the deed on account of the relationship, & viewing their credibility as impaired by the unusual & extraordinary circumstances attending the purchase, amounted to an intimation of opinion against the defendants & had or may have had an improper influence on the minds of the jury in coming to a conclusion adverse to them.

Entry of Appeal according to law, notice of appeal given & appeal bond filed.

Melane, Kerr & Dillard for appellants.

For bill [illegible] the Counsel [illegible] to [illegible] it

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013