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IN THE

Supreme Court of Appeals of Virginia

AT STAUNTON

JAMES PINCKNEY HISE .....*Appellant*

vs.

JOHN S. GRASTY, III, TRUSTEE .....*Appellee*

BRIEF ON BEHALF OF THE APPELLEE

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BRIEF ON BEHALF OF THE APPELLEE

This case comes to this Court upon an appeal and supersedous from a decree entered by the Circuit Court of Augusta County on December 2nd, 1931, in which decree the Court declared James Pinckney Hise to be a trustee of certain property, for the benefit of his father, John Hise, and that the same be subjected to the payment of debts due and owing by John Hise.

I.

THE FACTS OF THIS CASE

NOTE: In this discussion the Appellee will be referred to as the plaintiff, and the Appellant as the defendant.

John Hise for many years lived on Alleghany Mountain, in Highland County, Virginia. Aside from a small mountain farm his principal occupation was manufacturing and selling a certain collapsible bed spring (R. P. 44). About 1928, John Hise became insolvent; owing debts totalling approximately $8,500.00 and had assets of very little, if any (R. P. 64).

The complainant proved that John Hise had manufactured and sold these very bed springs for some ten years before his son was born (R. P. 44 and P. 63); that he had an inventive mind, having procured several other patents (R. P. 68); that he was hopelessly insolvent at the time these patents were applied for, and was being harrassed by his creditors (R. P. 50 and P. 64); that he repeatedly stated to several responsible persons that he had perfected this improvement and that he was going to apply for these patents in his son's name to prevent his creditors from realizing upon them (R. P. 43-48); that John Hise conducted all the negotiations leading up to the sale of the patents, and the purchase of the real estate (R. P. 75, 83, and 92), that the checks given in payment of the patents, while payable to Pinckney Hise, were all endorsed by John Hise, as his attorney in fact (R. P. 72, 73); that the money in the bank, while in the name of James P. Hise, was subject only to the order of John Hise (R. P. 82); that Pickney Hise who claimed to be the owner of all the property spent most of his time working as a day laborer for other farmers (R. P. 44 and 115), and that Pickney Hise stated on at least one occasion that he had no interest in the patents or the proceeds thereof (R. P. 53).

Upon the foregoing evidence the lower Court found as a matter of fact that John Hise was the actual inventor of the patents; that Pickney Hise had no interest in the patents or the proceeds thereof; and that there must have been a secret understanding between the father and son, that Pickney Hise was to hold the legal titles for the benefit of John Hise, and decreed Pickney Hise a trustee of the patents and real estate, purchased with the proceeds thereof. The defendant has prosecuted his appeal to this Court basing his case upon four points.

1. That if John Hise was the inventor of the patents, and procured the patents in the name of Pickney Hise the patents would be void as a matter of law,

2. That John Hise, assuming that he was the inventor, had

entitled to the relief prayed under such state of facts, would the mere fact that the defendants set up a false state of facts in the application for the patents, bar the complainant of his relief? Would any court of equity shield and protect these defendants, upon a technicality, and permit them to take advantage of their own fraud?

It is respectfully submitted that these defendants should be the last ones to be heard complain about the validity of the patents.

II.

THAT JOHN HISE, ASSUMING THAT HE WAS THE INVENTOR HAD GIVEN UP ALL RIGHTS IN THE PATENTS FOR THE REASON THAT HE HAD MADE HIS IDEA PUBLIC PROPERTY

The defendant is here contending that John Hise had abandoned all his interest in his idea by discussing the same with various persons. This contention is based upon certain statements found in the testimony of the witnesses A. P. Gum and E. D. Swecker. In cross examining the first named witness (R. P. 61) the defendant brought out the following:

> "Q. The idea of the bed springs was discussed around here for a long time.
>
> A. Yes sir.
>
> Q. It was public property so far as knowledge of it was concerned.
>
> A. Yes sir.
>
> Q. One of the original ideas was to get a bed spring that would conform itself to the position of the body and distribute the weight when two people occupied the bed and one was heavier than the other.

"Q. During the talk about this bed spring being common knowledge throughout the country, and public property, so far as knowledge of it was concerned, did he go around telling everybody how it worked, or just say it was an improvement on his patent spring?

A. No sir, just making an improvement on it."

And again on page 62 of the record:

"Q. None of the details of the operation of the patent was released?

A. I never did know what the details of the patent were.

On redirect examination of the witness E. D. Swecker (R. P. 67) the following appears:

"Q. Did he tell you just exactly how the patent was going to work?

A. No sir.

It can be plainly seen from the foregoing that John Hise did not abandon, nor did he intend to abandon the idea to the public. He did not fully and completely disclose the manner in which the bed spring were to function or how they were to be made so as to produce the desired effect. All he did was to tell certain parties of the result he was trying to accomplish but did not disclose the manner in which it was to be accomplished.

To be an abandonment there must be an intention to abandon; to forever relinquish all right and claim. Is it not a complete answer to the defendant's theory to say that John Hise's actions show conclusively that he had no intention or thought of abandoning his idea to the public. The mere fact that he later procured the patents and acted with them in a

several responsible persons that he had perfected this improvement and was going to apply for the patents in his son's name to prevent certain creditors from realizing upon them (R. P. 43 and 48); that he could not have anything in his name because of the above facts (R. P. 43); that John Hise conducted all the negotiations leading up to the sale of the patents, and the purchase of the real estate (R. P. 75, 83, and 92); that the checks given by the company in payment for the patent, while made payable to Pickney Hise were endorsed by John Hise as attorney in fact (R. P. 72 and 73); that the bank accounts while in the name of James P. Hise, was subject only to the order of John Hise (R. P. 82); and that Pickney Hise who claimed to be the owner of all the property spent the majority of his time working as a day laborer upon the farm of Mr. Homer Stevenson in Highland County (R. P. 44 and 115).

In passing upon this contention the lower Court in its opinion (R. P. 123) had this to say:

"However, in this case I did not think that John P. Hise ever gave over to his son this idea nor did he abandon this idea to the public. On the other hand, I think the whole record in this case shows that he retained the ownership of the idea and took out the patents in the name of his infant son, James P. Hise, for the simple purpose of keeping his creditors off of any income that might be derived from this idea. The whole record shows, to my mind, that this idea and the patent in fact belonged to and is now the property of John P. Hise covered up by a secret undertaking and agreement with his son, that while the patent was taken in the name of the son, the patent and the money derived therefrom should remain as the property of the said John P. Hise. If John P. Hise discovered and evolved this idea, he could have unquestionably protected his idea and obtained a monopoly on the idea by perfecting a patent of the same. He could also have by contract or agreement taken the patents out in the name of his son upon an agreement that while it stood in the name of his

the owner of the property. This is true enough, but the expressed declaration need not be a writing. Evidence from which the court can be satisfied that the agreement was actually made is sufficient. As stated in 39 Cyc 80

> "And expressed trust may be proved not only by an expressed declaration but also by circumstances from which its existence may be inferred and to this end evidence of the acts and declarations, either oral or written, of the parties, as well as the surrounding circumstances, may be admitted and considered."

As stated by the lower Court, in the excerpt from its opinion above quoted, John Hise could have by contract and agreement taken the patent out in the name of his son with the understanding that the boy would hold it in trust for the benefit of his father. It is hard to read the record and not arrive at the conclusion that that is exactly what was done and what they intended to do. At any rate the lower court found as a matter of fact that such was the intention and action of the parties.

If that be true the trust is an *express* trust, and not a resulting or constructive trust. It is well established that an express trust needs no consideration other than a valuable one sufficient to support a contract, and even that is not necessary where the contract is an executed one and nothing more remains to be done in furtherance of the agreement.

Harris etc. vs. Miller (Mo.) 89 S. W. 629.
Van Cott vs. Prentice (N. Y.) 10 N. E. 257.
Dennison vs. Gochring (Pa.) 47 Am. Dec. 505.

In *Flippo vs. Lamb,* 102 Va., 475, 64 S. E. 681 the Court treated a case very similar to the one at bar. In that case one John T. Terrell knew of a certain valuable tract of land which

purchase, he merely knew where he could purchase. So to in the case at bar the parties were dealing with something which was not yet property but with an article which was solely within their power and of which, by mere application for a patent, they held the means to make it property, and did actually convert it into property.

The only difference between the two cases is that in the Lamb Case the contract was in writing, and before the Court, and there was no trouble in arriving at the agreement. But let us suppose that the contract had been oral and that both Flippo and Terrell had repudiated all knowledge of it, for the purpose of preventing the trustee in bankruptcy from acquiring the proceeds, would that fact have changed the nature of the trust? Does mere secrecy change an express trust into a resulting or constructive trust? Assuming, in the Lamb Case, that the Court, had sufficient evidence before it from which the agreement could have been ascertained and that the parties had disavowed the express agreement, would the decision have been altered?

Let us assume that John Hise had filed his bill alleging that he was the inventor of the patents referred to, that for some reason the patents were taken in the name of Pickney Hise, with the understanding that he held in trust, that Pickney Hise furnished no part of the consideration, that Pickney Hise agreed to reconvey the patents, and any property purchased with the proceeds thereof, whenever the said John Hise might request it, but that Pickney Hise had refused to reconvey upon request, would not the case fall squarely within the doctrine of *Flippo vs. Lamb,* and would not this Court grant him the relief asked except possibly for the reason that he came into Court with unclean hands. If he could have done so, his creditors can now do for him anything which he might have done himself.