IN THE

Supreme Court of Appeals of Virginia

AT STAUNTON

JAMES PINCKNEY HISE.....*Appellant*

vs.

J. S. GRASTY.....*Appellee*

REPLY BRIEF FOR APPELLANT

The brief on behalf of appellee contributes nothing new to the discussion; it does not question the proposition of law asserted in the petition, but seeks to escape their effect by a reiteration of the proposition upon which the lower Court in its opinion rested its decision. Let us again examine this conclusion briefly, beginning with the allegation of the bill and concluding with the opinion of the Court.

As stated on page two of appellee's brief, the bill averred "that while James P. Hise was the holder of the legal title to the patents above referred to, that the brains and ingenuity of John Hise were responsible for the product covered by the patents and that the proceeds thereof, which had been invested in real estate, were handled and manipulated by John Hise; and that the title to the patents were in the name of James P. Hise solely for the purpose of hindering, delaying, and defrauding the creditors of John Hise; and the prayer of the bill was that James P. Hise be declared a Trustee of the patents and the proceeds thereof, for the benefit of his father, John Hise."

The relief granted by the Court was in conformity with the prayer of the bill. The Court, as prayed in the bill, went back beyond the patent and held that the idea was that of John

Hise and that, when he turned it over to his son, Pinckney, to be used as the basis for a patent, he did so with the secret agreement in fraud of creditors between them that Pinckney Hise, when the patent should be issued, would hold the legal title to it and he would hold the equitable title as the true owner. There is no pretense anywhere in the case that any trust was created *after the issuance of the patent* in the patent itself or that any trust was created in the real estate after its acquisition; the trust is definitely held to have begun with the mere idea and to have thence gone forward into the patent and finally into the real estate. In other words, the Court held that the legal title to the idea was in Pinckney Hise while the equitable title to it was in John Hise and that the legal title to the patent was in Pinckney Hise and the equitable title to it was in John Hise. This is the fundamental and basis predicate upon which the reasoning of the Court is rested, and upon which its ultimate conclusion was founded. Its conclusion was as follows:

> "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 creditor off of any income which 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 his son, the patent and the money derived therefrom should remain as the property of the said John P. Hise."

In order to affirm the finding of the lower Court, its chain of reason must be preserved in all of its links. If it is once broken in any link, the conclusion must fail. Take the first link:—If a mere idea has no attribute of property, how can a secret trust be attached to it and how can the title to it be di-

vided into a legal and an equitable title? Under the settled law, there can be no division of title to a patent prior to or at the time of its issuance. It must first be issued to one who is the inventor and thereafter it can for the first time be dealt with as property. See the cases cited in the petition on pages six and seven. We could stop right here for the first link in the chain has given way. Let us go a step farther, however. If there was a trust in the favor of John Hise in the patent, it must have been a resulting trust arising from the secret agreement and the contribution by John Hise of the idea. Here again the chain of reasoning must give way for, as pointed out in the petition, it is well settled that "a resulting trust arises out of payment of purchase money, or the equivalent thereof, and not otherwise." And "in order to raise a resulting trust from the payment of purchase money, it is absolutely necessary that the payment of advance be made by the beneficiary, or an obsolute obligation be assumed by him as a part of the original transaction, at or before the time of the conveyance." When John Hise contributed the mere idea, was this a payment of purchase money, or its equivalent? Certainly not, for it is undisputed that the idea was in no sense property or anything of value which could be the subject of agreement or deemed to be consideration for anything.

As pointed out in the citation of authority on page seven of the petition, "the law takes no cognizance of fraudulent practices that injure no one, and so, no matter how covinous the intent, unless the thing upon which it operates be something which the law would appropriate to the payment of the debt, the conveyance cannot be fraudulent."

One of three things is certain. John Hise gave the idea to appellant, sold it to him, or loaned it to him. The lower Court held that he did not give it to him or sell it to him, but that he had loaned it to him under a secret and covinous agreement. What became of this agreement when the patent was issued? Under the settled law, the patent would be void if issued to one other than the inventor and the patent itself is

conclusive evidence that the patentee is the inventor until the true inventor has directly assailed it by interference in the patent office. See *Becher v. Contours Laboratories, Inc.*, cited in the petition.

Counsel for appellee says that John Hise, unless prevented by the rule denying relief to one who comes with unclean hands, could assert as against appellant his equitable title to this patent or its proceeds, and argues that, this being so, the creditors of John Hise can do the same thing. Could John Hise do any such thing? Would he not be met by the fact that the idea was in no sense property; that no agreement could therefore be annexed to it; that it could not constitute consideration or be the equivalent of purchase money; that, having freely communicated it, he had lost control of it; and, finally, that the only recourse open to him in any event would be by interference in the patent office?

It makes no difference from what angle we approach this case or by what process of reasoning we may seek to sustain the decision of the lower Court. We inevitably come back to the same difficulty, namely, the difficulty of making something out of nothing.

In conclusion, we again point out that the creditors of John Hise have lost nothing to which they are entitled. They could not subject the idea of John Hise or keep him from doing with it what he pleased. They could not make him obtain a patent upon it or use it themselves in any way. If he saw fit to let his son obtain a patent upon it, the patent became the property of the son regardless of any previous agreement. Unless and until the son, after the issuance of the patent, transferred it, or the property into which its proceeds went, to his father (and it is not pretended that anything of this sort has been done), the father could have no property right in anything which could be subjected by his creditors.

Respectfully submitted,

TIMBERLAKE & NELSON,
For Appellant.