SUPREME COURT OF ALABAMA

Hartley v. Matthews

96 Ala. 224 (1892) · Decided November 15, 1892

SUMMARY

The Supreme Court of Alabama considered an appeal from a decree dissolving an injunction that had restrained a mortgage purchaser from prosecuting separate actions for rent and unlawful detainer. The Court held that the injunction was properly dissolved because the sworn answer denied the essential allegations of the bill, and the complainants had an adequate defense at law. The Court also noted that under the statute, the power of sale in a mortgage passes to the assignee of the debt.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Thorington
JURISDICTION	Alabama
DECIDED	November 15, 1892
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from decree dissolving injunction in equity action.
STANDARD OF REVIEW	Abuse of discretion for dissolution of injunction
PRECEDENTIAL VALUE	Published
PARTIES	Hartley v. Matthews

TOPICS

mortgages · injunctions · civil procedure · equitable relief · real estate

PRACTICE AREAS

Real Property · Civil Procedure

QUESTIONS PRESENTED

1. Whether the injunction was properly dissolved based on the denials in the answer and the adequacy of a legal defense.
2. Whether the power of sale in a mortgage passes to the assignee of the mortgage debt.

HOLDINGS

1. The injunction was properly dissolved where the sworn answer denied the facts constituting the equity of the bill and the complainant had an adequate defense at law.
2. Under Code 1886 § 1844, the power of sale in a mortgage passes to the assignee of the mortgage debt.

KEY QUOTATIONS

> *"When the bill avers facts, the burden of proving which is entirely on complainant, then, if the sworn answer is made on knowledge and contains an unequivocal denial of the charges on which the right to an injunction rests, the general rule is that the injunction must be dissolved on the denials in the answer."* (at 226)

FACTUAL BACKGROUND

The widow and heirs of a deceased mortgagor filed a bill to cancel a mortgage and enjoin the purchaser at a mortgage sale from prosecuting actions for rent and unlawful detainer. They alleged the mortgage debt was fully paid before the transfer of the mortgage to the transferee, and that the power of sale was personal to the mortgagee and did not pass to the assignee. The transferee answered, denying the allegations and exhibiting written acknowledgments of a subsisting debt. The court dissolved the injunction.

PROCEDURAL HISTORY

Complainants filed a bill in equity to cancel a mortgage and enjoin actions at law. The Chancery Court dissolved the injunction and ordered a reference. Complainant appealed.

DISPOSITION

affirmed

CASES CITED

- Tipton v. Wortham, 93 Ala. 331
- Whitley & Trimble v. Dunham Lumber Co., 89 Ala. 493
- Wingo v. Hardy, 94 Ala. 184
- Jackson v. Jackson, 10 So. 31 (Ala. 1892)
- L. & N. R. R. Co. v. Philyaw, 94 Ala. 463
- Mobile School Coms'rs. v. Putnam, 44 Ala. 506
- Dunlap v. Clements, 7 Ala. 539