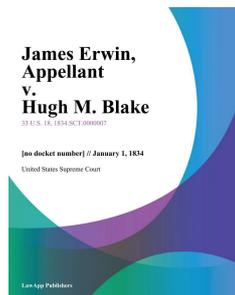


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JAMES ERWIN APPELLANT V HUGH M BLAKE EBOOKS 2019



Author: United States Supreme Court

Realese Date: Expected @@expectedReleaseDate@@

The principal question in the case is, whether the plaintiff, Blake, has entitled himself to a re-conveyance of the land in controversy against the judgment creditor, Erwin; the same land having been sold upon execution, and being, by the laws of Tennessee, redeemable by the owner at any time within two years after the sale: and that question turns upon this, whether the judgment has been according to those laws duly discharged within the two years by the judgment debtor. It is clear from the evidence, that Fulton, as attorney of Erwin, did give a receipt discharging the whole of the claim under the judgment, amounting, on the last day, when the land was redeemable, to one thousand five hundred and one dollars and seventeen cents: and if he either had an original authority so to do, or his acts have since been confirmed by Erwin, then Blake is entitled to the relief sought by the bill. It is material, in the first place, to state, that the original demand on which the judgment was rendered, was, before the suit was brought, assigned by Erwin to one M'Connell; and that the suit was commenced and carried on through all its stages by Fulton, for and under the direction of M'Connell, although in the name of Erwin: and the latter never interfered in the suit until after the judgment had, by the redemption of Brittain's prior judgment, been levied, and fixed as a lien on the land. Now, it cannot be doubted that if the assignment to M'Connell was never rescinded, he alone had a right to control the judgment and the levy, and the subsequent proceedings as to the redemption by Blake. And in point of fact, he was not only connusant of, but party to the arrangement made by Fulton with Blake, by which the judgment claim against the land was discharged. Was then the assignment antecedently rescinded? Erwin in his answer affirms that it was, but the evidence in the cause does not support his averment: on the contrary, it is established by Erwin's own acknowledgement, in his letter of the 6th of September 1826, that M'Connell continued to have an interest in it until long after all these transactions; and M'Connell, in his testimony, asserts his own claim in the most positive manner: so that, at most, the case cannot be judicially treated as one where there had been a total rescision of the assignment; but only subsequent negotiations, out of which other equities connected with it arose between the parties.

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