

Supreme Court of the Hawaiian Islands—In Banco. October Term, 1887.

OLEPAU, AULIKE AND Z. PAAKIKI HER HUSBAND, VS. RAHAPA AND KAHONA HER HUSBAND, LONOHIWA, J. K. KAUNAMANO, AND THE HONOKAA SUGAR COMPANY.

BEFORE JUDD, C. J., M'CALLY, PRESTON AND BICKERTON J. J., (FORNANDER J. ASSISTANT.)

Opinion of the Court per JUDD C. J.

This is a bill in equity alleging that in the year 1858, one Olepau together with Kaiakioki and Papaikie bought of the Government a tract of land in Papaanui, Hamakua, Hawaii, containing 225 acres for \$225, and there was issued to them therefor a Royal Patent numbered 2465; that of the purchase money Olepau paid \$175, Kaiakioki \$20, and Papaikie \$30, and that this money was paid to Rev. L. Lyons deceased, the Government Land Agent for the land; that at first this land was surveyed off for Olepau alone, but as it contained more acres than was proper (to grant to one person), Mr. Lyons ordered that some other names be inserted (in the patent), and for this reason the names of Kaiakioki and Papaikie were inserted, but they then paid the above mentioned sums, and at that time Olepau, Kaiakioki and Papaikie believed that they were owners of the land in proportion to the amounts of money paid by each one respectively, to wit, Olepau 175 acres, Kaiakioki 20 acres, and Papaikie 30 acres: that Aulike (plaintiff), has bought the interest of Papaikie in this land and claims 30 acres: that the plaintiffs are informed and believe that Kaiakioki is dead, and that Rahapa, Lonohiwa and J. K. Kaunamano (defendants), claim to hold his interest in this land; but what their respective shares are these plaintiffs are ignorant, but they (defendants) allege that they are entitled to an undivided one-third part of this land to wit: 75 acres, but that they are in fact only entitled to twenty acres: that the plaintiffs are informed and believe that Rahapa and Lonohiwa have leased to the Honokaa Sugar Co., seventy acres, undivided, of this land, on terms unknown to the plaintiffs: that the defendants well knew the above stated facts or had good reasons to put themselves upon enquiry of them: that plaintiffs are desirous of partitioning the land among those entitled to it according to their true interests in the same as above set forth and have asked the defendants to so divide it, but they have declined this reasonable request, and the plaintiffs have no other remedy but as now asked of this Court.

The bill prays for an answer from the defendants, for a decree of partition of the land in accordance with the respective interests of the parties, that the lease of Rahapa and Lonohiwa to the Honokaa Sugar Co., be declared void as to any excess of land over the proper share of the lessors, and for general relief. The answer of Rahapa and husband, and Lonohiwa and the Honokaa Sugar Co., denies the payment of the purchase money in the proportions as alleged, and avers that Olepau, Kaiakioki and Papaikie contributed equally to the payment of the purchase money and that said patentees were tenants in common and each entitled to one undivided third part of the land, and that they with J. K. Kaunamano are entitled to one undivided third of the land, succeeding to the rights of the said Kaiakioki.

The Court heard the testimony offered by the plaintiffs and after argument held that a resulting trust was not established and ordered a partition of the land in the proportion of one-third to each of the three parties holding the title of the original patentees.

The plaintiffs appealed and now claim that the evidence shows that Olepau paid \$175, Kaiakioki \$20, and Papaikie \$30, of the purchase money and therefore the trust in such legal estate will result to the parties who have advanced the purchase money in proportion to the amount of their respective advances.

BY THE COURT.—The general rule of law is well settled that where upon a purchase of property, the conveyance of the legal title is taken in the name of one person, while the consideration is given or paid by another, the parties being strangers to each other, a resulting trust immediately arises from the transaction, and the person named in the conveyance will be a trustee for the party from whom the consideration proceeds. 1 Perry Trusts § 126.

A resulting trust is called a matter of equitable presumption, the rule having its foundation in the natural presumption, in the absence of all rebutting circumstances, that he who supplies the purchase money intends the purchase to be for his own benefit and not for another and that the conveyance in the name of another is a matter of convenience and arrangement between the parties for collateral purposes. Id. § 126.

Whatever facts appear tending to prove that it was intended that the nominal purchaser should take the beneficial interest as well as the legal title negative the presumption. Id. § 139.

It is also settled that where part

of the purchase money is paid by one, and the whole title is taken by the other, a resulting trust pro tanto may, in like manner, under some circumstances, be created.

McGowan vs. McGowan 14 Gray 121.

Case vs. Codding 38 Cal. 191. But in such cases it must be shown that the part of the purchase money paid by him in whose favor the resulting trust is sought to be enforced, was paid for some specific part or distinct interest in the estate. Id. also Baker vs. Vining 30 Me. 121.

To apply these principles to the case at bar. The plaintiff's testimony is to the effect that Olepau paid \$175, Kaiakioki \$20, and Papaikie \$30. All these names appear in the patent as grantees of the Government. They hold the legal title and are presumably tenants in common, each entitled to an undivided third.

This is not the case, like those cited, of the name of the person advancing the purchase money not appearing in the conveyance. The legal title is in these three parties. It seems to us that we might hold, upon the evidence that the Government land agent refused to let Olepau take a patent for so large a piece of land as 225 acres to himself alone and that thereupon he procured Kaiakioki and Papaikie to join with him in the patent, that this rebutted the presumption that might arise that a trust resulted in favor of Olepau to the extent of his advance. It is certainly clear that it was the intention that all the patentees should have some beneficial interest as well as the legal interest in the land.

We can find no case in the books exactly parallel, probably because it has not been the policy of other governments to grant a patent of public lands to more than one person. But we are of opinion that no resulting trust, as contended for, was created in this case, on the unassailable ground that the testimony does not show that when these parties contributed towards the purchase money they agreed that each should take an aliquot part of the land in proportion to the sums advanced by each. In other words, the mere fact that each of three purchasers contributed unequally to the purchase money does not of itself and without other proof, create a resulting trust in those holding the legal title in favor of another paying the larger part of the purchase money in proportion to the amount paid by him.

We are also impressed with the want of equity in this case, considering that it was twenty-nine years ago that this purchase was made. Kaiakioki and Papaikie are both dead and are not here to disprove Olepau. Courts will not enforce a resulting trust after a great lapse of time, or laches on the part of the supposed cestui que trust. 1 Perry § 141. Courts ought to discourage such claims after so long an interval of time.

We are of opinion that the decree appealed from, which orders a partition of the estate in the proportion of thirds should be sustained. And it is so ordered. W. C. Achi for plaintiffs; Smith & Kinney for defendants. Dated Honolulu, Nov. 11th 1887.

Supreme Court of the Hawaiian Islands—October Term, 1887.

S. KAALA VS. PETERO.

JUDD C. J., M'CALLY J., PRESTON J., BICKERTON J. J., (FORNANDER J. ASSISTANT.)

Opinion of the Court per JUDD C. J.

This case comes up on points of law from the Intermediary Court.

The facts found by the Justice are as follows: "The plaintiff originally leased the whole of the Sea Fishery of Heeia to defendant for one year from January 1, A. D. 1885, at \$300 per year, but a portion of the fishery was then under lease to another party unbeknown to defendant at the time, said lease expiring in April 1885,—another part was reserved by the plaintiff for himself—but defendant occupied and used the balance of the demised premises under said lease for four months and then occupied the whole for the fourth and fifth months."

The Court below, on these findings of fact, gave judgment for \$90,—taking off \$25, from plaintiff's claim by reason of the fact that a part of the premises demised was under lease to another. BY THE COURT:—We think the judgment was erroneous and should have been for the defendant. If the landlord cannot put the lessee into possession of all the land he contracted to give, the latter is under no obligation to accept the residue, but will be justified in abandoning the entire premises. "Yet if he prefers to occupy them, but does not obtain possession of all he hired he is liable on a quantum meruit for the part occupied." Taylor Landlord and Tenant § 177.

In Lawrence vs. French 25, Wend. 445, the Court said that it was a familiar rule of law, that if the landlord enter wrongfully upon, or prevent the tenant from the enjoyment of a part of the demised premises, it suspends the whole rent, until possession is restored. His title is founded upon this, that the land leased is

enjoyed by the tenant during the term; if, therefore, he be deprived of it, the obligation to pay ceases. "The rule is otherwise where a part is recovered by title paramount to the lessors; for, in that case he is not so far considered in fault, as that it should deprive him of a return for the part remaining. The law therefore directs an apportionment of the rent." In the case before us there was no eviction by title paramount or by the landlord—of the lessee from his possession, but the lessee failed to obtain possession of all that was demised.

In Neale vs. Mackenzie 1 M. & W., 746, a lessee of one hundred acres of land accepted the lease and entered upon the land. Upon his entry he found eight acres in the possession of another person entitled under a prior lease from the lessor, and that person kept possession of the eight acres until a half year's rent became due, and excluded the lessee from the enjoyment during that period, the lessee continuing in possession of the remainder.—Held, that the latter demise was wholly void as to the eight acres; and that the rent was not apportionable, and that the lessor was not entitled to restrain for the whole rent or any part of it.

In the case before the Justice apportioned the rent. The action is for rent as such, and on the principle above adopted it cannot be maintained. The proper remedy is an action for use and occupation for the part of which defendant had possession.

Judgment for defendant. W. C. Achi for Plaintiff; Smith and Kinney for Defendant. Honolulu, November 11, 1887.

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