

WESTERN LAND & EMIGRATION CO. v. GUINAULT *et al.**(Circuit Court, E. D. Louisiana. January 24, 1889.)*

EQUITY—MULTIFARIOUSNESS.

Where the same relief is asked against several defendants, and all based on the same transaction, and it appears that, unless they can be joined in one bill, 70 or 80 suits, all growing out of the same character of transactions, will have to be brought, the bill will not be held bad for multifariousness.

In Equity. On motion for injunction *pendente lite*.
E. Howard McCaleb and *W. H. Smith*, for complainant.
S. L. Gilmore and *Wynn Rogers*, for defendants.

PARDEE, J. This cause has been submitted on a motion for an injunction *pendente lite*. The defendant's main objection is that the bill is multifarious. The general rule with regard to multifariousness is clearly stated in *Coop. Eq. Pl. 182*, as follows:

"The court will not permit several plaintiffs to demand by one bill several matters perfectly distinct and unconnected against one defendant, nor one plaintiff to demand several matters of distinct natures against several defendants."

But Mr. Cooper, in commenting on this rule, allows that there are many exceptions, mainly for the purpose of preventing a multiplicity of suits, and where the rights claimed grow out of the same transaction. Justice Story, in commenting upon the same question, says:

"A bill is not to be treated as multifarious because it joins two good causes of complaint growing out of the same transaction, where all the defendants are interested in the same claim of right, and where the relief asked in relation to each is of the same general character. * * * Indeed, the objection of multifariousness, and the circumstances under which it will be allowed to prevail or not, is in many cases, as we shall hereafter see, a matter of discretion, and no general rule can be laid down on the subject." See *Story, Eq. Pl. § 284*.

In this case the same relief is asked against the several defendants, and all based upon the same transactions. Unless they can be joined in one bill, a multiplicity of suits,—70 or 80,—all growing out of the same character of transactions, would have to be brought. Therefore the objection of multifariousness, in my opinion, ought not to be allowed. On the other grounds of opposition to the injunction *pendente* as prayed for, in order that the question may be presented fully, and the *status quo* maintained, (without committing myself to a fixed opinion,) I am inclined to think that the injunction should issue, and it is so ordered.

NUSSBAUM *et al.* v. NORTHERN INS. CO. *et al.*

(Circuit Court, S. D. Georgia, W. D. January 3, 1889.)

1. INSURANCE—ALIENATION OF PROPERTY—STATUTES—CONSTRUCTION.

Where the state statute provides that "an alienation of property insured, and a transfer of the policy without the consent of the insurer, voids the insurance, but the hypothecation or creation of a lien thereon does not void it," *held*, that a deed to a creditor, to secure a debt, with reservation of balance, and the right to redeem all by payment, is not such alienation.

2. SAME—CONDITION IN POLICY.

Where the policy stipulates as follows: "If the property be sold or transferred, or any change takes place in title or possession, the policy shall be void,"—*held* that, in the absence of precise stipulations identifying and forbidding the transaction, the deed pledging the property to secure a debt, coupled with retention of possession by the maker, and the right to sell in usual course of his business, and to redeem entirely by payment, is not such change of title as will avoid the insurance.

3. SAME—INSURABLE INTEREST.

Where the destruction of the property pledged to secure a debt would leave the debt still unpaid, the debtor in possession of the property pledged has an insurable interest therein, and the measure of his loss would be the value of the property burned, and which otherwise would have gone to reduce his indebtedness.

(Syllabus by the Court.)

At Law.

Actions upon insurance policies, by M. Nussbaum & Co. against the Northern Insurance Company of London and Aberdeen and others.

Bacon & Rutherford and *Hill & Harris*, for plaintiffs.

Lyon & Estes and *Du Pont Guerry*, for defendants.

SPEER, J. The plaintiff has brought seven actions upon as many insurance policies against the companies issuing them. The actions are on trial (the issues in each case being the same) before the same jury. Before submitting evidence, the plaintiff has made a motion to strike certain pleas of the defendants, which are as follows:

"And for further plea the defendants say they are not indebted, etc., because the insured, Fried & Hecht, without the consent of defendants, alienated the property insured on the 27th day of November, 1886; for that on that day the said Fried & Hecht signed, sealed, and delivered to M. Nussbaum & Co. a deed, a copy of which is hereto attached, by which they conveyed to M. Nussbaum & Co. the title to said property, and thereby voided the said policy of insurance."

The plaintiff moves that the third ground of the plea be stricken also, because, as therein stated, it is conditioned in the policy that, if any change takes place in the title of the property insured without the consent of the defendant, "whether by sale, transfer, or conveyance," said policy shall be void, and that such change in the title did take place by the deed before mentioned. The deed referred to is set out in full as an exhibit to the plea, and is in the following language:

"*State of Georgia, Bibb County.* This indenture, made the 27th day of November, 1886, between Fried & Hecht, a firm composed of Joseph Fried and Robert Hecht, of the county of Bibb, of the one part, and M. Nussbaum