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NEW JERSEY
Court of Errors and Appeals.

BETWEEN

MARGARET IRELAND, EXECU-
TRIX OF THE ESTATE OF
SAMUEL IRELAND, DECEASED,

Complainant-Respondent,

AND

PENN MOTORS CORPORATION, A
CORPORATION, &C.,

Defendant-Appellant,

On Appeal from
Chancery.

Appellant's Brief.

STATEMENT.

Samuel Ireland in his lifetime filed his bill based upon allegations of fraud upon the part of officers of the appellant. On September 28, 1921, an agreement was entered into between said Ireland and appellant. The agreement concerned the sale of land by Ireland to appellant and contained certain provisions touching the reconveyance of the property in the event that appellant failed to do things enumerated therein. Thereafter Ireland conveyed pursuant to the terms of the agreement and appellant executed and delivered a bond and mortgage pursuant to the terms of said agreement but which did not, according to the claim of the bill,

contain a provision concerning a reconveyance. The bill then alleges (paragraph 17) :

“That in delivering to complainant (said Ireland) the said bond and mortgage, with the assurance of the representative and agent of said corporation that said bond and mortgage incorporated the terms of the previous agreement, which representation was false and fraudulent, said Penn Motors Corporation perpetrated a fraud upon complainant.”

And again (paragraph 19) :

“That upon examining said bond and mortgage, complainant discovered that neither said bond nor mortgage contained a specific agreement for reconveyance of said lands in the event of failure to build said buildings; it containing only references thereto, which the said agents and representatives of defendant Penn Motors Corporation induced complainant to believe fully covered the previous agreement.”

There are three prayers. The first is:

“That said conveyance from complainant to said Penn Motors Corporation be decreed to have been secured by fraud, and that said Penn Motors Corporation be decreed to reconvey said premises to complainant.”

The second is:

“That said bond and mortgage be reformed so as to contain a specific covenant, similar to the agreement entered into between complainant and said Penn Motors Corporation, prior to the execution and delivery of the said bond and mortgage, to wit: That if said Penn Motors Corporation shall fail to erect a building and assembling plant upon said lands within six (6) months, said Penn Motors Corporation will reconvey said lands to complainant.”

The alleged agreement was not produced and its contents were permitted to be proved by parol over objection. Appellant denied there was such an agreement.

After final hearing and argument the Vice-Chancellor delivered an oral opinion in which he found as a fact that there was no fraud, nor was there any understanding that the alleged agreement was intended to be incorporated as a part of the bond and mortgage. Having reached this conclusion, he signed an order transferring the cause to a court of law for action upon the alleged agreement. From the order this appeal was taken. The single question is, was there justification for the order transferring the cause?

ARGUMENT.

The only authority for transferring the cause is the "Transfer of Causes Act."

Our submission is that the case is not within the statute. The Court of Chancery had jurisdiction of the cause made by the bill which had fraud for its basis. The Vice-Chancellor found there was no fraud, nor was there any agreement that the alleged agreement was to be made a part of the bond and mortgage. With these findings, defendant-appellant was entitled to have the bill dismissed.

Having jurisdiction of the cause which was tried to final hearing and decision, the case was outside of the statute. It is the converse of the case of *Curran v. Carroll*, decided at the present term of this court (not yet reported) but in principle the same. No cause can be transferred where there is jurisdiction. There was jurisdiction in this case but respondent failed for lack of proof. The respondent must make a new cause of action in the law court by virtue of the alleged agreement. There must be a new complaint and all proceedings must be new. The law court cannot try the cause upon the record transferred.

The alleged agreement cannot be made the basis of a cause of action at law.

It was argued before the Vice-Chancellor that the alleged agreement was merged in the conveyance. He does not treat this in his opinion. We contend that the agreement was not collateral and that the case is controlled by *Goldsmith v. Meyer*, 94 N. J. Law, page 40.

If we are right in this, then additional reason is afforded why the cause should not have been transferred.

It is respectfully submitted that the order was erroneous and should be reversed.

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