

FOCUS - 49 of 52 DOCUMENTS

Blick, Appellant, v. Cockins

No. 228

Supreme Court of Pennsylvania

252 Pa. 56; 97 A. 125; 1916 Pa. LEXIS 568

October 19, 1915, Argued

January 3, 1916

PRIOR HISTORY: [*1]**

Appeal, No. 228, Oct. T., 1915, by plaintiff, from decree of C.P. Allegheny Co., Oct. T., 1909, No. 1139, in case of Adelaide Blick and Horace J. Miller v. James M. Cockins. Affirmed.

Bill in equity to declare a trust ex maleficio.

From the record it appeared that Marianna M. Cockins, wife of the appellee died on March 6, 1907, domiciled in the State of Maryland, where the principal administration of her estate was had. After her estate had been settled in that state, her husband, James M. Cockins, was declared in this State to be a trustee ex maleficio of her estate, in *Blick v. Cockins*, 234 Pa. 261, and The Commonwealth Trust Company of Pittsburgh was appointed trustee thereof. Sequestration proceedings were instituted in order to compel the appellee to turn over the assets of his wife's estate to the trust company, and exceptions were filed by the plaintiffs to defendant's petition for discharge from said proceedings, on the ground that the entire estate had not as yet been turned over to the trustee. The lower court discharged the defendant from the writ of attachment and writ of sequestration so far as the accumulation of income was concerned on the ground that defendant [***2] was endeavoring in good faith to comply with the decree and was not in contempt, which order was affirmed by the Supreme Court in *Blick v. Cockins*, 247 Pa. 186. The case was then brought before the lower court for hearing on the exceptions involving the title to certain property.

Further facts appear in the following opinion by SHAFER, P.J.:

The parties have agreed as to most of the property in possession of James M. Cockins. An order has been made in relation to it, reserving certain matters as to which they were not agreed. By further agreement between the parties the matters in controversy have been reduced to the

following items: The ownership of five bonds, of balance in two banks, of certain jewelry, of a lot in California, and of the interest on mortgages collected by Cockins as executor of his wife, part of which was earned before her death. From the evidence taken, we find the facts in regard to the ownership of these items to be as follows:

(1) The bank balances in question were balances of accounts with "J. M. Cockins and Marianna M. Cockins, subject to the order of either or survivor." Moneys were deposited in these accounts by each of them, most of it perhaps [***3] by the wife. We are of opinion, however, that this makes no difference, and even if all by the wife it would now belong to the survivor. She had a right had she chosen to do so, to give property over to herself and husband as joint owners, and the deposit of it in this way had that effect. We find, therefore, that these deposits belong to James M. Cockins.

(2) Four of the bonds in question, namely, two bonds for \$1,000.00 each of the City and Suburban Railroad, and two of the Wilmington and Weldon Railroad Company for \$1,000.00 were purchased by moneys drawn out by the parties from the accounts above stated, and were intended to be held by the parties in the same way, that is, as joint owners with survivorship. The bonds were not registered in any manner whatever. We are of opinion that having been purchased with funds which had been so deposited they now belong to James M. Cockins as the money would if it had not been drawn from the bank.

(3) A fifth bond for \$1,000.00 of the Carolina Central R.R. Co. was not purchased by checks upon the joint account, but by Mrs. Cockins herself. The testimony in regard to this bond is that while it was bought with the money of Mrs. Cockins [***4] it was left unregistered for the same reason, and as the witness said "it was understood that these bonds were our common property." We are of opinion that the title to this bond is in far different condition to that of the four above referred to, and that the

252 Pa. 56, *; 97 A. 125, **;
1916 Pa. LEXIS 568, ***4

mere understanding or intention of Mrs. Cockins without any act which would show the ownership of the bond was other than in herself is not sufficient to give her husband any title. We find, therefore, that this bond belonged to Mrs. Marianna Cockins.

(4) It appears from the evidence that J. M. Cockins collected, after his wife's death, interest on mortgages which became due after her death, a part of which, however, was earned before her death. As interest accrues *die in diem* it is unlike rents and like charges apportionable at common law. We are of opinion, therefore, that these sums received as interest are apportionable.

(5) Mrs. Cockins was at the time of her death the owner of certain jewelry, the items of which are as follows: one sapphire diamond ring, one 3-stone diamond ring, one princess ring, one brooch with cluster of diamonds, one small gold watch. As we understand, it is not claimed by the plaintiff that [***5] the defendant is not entitled to maintain possession of this jewelry for his lifetime.

(6) As to the lot in California concerning which a question was raised, the evidence shows that the same belonged to Mr. Cockins.

A decree was entered directing the transfer by Cockins

to the trustee of certain properties mentioned in the opinion as belonging to the estate of Mrs. Cockins and that certain other property be retained by himself as his own property, except the jewelry, which was to be retained by him during his lifetime. Plaintiffs appealed.

Errors assigned were the decree of the court and in dismissing exceptions to various findings of fact.

COUNSEL:

J. R. Miller, of Miller and Arensberg, with him Patterson Crawford and **Joseph N. Ulman**, for appellants.

Samuel S. Mehard, with him Harvey A. Miller, for appellee.

JUDGES:

Before MESTREZAT, POTTER, STEWART and MOSCHZISKER, JJ.

OPINION:

[*60] [**126] PER CURIAM:

The decree is affirmed on the opinion of the learned president judge of the Common Pleas, filed June 16, 1915.