

Court Opinion

No. 5886 Equity,
Court OpinionJames J. Wrasche
vsLeonard P. Wrasche
and wife.No. 5886 Equity,
In the Circuit Court for Frederick County
January Term 1893.

Decree

The Bill in this suit, was filed by the plaintiff to foreclose a Mortgage on certain property in Mechanicstown, in said County, executed by the defendant, Leonard P. Wrasche, to secure the sum of five thousand dollars (\$5000) due from said defendant to the plaintiff, as set out in the Mortgage. The defendant in his answer, denies that he was ever indebted to the plaintiff in any sum of money whatever but avers that said mortgage was executed by him for another other purpose than to protect the partnership property.

The plaintiff in his testimony swears that his brother, Leonard P. Wrasche, was and still is indebted to him in the amount of money as mentioned in the mortgage, and that no part of the same, nor any interest thereon has been paid.

Leonard P. Wrasche, in his testimony, swears that he never was indebted to his brother, and that the mortgage was given for the purpose hereinbefore stated. The testimony of the other witnesses throws very little, if any light upon the matter in dispute, and therefore, the Court must decide the question upon the conflicting testimony of the mortgagor and the mortgagee, and the intrinsic evidence of the Mortgage itself.

Here the testimony of the one directly contradicts that of the other.

The mortgagor by signing and acknowledging the mortgage before the Justice of the Peace and delivering it to the mortgagee in effect, admitted the debt and the ownership of the property and also the purpose for which it was executed as set out in that instrument. At the same time, and before the same Justice of the Peace, the mortgagee made oath that the consideration stated in the mortgage "to be true and bona fide as therein expressed and mentioned." The only evidence, therefore upon which the Court is asked to set aside so solemn an instrument as a deed, is the testimony of the grantor which is in conflict with all his former acts in the premises, and which is also contradicted by the testimony of the grantee.

The general principle, or rule of law is that solemn contracts and instruments of this character affecting title to property should not be declared void or impeached, except upon clear and convincing evidence. The testimony in this case does not come up to this standard. The Court will, therefore pass a decree directing the property covered by the mortgage to be sold for the purpose of paying the debt and interest due thereon and the costs of this suit.

John A. Lynch, J. of the Cir. Court
Filed January 13th 1893.