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Equity

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EQUITY

THOMAS M. STUBBS*

Distinctive Covenants and Laches

*Maxwell v. Smith*¹ is a case of the conventional type in upholding the right of a purchaser in a residential subdivision to enforce restrictive covenants as against the owner and developer of the subdivision. Relief granted was both by restraining order and mandatory injunction to remove structures built or used in violation of such covenants.

Here the Master found complainant entitled to the relief sought. This was affirmed by the County Court and, on appeal, by the Supreme Court except as to a single minor detail.

It was held, more specifically, that conversion of a "store-house" into a residence by defendant was violative of a covenant against building of a "residence" nearer certain lot lines than was allowable by the covenant; that construction of lakes and a pump-house for the purpose of breeding of minnows for sale to the public as "live bait", was violative of the covenant against maintenance of a "commercial enterprise" in the subdivision.

The court also held that complainants were not guilty of laches while such alterations were being made because of the fact that defendant represented to one or some of them that the "store-house" was being altered for use as a club-house for the benefit of lot owners in the subdivision; and because defendant stated to them, as to construction of the lakes and pump-house, that there were to be "fish in the lake." Complainants were not informed thereby that this was to be a commercial fish hatchery. The unanimous decision of the court seems not only logical but inescapable.

Laches

*Hemingway v. Mention*² was decided upon the single point of the laches of complainants in asserting their claimed rights to land. The action, brought by three of the four heirs of the deceased Hemingway, against the remaining heirs, sought a decree declaring void a certain tax deed, and other deeds subsequent thereto, a partition of the real estate and an accounting for the use thereof. A decree for defendant, affirming findings of the referee, was, on appeal, affirmed.

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1. 228 S.C. 182, 89 S.E. 2d 280 (1955).

2. 228 S.C. 211, 89 S.E. 2d 369 (1955).

The facts alleged were that A. J. Hemingway died intestate in 1916, seized of the land in question, leaving as his sole heirs the three complainants (appellants) and their sister Adelaide; that all four of them were minors upon their father's death, the family moving off of and abandoning the land in 1924.

No taxes were paid on the land thereafter and, in 1930, it was sold for delinquent taxes to the County Forfeited Lands Commission, which, in 1935, sold it to a neighbor. The neighbor, in turn, made a gratuitous deed to it to the sister, Adelaide.

In 1941 Adelaide sold one-half of the land (fifty acres) to defendant (respondent) for \$250.00, which the Referee found to have been a fair price at the time. During the ten years of his possession, respondent greatly improved the value of the land, erected a substantial building on it and obtained a valuable tobacco allotment, so that, as it was found, the property is now worth \$5,000.00.

Complainants chiefly relied on the irregularity of the 1930 sale of the land for delinquent taxes, in the name of "A. J. Hemingway" (who had then been dead for fourteen years) contending that it should have been sold rather in the name of his heirs.

The court, in denying complainants relief, rested its decision solely upon the maxim that "Equity aids the vigilant", and urged that defendant "Must be protected or the fruits of his husbandry and thrift [would] be lost to him." The court cited and applied the definition of laches, as defined in *Bouviere's Law Dictionary*, as well as the classic definition of the same as employed in *Babb v. Sullivan*.³

3. 43 S.C. 436, 21 S.E. 277 (1894).