

Boehm and Shitz Vs. Engle

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Court : US Supreme Court

Decided On : 1767

Appeal No. : 1 U.S. 15

Appellant : Boehm and Shitz

Respondent : Engle

Judgement :

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U.S. Supreme Court BOEHM AND SHITZ v. ENGLE , 1 U.S. 15 (1767)

1 U.S. 15 (Dall.)

Boehm and Shitz v. Andrew Engle

Supreme Court of Pennsylvania September Term, 1767

Action on the Case for L 802. The Plaintiffs under a power in the Will of Henry Bolster deceased, had sold at public vendue to the Defendant, a house and lot in the city of Philadelphia for L 802, and shortly after tendered him a Deed for it, which the Defendant refused to accept, being advised by council that Bolster had no good Title to the Lot. Upon which the Plaintiffs brought a special Action on the case for the consideration Money.

On the Trial, in support of Bolster's title, the Plaintiffs produced a Patent to Jane Batchelor dated 1694, and a Deed from one Richard Tucker (who had married Jane Butchelor) to John Chambers dated 1685, and deduced a regular title from Chambers down to Bolster. The Plaintiffs acknowledged the defect in the Title, in Tucker's conveying his Wife's Estate without her joining in the Deed, but insisted on sixty Years Possession as giving a good Title under the Statute of 32 H. 8 c. 2.

The Council for the Defendant denied the extension of that Statute, and urged that if the 32 H. 8. extended. the Statute of 21 Fa. 1. c. 16. likewise extended, being both made before the Settlement of the Province, but it appears to have been the Opinion of the Legislature of this Province, that these Statutes of Limitations did not extend, by their having made an Act to limit personal Actions in the very Words of the Statute of James.* It was likewise contended on the Part of the Defendant, that though the Statute of 32 H. 8 should be extended, yet this Case was not within it; because, 1st The Act was made on a presumption that there might have been regular Conveyances and lost, but here it appears there was no Conveyance at all from the Wife by Tucker's granting for himself and his Wife. 2nd. There is no Proof of sixty Years Possession, the Witnesses for the Plaintiff speaking only to 44 Years back 3rd. The Act of 32 H. 8. does not operate unless sixty Years elapsed since Right of Entry accrued, and here Tucker's Wife had no Right of Entry till the Death of her Husband, which was in 1708 and not sixty Years ago. There was another point made for the Defendant, that in one of the mesne Conveyances, about sixteen Years ago, the Wives of the Grantors had not joined in the Deed, and were now living, and consequently might be intitled to Dower.

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For the Plaintiffs it was answered, that in 2 Peere Williams 75, and many other cases, it was settled that all Acts of Parliament made before the Settlement of the Colony extend, unless local in their Nature; that under this rule the Statute of Wills, Statute of Uses, and many other Statutes, were always held to extend; and that the reason of this Act extended as well as any other. That as to this Case not being within the Act, the presumption spoken of was not justified by the Act itself, which extended to every Case 2nd. Though the Witnesses swear only to forty-four

Years possession, yet after such a length of time it should be presumed the possession had been from the Date of the Deed to Chambers, which was in 1685. 3rd. The Rights of Femes Covert are not saved in this Act (except such Femes Covert as were in being at the time of making the Act) and Possession was out of Tucker's Wife from the time of her Husband's Deed to Chambers. As to the last Point it was said, that it was picked up at the Bar, and not objected to at the Time of tendering the Deed; that it did not strictly go to the title, but was only a claim of two old Women for their Lives, which the Jury might take notice of, if they pleased, by lessening the Damages.

The Court were unanimous and clear in their Opinion, that the Act of 32 H. 8 did extend to this Province, and gave it in charge to the Jury accordingly. [*](#)

The Verdict of the Jury was conformable to this opinion, by their finding for the Plaintiffs, having made an allowance for the Lives of the two Women in the Damages. Footnotes

[[Footnote *](#)] 12 Ann.c.2; 1 Sm.L. 76; and 1 Geo.I.c.8; 1 Sm.L. 91.

[[Footnote *](#)] See S. P. Morris's versus Vanderes Pet.