

Sliver Vs. Shelback

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Court : US Supreme Court

Decided On : 1786

Appeal No. : 1 U.S. 165

Appellant : Sliver

Respondent : Shelback

Judgement :

SLIVER v. SHELBACK - 1 U.S. 165 (1786)

U.S. Supreme Court SLIVER v. SHELBACK, 1 U.S. 165 (1786)

1 U.S. 165 (Dall.)

Sliver, Plaintiff in Err.

v.

Shelback

Supreme Court of Pennsylvania

April Term, 1786

This was a question on a writ of error, brought to reverse a judgment in the Common Pleas of Philadelphia County, against the plaintiff in error, when within age. The record of the Court below, stated, that the defendant (now plaintiff) appeared in person, imparled to the next term, and then appeared and said

nothing; wherefore, &c.; The plaintiff attained his full age before he brought the writ of error.

Levy, for the plaintiff in error, cited 8 Mod. 185. Rep. imp. Hardw. 104. 376. 1 Bl.Com. 465. Cro. El. 569. 818. Lill.Ent. 252. 3. Bac. Abr. 149. But, as his arguments were afterwards admitted, and repeated by the Court, it is unnecessary to insert them here.

Lewis, for the defendant in error. Infancy must be tried by inspection, 3. Bl. Com. 331. By the record it is stated, that the plaintiff in error appeared twice; and the Court might then have tried the question of infancy by inspection, if he had suggested it; so that he is not at this time entitled to be relieved, 3 Bac. Abr. 124. 134. 3 Bl. Com. 331. In all judicial process, the error must be reversed before 21 years are attained for what is done in Court, though not for what is done in pais; as in the latter case, a different mode for the trial of infancy is adopted, to wit, an inquest.

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3 Bac. Abr. 134. 5.6. and that may be done either within, or, at full age. 9. Vin. 377. Co. Litt. 280.

By M'Kean, Chief Justice. Nil dicit is not a judicial act; but cognovit actionem would have been so. Lewis. True; but the giving judgment upon Nil dicit is a judicial act; and when he says nothing, there is the greater reason for the inspection of his age, in order to protect him, who evidently knows not how to protect himself. But how can the Court ascertain the truth of what is alledged? Not by the verdict of a jury, for this is a judicial act; nor by the inspection of the party for he has now attained his full age; it can only be done by the record. Lewis admitted, however, upon a question being put to him, that by the rejoinder in error, the infancy, which was assigned for error, was acknowledged; but he relied upon the impossibility of obtaining relief for a judicial act done diens atatem, by a writ of error post plenam atatem. THE CHIEF JUSTICE delivered the opinion of the Court, in substance as follows:

M'Kean, Chief Justice. At the common law there could be no appearance in any suit, real, personal, or mixed, whether as plaintiff or defendant, but in proper person; except where the King, by virtue of his prerogative, granted his writ for an Attorney; and where an infant appeared to defend a suit by his guardian. The statute of W. 2. 6. 15. declares that if an infant is eloined, so that he cannot sue personally, his next friend shall be admitted to sue for him; and c. 10. of the same statute, enables all persons of full age to sue and defend suits by attorney. But the appearance of an infant to a suit brought against him, is not a judicial act. The appointment of a guardian to defend the suit; and the taking his examination when a fine is to be levied, a recovery to be suffered, or a statute staple &c.; to be acknowledged, are judicial acts. Most clearly, however, the appearance in this case is error. The authorities cited by the council for the defendant in error, to show, that after his full age, the party cannot take advantage of his previous infancy, appear to be restricted to real actions, and to fines and recoveries, which are, in their operation, mere modes of assurance. But we are likewise, clearly of opinion, that, in other cases, a judgment against an infant may be reversed after full age, and that the fact must be tried per pais and not by inspection. Moore 460. Hardwick's cases 104. Hetly 65. Let the judgment below be reversed.

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