

Faw Vs. Roberdeau's Executor

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Court : US Supreme Court

Decided On : 1805

Appeal No. : 7 U.S. 174

Appellant : Faw

Respondent : Roberdeau's Executor

Judgement :

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Faw v. Roberdeau's Executor

U.S. (3 Cranch) 174

ERROR TO THE CIRCUIT COURT OF THE COUNTY

OF ALEXANDRIA IN THE DISTRICT OF COLUMBIA

SYLLABUS

If an act of limitations have a clause, "saving to all persons *non compos mentis*, *femes covert*, infants, imprisoned, or out of the commonwealth, three years after

their several disabilities removed," a creditor, resident of another state, removes his disability by coming into the commonwealth, provided the debtor be at that time within the commonwealth.

On his returning to the commonwealth, he must bring his action within three years. "Beyond sea" and "out of the commonwealth" are analogous expressions in the law of Virginia.

This was an action in the Circuit Court of the District of Columbia for the County of Alexandria, and the question arose upon the construction of the Act of Assembly of Virginia for "reducing into one the several acts concerning wills," &c.;, Revised Code, 169, c. 92, § 56, which is in these words, *viz.*,

"If any suit shall be brought against any executor or administrator for the recovery of a debt due upon an open account, it shall be the duty of the court before which such suit shall be brought to cause to be expunged from such account every item thereof which shall appear to have been due five years before the death of the testator or intestate. Saving to all persons *non compos mentis, femes covert*, infants imprisoned or out of this commonwealth who may be plaintiffs in such suits three years after their several disabilities removed."

The declaration was for plank, scantling, and foundation stone, lent by the plaintiff to the defendant,

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for the like materials sold and delivered, and for money had and received. The defendant pleaded the general issue, and a verdict was taken for the plaintiff, subject to the opinion of the court, upon the following facts:

"That the debt found by the verdict was due by the defendant's testator to the plaintiff in the year 1786. That the testator died in 1794. The plaintiff was a resident of and in the State of Maryland and out of the Commonwealth of Virginia when the articles were delivered for which the suit was brought and when the debt was contracted, and continued so in Maryland and out of the said commonwealth

until the month of June, 1795, when he removed to Alexandria to live, and hath lived there ever since. That in the year 1786, after the cause of action accrued, the plaintiff passed through the Town of Alexandria, and was for a short time therein, but not as a resident thereof."

Upon this statement of facts the judgment of the court below was for the defendant, and the plaintiff brought the present writ of error.

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MR. CHIEF JUSTICE MARSHALL, after stating the case, delivered the opinion of the Court.

There being a general verdict for the plaintiff, it is necessary in order to justify a judgment for the defendant that the statement of facts upon which he relies should contain all the circumstances necessary

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to support such a judgment; otherwise the judgment must be rendered upon the verdict for the plaintiff.

The five years mentioned in the 56th section of the act of assembly must have elapsed before the death of the testator. If they did not, no lapse of time after his death can bring the case within the purview of this act. In the present case, the five years had elapsed. But there is a saving clause in the following words:

"Saving to all persons *non compos mentis, femes covert*, infants, imprisoned or out of this commonwealth, who may be plaintiffs in such suits three years after their several disabilities removed."

It is one of the facts stated that the plaintiff was within the Commonwealth of Virginia in the year 1786, after the cause of action accrued, and hence it is argued that he is not within the saving clause of the section and that to exclude him from the benefit of that clause it is not necessary that he should have become a

resident of that state.

The Court has not been able to find any case in which this question has been decided. We are therefore obliged to form an opinion from a consideration of the act itself.

The words of the act are "out of this commonwealth," and such persons may bring their actions within three years after their "disability" removed.

The Court is of opinion that the disability is removed at the moment when the person comes into the commonwealth, and he must bring his action within three years from that time.

But something further than this was necessary to authorize a judgment for the defendant. It ought to have appeared that Roberdeau was a resident of the State of Virginia at the time the plaintiff came into that state in 1786, and that fact is not in the case stated. The judgment therefore ought to have been for the plaintiff, and not for the defendant.

Judgment reversed with costs and judgment entered for the plaintiff on the verdict.