Marsteller Vs. Mcclean

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 156

Appellant : Marsteller

Respondent : Mcclean

Judgement :

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Marsteller v. McClean

11 U.S. (7 Cranch) 156

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

In order to avoid the plea of the statute of limitations to an action by joint tenants, it is necessary to show that all the plaintiff's were under a disability to sue.

It is a rule of pleading that a replication should contain of itself a full and complete answer to the bar, and that a joint plea, which is bad, affects with its consequences all the parties joining in it.

It seems to be a settled rule that all the plaintiffs must be competent to sue, otherwise the action cannot be supported.

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This was an action of trespass for mesne profits after a recovery in ejectment by the present plaintiffs against the present defendant, who pleaded the statute of limitations, to which the plaintiffs replied in substance that Christiana, the wife of one of the plaintiffs, and Elizabeth, the wife of another of the plaintiffs, in whose rights they sue, "were *femes covert* when the cause of action accrued, and have ever since continued *femes covert* " -- and "that Kitty Hunter," one of the plaintiffs, "was a *feme covert,* " and that the other plaintiffs, in whose right the suit was brought, were infants at the time the cause of action accrued and also at the commencement of the action. To this replication there was a general demurrer and joinder, on which the court below rendered judgment for the defendant.

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STORY, J. delivered the opinion of the Court as follows:

The plaintiffs in error brought an action of trespass *quare clausum fregit* -- to which the defendant in error pleaded the statute of limitations. The replication in substance states that at the time when the cause of action accrued, Christiana, wife of one of the plaintiffs, and Elizabeth, wife of another of the plaintiffs, "were *feme coverts,* and ever since have continued *feme coverts* ", and "that Kitty Hunter," one of the plaintiffs, "was a *feme covert,* " and that the other plaintiffs in whose right the suit was brought, at the time when the action accrued and also at the commencement of the suit, were infants. To this replication there is a general demurrer and joinder, on which the court below gave judgment for the defendant.

It is contended by the defendant that this replication is insufficient inasmuch as it does not allege that Kitty Hunter continued a *feme covert* until within five years, the time prescribed by the statute of limitations for the pursuit of this remedy. And it is further contended that even if the replication be good, yet the plaintiffs ought not to recover because the declaration charges the trespass by way of recital -- "for that whereas the defendant with force and arms," &c.;, and not by positive and direct allegations as the law requires. On this last exception the Court does not intend to give any opinion, but unless the point were fully settled by authority, it would feel little inclination to sustain an objection which would seem directed more to the form than the merits of the action.

The objection to the replication deserves more consideration. It is certainly a rule of pleading that a replication should of itself contain a full and complete answer to the bar, and that a joint plea which is bad affects with its consequences all the parties joining in it.

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In the present case it may be true that Kitty Hunter was a *feme covert* at the time when the action accrued, and yet it may be equally true that five years have elapsed since the disability was removed. It was therefore incumbent on the plaintiffs not barely to show a coverture, but, by a proper averment, to show its continuance to a time within which it would have been a perfect avoidance of the bar. The objection then would have been fatal in a several action brought by Kitty Hunter.

But it is said that though the replication be bad as to one of the plaintiffs, yet it can only bar he; that the infancy or coverture of the other plaintiffs entitles them to a recovery in this action for the injury done to them; and that, as parceners and tenants in common are compellable to join in actions of this nature, it would be hard to affect them with the disability of a co-tenant.

It seems, however, to be a settled rule that all the plaintiffs in a suit must be competent to sue, otherwise the action cannot be supported, and the case of

Perry v. Jackson, cited from 4 Term Reports 516, decides that a plea of the statute of limitations which is good as to one partner bars them both in a joint action. When once the statute runs against one of two parties entitled to a joint action, it operates as a bar to such joint action.

It is therefore the opinion of the Court that as this answer to the objection fails, the replication must be adjudged insufficient, and of course the bar must prevail.

Judgment affirmed.