Doe Vs. Mcfarland

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Court : US Supreme Court

Decided On : 1815

Appeal No. : 13 U.S. 151

Appellant : Doe

Respondent : Mcfarland

Judgement :

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ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

It is not necessary that an executor of a will, made in Virginia, devising to the executor land in Kentucky, should take out letters testamentary in Kentucky, to enable him to maintain an ejectment for the land in Kentucky.

If the plaintiff in his declaration claims the whole tract, a deed showing that he has only an undivided interest in the tract may be given in evidence.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

This is a writ of error to a judgment rendered in the Circuit Court of the United States for the District of Kentucky in an ejectment by the plaintiffs in error against the defendants.

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At the trial of the cause the plaintiffs produced and read in evidence a patent from the Commonwealth of Virginia granting certain lands therein described lying in the County of Nelson in the now State of Kentucky to John May, John Banister, Kennon Jones, Thomas Shore, and Christopher McConico. He then offered in evidence the last will and testament of John May, deceased, which contained this clause

"I give and devise my land to my executors, herein after named, and to the survivors and survivor of such of them as may act, and their heirs, for the purpose of selling as much thereof as will pay all my debts."

This will was proved and admitted to record according to the laws of Virginia while Kentucky was a part of that state, and is duly certified by the proper authority. The plaintiff, Ann Lewis, wife of the other plaintiff, Thomas Lewis, who was an executrix named in the will of the said John May, alone qualified as executrix, and took upon herself the burden of executing the said will, but she did not qualify, and did not obtain her letters testamentary until after Kentucky had become an independent state.

The counsel for the defendants objected to the admissibility of the will and certificate thereto subjoined because the said Ann had only qualified and sued out letters testamentary in the State of Virginia, and not in the State of Kentucky, where the land lies. The court sustained the objection, and the will was not permitted to go in evidence to the jury. To this opinion an exception was taken.

There was also a second exception taken on the same rejection of evidence which depends entirely on the correctness of the first opinion, and therefore need not be particularly stated.

It has been decided in this Court that letters testamentary give to the executor no authority to sue for the personal estate of the testator out of the jurisdiction of the power by which those letters are granted. But this decision has never been understood to extend to a suit for lands devised to an executor. In such case, the executor sues as devisee. His right is derived from the will, and the letters testamentary do not give the title. The executors are trustees for the purposes of the will.

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This will may be considered as requiring that the executors shall act to enable themselves to take under the devise to them, but when the condition is performed, those who have performed it take under the will. That the executrix took upon herself that character after the separation of Kentucky from Virginia is of no consequence. When she did take it upon herself, the condition on which the devise was made was performed, and she took as devisee under the will, and the act consummating her title had relation to the time of its commencement, which was before the separation of the two states. Were it even necessary, which is not admitted, to record this will in Kentucky, that objection was not made to the instrument, and therefore the Court cannot suppose it to exist. The will was rejected because the executrix had not qualified in Kentucky, and this objection is not deemed a valid one.

An objection was also taken to a deed which was offered in evidence on the ground of an alleged variance between it, as proof, and the allegations in the declaration. The deed was not permitted to go in evidence to the jury, and to this opinion also an exception was taken.

The variance is not pointed out. If the objection to the deed is that it conveys only an undivided interest, while the declaration claims the whole tract, the objection

ought not to have been sustained; but on the propriety of rejecting the deed it is not necessary to give an opinion, since the judgment must be reversed on the first point.

Judgment reversed and the cause remanded with directions to grant a new trial and to permit the will to be read in evidence.