

Liter Vs. Green

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Court : US Supreme Court

Decided On : 1817

Appeal No. : 15 U.S. 306

Appellant : Liter

Respondent : Green

Judgement :

Liter v. Green - 15 U.S. 306 (1817)

U.S. Supreme Court Liter v. Green, 15 U.S. 306 (1817)

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15 U.S. 306

SYLLABUS

In a writ of right, brought under the statute of Kentucky, where the demandant described his land by metes and bounds, and counted against the tenants jointly, it was *held* that this was matter pleadable in abatement only, and that by pleading in bar, the tenants admitted their joint seizin, and lost the opportunity of pleading a several tenancy.

The tenants could not in this case severally plead, in addition to the mise or general issue, that neither the plaintiff nor his ancestor nor any other under or from whom he derived his title to the demanded premises was ever actually seized or possessed thereof or of any part thereof, because it amounted to the general issue, and was an application to the mere discretion of the court, which is not examinable upon a writ of error.

Quaere whether the tenants could plead the mise severally as to the several tenements held by them, parcel of the demandant's premises, without answering or pleading anything as to the residue.

Under such pleas and the replication prescribed by the statute the mise was joined, the parties, proceeded to trial, and the following general verdict was found, *viz.*,

"The jury finds that the demandant hath more mere right to hold the tenement, as he hath demanded, than the tenants or either of them have to hold the respective tenements set forth in their respective pleas, they being parcels of the tenement in the count mentioned."

It was *held* that this verdict, being certain to a common intent, was sufficient to sustain a judgment.

It was also *held* that a joint judgment against the tenants for the costs, as well as the *land*, was correct.

Page 15 U. S. 307

MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of right for the recovery of lands brought in the form prescribed by the statute of Kentucky, in which the demandant described his land by metes and bounds and counted against the tenants jointly. To this count the tenants demurred, and upon a joinder the demurrer was overruled by the court, and upon motion of the tenants, leave was given to them to withdraw the demurrer and

plead anew. A motion was then made to the court by the tenants to compel the demandant to count against them severally upon the ground that they held separate and distinct tenements, parcels of the land demanded, which motion was overruled by the court. And in our judgment this was very properly done, for the matter was pleadable in abatement only, and by pleading in bar, the tenants admitted their joint seizin of the freehold and lost the opportunity to plead a several tenancy. Assuming that at common law, a writ of right patent may be brought against divers tenants who hold their lands severally, and that the demandant may count against them severally, it does not follow that this doctrine applies to a writ of right close, but if it did and the demandant should in such case count against the tenants jointly and the tenants should plead to the merits, it would, for all the purposes of the suit, be an admission of the joint tenancy. And the clause in the statute of Kentucky requiring that where several tenements are demanded, the contents, situation, and boundaries of each shall be inserted in the

Page 15 U. S. 308

count has not affected this rule. It supposes that the several tenements are held by the same tenants.

The tenants next moved the court to allow them severally to plead, in addition to the mise or general issue, that neither the plaintiff nor his ancestor nor any other under or from whom he derived his title to the demanded premises was ever actually seized or possessed thereof or of any part thereof, which motion the court refused to grant. And in our judgment this was very properly done. In the first place, this plea was clearly bad as amounting to the general issue, and indeed for other manifest defects. In the next place, it was an application to the mere discretion of the court, which is not a subject of examination upon a writ of error. The court then permitted the tenants to sever in pleading and to plead the mise severally as to several tenements held by them, parcel of the demanded premises, without answering or pleading anything as to the residue. Upon the propriety of this pleading we give no opinion, as it is not assigned for error by the demandant and the error, if any, is in favor of the tenants. The replication prescribed by the act of Kentucky was pleaded to the several pleas, and upon the mise so joined the

parties proceeded to trial. The court being divided upon several points made at the trial, the jury was discharged. At a subsequent term, the tenants again moved the court for leave to withdraw the mise joined and to plead nontenure as to some and several tenancy as to others, in abatement, which was refused by the court, and in our judgment, for the reasons already stated, was properly refused.

Page 15 U. S. 309

The cause was then again tried by a jury, which returned a general verdict for the demandant, which, under the direction of the court, was amended by the jury, and recorded as follows:

"The jury finds that the demandant hath more mere right to hold the tenement, as he hath demanded, than the tenants or either of them have to hold the respective tenements set forth in their respective pleas, they being parcels of the tenement in the count mentioned."

It is objected by the tenants that this verdict is insufficient because it does not contain a several finding upon the several issues of the tenants, but is a joint finding against them all, and only by inference and argument a finding of the several issues for the plaintiff. This objection cannot be sustained. The verdict expressly and directly affirms the right of the demandant, and denies the right of the tenants to the land contained in their respective pleas, the same being parcel of the land demanded. A verdict, certain to a common intent, is sufficient to sustain a judgment. At the trial, a bill of exceptions was taken. The first point in the exceptions is the refusal of the court, upon the prayer of the counsel for the tenants, to direct the jury that the demandant was not entitled to recover in the suit, upon the proof by the tenants, that they claimed their several tenements under distinct and several titles. This refusal was perfectly correct, for the matter did not go to the merits, and could be taken advantage of only, as has been already stated, by a plea in abatement.

Page 15 U. S. 310

The next exception is that the court allowed a copy of the survey of the land claimed by the demandant to go in evidence to the jury for the purpose of identifying the same. No ground for this objection has been stated, and it seems to be utterly untenable.

Another exception is that the court refused to allow as evidence to the jury to prove that the demandant did not hold the legal title to 2,000 acres parcel of the land demanded in this suit, the copies of a certain record of a decree in chancery in a suit between the demandant and third persons (with whom the tenants had no privity of title or estate), and also of a deed made in pursuance of such decree, by which deed 2,000 acres of the land demanded by the writ appeared to be conveyed to third persons. This exception is not now relied on, and is certainly open to various objections. Without adverting to the objections that neither the record nor the deed were properly authenticated and that it was an attempt to set up an outstanding title in third persons having no privity with the tenants, it is decisive against the admission that the 2,000 acres or any part thereof are not shown to be within the boundaries of the land claimed by any of the tenants or put in issue between the parties.

The last exception is that the court refused to instruct the jury that if it should be proved that divers of the tenants had no title to certain parcels of the demanded premises, but that they claimed the same under a third person having the legal title thereof, then that it ought to find for the said

Page 15 U. S. 311

tenants because they had no title. This exception is also not relied on, and certainly could not be supported, for it could be given in evidence only on the plea of nontenure.

A motion was afterwards made for a new trial, the proceedings on which, not being matters of error, need not be mentioned.

The only remaining objection, urged as a ground for reversal is that the judgment is a joint judgment against the tenants for the costs as well as the land. We are all

of opinion that the judgment is right, and that the tenants can take nothing by this objection. The judgment is therefore affirmed with costs.

Judgment affirmed.

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