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Brown Vs. Jackson

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Court : US Supreme Court

Decided On : 1818

Appeal No. : 16 U.S. 449

Appellant : Brown

Respondent : Jackson

Judgement :

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Brown v. Jackson

16 U.S. 449

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Although the grantees in a deed executed *after,* but recorded *before,* another conveyance of the same land, being *bona fide* purchasers without notice, are by law deemed to possess the better title, yet where L. conveyed to C. the land in

controversy *specifically,* describing himself as devisee of A.S. by whom the land was owned in his lifetime, and by a subsequent deed (which was first recorded) L. conveyed to B.

"all the right, title and claim, which he, the said A.S., had and all the right, title, and interest which the said S. holds as legatee and representative to the said A.S. deceased, of all land lying and being within the State of Kentucky, which cannot at this time be particularly described, whether by deed, patent, mortgage, survey, location, contract, or otherwise,"

with a covenant of warranty against all persons claiming under L., his heirs and assigns; it was held that the latter conveyance operated *only upon lands the right, title, and interest of which was then in L. and which he derived from J.S.,* and consequently could not defeat the operation of the first deed upon the land specifically conveyed.

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This was an action of ejectment brought by the defendant in error against the plaintiff in error to recover the possession of certain lands in the State of Kentucky. To support his action, the plaintiff below showed the following title: a patent to Alexander Skinner; the will of Alexander Skinner devising all his estate to Henry Lee, and a deed from Henry Lee to Adam Craig conveying the tract of land in controversy specifically by metes and bounds, describing himself as devisee of Skinner, with a regular deduction of title from Craig to the plaintiff. The deed from Lee to Craig was dated 23 December, 1790, attested by three witnesses, acknowledged by the grantor on 15 December, 1795, before two justices of the peace in Virginia, and recorded in the Court of Appeals in Kentucky on 26 July, 1796. The execution of this deed was proved by one of the subscribing witnesses. The defendant below produced in evidence a deed from Henry Lee to Henry Banks, dated 5 May, 1795, acknowledged before the Mayor of Richmond, Virginia, on 13 May, 1795, and recorded in the Court of Appeals of Kentucky on 11 July, 1796, granting "all the right, title, and claim which he the said Alexander Skinner

had, and all the right, title, and interest which the said Lee holds as legatee and representative to the said Alexander Skinner, deceased, of all land, lying and being within the State of Kentucky, which cannot at this time be particularly described, whether they be by deed, patent, mortgage, survey, location, contract or

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otherwise," with a covenant of warranty against all persons claiming under Lee, his heirs and assigns.

Upon this testimony the defendant's counsel moved the court to instruct the jury that by virtue of the deed aforesaid from Lee to Banks, first acknowledged and first recorded, the legal title was vested in the said Banks to the land in question; that the deed under which the plaintiff claimed was not operative and valid against the deed to Banks, and that the said deed to Banks showed such a legal title out of the plaintiff as that he could not maintain his action. The question of fact whether the deed of Lee to Craig was duly executed on the day it bears date was left by the court to the jury, which found a verdict for the plaintiff, subject to the opinion of the court, upon the question of law arising in the cause. Judgment was thereupon rendered for the plaintiff by the court below, and the cause was brought to this Court by writ of error.

MR. JUSTICE TODD delivered the opinion of the Court.

In this case, the question of fact, whether the deed of Henry Lee to Adam Craig was duly executed on the day it bears date, was left by the court to the jury, and upon the evidence, it properly found a verdict in favor of that deed as an existing deed at that time.

The material question for the consideration of this

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Court is whether, under the circumstances of this case, the deed of Henry Lee to Henry Banks, which was executed after but recorded before the deed of Lee to

Craig, has a priority over the latter.

This depends upon the construction of the terms of the conveyance from Lee to Banks, for if it conveys the same land as the deed to Craig, then the parties claiming under it, being *bona fide* purchasers without notice of Craig's deed, are by law deemed to possess the better title.

It is necessary to bear in mind that Alexander Skinner, by his will, devised all his real estate to Lee, and that Lee, by his deed to Craig, conveyed the tract of land in controversy specifically by metes and boundary, describing himself as devisee of Skinner. By his deed to Banks, he grants

"all the right, title and claim, which he the said Alexander Skinner had, and all the right, title, and interest which the said Lee holds as legatee and representative to the said Alexander Skinner, deceased, of all land lying and being within the State of Kentucky, which cannot at this time be particularly described, whether they be by deed, patent, mortgage, survey, location, contract, or otherwise,"

and then follows a covenant of warranty against all persons claiming under Lee, his heirs and assigns.

A conveyance of the right, title, and interest in land, is certainly sufficient to pass the land itself, if the party conveying has an estate therein at the time of the conveyance; but it passes no estate which was not then possessed by the party. If the deed to Banks had stopped after the words "all the right,

title and claim which Alexander Skinner had," there might be strong ground to contend that it embraced all the lands to which Alexander Skinner had any right, title, or claim at the time of his death, and thus have included the lands in controversy. But the Court is of opinion that those words are qualified by the succeeding clause, which limits the conveyance to the right, title, and claim which Alexander Skinner had at the time of his decease and which Lee also held at the time of his conveyance, and coupling both clauses together, the conveyance

operated only upon lands the right, title, and interest of which was then in Lee and which he derived from Skinner. This construction is, in the opinion of the Court, a reasonable one founded on the apparent intent of the parties and corroborated by the terms of the covenant of warranty. Upon any other construction, the deed must be deemed a fraud upon the prior purchaser, but in this way both deeds may well stand together, consistently with the innocence of all parties.

Judgment affirmed.

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