

Barr Vs. Gratz's Heirs

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Court : US Supreme Court

Decided On : 1819

Appeal No. : 17 U.S. 213

Appellant : Barr

Respondent : Gratz's Heirs

Judgement :

Barr v. Gratz's Heirs - 17 U.S. 213 (1819)

U.S. Supreme Court Barr v. Gratz's Heirs, 17 U.S. 213 (1819)

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ERROR TO THE CIRCUIT

COURT OF KENTUCKY

SYLLABUS

A patent issued on 18 November, 1784, for one thousand acres of land, in Kentucky, to J.C. who had previously, in July 1784, covenanted to convey the same to M.G., the ancestor of the lessor of the plaintiff, and on 23 June, 1756,

M.G. made an agreement with R.B., the defendant in ejectment, to convey to him seven hundred and fifty acres, part of the tract of one thousand acres, under which agreement R.B. entered into possession of the whole tract, and on 11 April 1787, J.C., by direction of M.G., conveyed to R.B. the seven hundred and fifty acres in fulfillment of said agreement, which were severed by metes and bounds, from the tract of one thousand acres. J.C. and his wife, on 26 April 1791, made a conveyance in trust of all his property, real and personal, to R.J. and E.C. On 12 February 1813, R.J., as surviving trustee, conveyed to the heirs of M.G., under a decree inequity, that part of the one thousand acres not previously conveyed to R.B., and in the part so conveyed under the decree, was included the land claimed in the ejectment. R.B. (the defendant) claimed the land in controversy under a patent for four hundred acres issued on 15 September, 1795, founded on a survey made for B.N., May 12, 1782, and under a deed of 13 December, 1796, from one Coburn, who had, in the winter and spring of 1791, entered into and fenced a field within the bounds of the original patent for one thousand acres to J.C. claiming to hold the same under B.N.'s survey of four hundred acres. *Held* that upon the issuing of the patent to J.C. in November, 1784, the possession then being vacant, he became by operation of law vested with a constructive actual seizin of the whole tract included in his patent, that his whole title passed by his prior conveyance to M.G. (the ancestor of the lessor of the plaintiff), and that when it became complete at law by the issuing of the patent, the actual constructive seizin of J.C. passed to M.G., by virtue of that conveyance.

Held that when subsequently, in virtue of the agreement made in June, 1786, between M.G. and R.B. (the defendant), the latter entered into possession of the whole tract under this equitable title, his possession being consistent with the title of M.G. and in common with him was the possession of M.G. himself, and enured to the benefit of both according to the nature of the respective titles. And that when subsequently, in April, 1787, by the direction of M.G., J.C. conveyed to the defendant seven hundred and fifty acres in fulfillment of the agreement between M.G. and the defendant, and the same were severed by metes and bounds in the deed from the tract of one thousand acres, the defendant became sole seized in his own right of the seven hundred and fifty acres so conveyed. But as he still

remained in the actual possession of the residue of the tract, within the bounds of the patent, which possession was originally acquired under M.G., the character of his tenure was not changed by his own act, and therefore he was *quasi* -tenant to M.G., and as such continued the actual seizin of the latter, over this residue at least, up to the deed from Coburn to the defendant in 1796.

Held that if Coburn, in 1791, when he entered and fenced a field, &c., had been the legal owner of B.N.'s survey, his actual occupation of a part would not have given him a constructive actual seizin of the residue of the tract included in that survey, that residue being at the time of his entry and occupation in the adverse seizin of another person (M.G.) having an older and better title. But there being no evidence that Coburn was the legal owner of B.N.'s survey, his entry must be considered as an entry without title, and consequently his disseizin was limited to the bounds of his actual occupancy.

The deed of 16 July, 1784, from J.C. to M.G., being more than thirty years old and proved to have been in possession of the lessors of the plaintiffs and actually asserted as the ground of their title in the equity suit, was admissible in evidence without regular proof of its execution.

The deed from J.C. and wife to D.J. and E.C. in 1791 was not within the statute of champerty and maintenance of Kentucky, for, as to all the land not in the actual occupancy of Coburn, the deed was operative, the grantors and those holding under them having at all times had the legal seizin.

In general, judgments and decrees are evidence only in suits between parties and privies, but the doctrine is wholly inapplicable to a case like the present, where the decree in equity was not introduced as *per se* binding upon any rights of the other party, but as an introductory fact to a link in the chain of the plaintiff's title, and constituting a part of the muniments of his estate.

The deed of 1813, from R.J., surviving trustee, under the decree in equity, was valid without being approved by the court and recorded in the court according to the statute of Kentucky of 16 February, 1808, ch. 453.

This was an action of ejectment, in which the defendants in error were the lessors of the plaintiffs below, and which was brought to recover the possession of a tract of land in the District of Kentucky claimed by them under a patent issued to John Craig November 18, 1784, for 1,000 acres of land included in three separate warrants of 320 acres, 480 acres, and 200 acres, surveyed for John Craig, on 14 January, 1783.

On 16 July, 1784, John Craig conveyed by deed the said tract of land to Michael Gratz, the ancestor of the lessors of the plaintiffs, and covenanted to cause a patent to issue to said Gratz, or if it could not issue in his name, that said Craig would stand seized to the use of Gratz, and make such other conveyances as should be necessary to confirm the title. On 23 June, 1786, Gratz made an agreement with Robert Barr the defendant in ejectment, to convey to him 750 acres of land, part of the said 1,000 acres; the defendant entered into possession

of the whole tract, and settled a quarter and farm thereon, and on 11 April, 1787, John Craig, by the direction of said Gratz, conveyed to the defendant Barr 750 acres in fulfillment of said agreement, which were severed by metes and bounds from the said tract of 1,000 acres. On the 26th of April 1791, John Craig and his wife made a conveyance in trust to Robert Johnson and Elijah Craig of all his property, real and personal. On the 12th of February 1813, Robert Johnson as surviving trustee, under a decree in equity of the circuit court for the District of Kentucky, conveyed to the lessors of the plaintiffs that part of the 1,000 acres not previously conveyed to the defendant Barr and in the part so conveyed was included the land claimed in this action.

The defendant Barr claimed the tract of land in controversy, under a patent for 400 acres, issued by the State of Kentucky, on 15 September, 1795, founded on a survey made for Benjamin Netherland, May 12, 1782.

On the trial of the cause, the plaintiffs read in evidence to the jury the patent to John Craig for 1,000 acres of land; copies of two other surveys for John Craig; the deed of 16 July, 1784, to Michael Gratz, the ancestor of the lessors of the plaintiffs; the deed of trust of 26 April, 1791, from John Craig and wife to Robert Johnson and Elijah Craig; the deed of 12 February, 1813, from Robert Johnson (as surviving trustee) to the lessors of the plaintiffs; the decree in the chancery suit between Michael Gratz and John Craig and others,

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under which that deed was made; the surveys, plats and reports of 14 January, 1783, signed by John Price and the agreement between the said Gratz and Barr. The plaintiffs also introduced parol testimony establishing the boundary of the land patented to John Craig, and proving the defendant's possession of the whole tract.

The defendant gave in evidence a deed from one Coburn to him dated 13 December, 1796, the deed from Craig to him of 11 April, 1787, the plat and certificate of Netherland's survey, the certificate of its conveyance by Ann Shields to the defendant, and gave parol testimony that in the winter and spring of 1791, Coburn entered into, and fenced a field within the boundary of Craig's patent, claiming to hold the same under the title of Netherland as part of the land included in his survey of 400 acres.

The defendant objected to the admission in evidence of the record and proceedings of the circuit court in the chancery suit between Michael Gratz and John Craig and others, but the decree was permitted to be read to the jury, to which the defendant excepted. The defendant also excepted to the admission in evidence of the deed from John Craig to Michael Gratz, dated the 16 July, 1784, because the same was not proved by the subscribing witnesses, nor their absence accounted for.

The court instructed the jury as follows:

1. That if it should be of opinion that neither the defendant nor John Coburn, under whom he claims, was in actual possession of the land now in dispute prior

to 18 November, 1784, the date of the patent to John Craig for the land now in dispute, the emanation of the said grant gave possession to the said John Craig of the whole of the said land, and that the present plaintiffs were entitled to the benefit of that possession.

2. That if the jury should be of opinion that Robert Barr the defendant, entered upon and took possession of the land in contest under a contract with the ancestor of the plaintiffs and was so possessed at the time of the settlement of Coburn, under whom the defendant now pretends title, that the possession of Coburn, when taken, did not extend within the patent lines, under which the lessors of the plaintiffs claim, beyond his actual occupancy.

3. That Coburn's claiming and fencing a part of the land in 1791, or whenever the jury should be of opinion he took possession and fenced within the patent limits aforesaid did not give to him a legal possession to any other part of the land within the patent to Craig than that of which he had the actual occupancy.

4. That the possession of Coburn, attempted to be proved, more than twenty years before the bringing this suit did not bar the plaintiffs' right to sue further than he showed an actual possession for twenty years or upwards next before bringing this suit.

The defendant objected to the instructions so given the jury and moved that the court should give certain other instructions to the jury, which were refused. A verdict was taken for the plaintiffs and judgment rendered thereupon. The defendant afterwards moved for a new trial, which was refused by

the court. The cause was thereupon brought by writ of error to this Court.

STORY, JUSTICE, delivered the opinion of the Court

In this case it is unnecessary to travel

through all the exceptions taken by the defendant in the court below, because, upon the facts stated in the bill of exceptions, some of the opinions required of the court upon points of law do not arise from the evidence, and as to others the opinion of the court, if in any respect erroneous, was so in favor of the defendant.

The first error assigned is that the court refused to grant a new trial, but it has been already decided and is too plain for argument that such a refusal affords no ground for a writ of error.

Another error alleged is that the court allowed the decree of the circuit court, in the chancery suit between Michael Gratz and John Craig and others, to be given in evidence to the jury. In our opinion this record was clearly admissible. It is true that in general, judgments and decrees are evidence only in suits between parties and privies. But the doctrine is wholly inapplicable to a case like the present, where the decree is not introduced as *per se* binding upon any rights of the other party, but as an introductory fact to a link in the chain of the plaintiff's title and constituting a part of the muniments of his estate; without establishing the existence of the decree, it would be impossible to establish the legal validity of the deed from Robert Johnson to the lessors of the plaintiffs, which was made under the authority of that decree, and under such circumstances to reject the proof of the decree would be in effect to declare that no title derived under a decree in chancery was of any validity except in a suit between parties and privies, so that in

a suit by or against a stranger it would be a mere nullity. It might with as much propriety be argued that the plaintiff was not at liberty to prove any other title deeds in this suit because they were *res inter alios acta*.

Another error alleged is the admission in evidence of the deed of John Craig to Michael Gratz dated 16 July, 1784, without the regular proof of its execution by the subscribing witnesses. But as that deed was more than thirty years old and was proved to have been in the possession of the lessors of the plaintiff and actually

asserted by them as the ground of their title in the chancery suit, it was, in the language of the books, sufficiently accounted for, and on this account, as well as because it was a part of the evidence in support of the decree, it was admissible without the regular proof of its execution.

Another error alleged is that the deed from Robert Johnson to the plaintiffs, under the decree in chancery, was not admissible in evidence, without proof that Robert Johnson was the surviving trustee and that Elijah Craig was dead. But upon examining the bill of exceptions of the defendant, no point of this sort arises, for it is there stated that the plaintiff gave in evidence "the deed from Robert Johnson the surviving trustee to the lessors of the plaintiff," and no objection appears to have been made to its admissibility, on this account.

Having disposed of these minor objections, we may advance to the only points of any real importance in the cause, but which in our opinion are of no intrinsic difficulty. Upon the issuing of the patent

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to John Craig in November, 1784, the possession then being vacant, he became by operation of law vested with a constructive actual seizin of the whole tract of land included in his patent. His whole title (such as it was) passed by his prior conveyance in July, 1784, to Michael Gratz, the ancestor of the lessor of the plaintiff, and the moment it became complete at law by the issuing of the patent, the actual constructive seizin of Craig was transferred to Gratz, in virtue of that conveyance. When subsequently, in virtue of the agreement made in June, 1786, between Michael Gratz and the defendant for the purchase of 750 acres of the tract of 1,000 acres, the defendant entered into possession of the whole tract under this equitable title, his possession being consistent with the title of Gratz, and in common with him was the possession of Gratz himself, and inured to the benefit of both, according to the nature of their titles. When subsequently, in April, 1787, by the direction of Gratz, Craig conveyed to the defendant a large portion of the land in fulfillment of the agreement between Gratz and Barr and the same was severed by the metes and bounds in the deed from the tract of 1,000 acres, the

defendant became sole seized in his own right of the portion so conveyed. But as he still remained in the actual possession of the residue of the tract within the bounds of the patent, and this possession was originally taken under Gratz, the character of his tenure was not changed by his own act, and therefore

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he was *quasi*-tenant to Gratz, and as such continued the actual seizin of the latter over the whole of this residue, at least up to the period of the deed from Coburn to the defendant in 1796.

This brings us to the consideration of the period when the evidence first establishes any entry or possession in John Coburn. It appears by the evidence that in the winter and spring of 1791, Coburn entered into and fenced a field within the boundary of Craig's patent, claiming to hold the same under the title of Netherland as part of the land included in his survey of a tract of 400 acres. If Coburn at this time had been the legal owner of Netherland's survey, his actual occupation of a part would not have given him a constructive actual seizin of the residue of the tract included in that survey if, at the time of his entry and occupation, that residue was in the adverse seizin of another person having an older and better title. For where two persons are in possession of land at the same time under different titles, the law adjudges him to have the seizin of the estate who has the better title. Both cannot be seized, and therefore the seizin follows the title. Now it is clear that the title of Craig, and of course of his grantee Gratz, was older and better than Netherland's, and the possession of Barr under that title, being the possession of Gratz, the legal seizin of the land which was not sold to Barr was, by construction of law, in Gratz, and the disseizin of Coburn under a junior title did not extend beyond the limits of his actual occupancy.

This reasoning proceeds upon the supposition that Coburn had a good title to Netherland's survey.

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But in fact no such title was shown in evidence, there being no proof that Ann Shields, from whom Coburn derived his title, was the legal owner of the title of Netherland. So that the entry of Coburn must be considered as an entry without title, and consequently his disseizin was limited to the bounds of his actual occupancy. This view of the case disposes of the objection to the deed from Craig and wife to Robert Johnson and Elijah Craig in 1791 upon the ground that it was within the statutes of champerty and maintenance, the land being at the time in the adverse possession of Coburn, for as to all the land not in his actual occupancy (and to this alone the charge of the court applied) the deed was at all events operative, the grantors and persons holding under them having at all times had the legal seizin.

Another objection taken is that the deed from Robert Johnson to the lessors of the plaintiff, under the decree in chancery, was not approved by the court nor recorded in the court in conformity with the statute of Kentucky of 16 February, 1818, ch. 453. In our judgment, no such approval was necessary, and upon examination of the statute in question it is clear that it is not imperative in the present case.

Upon the whole, without going more minutely into the case, we are all of opinion that the judgment of the court below ought to be affirmed. No error has been committed which is injurious to the defendant.

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He has had the full benefit of the law so far as the facts of his case would warrant the court in applying it in his favor.

Judgment affirmed.