

Somerville's Executors Vs. Hamilton

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SooperKanoon Citation : sooperkanoon.com/78830

Court : US Supreme Court

Decided On : 1819

Appeal No. : 17 U.S. 230

Appellant : Somerville's Executors

Respondent : Hamilton

Judgement :

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Somerville's Executors v. Hamilton

17 U.S. (4 Wheat.) 230

ON CERTIFICATION OF DIVISION IN OPINION AMONG THE

JUDGES OF THE CIRCUIT COURT OF NORTH CAROLINA

SYLLABUS

Where the defendant in ejectment for lands in North Carolina has been in possession under title in himself and those under whom he claimed for a period of

seven years or upwards, such possession is, by the statute of limitations of North Carolina, a conclusive legal bar against the action by an adverse claimant unless such claimant brings himself by positive proof within some of the disabilities provided for by that statute. In the absence of such proof, the title shown by the party in possession is so complete as to prove, in an action upon a covenant against encumbrances, that a recovery obtained by the adverse claimant was not by a paramount legal title.

Quaere whether in an action upon a covenant against encumbrances, the plaintiff is bound to show that the adverse claimant recovered, in the suit by which the plaintiff is evicted, by title paramount, or whether the recovery itself is *prima facie* evidence of that fact.

This was an action of covenant, brought in the Circuit Court of North Carolina by the executors of John Somerville the younger against John Hamilton on the following covenants in a deed of land in North Carolina from Hamilton to John Somerville the elder dated April 15, 1772.

The grantor covenanted

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with the grantee, his heirs and assigns, that the premises

"then were, and so forever thereafter should remain free and clear of and from all former and other gifts, bargains, sales, dower, right and title of dower, judgments, executions, title, troubles, charges and encumbrances whatsoever done, committed, or suffered by the said John Hamilton or any other person or persons whatsoever, the quit-rent afterwards to grow due to Earl Grenville, his heirs, &c., only excepted."

There was also a covenant for a general warranty.

Hamilton claimed the lands under a deed dated 4 October, 1771, from one Stewart, who was then in possession and who delivered possession to Hamilton. John Somerville the elder conveyed the same to his son, John Somerville the

younger, by deed dated 8 September, 1777, and Somerville the younger conveyed to one Whitmill Hill by deed dated 9 October, 1795. W. Hill died on 13 October, 1797, having by his last will devised the lands to his son Thomas B. Hill. The latter having entered under the devise, an action of ejectment was brought against him in the Superior Court of the State of North Carolina for Halifax District on 7 June, 1804, for 250 acres, parcel of the said lands, by one Benjamin Sherrod, who, at the April term, 1805, of the said court, obtained a verdict and judgment for the possession of the said 250 acres of land and was put in possession of the same. On 2 September, 1804, Hamilton had notice from Somerville the younger of the institution of this suit, but did not aid in the defense. From the date of Stewart's deed to Hamilton

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(October 4th, 1771) to the commencement of this suit by Sherrod against Hill on 7 June, 1804, the land in controversy was in the possession of Hamilton and of Somerville and the Hills, claiming under Hamilton. On 6 November, 1806, Somerville the younger died, leaving the plaintiffs executors of his last will and testament. The above facts were found by a special verdict in the circuit court, and the case came before that court upon the special verdict, at November term, 1816, when the judges differed in opinion upon the following questions:

1. Whether the plaintiffs were bound to show that Benjamin Sherrod recovered against Thomas B. Hill by title paramount to that derived from Hamilton, or the recovery itself was *prima facie* evidence of that fact?
 2. Whether the title shown by Thomas B. Hill under Hamilton was not so complete as to prove that Sherrod's recovery could not have been by title paramount?
- Which questions were thereupon certified to this Court for decision.

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The opinion of the Court was delivered at the present term by STORY, JUSTICE.

Upon the special verdict in this case, the judges in the court below differed in opinion on two points, which are certified to this Court for a final decision:

1. Whether the plaintiffs were bound to show that Benjamin Sherrod recovered against Thomas B. Hill by title paramount to that derived from Hamilton, or the recovery itself was *prima facie* evidence of that fact?
2. Whether the title shown by Thomas B. Hill under Hamilton, was not so complete as to prove that Sherrod's recovery could not be by title paramount?

Upon the first point, this Court also is divided in opinion, and therefore no decision can be certified. But as we are unanimous on the second point and an opinion on that finally disposes of the cause, it will now be pronounced.

From the date of Stewart's deed to Hamilton in October, 1771, until the commencement of the suit by Sherrod against Hill in June, 1804, a period of thirty-three years, the land in controversy was in the exclusive possession of Hamilton and those deriving title under him. A possession for such a length of time under title was, by the statute of limitations of North Carolina, a conclusive bar against any suit by any adverse claimant unless he was within some one of the exceptions or disabilities provided for by that statute. The special verdict in this case does

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not find either that Sherrod was or was not within those exceptions or disabilities. The case therefore stands, in this respect purely indifferent. By the general principles of law, the party who seeks to recover upon the ground of his being within some exception of the statute of limitations is bound to establish such exception by proof, for it will not be presumed by the law. In the suit by Sherrod against Hill, it would have been sufficient for the defendant to have relied upon the length of possession as a suitable bar to the action, and the burden of proof would have been upon Sherrod to show that he was excepted from its operation. By analogy to the rule in that case, the proof of possession under title for thirty-three years was presumptive evidence, and in the absence of all conflicting evidence to remove the bar, conclusive evidence that the title of Hill

under Hamilton was so complete that Sherrod's recovery could not have been by title paramount.

Certificate accordingly.