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Clarke Vs. Graham

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Court : US Supreme Court

Decided On : 1821

Appeal No. : 19 U.S. 577

Appellant : Clarke

Respondent : Graham

Judgement :

Clarke v. Graham - 19 U.S. 577 (1821)
U.S. Supreme Court Clarke v. Graham, 19 U.S. 6 Wheat. 577 577 (1821)

Clarke v. Graham

19 U.S. (6 Wheat.) 577

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF OHIO

SYLLABUS

A power to convey lands must possess the same requisites and observe the same solemnities as are necessary in a deed directly conveying the lands.

A title to lands can only be acquired and lost according to the laws of the state in which they are situate.

The laws of Ohio require all deeds of land to be executed in the presence of two witnesses, and a deed executed in the presence of one witness only is void. A parol exchange of lands or parol evidence that a conveyance should operate as an exchange will not convey any estate or interest in lands.

MR. JUSTICE TODD delivered the opinion of the Court in this cause, which was submitted without argument.

This is an action of ejectment brought in the Circuit Court for the District of Ohio. At the trial, the plaintiff proved a title sufficient in law, *prima facie,* to maintain the action. The controversy turned altogether upon the title set up by the defendants. That title was as follows: a letter of attorney, purporting to be executed by John Graham, bearing date 23 September, 1805, authorizing Nathaniel Massie to sell all his estate, &c.;, in all his lands in Ohio. This power was executed in the presence of two witnesses in Richmond, in Virginia, and was there acknowledged by Graham before a notary public.

Page 19 U. S. 578

Nathaniel Massie, by a deed dated 7 June, 1810, and executed by him in Ohio in his own right as well as attorney to John Graham, conveyed to one Jacob Smith, under whom the defendants claimed the land in controversy. This deed was executed in the presence of one witness only, and was duly acknowledged and recorded in the proper county in Ohio. The deed and letter of attorney so executed and acknowledged, were offered in evidence by the defendants, and were rejected by the court upon the ground that they were not sufficient to convey lands according to the laws of Ohio. The defendants also offered in evidence a deed from Jacob Smith and wife to the said Graham dated 7f March, 1811, duly witnessed, acknowledged, and recorded, conveying a certain tract of land in Ohio, and offered further to prove that the tract of land so conveyed was given in exchange for and in consideration of the lands conveyed by the deed first

mentioned to Smith. This evidence also was rejected by the court. A bill of exceptions was taken to these proceedings by the defendants, and the jury found a verdict for the plaintiff upon which a judgment was entered for the plaintiff, and the present writ of error is brought by the defendants to revise that judgment.

The principal question before this Court is whether the deed so executed by Massie was sufficient to convey lands by the laws of Ohio. If not, it was properly rejected; if otherwise, the judgment should be reversed. Two objections have been taken to the

Page 19 U. S. 579

execution of this deed -- first, that the power of attorney was not duly acknowledged, as every deed is required to be in Ohio in order to convey lands, and if so, then the subsequent conveyance is void, for it is a general principle that a power to convey lands must possess the same requisites and observe the same solemnities as are necessary in a deed directly conveying the lands. On this objection, which is apparently well founded, it is unnecessary to dwell, as another objection is fatal -- that is, the deed of Massie was executed in the presence of one witness only, whereas the law of Ohio requires all deeds for land to be executed in the presence of two witnesses. It is perfectly clear that no title to lands can be acquired or passed unless according to the laws of the state in which they are situate. The act of Ohio regulating the conveyance of lands, passed on 14 February, 1805, provides

"That all deeds for the conveyance of lands, tenements, and hereditaments, situate, lying, and being within this state shall be signed and sealed by the grantor in the presence of two witnesses, who shall subscribe the said deed or conveyance, attesting the acknowledgment of the signing and sealing thereof, and if executed within this state, shall be acknowledged by the party or parties, or proven by the subscribing witnesses before a judge of the court of common pleas or a justice of the peace in any county in this state."

Although there are no negative words in this clause declaring all deeds for the conveyance of lands executed in any other manner to be void, yet this must be necessarily inferred from the

Page 19 U. S. 580

clause in the absence of all words indicating a different legislative intent, and in point of fact such is understood to be the uniform construction of the act in the courts of Ohio. The deed, then, in this case not being executed according to the laws of the state, the evidence was properly rejected by the circuit court.

The remaining point, as to the rejection of the evidence of the deed from Smith to Graham and the proof to show that it was given in exchange for the land in controversy, has not been much relied on in this Court. It is indeed too plain for argument that if a deed imperfectly executed would not convey any estate or interest in the land, a parol exchange, or parol proof of an intention to convey the same in exchange cannot be permitted to have any such effect.

Judgment affirmed with costs.

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