Thomas Vs. Brockenbrough

Thomas Vs. Brockenbrough

SooperKanoon Citation : sooperkanoon.com/79024

Court : US Supreme Court

Decided On : 1825

Appeal No. : 23 U.S. 146

Appellant : Thomas

Respondent : Brockenbrough

Judgement :

Thomas v. Brockenbrough - 23 U.S. 146 (1825)
U.S. Supreme Court Thomas v. Brockenbrough, 23 U.S. 10 Wheat. 146 146 (1825)

Thomas v. Brockenbrough

23 U.S. (10 Wheat.) 146

APPEAL FROM THE CIRCUIT

COURT OF KENTUCKY

SYLLABUS

Although bills of review are not strictly within the statute of limitations, yet courts of equity will adopt the analogy of the statute in prescribing the time within which they

shall be brought.

Appeals in equity causes being limited by the Judiciary Acts of 1789, c. 20, s. 22, and of 1893, c. 353, s. 2, to five years after the decree, the same period of limitation is applied to bills of review.

Quaere whether a bill of review founded upon matter discovered since the decree is also barred by the lapse of five years?

It is in the discretion of the Court to grant leave to file a bill of review for that cause.

The appellant, Thomas, filed in the Circuit Court of Kentucky at the November term, 1818, a bill to review and reverse a final decree of the same court pronounced at the May term, 1810, by which the plaintiff in the bill of review and defendant in the original suit was decreed to convey

Page 23 U. S. 147

to the heirs of John Harvie, the plaintiffs in the original suit, a certain tract of land which formed the subject of controversy in that suit. The bill of review, after stating the substance of the original bill, which was filed by John Harvie, and the bill of revivor after his death, in the name of the present respondents, in whose favor the decree was passed, assigns the following errors in the said decree as causes for its reversal.

1. That the entry of James Clark under whom the said John Harvie claimed the land in dispute was void for uncertainty.

2. That before the final decree was passed, the said Harvie died, leaving a will by which he devised the land in controversy to his sons, Edwin and Jacqueline, two of the plaintiffs in the bill of revivor, of which will the plaintiff was wholly ignorant until long after the final decree was entered.

3. That the said Edwin Harvie died previous to the said decree, and his right in the said land descended to his heirs at law, John and Lewis, who were no parties to the said suit, of which facts the plaintiff was wholly ignorant until long after the

decree complained of.

To this bill of review the defendants plead in bar the decree passed and enrolled in the original suit, and the prosecution by the plaintiff, Thomas, of a writ of error to the supreme court to reverse the same, which was dismissed, and then demurred to so much of the bill as sought to review and reverse the said decree. Upon argument of the plea and demurrer, the court below

Page 23 U. S. 148

dismissed the bill of review, and the cause was brought by appeal to this Court.

Page 23 U. S. 149

MR. JUSTICE WASHINGTON delivered the opinion of the Court, and after stating the case, proceeded as follows:

The first error assigned in the bill of review involves the merits of the original cause, and was intended to induce a reexamination of the title of the plaintiffs in that cause, the validity of which had been established by the decree. But previous to an investigation of that subject, a preliminary question has been suggested by the counsel for the appellee which the Court is called upon to consider. The record shows that the order of the court permitting the bill to be filed was granted eight years subsequent to the final decree in the original cause, and the question to be decided is whether this remedy was not barred by length of time.

It must be admitted that bills of review are not strictly within any act of limitations prescribed by Congress; but it is unquestionable that

Page 23 U. S. 150

courts of equity, acting upon the principle that laches and neglect ought to be discountenanced and that in cases of stale demands, its aid ought not to be afforded, have always interposed some limitation to suits brought in those courts. It is stated by Lord Camden in the case of *Smith v. Clay,* Ambl. 645, 3

Bro.Ch.Cas. 639, note,

"that as the court of equity has no legislative authority, it could not properly define the time of bar by a positive rule, but that, as often as Parliament had limited the time of actions and remedies to a certain period in legal proceedings, the court of chancery adopted that rule and applied it to similar cases in equity."

Upon this principle it is that an account for rents and profits in a common case is not carried beyond six years, or a redemption of mortgaged premises allowed after twenty years possession by the mortgagee, or a bill of review entertained after twenty years, by analogy to the statute which limits writs of error to that period.

These principles seem to apply with peculiar strength to bills of review in the courts of the United States, from the circumstance that Congress has thought proper to limit the time within which appeals may be taken in equity causes, thus creating an analogy between the two remedies, by appeal and a bill of review, so apparent that the court is constrained to consider the latter as necessarily comprehended within the equity of the provision respecting the former. For it is obvious that if a bill of review to reverse a decree on the ground of error apparent

Page 23 U. S. 151

on its face may be filed at any period of time beyond the five years limited for an appeal, it will follow that an original decree may in effect be brought before the Supreme Court for reexamination after the period prescribed by law for an immediate appeal from such decree by appealing from the decree of the circuit court upon the bill of review. In short, the party complaining of the original decree would in this way be permitted to do indirectly what the act of Congress has prohibited him from doing directly.

Whether a bill of review founded upon matter discovered since the decree is in like manner barred by the lapse of five years after such decree is a question which need not be decided in the present case, since we are all of opinion that it is in the discretion of the Court to grant leave to file a bill of review for that cause, and that such leave ought not to be granted in a case where it appears that the plaintiff is

not aggrieved by the decree on account of the error so assigned, or that being granted, the Court ought to dismiss the bill where no other error is assigned.

In this case the court below decided in the original cause that the title to the land the controversy was vested in the heirs of John Harvie and decreed the appellant to convey the same to them.

If Thomas then had no title to the land, of what consequence was it to him that the conveyance was decreed to be made to all the complainants

Page 23 U. S. 152

in that cause, as being the heirs of Harvie, rather than to two of them who, he alleged, were entitled to the land as devisees? If they did not complain of the decree (and that they did not is proved by their plea and demurrer to the bill of review) and if the plaintiff in this bill was not injured by it, the Court is at a loss to conceive upon what legal or equitable ground that decree could have been reversed for the errors growing out of the after discovered evidence. These observations apply equally to the second and third errors assigned.

Decree affirmed with costs.