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Elmendorf Vs. Taylor

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Appeal No. : 23 U.S. 152

Appellant : Elmendorf

Respondent : Taylor

Judgement :

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Elmendorf v. Taylor

23 U.S. (10 Wheat.) 152

APPEAL FROM THE CIRCUIT

COURT OF KENTUCKY

SYLLABUS

Although the statutes of limitations do not apply in terms to courts of equity, yet the period of limitation which takes away a right of entry or an action of ejectment has been held by analogy to bar relief in equity even where the period of limitation for a

writ of right or other real action had not expired.

Where an adverse possession has continued for twenty years, it constitutes a complete bar in equity wherever an ejectment would be barred if the plaintiff possessed a legal title.

The rule which requires all the parties in interest to be brought before the court does not affect the jurisdiction, but is subject to the discretion of the court, and may be modified according to circumstances.

In the courts of the United States, wherever the case may be completely decided as between the litigant parties, an interest existing in some other person whom the process of the court cannot reach, as if such party be a resident of another state, will not prevent a decree upon the merits.

The courts of every government have the exclusive authority of construing its local statutes, and their construction will be respected in every other country.

This Court respects the decisions of the state courts upon their local statutes in the same manner as the state courts are bound by the decisions of this Court in construing the Constitution, laws, and treaties of the union.

In Kentucky, a survey must be presumed to be recorded at the expiration of three months from its date, and an entry dependent on it is entitled to all the notoriety of the survey as a matter of record.

An entry in the following words:

"W.D. enters eight thousand acres, beginning at the most southwestwardly corner of D.R.'s survey of eight thousand acres, between Floyd's Fork and Bull Skin, thence along his westwardly line to the corner; thence the same course with J.K.'s line north two degrees west, nine hundred and sixty-four poles to a survey of J.L. for twenty-two thousand acres; thence with Lewis' line, and from the beginning south seven degrees west till a line parallel with the first line will include the quantity"

is a valid entry.

Such an entry is aided by the notoriety of the surveys which it calls to adjoin where those surveys had been made three months anterior to its date.

This was a bill in equity brought by the appellant, Elmendorf, in the Court below to obtain a conveyance of lands held by the respondents under a prior grant and under entries which were all older than his entry. But the defendants below relied entirely on their patent, and the case consequently depended on the validity of the plaintiff's entry. This entry was made on 19 April, 1784, as follows:

"Walker Daniel enters 8,000 acres, beginning at the most southwestwardly corner of Duncan Rose's survey of 8,000 acres, between Floyd's Fork and Bull Skin; thence along his westwardly line to the

Page 23 U. S. 154

corner; thence the same course with Granville Smith's lower line to John Lewis' corner; thence with Lewis' line, and from the beginning south 7 west, till a line parallel with the first will include the quantity."

This entry was afterwards explained and amended on 1 July, 1784, so as to read as follows:

"Walker Daniel enters 8,000 acres, beginning at the most southwestwardly corner of Duncan Rose's survey of 8,000 acres, between Floyd's Fork and Bull Skin; thence along his westwardly line to the corner; thence the same course with James Kemp's line north 2 west 964 poles, to a survey of John Lewis for 22,000 acres; thence with Lewis' line, and from the beginning south 7 west, till a line parallel with the first line will include the quantity."

The plaintiff's bill was dismissed by the Court below, and the cause brought by appeal to this Court.

Page 23 U. S. 157

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This suit was brought by the appellant, Elmendorf, in the Court for the Seventh Circuit and District of Kentucky to obtain a conveyance of lands held by the defendants under a prior grant and under entries which are also older than the entry of the plaintiff. As the defendants do not adduce their entries, and rely entirely on their patent, the case depends on the validity of the plaintiff's entry. That was made in April, 1784, and was afterwards, in July of the same year, explained or amended so as to read as follows:

"Walker Daniel enters 8,000 acres beginning at the most southwestwardly corner of Duncan Rose's survey of 8,000 acres between Floyd's Fork and Bull Skin; thence along his westwardly line to the corner; thence the same course with James Kemp's line, north 2 west 964 poles to a survey of John Lewis for 22,000 acres; thence with Lewis' line, and from the beginning south 7 west till a line parallel with the first line will include the quantity."

As this entry begins as "the most southwestwardly corner of Duncan Rose's survey of 8,000 acres between Floyd's Fork and Bull Skin," the first inquiry is whether this survey was at the time an object of sufficient notoriety to give validity

to an entry calling for one of its corners as a beginning. It is not pretended that the survey itself had acquired this notoriety; but the plaintiff contends that it had become a matter of record, and that subsequent purchasers were on that account bound to know its position in like manner as they are bound to know the position of entries. The Land Law prescribes that surveys shall be returned to the office and recorded in a record book, to be kept for that purpose by the principal surveyor, within three months from the time of their being made. They are to be returned to the land office in twelve months from their date, during which time the surveyor is forbidden to give a copy to any person other than the owner.

It is contended by the defendants that this prohibition to give a copy of the plot and certificate of survey, excludes the idea of that notoriety which is ascribed to a

record. Though inserted for preservation in a book which is denominated a book of record, it does not become, in fact, a record until it shall partake of that characteristic quality of a record, on which the obligation to notice it is founded, being accessible to all the world. Were even an inspection of the book demandable as matter of right, which the defendants deny, that inspection would, they say, from the nature of the thing, be of no avail, unless a copy was also attainable. They insist, therefore, that the notoriety of these surveys is not to be implied from the fact that the three months had expired, during which they were directed by law to be recorded.

Page 23 U. S. 159

The plaintiff contends that the book of surveys has every characteristic of a record, except that the surveyor is restrained from granting copies until the time limited by law for the return of surveys to the land office shall have expired, and denies that the notoriety attached to a record is dependent entirely on the right to demand a copy of it. He maintains the right to inspect it, and insists that this right has been considered by the legislature as giving sufficient notice to all persons interested in the property to enter a caveat against the issuing of a patent, from which he implies that it is intended as a record to give notice, although a copy of it cannot be obtained.

Were this question now for the first time to be decided, a considerable contrariety of opinion respecting it would prevail in the Court, but it will be unnecessary to discuss it if the point shall appear to be settled in Kentucky.

This Court has uniformly professed its disposition in cases depending on the laws of a particular State to adopt the construction which the Courts of the State have given to those laws. This course is founded on the principle, supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no Court in the universe which professed to be governed by principle would, we presume, undertake to say that the Courts of

Great Britain or of France or of any other nation had misunderstood their own statutes, and therefore erect

Page 23 U. S. 160

itself into a tribunal which should correct such misunderstanding. We receive the construction given by the Courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction, than to depart from the words of the statute. On this principle, the construction given by this Court to the constitution and laws of the United States is received by all as the true construction, and on the same principle the construction given by the Courts of the several States to the legislative acts of those States is received as true unless they come in conflict with the constitution, laws, or treaties of the United States. If, then, this question has been settled in Kentucky, we must suppose it to be rightly settled.

The defendants contend that conflicting opinions have been given in the State and that the question is still open, while the plaintiff insists that the real question -- that is, the notoriety of a survey after being made three months -- has never been determined in the negative.

The first case of which we have any knowledge is *Sinclair v. Singleton,* Hughes 92. The decision of the court was in favor of the validity of an entry which calls for the lines of a survey. The Court is not in possession of the book in which the case is reported, but judging from the references made to it in subsequent cases, the entry must have been made within twelve, and probably within three months of the date of the survey.

The next case in which the question was directly

Page 23 U. S. 161

made is *Key v. Matson,* Hardin 70, decided in the fall term of 1806. The survey had not been made three months, at the date of the entry, and the court determined that it was not an object of notoriety. A rehearing was moved for, and

according to the course of the Court of Appeals of Kentucky, errors were assigned in the original decree. The first was that

"the court has decided that an entry dependent on a survey not made three months is void, whereas, according to law and former decisions, such an entry ought to have been valid."

The court adhered to its first decision, and used expressions which, though applied to a case in which the entry was made before the expiration of three months after the survey on which it depended, yet indicated the opinion that an entry made after the expiration of three months from the date of the survey, would be equally invalid.

Moore v. Whitlege, Hardin 89, and *Respass v. Arnold,* Hardin 115, decided in the spring of 1807, were on the authority of *Key v. Matson,* and were also cases in which the entries were made a few weeks after the surveys. The case of *Cartwright v. Collier,* Hardin 179, decided in the spring of 1808, was one in which the entry was made only fifteen days after the survey. In *Ward v. Lee,* 1 Bibb 27, decided in 1808, the entry called for a survey which had been made twentythree days, of the return of which, to the office there was no proof. The judge adds, "if it had been returned and recorded,

yet no person was entitled to a copy." This last observation is indicative of the opinion, that a survey, though recorded, would not become an object of notoriety until a copy of it was demandable; but it was made in a case in which that point did not occur. The case of *Cleland's Heirs v. Gray,* decided at the same time, is of the same character. The survey was made sixteen days before the entry which called to adjoin it. The judge says,

"It is clear that no description in this certificate of Evan Shelby's survey can aid Weeden's entry, because it does not appear that the certificate was even made out or deposited in the surveyor's office at the date of Weeden's entry. But if it had been recorded, yet it was inaccessible to holders of warrants. They were not

entitled to a copy until twelve months after the making of the survey, nor was the surveyor himself bound to record it in less than three months after the survey was made."

In the case of *Galloway v. Neale,* 1 Bibb 140, the judge who delivered the opinion of the court, states the law thus:

"If the holder of a warrant adopts a survey previously made upon another warrant as the basis of a location, he must prove the notoriety of the survey at that period, otherwise his location cannot be supported. If he has adopted such survey at a period earlier than that at which the law has opened the record thereof for copies, he must prove its notoriety by evidence *aliunde.* "

This plain declaration of the opinion of the court on this point was, however, made in a

Page 23 U. S. 163

case in which it did not arise. The survey had preceded the entry which called for it, more than twelve months.

The cases of *Davis v. Bryan,* 2 Bibb 113, and *Davis v. Davis,* 2 Bibb 137, decided in the spring of 1810, were, each of them, cases in which the surveys preceded the entries calling for them, less than three months.

It is, then, true that from 1806 to 1810, inclusive, the prevailing opinion of the court of Kentucky was that an entry could derive no aid from the description contained in the plat and certificate of a survey for which it called until that survey had been made twelve months, but it is also true that this opinion has been advanced only in cases in which the point did not occur.

The first case in which the point actually occurred was *Carson v. Hanway,* 3 Bibb 160. The entry was made on 9 February, 1784, and called for a survey made on 15 February, 1783. The entry was supported on the principle that the plat and certificate of survey constituted a part of it. In delivering the opinion of the court, the judge said

"when the survey has been so long made, that the law requires it to be of record, it will be presumed to be so, and a call for its lines, in an entry, will render it a part of the description of such entry."

At the preceding term, before the same judges, the case of *Bush v. Jamison,* 3 Bibb 118, was argued, and the court determined that an entry could not be aided by the description contained in a survey which had been made only seven days

Page 23 U. S. 164

prior to the entry which called to adjoin it. In giving its opinion, the court says,

"How far a subsequent adventurer would have been bound by a description given in the survey of its beginning corner, if the survey had been of record is not material to inquire, for there is no proof that the survey was in fact of record, and as the law did not require that it should have been recorded at the date of the entry, a presumption that it was cannot be indulged, according to any rule of probability or on any principle recognized in former adjudications of this court."

These cases, decided so near each other by the same judges, show clearly by the terms in which they are expressed that the distinction between a survey, neither recorded in fact nor in presumption of law, was in the mind of the court, and that its former adjudications were considered.

Reed's Heirs v. Dinwiddie, 3 Marsh. 185, was decided in the year 1820. In that case an entry called for a survey which had been made six months, and the court determined that the person claiming under this entry might avail himself of the notoriety contained in the certificate of survey, "which, from its date, must have been of record."

Jackman's Heirs v. Walker's Heirs, 3 Litt. 100, is the last case which has been cited. It was decided in 1823. The surveys were made about ten months before the entry, which called to adjoin them, and the court allowed to the entry all the aid which could be derived from the

Page 23 U. S. 165

description contained in the next certificate of survey, because

"from the length of time they had been made before the date of the entry in question, the law required them to be of record, and of course they must be presumed to be so."

From the year 1813, then, to the present time, the courts of Kentucky have uniformly decided that a survey must be presumed to be recorded at the expiration of three months from its date, and that an entry dependent on it is entitled to all the notoriety which is possessed by the survey. We must consider the construction as settled finally in the courts of the State, and that this court ought to adopt the same rule, should we even doubt its correctness.

We think, then, that the entry under which the plaintiff claims, is aided by the notoriety of the surveys which it calls to adjoin, if those surveys have been made three months anterior to its date.

This depends on the question whether it is to date from April or July, 1784. The defendants insist that the amendment, or explanation, of the first of July, does not change the ground originally occupied, and is therefore, not to be considered as having any influence on the date of the entry, or as connecting it with the surveys mentioned in the amendment or explanation.

We cannot think so. This amendment would be seen by subsequent locaters, and would give them as full notice that the entry adjoined the surveys of Duncan Rose, James Kemp, and John Lewis as they would have received had the

Page 23 U. S. 166

original entry been made on that day. Were it then to be conceded that the original entry, calling for Greenville Smith's line, instead of James Kemp's, would have been construed to cover the same ground which it now covers, still we perceive no substantial reason for refusing to the change made in its terms any advantage belonging to the date of that change.

We think, then, for the purpose of the present inquiry, the entry is to be considered as if made on the first of July, 1784, and is entitled to all the notoriety of the surveys for which it calls.

This being established, we do not understand that any controversy remains on the question of notoriety. Some of the objects called for in the surveys are so well known, as to fix incontrovertibly the beginning of the entry made by Walker Daniel, and its validity is not questioned on any other ground.

The validity of the plaintiff's entry being established, it remains to consider the other objections which are made to a decree in his favor.

2. It is contended, that he is a tenant in common with others, and ought not to be permitted to sue in equity, without making his cotenants parties to the suit.

This objection does not affect the jurisdiction, but addresses itself to the policy of the court. Courts of equity require that all the parties concerned in interest shall be brought before them, that the matter in controversy may be finally settled. This equitable rule, however, is framed by

Page 23 U. S. 167

the court itself, and is subject to its discretion. It is not, like the description of parties, an inflexible rule a failure to observe which turns the party out of court because it has no jurisdiction over his cause, but, being introduced by the court itself for the purposes of justice, is susceptible of modification for the promotion of those purposes. In this case, the persons who are alleged to be tenants in common with the plaintiffs appear to be entitled to a fourth part not of the whole tract, but of a specially described portion of it which may or may not interfere with the part occupied by the defendants. Neither the bill nor answers allege such an interference, and the court ought not, without such allegation, to presume it. Had the decree of the circuit court been in favor of the plaintiff, and had this objection to it been deemed sufficient to induce this Court to reverse it and send back the case for the examination of this fact, it could never have justified and mission of the bill without allowing the plaintiff an opportunity of showing that he was the sole owner

of the lands in dispute. In addition to these observations, it may be proper to say that the rule which requires that all persons concerned in interest, however remotely, should be made parties to the suit, though applicable to most cases in the courts of the United States, is not applicable to all. In the exercise of its discretion, the court will require the plaintiff to do all in his power to bring every person concerned in interest before the court. But if the case may be completely decided

as between the litigant parties, the circumstance that an interest exists in some other person, whom the process of the court cannot reach, as if such party be a resident of some other state, ought not to prevent a decree upon its merits. It would be a misapplication of the rule to dismiss the plaintiff's bill because he has not done that which the law will not enable him to do.

3. The third point in the defense is the length of time which has elapsed since the plaintiff's equitable title accrued.

His patent was issued on 11 February, 1794, and those of the defendants are of prior date. His bill was filed on 28 December, 1815. Several of the defendants, in their answers, claim the benefit of the length of time.

From the earliest ages, courts of equity have refused their aid to those who have neglected for an unreasonable length of time to assert their claims, especially where the legal estate has been transferred to purchasers without notice. Although the statutes of limitations do not, either in England or in these states, extend to suits in chancery, yet the courts in both countries have acknowledged their obligation. Their application, we believe, has never been controverted, and in the recent case of *Thomas v. Harvie's Heirs,* decided at this term, it was expressly recognized. But the statute of limitations, which

bars an ejectment after the lapse of twenty years, constitutes no bar to a writ of right, even where the tenant counts on his own seizin, until thirty years shall have elapsed. Whether a court of equity considers an equitable claim to land as barred when the right of entry is lost, or will sustain a bill as long as the mere right may be asserted, is a question of some difficulty, and of great importance. The analogy of a bill in equity to actions founded on a right of entry, seems to derive some title to consideration, from the circumstance, that the plaintiff does not sustain his claim on his own seizin, or that of his ancestor, but on an equity not necessarily accompanied by seizin, whereas seizin is an indispensable ingredient in a writ of right. But the case must depend upon precedent, and if the one rule or the other has been positively adopted, it ought to be respected.

In the case of *Jenner v. Tracy,* 3 P.Wms. 287, in a note, the defendant demurred to a bill to redeem mortgaged premises, of which the defendant had been in possession more than twenty years, and the demurrer was sustained, the court observing that "as twenty years would bar an entry or ejectment, there was the same reason for allowing it to bar a redemption." It is added that the same rule was agreed in the case of *Belch v. Harvey* by Lord Talbot. In 3 Atk. 225, the court expressed an opinion unfavorable to a demurrer in such a case, because the plaintiff ought to be at liberty in his replication to show that he is within the exceptions of

the statute, but supported the bar when pleaded. The same principle is recognized in 3 Atk. 313. The rule appears to have been laid down in 1 Ch.Cas. and to have been observed ever since.

In 3 Johns.Ch., Chancellor Kent said,

"It is a well settled rule that twenty years possession by the mortgagee, without account or acknowledgment of any subsisting mortgage, is a bar to a redemption unless the mortgagor can bring himself within the proviso in the statute of limitations."

These decisions were made on bills to redeem mortgaged premises, but as no reason can be assigned why an equity of redemption should be barred in a shorter time than any other equity, they appear to us to apply with equal force to all bills asserting equitable titles. We have seen no *dictum* asserting that the rule is not applicable to other equitable rights, and we should not feel justified in drawing a distinction which has never heretofore been drawn. But we think the rule has been applied to equitable rights generally.

In the 2d vol. of Eq.Cas.Abr., title "Length of Time," it is said generally "that possession for more than twenty years under a legal title shall never be disturbed in equity." The case of *Cook v. Arnham,* 3 P.Wms. 283, was a bill brought to supply the want of a surrender of copyhold estate to the use of the will, and it was objected, that the application to the court had been unreasonably delayed. The Lord Chancellor said that "the length of time was not

Page 23 U. S. 171

above fourteen years, which, as it would not bar an ejectment, so neither could it bar a bill in equity."

The case of *Bond v. Hopkins,* 1 Sch. & Lef. 413, was a suit brought by a person claiming to be the heir to set aside a will alleged to be obtained by fraud, to obtain possession of title papers, and to remove impediments out of the way in a trial at law. Length of possession was set up as a bar to the relief prayed for in the bill, and the question, which was discussed at the bar by very eminent counsel, was profoundly and deliberately considered by Lord Redesdale. The testator died in November, 1754, and the bill was filed in June, 1792, so that thirtyeight years had elapsed between the death of the testator and the filing of the bill. As this time was not sufficient to bar a writ of right, no question could have arisen respecting the act of limitations, had the rule of granting relief in equity depended on the ability of the plaintiff to maintain a writ of right. But the rule was clearly understood both at the bar and by the court to be that the equitable rule respecting length of time had reference to twenty years, the time during which the right of entry was preserved, not to the time limited for maintaining a writ of right. In the very elaborate and very

able opinion given by the chancellor, in this case, in which he investigates thoroughly the principles which govern a court of equity in its decisions on the statute of limitations, it is not insinuated that it acts in any case from

analogy to a writ of right, but is assumed as an acknowledged and settled principle that it acts from analogy to a writ of ejectment. In this case, a suit had been instituted by John Bond, the grandfather of the plaintiff, as early as 1755, and a decree pronounced in 1770. The full benefit of this decree was not obtained, and John Bond took forcible possession of a part of the property, of which he was dispossessed by order of the court, on a bill for that purpose, brought by the defendant. The said John Bond died in prison in 1774, having first devised the property in dispute to his son Thomas, then an infant, for life, with remainder to his first, and other sons, in strict settlement. Soon after his death, an ejectment was brought by the defendant to recover part of the property in possession of Bond, and in 1776, a bill was filed by Thomas Bond, then a minor, to enjoin the defendants from proceeding in their ejectment and to have the will delivered up. Various orders were taken, and in June, 1792, an original bill, in the nature of a bill of revivor, was filed by Thomas Bond, and his eldest son Henry. In discussing this case, so far as respected length of time, no doubt was entertained that the plaintiffs would have been barred of all relief in equity, by a quiet acquiescence in the possession of the defendants for twenty years. It was a strong case of fraud, but an acquiescence of twenty years would have closed the court of equity against the plaintiffs. This was not questioned, but it was insisted that the pendency of suits, from the year 1755, when John

Bond, the son and heir of the testator, returned from America, had preserved the equity of the plaintiffs, unaffected by the lapse of time, and of this opinion was the court.

The case of *Hovenden v. Lord Annesly,* 2 Sch. & Lef. 607, was a bill filed in May, 1794, to set aside a conveyance made in July, 1726, alleged to have been fraudulently obtained. There were some circumstances on which the plaintiff relied, as relieving his case from the laches justly imputable to him for permitting such a length of time to elapse, but they need not be noticed, because they were deemed insufficient by the chancellor, and the bill was dismissed. In discussing this point, Lord Redesdale reviewed the cases which had been determined, and said

"that it had been a fundamental law of state policy in all countries and at all times that there should be some limitation of time beyond which the question of title should not be agitated. In this country, the limitation has been fixed (except in writs of right, and writs depending on questions of mere title) at twenty years. . . . But it is said that courts of equity are not within the statute of limitations. This is true in one respect; they are not within the words of the statutes, because the words apply to particular legal remedies; but they are within the spirit and meaning of the statutes, and have been always so considered."

After reasoning for some time on this point, and citing several cases to show

"that wherever the legislature has limited a period for law proceedings, equity will, in analogous

Page 23 U. S. 174

cases, consider the equitable rights as bound by the same limitation,"

he says,

"a court of equity is not to impeach a transaction on the ground of fraud, where the fact of the alleged fraud was within the knowledge of the party sixty years before. On the contrary, I think the rule has been so laid down that every right of action in equity that accrues to the party, whatever it may be, must be acted upon, at the utmost, within twenty years."

This question was fully discussed, and solemnly, and, we think, finally decided in the case of *Marquis Cholmondeley v. Lord Clinton,* reported in the 2d vol. of Jacobs & Walker. In that case, the title accrued in December, 1791, and the bill was filed in June, 1812. Other points were made, but the great question on which the cause depended was the length of time which had been permitted to elapse, and this question, after being argued with great labor and talent at the bar, was decided by the court upon a full review of all the cases which are to be found in the books. It was considered and was treated by the court as one of the highest importance, and the opinion was unequivocally expressed that

"both on principle and authority, the laches and nonclaim of the rightful owner of an equitable estate for a period of twenty years (supposing it the case of one who must, within that period, have made his claim in a court of law, had it been a legal estate), under no disability, and where there has been no fraud, will constitute a bar to equitable relief, by analogy to the statute of limitations,

if, during all that period, the possession has been held under a claim unequivocally adverse, and without anything having been done or said, directly or indirectly, to recognize the title of such rightful owner by the adverse possessor."

Upon this ground alone the bill was dismissed. The plaintiff appealed to the House of Lords, and the decree was affirmed.

The Lord Chancellor, in delivering his opinion in the House of Lords, took a distinction as to length of time between trusts,

"some being express, and some implied. . . . In the case of a strict trustee, it was his duty to take care of the interest of his *cestui que trust,* and he was not permitted to do anything adverse to it; a tenant also had the duty to preserve the interests of his landlord, and many acts, therefore, of a trustee, and a tenant, which, if done by a stranger, would be acts of adverse possession, would not be so in them, from its being their duty to abstain from them."

In a case of actual adverse possession, however, as was that before the House, his Lordship considered twenty years as constituting a bar. Lord Redesdale was of the same opinion, and, in the course of his address, remarked, that

"It had been argued that the Marquis Cholmondeley might, at law, have had a writ of right. That was a writ to which particular privileges were allowed, but courts of equity had never regarded that writ, or writs of formedon, or others of the same nature. They had always considered the provision in the Statute of James, which applied

Page 23 U. S. 176

to rights, and titles of entry, and in which the period of limitation was twenty years, as that by which they were bound, and it was that upon which they had constantly acted."

This is not an express trust. The defendants are not, to use the language of the Lord Chancellor in the case last cited, "strict trustees, whose duty it is to take care of the interest of *cestui que trusts,* and who are not permitted to do any thing adverse to it." They hold under a title in all respects adversary to that of the plaintiff, and their possession is an adversary possession. In all cases where such a possession has continued for twenty years, it constitutes, in the opinion of this Court, a complete bar in equity. An ejectment would be barred, did the plaintiff possess a legal title.

This point has been decided in the same manner by the courts of Kentucky. The counsel for the plaintiff insist that those decisions are founded on the peculiar opinions entertained by that court respecting writs of right. We do not think so. Their doctrine on that subject is indeed used as an auxiliary argument, but it is merely auxiliary to an opinion formed without its aid.

The decree of the circuit court is to be reversed and the cause remanded to that court with instructions that the entry under which the plaintiff claims is valid, but that the adversary possession of the defendants respectively constitutes a complete bar to the plaintiff's bill

Page 23 U. S. 177

wherever it would constitute a bar to an ejectment, did the plaintiff possess the legal title.

Page 23 U. S. 178

DECREE. This cause came on, &c.; on consideration whereof, this Court is of opinion, that there is error in the decree of the said circuit

Page 23 U. S. 179

court in this, that the said court determined, that the entry in the bill mentioned, made by Walker Daniel, on the first day of April, 1784,

Page 23 U. S. 180

and explained on the first day of July of the same year, on which the plaintiff's title is founded, is invalid, whereas, this Court is of opinion

Page 23 U. S. 181

that the same is a valid entry. It is therefore ORDERED and DECREED that the decree of the said circuit court dismissing the plaintiff's bill ought to be, and the same is hereby reversed and annulled. And this Court is further of opinion that in cases of adversary title, such an adversary possession as would bar an ejectment, did the plaintiff possess the legal title, constitutes also a bar to a bill in equity. It is therefore further ORDERED and DECREED that this cause be remanded to the said circuit court, with instructions to take such further proceedings therein conformably to this opinion as may be agreeable to equity and good conscience. All which is ordered and decreed accordingly.

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