

Steele's Lessee Vs. Spencer

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 552

Appellant : Steele's Lessee

Respondent : Spencer

Judgement :

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Steele's Lessee v. Spencer

26 U.S. (1 Pet.) 552

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

A decree of the Supreme Court of Ohio ordered that the patentee of a certain tract of land should, within six months, make a deed &c.; with covenants of warranty conveying a portion of the land held under a patent to the complainants in that suit,

and on the failure of A to make the said deed, &c.;

"that then and in that case the complainant shall hold, possess, and enjoy the said portion of land in as full and ample a manner as if the same had been conveyed to him."

The decree of the Supreme Court of Ohio by which a conveyance of land is directed to be made, the decree being according to the laws of Ohio, vested in those to whom the deed was ordered to be made such a legal title to the land to have been conveyed by the deed as would have been vested by a deed of equal date, and the Registry Act of Ohio applies as well to a title under such a decree as it would do if the party held under a *bona fide* deed of the same date with the patent of the land, and the decree gives a legal title as ample as a deed.

The Registry Act of Ohio directs that all deeds made within the state shall be recorded within six months from the time of the actual execution thereof, and declares that if any such deed shall not be recorded in the county where the land lies within the limits allowed by the law, "the same shall be deemed fraudulent and void against any subsequent purchaser for a valuable consideration without note of such deed."

In the construction of the Registry Act of Ohio, the term "purchasers" is usually taken in its limited legal sense. It means a complete purchaser, or in other words, a purchaser clothed with a legal title.

It is not necessary that a deed made to a subsequent *bona fide* purchaser without notice shall be recorded to give it operation against a prior unrecorded deed, as by the provisions of the registry acts the prior deed is declared in itself absolutely void as against such purchaser.

Whether erasures and alterations in a deed are material or not is a question of law to be decided by the court.

The construction of words belongs to the court, and the materiality of an alteration in a deed is a question of construction.

This was a writ of error to the Circuit Court of the United States for the District of Ohio to reverse the judgment of that court in favor of the defendant in error in an action of ejectment instituted by the plaintiff in error to recover a tract of land in Perry County in the State of Ohio.

The title claimed and exhibited by the plaintiff in the ejectment was originally derived under a patent from the United States to Jesse Spencer, dated November 15, 1811, who with George Spencer and others were the heirs at law of Thomas Spencer deceased, and in order to show the title acquired by the patent, he offered in evidence a deed from Jesse Spencer, the patentee, and Catharine his wife to William Steele, purporting

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to bear date 20 January, 1818, and which appeared on that day by the certificate on the deed to have been acknowledged before a justice of the peace.

"William Fulton, one of the subscribing witnesses proved that he attested the deed in the office of Jesse Spencer, but could not state when; that William Steele was not present; that he knew nothing of the purchase of the land by William Steele from Jesse Spencer; and that he saw no more of the deed until about one year ago, when Spencer and Steele were together, and Spencer produced the deed to see if the witness would recognize his signature."

Wherever the name of William Steele appeared either in the body of the deed or the label thereon, it manifestly appeared to have been written on an erasure, and with ink of a different color, as did the words "Ross" and "Ohio," in describing the place of residence of said Steele. The alterations on the face of the deed were not accounted for by any testimony. This deed was not recorded in the county where the land lies or elsewhere. The plaintiff further offered in evidence a deed from William Steele and Sarah his wife to Robert Steele, the lessor of the plaintiff, bearing date 7 July, 1821. Also the deposition of John Daragh to prove the execution of said deed, which deed and the certificate and acknowledgment thereon, and also the deposition of John Daragh, were also not recorded.

The defendants in the ejectment were in possession of the land, and they claimed to hold it under a decree of the Supreme Court of the State of Ohio for Ross County, sitting in chancery rendered on 3 January, 1820, in a proceeding by a bill filed in Perry County, and, under advisement in Ross County, by the heirs of Thomas Spencer, deceased, against Jesse Spencer and others, by which decree Jesse Spencer was ordered to convey the land in controversy, to certain of the parties in the said bill, upon their full compliance with the terms and conditions stated in the said decree. The decree also proceeds as follows:

"It is further ordered and decreed, that if the complainants shall within the time specified, deposit and pay to the clerk of Perry County aforesaid, the several sums of money aforesaid, and interest thereon, as aforesaid, and the defendant, Jesse Spencer, shall fail to make out, execute and deliver to said clerk, a deed for nine-tenths of the land aforesaid, within the times aforesaid, in manner aforesaid, that then and in that case, the heirs at law aforesaid, to whom the land aforesaid is decreed to be conveyed, in manner aforesaid, shall hold, possess and enjoy, nine-tenths of the half section aforesaid, to them, their heirs, and assigns forever, in as full and ample a manner as though the same were conveyed to them by the said Jesse Spencer, defendant, in manner aforesaid. . . . It is further ordered that Jesse Spencer,

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the defendant, pay the costs of the suit in seven months from the date of this decree, and if he fail so to do, that then execution or executions issue in the same manner as executions issue on judgments at law. It is further ordered and decreed that the bill as to the other two defendants, to-wit, William Spencer and James Spencer, is dismissed without costs, and that the Clerk of the Supreme Court for Ross County enter this decree of record in the said Supreme Court of Ross County, and that he transmit a copy of this decree to the Clerk of the Supreme Court of Perry County, it being in the same county from which this cause was removed here for decision, and that the same be entered of record in the Supreme Court of the said County of Perry in the same manner as if the cause had been there heard and decreed. It is further ordered and decreed that if the money is not

paid and deposited in manner aforesaid, and within the time aforesaid, that then these complainants shall pay all the costs of the suit."

The defendants also exhibited evidence of their having fully complied with all the requisites of the said decree by the payment of the sum of \$524, the amount decreed to be paid, and also that the decree was duly recorded in the proper office for recording of deeds of the County of Perry on 24 July, 1822.

After the evidence was closed, the court, on the motion of the counsel for the defendants, instructed the jury as follows:

1. That the decree of the Supreme Court of the State of Ohio given in evidence in this cause by the defendants vested in them such a legal title to the land in question as would have been conveyed by deed of equal date from Jesse Spencer, the patentee, and that the Registry Act of Ohio applies as well to the title of the defendants under the said decree as it would do if they held under a *bona fide* deed of the same date from the said patentee.

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2. That if the elder deed be not recorded within the time specified by the Registry Act of Ohio, it is wholly void as to subsequent *bona fide* purchasers without notice of the existence of such deed.

3. That if the deed from Jesse Spencer to William Steele was altered in a material part after it was sealed, attested, and acknowledged, such alterations absolutely avoid the deed, and it can convey no title to the lessor of the plaintiff. The counsel of the defendant objected to those parts of the instructions contained in the first and second specifications. They submitted to this Court the following points:

1. The court below erred in charging the jury that the Registry Act of Ohio applies as well to the title of the defendants

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under the decree set forth in the bill of exceptions as if they held under a *bona fide* deed of the same date.

2. The court below erred in charging the jury that if the deed from Jesse Spencer to William Steele was altered in a material part after it was sealed, attested, and acknowledged, such alteration absolutely avoids the deed, and it can convey no title to the lessor of the plaintiff, because

1. Such an alteration, if made without the consent of the grantee, would not avoid the deed and divest the estate vested by the execution of the deed in the grantee.

2. An alteration of the deed made with the consent of the grantee could not divest the estate conveyed by the deed and revest the same in the grantor.

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MR. JUSTICE TRIMBLE delivered the opinion of the Court:

This writ of error is prosecuted to reverse a judgment of the Circuit Court for the District of Ohio rendered in favor of the defendants in an action of ejectment instituted by the plaintiff in error against the defendants in the court below to recover a tract of land in Perry County,

On the trial of the general issue which was joined between the parties, the plaintiff gave in evidence a patent from the President of the United States to Jesse Spencer dated 15 November, 1811, for the land in controversy, a deed of conveyance for the land from Jesse Spencer to William Steele purporting to bear date 20 January, 1818, and also a deed from William Steele to Robert Steele dated 7 July, 1821, prior to the institution of the suit.

It appeared from a certificate on the deed from Jesse Spencer to William Steele that it had been acknowledged on the day of its date before a justice of the peace, and it was attested by two subscribing witnesses.

The deed from Jesse Spencer to Steele had never been recorded either in the county where the land lies or elsewhere. Wherever the name of William Steele appeared in the body of the deed or in the label thereon, it appeared to have been written over an erasure, and with ink of a different color, as did the words "Ross" and "Ohio" in describing the place of residence of Steele. This was unaccounted for by any testimony in the cause.

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The defendants gave in evidence a record and decree of the Supreme Court of the State of Ohio in a cause in which the heirs of Thomas Spencer and the defendants in this cause were complainants and Jesse Spencer, the patentee of the land, was defendant.

This decree was rendered by the Supreme Court on 3 January, 1820, while sitting in Ross County, having heard the cause in Perry County, where the suit was instituted and where the land lies, and having held it under a advisement, as is the practice in Ohio, the decree was pronounced in the cause at Ross County, and was certified from thence to Perry County, to be there entered on record in the suit in the same manner as if rendered while the Supreme Court was sitting in Perry County, and it was so entered on record accordingly.

The decree was also recorded in the office of the recorder of deeds on 24 July, 1822, in Perry County.

The decree, *inter alia*, ordered Jesse Spencer, the patentee of the land,

"within six months from the date of the decree, to make out a deed with covenants of general warranty conveying to the complainants in that cause and defendants in this an undivided nine parts out of ten, or nine-tenths, of the tract of land in controversy, and to deposit said deed, duly executed, acknowledged, and attested, with the Clerk of the Supreme Court of the County of Perry within the said term of six months, and by the clerk to be delivered to the complainants upon their paying and depositing with the clerk, within the said term of six months,

certain sums of money, with interest, as specified in the decree, and that upon the failure of the said Jesse Spencer to make out and deposit a deed as above directed within the said term of six months, that then and in that case the complainants shall hold, possess, and enjoy nine-tenths of the said tract of land in as full and ample a manner as if the same were conveyed to them by the said Jesse Spencer."

The defendants paid and deposited with the clerk the money required by the decree within the six months, and took his receipt for the same.

It appears by a bill of exceptions tendered by the plaintiff's counsel that after the evidence was closed, the counsel of the defendants moved the court to instruct the jury, 1st, that the decree of the Supreme Court of the State of Ohio given in evidence by the defendants vested in them such a legal title to the land in question as would have been vested by a conveyance from Jesse Spencer of equal date, and that the Registry Act of Ohio applies as well to the title of the defendants under the said decree as it would do if they held under a *bona fide* deed of the same date from the patentee.

2. That if the elder deed be not recorded within the time specified by the Registry Act of Ohio, it is wholly void as to subsequent *bona fide* purchasers without notice of the existence of such deed.

3d. That if the deed from Jesse Spencer to William Steele, was altered in a material point after it was sealed, attested, and acknowledged, such alteration absolutely avoids the deed; and it can convey no title to the lessor of the plaintiff: which instructions the court gave, and the plaintiff excepted.

The counsel for the plaintiff, relies on the following points for a reversal of the judgment.

1. The court below erred in charging the jury, that the Registry Act of Ohio applies as well to the title of the defendants, under the decree set forth in the bill of exceptions, as if they held under a *bona fide* deed of the same date.

2. That the court below erred in charging the jury that if the deed from Jesse Spencer to William Steele was altered in a material part after it was sealed, attested, and acknowledged; such alteration absolutely avoids the deed, and it can pass no title to the lessor of the plaintiff.

The propriety of the first instruction given by the court to the jury admits not of a doubt. The statute of Ohio entitled "An act directing the mode of proceeding in chancery" declares

"That where a decree shall be made for a conveyance, release, or acquittance, &c., and the party against whom the decree shall pass shall not comply therewith by the time appointed, then such decree shall be considered and taken in all courts of law and equity to have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such decree."

Land Laws for Ohio 296.

The Registry Act of Ohio directs that all deeds made within the state shall be recorded "within six months from the actual time of signing or executing of such deeds," and declares that if any such deed shall not be recorded in the county where the land lies within the time allowed by the act, "the same shall be deemed fraudulent against any subsequent *bona fide* purchaser, for valuable consideration, without notice of such deed."

In the construction of registry acts, the term "purchaser" is usually taken in its technical legal sense. It means a complete purchaser, or in other words a purchaser clothed with the legal title. The meaning of the statute is that an unrecorded deed shall, after the expiration of the time limited by the statute, be deemed fraudulent and void as against all subsequent purchasers who may have obtained the legal title for valuable consideration without notice. The case of the defendants

is then within the terms of the Registry Act. They obtained their decree and paid the purchase money directed by the decree without notice, and the decree had obtained, by operation of the statute, all the attributes of a perfect legal title.

The argument for the plaintiff on this branch of the case was founded on a supposition that to bring the defendants' case within the terms of the Registry Act, it must be shown that their title has been recorded as a deed, and their title being not a deed, but a decree, it is insisted they are not within the terms of the statute. This is a mistake. The plaintiff's deed not being recorded, the statute avoids it in terms as against all subsequent purchasers for valuable consideration without notice, whether their titles be recorded or not. If the defendants had held under a conveyance executed by Jesse Spencer in obedience to the decree, their title deed, although not recorded, would, by the terms of the statute, prevail against the plaintiff's prior unrecorded deed. A deed not being recorded avoids it as against subsequent, but not as against prior, purchasers. By the laws of the State of Ohio, the decree obtained by the defendants clothes them with the legal title in as ample a manner as a deed. They are purchasers for valuable consideration without notice, and are therefore not only within the words but also within the spirit and intention of the statute.

This reasoning has been indulged upon a supposition that the title of the defendants has not been sufficiently recorded, which is not admitted. The decree, which is their title, is of record in the chancery suit in the proper county where the land lies, and it was recorded in the office of the recorder of deeds. Whether this last mode of recording the decree is usually practiced in Ohio or not we are not informed. But we suppose the defendants had done all they could do to commit their title to record in the proper county.

The third instruction given by the court to the jury, which forms the second ground relied on by the plaintiff's counsel for a reversal of the judgment, cannot be sustained. Although the proposition may be true that a material erasure or alteration in a deed, after its execution may avoid the deed, yet the instruction ought not to have been given in the terms used by the court. Whether erasures and alterations had been made in the deed or not was a question of fact proper to

be referred to the jury, but whether the erasures and alterations were material or not was a question of law which ought to have been decided by the court. The instruction given refers the question of materiality to the jury as well as the fact of alteration and erasure.

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If the name of William Steele was inserted in the deed as grantee after its full execution and attestation instead of the name of some other grantee which was stricken out, no doubt the alteration was very material and nothing could in that case pass by the deed to William Steele. The two other alterations supposed in the words "Ross" and "Ohio" in the description of the grantee's residence may have been either material or immaterial, as upon a sound construction of the whole instrument they would or would not alter or change its operation and effect.

The court ought to have decided the question of materiality in each instance, leaving the fact of alteration to the jury for their decision. The instruction given was calculated to mislead the jury by impressing on it the belief that it was warranted in finding either of the supposed alterations to be material, however it may have been in point of law. The construction of deeds belongs to the province of the court; the materiality of an alteration in a deed is a question of construction, and in this case the court committed an error by giving an instruction to the jury which imposed on it a difficult question of construction upon which the jury ought to have been enlightened by the decision of the court.

The judgment of the circuit court must be reversed and the cause remanded with instructions to award a venire facias de novo.