Waring Vs. Jackson

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 570

Appellant : Waring

Respondent : Jackson

Judgement :

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Waring v. Jackson

26 U.S. (1 Pet.) 570

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The testator devised to his son Joseph Eden certain portions of his estate in New York, among which were the premises sought to be recovered in this suit, to him, his heirs, executors and administrators forever. In like manner, he devised to his

son Medcef, his heirs and assigns, certain other portions of his property, and adds the following clause:

"It is my will and I do order and appoint that if either of my said sons should depart this life without lawful issue, his share or part shall go to the survivor. And in case of both their deaths without lawful issue, I give all the property aforesaid to my brother John Eden, of Lofters, in Cleveland in Yorkshire, and my sister Hannah Johnson of Whitby in Yorkshire, and their heirs."

Medcef Eden died without issue, having devised his estate to his widow and other devisees named in his will. According to the established law of New York, nothing passed under the ulterior devise over to, John Eden and Hannah Johnson; Medcef Eden, on the death of his brother Joseph Eden, became seized of an estate in fee simple absolute.

Adverse possession taken and held under a sheriff's sale by virtue of judgments and executions against Joseph Eden will not, according to the decisions of the courts of New York, prevent the operation of a devise by another in whom the title to the estate was vested by the death of the defendant in the executions.

It has been the uniform course of this Court with respect to titles to real property to apply the same rule that is applied by the state tribunals in like cases.

MR. JUSTICE THOMPSON delivered the opinion of the Court.

The question in the court below turned upon the construction of the will of Medcef Eden the elder, bearing date 29 August, 1798, by which the testator devised to his son Joseph certain portions of his estate, among which were the premises in question in this cause. "To him, his heirs, executors, and administrators forever." In like manner he devised to his son Medcef, his heirs and assigns, certain other portions of his property, and adds the following clause.

"Item. It is my will and I do order and appoint that if either of my said sons should depart this life without lawful issue, his share or part shall go to the survivor. And in case of both their deaths without lawful issue, then I give all the property aforesaid

to my brother John Eden of Lofters, in Cleveland in Yorkshire and my sister Hannah Johnson of Whitby, in Yorkshire, and their heirs. "

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The case of *Jackson v. Chew,* 12 Wheat. 153, decided at the last term, brought under the consideration of this Court the construction of this same clause in the will, and the records in the present cases have been submitted to the court without argument to see whether the decision in that case will govern the cases now before us. The facts disclosed in the case of *Jackson v. Chew* did not require of the Court to decide any other question than whether Joseph Eden took under the will an estate tail, which by operation of the statute of New York abolishing entails would be converted into a fee simple absolute. The Court decided that he did not take an estate tail, but an estate in fee, defeasible in the event of his dying without issue in the lifetime of his brother (which event happened), and thereupon his interest in the land became extinct and the limitation over to his brother Medcef was good as an executory devise.

In the cases now before the Court, it appears that Medcef Eden has died without issue, having by his last will and testament devised his estate to his widow and certain other devisees therein named, which has given rise to two other questions -- *viz.,* whether John Eden and the heirs of Hannah Johnson (she being dead) took any estate in the premises under this clause in the will on the death of Medcef Eden without issue.

And whether the possession taken and held under the sheriff's sale, by virtue of the judgments and executions against Joseph Eden, was such an adverse holding, as to prevent the operation of the will of Medcef Eden the younger.

In deciding the case of *Jackson v. Chew,* we did not enter into an examination of the construction of this clause in the will, considered as an open question, but adopted the construction, which appears to be well settled in the two highest courts of law in the State of New York not only upon this very clause but in numerous other analogous cases, and has thereby become a fixed rule of landed

property in that state.

And this was in conformity with what has been the uniform course of this Court, with respect to the titles to real property, to apply the same rule that we find applied by the state tribunals in like cases.

The additional questions presented in the cases now before us have likewise undergone a very full examination in that state and been decided both by the supreme court and the Court for the Correction of Errors. In the case of *Wilkes v. Lion,* 2 Cowan 333, the decision turned upon these very points, and the Court of Errors, affirming the decision of the supreme court, held with only one dissenting voice that nothing passed under the ulterior devise over to John Eden and Hannah Johnson, but that Medcef Eden had become seized of an estate in fee simple

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absolute. No opinion appears to have been directly expressed by the court with respect to the effects of the adverse possession upon the operation of the devise in the will of Medcef Eden the younger.

But this was a question necessarily involved in the result. And the decisions of the courts in that state are very satisfactory to show that such an adverse possession will not there prevent the operation of a devise.

The doctrine in the case of *Doe v. Thompson,* 5 Cowan 374, warrants this conclusion. And it is understood that this precise question, arising on the construction of the statute of wills in that state, has recently been decided in the supreme court in a case the report of which is not to be found here.

We are accordingly of opinion that the judgments of the circuit court in these cases must be affirmed.