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Appellant : Thompson

Respondent : Tolmie

Judgement :

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Thompson v. Tolmie

27 U.S. (2 Pet.) 157

APPEAL FROM THE CIRCUIT COURT FOR THE COUNTY

OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

It was assumed on the argument by the counsel on both sides that the Circuit Court of the County of Washington in the District of Columbia is vested with the, same power in relation to intestate's estates in that county that is possessed by a

county court in Maryland over lands lying within the county.

When the proceedings of a court of competent jurisdiction are brought before another court collaterally, they are by no means subject to all the exceptions which might be taken to them on a direct appeal. The general and well settled rule of law in such cases is that when the proceedings are collaterally drawn in question and it appears on the face of them that the subject matter was within the jurisdiction of the court, they are voidable only. The errors and irregularities of any suit are to be corrected by some direct proceeding either before the same court to set them aside or in an appellate court if there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right and afford no justification, and may be rejected when collaterally drawn in question.

The act of the Legislature of Maryland relative to a devise of the real estate of intestates in certain cases, in directing the commissioners when to give deeds to purchasers, has this general provision that the commission and proceedings thereon shall be recited in the preamble of the deed. It certainly could not have been intended that the commission, and all the proceedings, should be set out in *haec verba.* If the substance of the proceedings is recited, it is sufficient.

The law appears to be settled in the states that courts will go far to sustain *bona fide* titles acquired under sales made by statutes regulating sales made by order of orphans' courts. Where there has been a fair sale, the purchaser will not be bound to look beyond the decree if the facts necessary to give the court jurisdiction appear on the face of the proceedings.

The decision of this Court in *Elliott v. Piersoll,* 1 Pet. 310, was not intended to decide anything at variance with the principles established in this case.

When the jurisdiction of the court on the subject under whose authority lands have been sold appears on the face of the proceedings, its errors or mistakes, if any were committed, cannot be corrected or examined when brought up collaterally.

This case came up by appeal from the Circuit Court for the County of Washington in the District of Columbia, where a verdict was take for the appellees, subject to

the opinion of the Court upon the following agreed case.

"The plaintiff, to prove title to the premises (Lot No. 14 in Square No. 290, in the City of Washington) showed a title in Robert Tolmie, regularly deduced by sundry admitted mesne conveyances from David Burnes, one of the

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original proprietors of city property, duly executed and acknowledged and recorded to the said premises, accompanied by possession thereof and payment of taxes thereon by the several grantees according to the titles down to the year 1805, when the said Robert Tolmie, the last grantee in whom the said title had vested, departed this life intestate, leaving Margaret, Alice and James Tolmie, his only three children and heirs at law, infants at the time of his death, under the age of 21 years; that the said infants continued in possession of said premises until sometime in the year 1814; that Margaret was the eldest of said infants, and that in the year 1812 she intermarried with one Francis Beveridge, and has since died, leaving three children, to-wit, Margaret Beveridge, Hannah Beveridge, and James Beveridge, who are named among the lessors of the plaintiff; that James Tolmie aforesaid also died after the death of said Margaret, his sister, intestate, under age and unmarried, prior to the commencement of this suit, leaving Alice aforesaid his sister and the said three children of Margaret his heirs at law. And the plaintiff also proved that the said Margaret Tolmie was 17 years of age at the time of her said marriage, which was in 1812, and was an infant under the age of 21 years at the time of the sale made by the commissioners hereinafter named; that her husband, the said Francis Beveridge, some time in the year 1814 or 1815, went away, leaving his family residents of the City of Washington; that after some time he returned and lived with his family, and again went away and has never since returned, and is generally believed to be dead by his family and friends; about three or four years age he was heard of and was then sick, and has never been heard of since."

"The defendant has had possession of the premises since 1814, when she became the purchaser thereof (by her then name Julia Kean) at a public sale

made by certain commissioners appointed under the Act of the Assembly of Maryland of 1786, c. 45, to direct descents. She entered in pursuance of that sale, claiming the lot under it, and produced in evidence, the proceedings of the commissioners, which are made part of the case agreed. "

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That record contains a petition in the usual form for partition of the real estate of Robert Tolmie, which purports to be the joint petition of Francis Beveridge and Margaret his wife and of Alice Tolmie and James Tolmie, infants, by Margaret Tolmie, their guardian, mother, and next friend. It states that Robert Tolmie died seized, leaving Margaret his widow, and also the following children, his heirs at law, *viz.,* "Margaret, since intermarried with Francis Beveridge, said Alice Tolmie and James Tolmie, which said Alice and James are infants under the age of 21 years." This petition was filed on 15 June, 1814, and a commission issued on the same day. On 17 June, 1814, the commissioners reported that the estate consisted of a single lot, and could not be divided without loss, &c.;, and valued the same at $1,400. Whereupon, at June term, 1814, the court ordered the property to be sole at public auction on ten days' notice, one-fourth part of the purchase money in cash, and the residue at three, six and nine months, taking bond with good security to the heirs according to their several interests. On 5 July, 1814, F. Beveridge and wife, and Alice and James Tolmie by their mother, gave notice in writing that they did not elect to take the property at the valuation. On 3 July, 1818, the commissioners reported that they had sold the property on 30 July, 1814, to the appellant for $1,105, on a credit of three, six, and nine months, one-fourth being paid in cash, and that she gave due security for the payment of the purchase money, all which has been duly paid; they therefore requested that the said sale might be ratified, and that they might be directed to distribute the proceeds, and make a conveyance to the purchaser. On the same 3 July, the court

"ordered that the report of the commissioners returned and filed in this cause be, and the same is hereby ratified and confirmed, so soon as proper receipts of the parties are produced before one of the judges of this Court, and that then the

commissioners or a majority of them make a sufficient deed in fee to the purchaser."

On 13 June, 1816, the majority of the commissioners made a deed to the appellant which recites that by a decree of the circuit

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court, sitting as a court of chancery, David Appler, &c.;, were appointed commissioners, and they or a majority of them were authorized and empowered to sell said lot, the real estate of Robert Tolmie deceased, and that in pursuance of said decree, the said Appler, &c.;, did, on 30 July, 1814, sell the same to the appellant for $1,070; that the said purchase money had been paid, and that the said Appler, &c.;, were authorized and empowered by said decree to execute a conveyance of the same, and accordingly the said Appler, &c.;, conveyed said lot to the appellant and her heirs.

The statutes are the Acts of Assembly of Maryland of 1786, c. 45, s. 8; 1797, c. 114, s. 6; and 1799, c. 49, s. 3, 4.

This ejectment was brought by Alice Tolmie, and by the three infant children of her sister, Margaret Beveridge, who, since the death of the said Margaret and of the said James Tolmie, have claimed to be entitled to the lot, as heirs of the said Robert Tolmie. The defendant entered under and relied on the commissioners' sale above, which the lessors of the plaintiff contended was void 1. because none of the heirs of Robert Tolmie had arrived at age at the time of the sale; the act of 1786 expressly prohibiting a sale until the eldest was of age; 2. because the sale was never ratified by the court; 3. because bonds for the purchase money were not taken payable to each representative, according to his proportional part of the net amount of sales; and 4. because the deed does not recite the commission and all the necessary proceedings thereon to show a good title.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This was an action of ejectment brought in the Circuit Court of the District of Columbia in the County of Washington to recover possession of lot No. 14 in square No. 290, in the City of Washington. Upon the trial, the lessors of the plaintiff produced, and proved by sundry mesne conveyances, a title to the premises in question, from David Burnes, one of the original proprietors of city property, to Robert Tolmie, who in the year 1805 died intestate. And it was also proved that the lessors of the plaintiff are the heirs at law of Robert Tolmie.

The defendant claimed title to the premises in question, under a purchase made at a commissioners' sale, by virtue of certain proceedings, had in the circuit court, pursuant to the provisions of the laws of Maryland relative to a division of the real estate of intestates in certain cases. Objections were made to the validity of these proceedings, and a verdict taken for the plaintiff, subject to the opinion of the court upon a case agreed. The court below decided that the commissioners' sale was void, and rendered judgment for the plaintiff for two-thirds of the premises in question, and the case comes now before this Court upon a writ of error.

The case, in the circuit court, turned entirely upon questions arising upon the proceedings under which the sale was made. It was assumed on the argument by the counsel on both sides that the circuit court in which these proceedings were had was vested with the same powers in this respect in relation to intestates' estates in the County of Washington, that is possessed by a county court in Maryland on this subject over lands lying within the county.

The exceptions taken to the proceedings were

1. Because none of the heirs of Robert Tolmie were of age at the time of the sale.

2. Because the sale was never ratified by the court.

3. Because bonds for the purchase money were not taken, payable to each representative, according to his proportional part of the net amount of the sale.

4. Because the deed does not recite the commission and all the necessary proceedings thereon to shew a good title.

The counsel for the defendant in error have, in the argument, considered these proceedings open to the same examination and objections, as they would be in an appellate court on a direct proceeding to bring them under review. This, however, is not the light in which we view the questions now before us. These proceedings were brought before the court below collaterally, and are by no means subject to all the exceptions which might be taken on a direct appeal. They may well be considered judicial proceedings; they were commenced in a court of justice, carried on under the supervising power of the court, and to receive its final ratification. The general and well settled rule of law in such cases is that when the proceedings are collaterally drawn in question, and it appears upon the face of them that the subject matter was within the jurisdiction of the court, they are voidable only. The errors and irregularities, if any exist, are to be corrected by some direct proceeding, either before the same court, to set them aside, or in an appellate court. If there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right and afford no justification and may be rejected when collaterally drawn in question.

The first inquiry, therefore, is whether it sufficiently appears upon the face of these proceedings that the court had jurisdiction of the subject matter. The law of Maryland under which they took place, Act of 1786, ch. 45, head 8, declares that in case the parties entitled to the intestate's estate cannot agree upon the division, or in case any person entitled to any part be a minor; application may be made to the court of the county where the estate lies, and

the court shall appoint and issue a commission to five discreet men, who are required to adjudge and determine whether the estate will admit of being divided without injury and loss to all the parties entitled, and to ascertain the value of the estate. And if the estate can be divided without loss or injury to the parties, the commissioners are required to make partition of the same. And if they shall

determine that the estate cannot be divided without loss, they shall make return to the county court of their judgment, and the reasons upon which the same is formed, and also the real value of the estate. And if the judgment of the commissioners shall be confirmed by the county court, then the eldest son, child, or persons entitled, if of age, shall have the election to take the whole of the estate and pay to the others their just proportion of the value in money, and on the refusal of the eldest child, the same election is given in succession to the other children, or persons entitled, who are of age, and if all refuse, the estate is to be sold under the direction of the commissioners, and the purchase money divided among the several persons entitled, according to their respective titles to the estate. But if all the parties entitled shall be minors at the death of the intestate, the estate shall not be sold until the eldest arrives to age, and the profits of the estate shall be equally divided in the meantime.

The principal objection raised to the title of the defendant below, and indeed the only one that presents any difficulty is that upon the trial of this cause it was proved, that none of the heirs of Robert Tolmie had arrived at age when the sale was made, and how far this will affect the sale will depend upon the question whether the proceedings on the partition, when brought up in this collateral way, were open to an inquiry into that fact. Did the jurisdiction of the court over the subject matter of the proceedings depend upon that fact, or if true, was it matter of error, and to be corrected only on appeal?

It is to be borne in mind that no such fact appears on the face of these proceedings, but on the contrary, from what is stated it may reasonably be inferred that it appeared

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before the court that one of the heirs was of age. The petition presented to the court for the appointment of commissioners, and which was the commencement of the proceedings, in setting out the parties interested states that Robert Tolmie died intestate, leaving the following children and heirs at law, *viz.,* Margaret, since intermarried with Francis Beveridge, and Alice Tolmie, and James Tolmie, which

said Alice and James are infants, under the age of twenty-one years. Why specially allege that these two were minors if Margaret was also a minor? Every reasonable intendment is to be made in favor of the proceedings, and their allegation in the petition will fairly admit of the conclusion, that the petitioners intended to assert that Alice and James only were under age. The age of the heirs was, at all events, a matter of fact upon which the court was to judge, and the law nowhere requires the court to enter on record the evidence upon which they decided that fact. And how can we now say but that the court had satisfactory evidence before it that one of the heirs was of age. If it was so stated in terms, on the face of the proceedings, and even if the jurisdiction of the court depended upon that fact, it is by no means clear that it would be permitted to contradict it on a direct proceeding to reverse any order or decree made by the court. But to permit that fact to be drawn in question in this collateral way is certainly not warranted by any principle of law.

But independent of these considerations, the jurisdiction of the court over the subject matter of the proceedings sufficiently appears. It did not depend on the fact that one of the heirs was of age. But according to the express terms of the act, it attaches when the ancestor dies intestate and any of the persons entitled to his estate is a minor. The petition states that Robert Tolmie, late of the County of Washington, died intestate, seized in fee of lot No. 14 in square No. 290, leaving Alice Tolmie and James Tolmie, two of his children, and heirs at law, under the age of one and twenty years. And whether Margaret Beveridge, his other child and heir, was of age or not was immaterial, as it respected the jurisdiction of the court. That fact could only become

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material in case the land was not susceptible of a division without injury or loss to the parties. If it could be divided without injury, the commissioners were required to divide it, although all the heirs were minors. The materiality of the inquiry, whether any one of the heirs was of age, was altogether contingent and might never arise. And at all events must depend upon the report of the commissioners whether or not the property might be divided without injury. This must necessarily, therefore,

be an inquiry arising in the course of the proceedings and after the jurisdiction of the court attached.

With respect to the other exceptions, it would be difficult to sustain them, if the proceedings were before this Court on a direct appeal. No more could be required than to set forth enough to show the jurisdiction of the court, and a substantial compliance with the requirements of the law. In June term, 1814, the court confirmed the report of the commissioners, that the property would not admit of a division, and ordered a sale thereof, prescribing the terms, *viz.,* one-fourth cash, and the other three-fourths on a credit of three, six, and nine months, taking bonds, with good security to the heirs according to their several rights, bearing interest from the day of sale. On 15 June, 1815, after the expiration of the time of credit, ordered by the court to be given, the commissioners report a sale of the lot to the defendant below for $1,105, and that the purchase money and interest had all been paid, and they request that the sale may be ratified, and they directed to distribute the money and make a conveyance to the purchaser. It is objected that it does not appear that bonds were given to the heirs according to the order of the court and the directions of the act of 1799. But this objection cannot certainly be considered of any importance after the money had been paid by the purchaser and the report ratified and confirmed by the court and the commissioners directed to make a deed to the purchaser. But it is said this was a conditional ratification, and not to take effect until receipts from the parties entitled to the money were produced to one of the judges of the court. Suppose this is to be considered a conditional

ratification, and the purchaser not entitled to a deed until the condition was performed. Where is the evidence that affords any inference that it was not performed. The receipts were to be produced to one of the judges of the court, and was not a matter which the court were afterwards to sanction or pass any order upon. It was not a judicial act, and would not, of course, be made matter of record. And the deed being afterwards given, affords a pretty fair inference that the order of the court had been complied with.

The last objection is that the deed does not recite the commission and all the necessary proceedings thereon to show a good title.

The act of 1799, in directing the commissioners when to give deeds to purchasers, has general provision, that the commission and proceedings thereon shall be recited in the preamble of the deed. It certainly could not have been intended that the commission and all the proceedings should be set out *in haec verba,* and the substance of them is recited, which is all that could be necessary. So that this exception is not well taken as to the matter of fact

From this brief notice of the several objections which have been taken to these proceedings it will be seen that in the opinion of this Court, the three last are unfounded, and could not be sustained even on a direct appeal, and the first, although entitled to more consideration, cannot, at all events, be raised, when the proceedings are collaterally drawn in question, as they were on the trial of this cause.

The Maryland cases cited in the argument and reported by Harris & Johnson, Vol. V. 42, 130, and Vol. VI 156, 258, do not throw much light upon the particular questions drawn under examination in this case. Some of them, however, are very strong cases to show how far the courts of that state will go, to sustain *bona fide* titles acquired under sales made by virtue of these statutes. The rules which apply to and govern titles acquired under sales made by order of orphans' courts and courts of probate in the states where such regulations are adopted are applicable to the case now before the Court. The case of *McPherson v. Cunliff,* 11 Serg. & R. 429, was one of this description, and brought

under the consideration of the Supreme Court of Pennsylvania, the effect of a decree of the orphans' court, in matters within its jurisdiction, although founded in a mistake of facts. And in the discussion of that question which is gone into very much at large, rules are laid down which have a strong bearing upon the present case. When there is a fair sale, said the court, and the decree executed by a

conveyance from the administrator, the purchaser will not be bound to look beyond the decree if the facts necessary to give the court jurisdiction appear on the face of the proceedings. After a lapse of years, presumptions must be made in favor of what does not appear. If the purchaser was responsible for the mistakes of the court, in point of fact, after they had adjudicated upon the facts, and acted upon them, these sales would be snares for honest men. The purchaser is not bound to look further back than the order of the court. He is not to see whether the court was mistaken in the facts of debts and children. That the decree of an orphans' court, in a case within its jurisdiction, is reversible only on appeal, and not collaterally in another suit.

In *Perkins v. Fairfield,* 11 Mass. 227, in the Supreme Judicial Court of Massachusetts, it was held that a title under a sale by administration, by virtue of a license from the court of common pleas, was good against the heirs of the intestate, although the license was granted upon a certificate of the judge of probates, not authorized by the circumstances of the case. The court said the license was granted by a court having jurisdiction of the subject. If that jurisdiction was improvidently exercised, or in a manner not warranted by the evidence from the probate court, yet it is not to be corrected at the expense of the purchaser, who had a right to rely upon the order of the court, as an authority emanating from a competent jurisdiction. The case of *Elliot v. Piersoll,* 1 Pet. 340, decided in this Court at the last term, has been referred to by the counsel for the defendant in error as containing a doctrine that will let in every possible objection that can be made to these proceedings.

The observation relied upon is

"but we cannot yield an assent

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to the proposition that the jurisdiction of the county court could not be questioned when its proceedings were brought collaterally before the circuit court."

This remark was only in answer to the argument which had been urged at the bar that the circuit court could not question the jurisdiction of the county court. That it was so intended is obvious from what immediately follows. "We know nothing in the organization of the circuit courts of the union, which can contradistinguish them from other courts in this respect." And the limitation upon the extent of the inquiry, when the proceedings are brought collaterally before the court, is explicitly laid down.

"We agree that if the county court had jurisdiction, its decisions would be conclusive. When a court has jurisdiction, it has a right to decide every question that occurs in the cause, and whether its decisions be correct or not, its judgment, until reversed, is regarded as binding in every other court. But if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought in opposition to them even prior to a reversal."

This is the clear and well settled doctrine of the law, and applies to the case now before the Court. The jurisdiction of the court (under whose order the sale was made) over the subject matter appears upon the face of the proceedings, and its errors or mistakes, if any were committed, cannot be corrected or examined when brought up collaterally, as they were in the circuit court.

The judgment of the court below must, accordingly, be

Reversed and the record sent back with directions to the court to enter judgment for the defendant.