Lessee of Scott Vs. Ratliffe

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Court : US Supreme Court

Decided On : 1831

Appeal No. : 30 U.S. 81

Appellant : Lessee of Scott

Respondent : Ratliffe

Judgement :

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U.S. Supreme Court Lessee of Scott v. Ratliffe, 30 U.S. 5 Pet. 81 81 (1831)

Lessee of Scott v. Ratliffe

30 U.S. (5 Pet.) 81

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

A witness swore that she resided in Petersburg, Virginia, and that Bishop Madison resided in Williamsburg, Virginia; that while she resided in Petersburg, she had seen Bishop Madison, and was acquainted with his daughter only by report; that

she never had seen her or Mr. Scott, but recollects to have heard of their marriage in Petersburg, as she thought, before the death of her father; that she could not state from whom she beard the report, but that she had three cousins who went to college at the time that she lived in Petersburg, and had no doubt that she had heard them speak of the marriage; that she heard of the marriage of Miss Madison before her own marriage, as she thought, which was in 1810; that she was, as she believed, in 1811, in Williamsburg, and was

told that Mr. Madison was dead. *Held* that so much of this evidence as goes to prove the death of Mr. Madison was admissible on the trial and ought not to have been excluded by the court.

A patent was issued by the Governor of Kentucky for a tract of land containing eighteen hundred and fifty acres by survey, &c.;, describing the boundaries. The patent describes the exterior lines of the whole tract, after which the following words are used,

"including within the said bounds five hundred and twenty-two acres entered for John Preston, four hundred and twenty-five acres for William Garrard; both claims have been excluded in the calculation of the plot with its appurtenances,"

&c.; Patents of this description are not infrequent in Kentucky. They have always been held valid so far as respected the land not excluded, but to pass no legal title to the land excluded from the grant. The words manifest an intent to except the lands of Preston and Garrard from the patent. The government did not mean to convey to the patentee lands belonging to others by a grant which recognizes the title of these others. If this Court entertained any doubt on this subject, those doubts would be removed by the construction which it is understood has been put on this patent by the court of the State of Kentucky.

The defendants claimed under a patent issued by the Governor of Kentucky on 3 January, 1814, to John Grayham, and two deeds from him, one to Silas Ratliffe, one of the defendants, dated in August, 1814, for one hundred acres, the other to Thomas Owings, another defendant, for four hundred acres, dated 25 March,

1816, and gave evidence conducing to prove that they and those under whom they claimed had a continued possession by actual settlement more than seven years next before the bringing of this suit. The court instructed the jury that if it believed from the evidence that the defendants' possession had been for more than seven years before the bringing of the suit, that the act, commonly called the seven years limitation act of Kentucky, passed in 1809, was a bar to the plaintiffs' recovery; unless they found that the daughter of the patentee, holding under a patent from the State of Virginia, was a *feme covert* when her father, the patentee, died, or was so at the time the defendants acquired their titles by contract or deed from John Grayham, the

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patentee under the Governor of Kentucky. The words "at the time the defendants acquired their title by contract or deed from the patentee, John Grayham" can apply to those defendants only who did so acquire their title. The Court cannot say this instruction was erroneous.

On 2 April, 1825, the plaintiffs commenced an action of ejectment against the defendants, asserting a title and right of entry in and to eighteen hundred and fifty acres of land patented to their ancestor, James Madison, by the Commonwealth of Kentucky. The grant was dated August 8, 1798, and was in consideration of sundry land office treasury warrants issued by the State of Virginia, and a survey bearing date 26 December, 1796, founded on an entry made prior to 1 June, 1792. At May term, 1828, a verdict and judgment were rendered for the defendants.

On the trial, the plaintiff gave in evidence the patent to James Madison and evidence conducing to prove the boundaries thereof, and that the defendants resided in said bounds at the commencement of the suit.

The patent recites that in virtue of three land office treasury warrants &c.;, "there is granted unto the Reverend James Madison a certain tract or parcel of land containing eighteen hundred and fifty acres by survey, &c.;," and describes the boundaries thereof,

"including within said lands five hundred and twenty-two acres of land entered for John Preston, four hundred and twenty-five acres for William Garrard; both claims have been excluded in the calculation of the plot with its appurtenances,"

&c.;

They also proved by James Harvee that he had known Bishop James Madison and his daughter Susan, the wife of one of the plaintiffs in error. He stated that he had understood Susan had married Mr. Scott, but he had never seen him; that Bishop Madison was dead, and he supposed died in 1812. N. B. Beal, another witness, testified that he had known Bishop Madison, had been to school to him, and he was well acquainted with his daughter Susan Madison, and with James C. Madison, his son, the lessors; they were the only children of Mr. Madison living at his death; that he could not say when Bishop Madison died, but he thought about twenty

years prior to 1828; that in 1818 he was at the house of Mr. Scott, in Virginia, saw Mrs. Scott, and they were then living as man and wife.

Mrs. Eppes swore that she resided in Petersburg, Virginia, and that Bishop Madison resided in Williamsburg, Virginia; that while she resided in Petersburg, she had seen Bishop Madison, and was acquainted with his daughter only by report; that she had never seen her or Mr. Scott, but recollects to have heard of her marriage with Mr. Scott before the death of her father; that she had heard of Miss Madison's marriage before her own marriage, which was in 1910; that she could not tell from whom she heard the report, but she had three cousins who went to college in Williamsburg at the time that she lived in Petersburg, and had no doubt that she had heard them speak of the marriage; that she was, as she believed, in 1811 in Williamsburg, and was told that Mr. Madison was dead.

The defendants gave in evidence the patent to John Grayham, assignee of John Preston, issued by the Governor of Kentucky on 13f January, 1814, for fourteen hundred and forty-five acres of land; a deed from John Grayham to Silas Ratliffe,

for one hundred acres by metes and bounds, dated 12 August, 1814; a deed from John Grayham to Thomas Owings, for four hundred acres, dated 2 March, 1816. On the trial, the counsel for the plaintiffs took three bills of exceptions to the opinion of the court, the particulars of which are stated more at large in the opinion of this Court.

The first exception was to the instruction of the court of the jury that if the plaintiffs did not show to their satisfaction that the defendants resided within the plaintiffs' grant and outside of the land claimed of Preston and Garrard, they ought to find for the defendants. This bill of exception also set forth an objection by the plaintiffs' counsel to the ruling of the court as to the mode by which the location and survey should have been made.

The second bill of exceptions stated that the plaintiffs moved the court to instruct the jury that the seven years possession of the defendants was no bar to the plaintiffs' recovery, which the court overruled, and it instructed the jury that

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if it believed from the evidence that the defendants had been more than seven years in possession next before the bringing the action, that the seven years possession law of Kentucky, of 1809, was a bar to the plaintiffs' recovery unless the jury should find that Susan Madison was a *feme covert* when her father died and when the defendants acquired title under the patent of John Grayham.

The third bill of exceptions stated that the court, on the motion of the counsel of the defendants, overruled the evidence of Mrs. Eppes.

The plaintiffs prosecuted this writ of error.

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

The plaintiffs claimed title as heirs of the Reverend James Madison, deceased, under a patent issued to him by the Governor of Kentucky on 8 August, 1798. A verdict and judgment having been rendered for the defendants, the plaintiffs have brought the cause into this Court by writ of error. The case depends on several bills of exceptions taken to certain opinions given by the court at the trial of the cause.

The plaintiffs gave in evidence the patent to their ancestor. It grants to the Reverend James Madison a certain tract or parcel of land containing eighteen hundred and fifty acres by survey, &c.;, and "bounded as follows." It then describes the exterior lines of the whole tract, after which the following words are used:

"including within said bounds five hundred and twenty-two acres of land entered for John Preston, four hundred and twenty-five acres for William Garrard; both claims have been excluded in the calculation of the plot with its appurtenances, &c.;"

They then gave evidence conducing to prove the death of the grantee before the institution of the suit; that the plaintiffs Susannah and James C. were his heirs at law, and that the plaintiff Susannah had intermarried with the plaintiff Robert G. Scott. They then introduced Mrs. Eppes as a witness, who swore that she resided in Petersburg, Virginia, and that Bishop Madison resided in Williamsburg, Virginia; that while she resided in Petersburg, she had seen Bishop Madison, and was acquainted with his daughter only by report; that she had never seen her or Mr. Scott, but recollects to have heard of her marriage in Petersburg, as she thought, before the death of her father; that she could not state from whom she heard the report, but she had three cousins who went to college at the time that she lived in Petersburg, and had no doubt that she heard them speak of the marriage; that she heard of the marriage of Miss Madison before her own marriage, as she thought, which was in 1810; that she was,

as she believed, in 1811 in Williamsburg, and was told that Mr. Madison was dead.

On the motion of the defendants, the court excluded this testimony as incompetent, and the counsel for the plaintiffs excepted to this opinion.

In considering this exception, some diversity of opinion has prevailed in this Court with respect to that part of it which related to the time of the intermarriage between the plaintiffs, Robert G. Scott and Susan his wife. Some of the judges think that the evidence given by Mrs. Eppes respecting the time, as well as that respecting the fact of intermarriage, comes within the general rule excluding hearsay testimony, which was laid down by this Court in the case of *Queen v. Hepburn,* 7 Cranch 290. That rule is

"that hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge."

Others think that the fact of the marriage being established by other testimony, the circumstance that this fact was communicated to the witness before another event took place, becomes itself a fact and is evidence that the marriage was anterior to that other event. It becomes unnecessary to decide on this principle, because we are all of opinion that so much of the testimony of Mrs. Eppes as goes to prove the death of Mr. Madison was admissible, and ought not to have been excluded.

On the motion of the defendants, the court also instructed the jury

"that if the plaintiffs did not show to their satisfaction that the defendants resided within the plaintiff's grant and outside of the land claimed of Preston and Garrard, they ought to find for the defendants."

An exception was taken to this opinion, and the plaintiffs contend that it is erroneous because the grant comprehends all the land within the exterior lines of the survey, and that the exception of the equitable claims of Preston and Garrard did not impair the legal effect of the grant, but subjected the grantee to the equitable demands of those claimants.

Patents of this description are not infrequent in Kentucky. They have been always held valid so far as respected the land not excluded, but to pass no legal title to the land excepted from the grant. The plaintiff does not controvert this general

principle, but contends that the peculiar language of this grant forms an exception to the general rule, and exempts this patent from its operation. The language is that the lands entered for John Preston and William Garrard are included within the same bounds, but "both claims have been excluded in the calculation of the plot, with its appurtenances, &c.;" We think these words manifest an intent to except the lands of Preston and Garrard from the patent. The government could not mean to convey to Madison lands belonging to others by a grant which recognizes the title of those others. If we entertained doubts on this subject, those doubts would be removed by the construction which we understand the courts of the state have put on this very patent.

The defendants claimed under a patent issued by the Governor of Kentucky to John Grayham on 3 January, 1814, and showed two deeds from John Grayham, one to Silas Ratliffe one of the defendants for one hundred acres of land, dated 12 August, 1814, the other to Thomas Owings, also a defendant, for four hundred acres of land, dated 25 March, 1816. They also gave evidence conducing to prove that they and those under whom they claimed had a continued possession by actual settlement more than seven years next before the bringing this suit. The plaintiffs then moved the court to instruct the jury that seven years possession, as aforesaid, was no bar to the plaintiffs' recovery, but the court overruled the motion and instructed the jury that if it believed from the evidence that the plaintiffs had been more than seven years in possession next before the bringing the action, that the act, commonly called the seven years limitation act, of Kentucky, passed in 1809, was a bar to the plaintiffs' recovery unless the jury should find that Susan Madison was a *feme covert* when her father, the patentee, died or was so at the time the defendants acquired their titles by contract or deed from the patentee, John Grayham.

The plaintiffs excepted to this instruction.

Their counsel admits the constitutionality of the act of limitations referred to in the opinion of the court, and that it is a bar to the action as to those defendants who show title under John Grayham, but insists that only two of the defendants

show such title, and that the plaintiffs are entitled to judgment against the others.

There is no question respecting the law as applicable to the fact, but some doubt exists respecting the fact. It is understood to be settled in Kentucky that their limitation act of 1809 protects those only who are connected with a patent from government by paper title, and the record shows conveyances from Grayham to Ratliffe and Owings only; but it cannot escape us that the object of the plaintiffs' motion and exception was to bring into review and question the constitutionality of the act of 1809. He therefore does not discriminate between those who have and those who have not title. His motion comprehends all the defendants. The instruction given by the judge is also in general terms, obviously not contemplating any difference of situation or right between the several defendants. We find expressions in the conclusion of the instruction leading to the opinion that in fact there was no distinction between the defendants. After declaring that the statute was a bar, the judge adds

"unless the jury should find that Susan Madison was a *feme covert* when her father, the patentee, died, or was so at the time the defendants acquired their titles by contract or deed from the patentee, John Grayham."

The words "at the time the defendants acquired their titles by contract or deed from the patentee, John Grayham," can apply to those defendants only who did so acquire their title. The language of the judge cannot be construed to indicate that the conveyance to Ratliffe and Owings could avail those who did not claim under them. The defendants might all claim under them. Some confusion undoubtedly exists in the statement of the fact, both in the motion and in the instruction, but we think both may be fairly understood as applying only to defendants claiming under

John Grayham. We cannot say that this instruction is erroneous.

The judgment is reversed for error in the entire exclusion of the testimony of Mrs. Eppes, and the cause is to be remanded with instructions to award a venire facias de novo.

This cause came on to be heard on the transcript of the

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record from the Circuit Court of the United States for the Seventh Circuit and District of Kentucky and was argued by counsel. On consideration whereof this Court is of opinion that there is error in the proceedings and judgment of the said circuit court in this that the testimony of Mrs. Eppes, a witness in the said cause, was totally excluded, whereas the same ought to have been admitted so far as it conduced to prove the death of James Madison, the ancestor of the plaintiffs. Therefore it is considered, ordered, and adjudged by this Court that the said judgment be, and the same is hereby reversed and annulled: and that the cause be and the same is hereby remanded to the said circuit court with directions to award a *venire facias de novo.*