

Greenleaf's Lessee Vs. Birth

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Decided On : 1831

Appeal No. : 30 U.S. 132

Appellant : Greenleaf's Lessee

Respondent : Birth

Judgement :

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U.S. Supreme Court Greenleaf's Lessee v. Birth, 30 U.S. 5 Pet. 132 132 (1831)

Greenleaf's Lessee v. Birth

30 U.S. (5 Pet.) 132

ERROR TO THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF WASHINGTON

SYLLABUS

It is to be understood as a general rule that where there are various bills of exceptions filed according to the local practice, if in the progress of the cause the matters of any of these exceptions become wholly immaterial to the merits as they

are finally made out on the trial, they are no longer assignable as error, however they have been ruled in the court below.

It may be gathered from the decisions of the courts of Maryland that on the trial of a question of title to land, no evidence can be admitted of the location of any line, boundary, or object laid down on the plots or resurvey, and that a witness, who was not present at the resurvey, is not competent to give evidence as to the lines, objects, and boundaries laid down in such plots. These rules appear to rest on artificial reasoning, and a course of practice peculiar to Maryland.

The Court does not find it to have been decided by the courts of Maryland that no testimony is admissible to prove a possession of the land within the lines of the party's claim laid down in the plot except the testimony of some witness who was present on the resurvey. Upon the general principles of the law of evidence, such testimony is clearly admissible. A party has a right to prove his possession by any competent witness, whether he was present at the resurvey or not.

In the ordinary course of things, the party offering evidence is understood to waive any objection to its competency as proof. It is not competent for a party to insist upon the effect of one part of the papers constituting his own evidence without giving the other party the benefit of the other facts contained in the same paper.

A power of attorney was given by C. to A. and B. to make in his name an acknowledgement of a deed for land in the City of Washington before some proper officer, with a view to its registration, constituting them "the lawful attorney or attorneys" of the constituent. A. and B. severally appeared before different duly authorized magistrates in Washington at several times, and made a several acknowledgement in the name of their principal. *Held* that the true construction of the power is that it vests a several as well as a joint authority in the attorneys. They are appointed "the attorney or attorneys," and if the intention had been to give a joint authority only, the words "attorney" and "or" would have been wholly useless. To give effect, then, to all the words, it is necessary to construe them distributively, and this is done by the interpretation before stated. They are appointed his attorneys, and each of them is appointed his attorney, for the

purpose of acknowledging the deed.

The lessee of James Greenleaf instituted an action of ejectment

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in the Supreme Court for the County of Washington for the recovery of lot No. 16 in Square No. 75, in the City of Washington, which suit was afterwards removed to the County of Alexandria and was there tried in the circuit court.

Upon the trial, the plaintiff gave in evidence certain duly authenticated copies of deeds, commencing in date 18 June, 1791, and of the allotment of the lot in question to James Greenleaf by the commissioners of the United States under the authority of the Act of Congress of 16 July, 1790, establishing "a temporary and permanent seat of the government of the United States." Upon this evidence, the plaintiff prayed the court to give certain instructions to the jury in favor of the title and possession of the lessor of the plaintiff, which were refused, and which refusal was made the ground of separate bills of exceptions. Subsequently the plaintiff gave in evidence a regular chain of title from the Lord proprietor of the province of Maryland, and a good title in the lessor of the plaintiff, in the month of October, 1794. The case on the part of the plaintiff was by this evidence relieved from the difficulties presented by the evidence which was offered in the first instance, and out of which arose the exceptions taken to the refusal of the court to give instructions upon that evidence.

The plaintiff also offered in evidence the survey, certificates, plots, and explanations returned in this cause, and offered to prove that nineteen and a quarter acres were truly located on the plot by the lines designated by the letters E.S.G.; that the deed from Benjamin Stoddart to Gant and Beall, and the deed from Benjamin Stoddart and Uriah Forrest to James Greenleaf the lessor of the plaintiff, comprised the land designated as aforesaid; and that the said lot No 16, in square No. 75, allotted to the lessor of the plaintiff by the said commissioners, in the said division of the said square, was also part of the land so designated, and offered parol evidence, by a competent witness, who was not present at the

survey, that the lessor of the plaintiff was, in the month of October, 1794, in possession of the land designated by the lines and letters E.S.G. which is now demanded, and designated on the said plot, by lot 16 in square 75, under the claim of title.

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But the court refused to permit the said parol evidence to be given to the jury, the same having been objected to on the ground of the witness not having been on the survey.

The plaintiff having established a good title in his lessor in October, 1794, the defendant offered to read in evidence to the jury, for the purpose of showing that the title to the lot in question was out of the lessor of the plaintiff after the year 1794, a paper purporting to be a copy of certain proceedings under the bankrupt law of the United States, admitted to be duly authenticated, and a deed from the persons therein named as commissioners of bankruptcy to Edward S. Burd, and a deed from the said commissioners and Burd to John Miller, Jr. To the admission of which in evidence the counsel for the plaintiff objected, and the court sustained the objection as to the said two deeds.

And thereupon the defendant prayed the court to instruct and the court did instruct the jury that by the proceedings of bankruptcy, the said James Greenleaf the lessor of the plaintiff was divested of the legal title in and to the said lot No. 16 in the said square No. 75, in the declaration mentioned, and that the said legal estate was thereby vested in the said commissioners of bankruptcy, and rejected the said deeds as any evidence in said cause.

Whereupon the plaintiff, in addition to the evidence aforesaid, offered to read in evidence to the jury, the said deeds in the said proceedings mentioned from the said commissioners of bankruptcy to the said Edward S. Burd, and the said deed from the said commissioners and the said Edward S. Burd to the said John Miller, and also a copy of a deed, duly authenticated, from the said Miller to Samuel Eliot, Jr., and a copy, duly authenticated, of a deed from the said S. Eliot, Jr., to James

Greenleaf the lessor of the plaintiff, which the court refused to admit to be read in evidence.

The plaintiff excepted to those several opinions of the court, and prosecuted this writ of error, to reverse the judgment of the circuit court in favor of the defendant.

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MR. JUSTICE STORY delivered the opinion of the Court.

The plaintiff in error brought an action of ejectment in the Circuit Court for the County of Washington, in the District of Columbia, to recover a certain lot of land in the City of Washington. The general issue was pleaded, and upon the trial, the jury found a verdict for the defendant, upon which judgment was rendered in his favor. Upon that judgment the present writ of error has been brought.

At the trial, several exceptions were taken by the plaintiff to the opinions expressed or refused by the court. As to some of these exceptions which are thus brought before us, it is unnecessary to decide whether they are well or ill founded, because, in the progress of the cause, it is apparent that they worked no ultimate injury to the plaintiff, since, independently of the matters therein stated, it is admitted upon the record that the plaintiff made out a good title in his lessor, which was all which the plaintiff proposed to establish by them. And we wish it to be understood as a general rule that where there are various bills of exceptions filed according to the local practice, if in the progress of the cause the matters of any of those exceptions become wholly immaterial to the merits as they are finally made out at the trials, they are no longer assignable as error, however they may have been ruled in the court below. There must be some injury to the party to make the matter generally assignable as error. Upon this ground, we shall pass over the exceptions taken to the ruling of the court in the preliminary stages of the cause as to the title of the lessor of the plaintiff.

Another exception is founded upon the refusal of the court to admit the parol evidence of a witness who was not present at the survey returned in the cause to

establish the fact that the lessor of the plaintiff was, in the month of October, 1794, in possession of the land designated by certain lines and letters on the plot and demanded in the action under the claim of title.

The ground of the decision of the court was that such evidence was not competent except from a witness who had been on the survey, and this decision is attempted to be sustained by the local practice of Maryland in like cases. We have examined the cases which were referred to at the bar. They

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do not appear to us to be all easily reconcilable with each other. It may perhaps be gathered from them that no evidence can be admitted of the location of any line, boundary, or object not laid down on the plots of resurvey, and that a witness who was not present at the resurvey is not competent to give evidence as to the lines, objects, and boundaries laid down on such plots. See *McHenry on Ejectment*, ch. 3, 208 to 216, and cases there cited. These rules appear to rest on artificial reasoning, and a course of practice peculiar to Maryland. But we do not find it anywhere decided that no testimony is admissible to prove a possession of the land within the lines of the party's claim laid down in the plot, except the testimony of some witness, who was present at the resurvey, and some of the cases certainly show that possession may be proved within the lines of the plot, although the particular marks or places of possession are not designated thereon. See *Carroll v. Norwood*, 1 Har. & Johns. 167. *Hawkins v. Middleton*, 2 Har. & McHen. 119. It is unnecessary to consider whether, upon a general question of the competency of evidence in respect to lands in this district, this Court would follow all the decisions of Maryland, introduced as a part of their local practice in ejectment. We are not satisfied that any such rule exists as that contended for by the defendant in error, and upon the general principles of the law of evidence, the testimony of the witness which was objected to was clearly admissible. The plaintiff had a right to prove his possession by any competent witness, whether he was present at the resurvey or not. His testimony might not on that account be so satisfactory or decisive, but it was nevertheless proper for the consideration of the jury. The court erred therefore in rejecting it.

The subsequent exceptions may be considered together. The language of the bill is that

"The plaintiff then gave in evidence, without objection, a copy of the original patent or grant from the Lord Proprietor of the Province of Maryland, dated 5 July, 1686, and by sundry mesne conveyances, devises, and descents gave evidence of a good title in the lessor of the plaintiff in the month of October in the year 1794. Whereupon the defendant offered to read in evidence to the jury for the purpose of showing that the title to the

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lot in question was out of the lessor of the plaintiff after the year 1794, a paper purporting to be a copy of certain proceedings under the bankrupt law of the United States, admitted to be only authenticated (annexing the copy), and a deed from the persons therein named, as commissioners of bankruptcy, to Edward S. Burd, and a deed from the said commissioners to John Miller, Jr., to the admission of which in evidence the counsel for the plaintiff objected, and the court sustained the objection as to the two deeds. And thereupon the defendant prayed the court to instruct and the court did instruct the jury that by the proceedings in bankruptcy, Greenleaf, the lessor of the plaintiff, was divested of the legal title in and to the lot in controversy, and that the said legal estate was thereby vested in the commissioners of bankruptcy, and rejected the said deeds as any evidence in the said cause."

Whereupon the plaintiff, in addition to the evidence aforesaid, offered to read in evidence to the jury, the said two deeds in the said proceedings mentioned, from the said commissioners of bankruptcy to the said Edward S. Burd, and the said deed from the said commissioners and the said Edward Burd to the said John Miller; and also a copy of a deed duly authenticated from Miller to Samuel Eliot, and a copy of a deed duly authenticated from Eliot to Greenleaf (the lessor of the plaintiff), all which copies were objected to, and the court refused to permit the plaintiff to read them in evidence to the jury.

It is not one of the least curious circumstances of this cause, that copies of the same deeds were alternately offered as evidence, for the same purpose, by each of the parties, and successively objected to by the other, and rejected by the court. In the ordinary course of things, the party offering such evidence is understood to wave any objection to its competency as proof. But, without insisting upon this consideration, it is manifest that if the proceedings in bankruptcy admitted by the court were competent evidence at all, they established the fact not only of the bankruptcy of Greenleaf and the issuing of a commission against him, and the appointment of commissioners, but also of an assignment of his estate by them, first to Burd, and afterwards to Miller. The proceedings are not given at large, but among them is a transcript of the doings of

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the commissioners at a meeting held on 11 January, 1803, at which the commissioners certify that a majority of the creditors had removed Burd, at his own request, and appointed Miller assignee of the bankrupt's effects in his stead, and also at a meeting on 17 March, 1804, at which the commissioners certify that they executed an assignment of all the estate and effects of the bankrupt to Miller, calling him "John Miller, Jr., of the City of Philadelphia, merchant." We must take these proceedings, if at all, together, and if in virtue of the bankruptcy of Greenleaf his estate became *ipso facto* vested in the commissioners (on which, in our view of the case, it is unnecessary to decide), the same proceedings prove an assignment from them to Miller of the same estate. It is not competent for a party to insist upon the effect of one part of the papers constituting his own evidence without giving the other party the benefit of the other facts contained in the same papers. We think then, that the assignment to Burd and Miller were sufficiently in evidence upon the defendant's own proofs to entitle the plaintiff to deduce his title to the lot in controversy without the introduction of the copies of the deeds of assignment which were offered and rejected. The question then is reduced to this whether the deed from Miller to Eliot was entitled to be read in evidence, for no specific objection is taken to that from Eliot to Greenleaf.

Two objections have been taken to the deed from Miller to Eliot. The first is that it does not appear that Miller is a nonresident, so as to entitle the deed to registration, upon an acknowledgment to be made by a letter of attorney, in the manner pointed out by the registration act of Maryland of 1766, chap. 14, sec. 4. But we are of opinion that the nonresidence is sufficiently apparent from the form of the papers. Miller is stated in the bankrupt proceedings to be a merchant of Philadelphia, and in his deed to Eliot he describes himself to be "of the City of Philadelphia," and there is not the slightest evidence in the case to overcome the natural presumption of nonresidency arising from these facts.

The next objection is that the power of attorney given by Miller to William Brent and John G. McDonald to make an acknowledgment of the deed before some proper magistrate, with a view to its registration, did not authorize the

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acknowledgement as it was in fact made. The power of attorney constitutes them "to be the lawful attorney or attorneys" for Miller, and in his name to make the acknowledgement. They severally appeared before different magistrates (who were duly authorized) at several times and made a several acknowledgement in the name of their principal. The argument is that the power was joint and not several, and that therefore the execution should have been by a joint acknowledgement before the same magistrate. In our opinion, the true construction of the power is that it vests a several as well as a joint authority in the attorneys. They are appointed the "attorney or attorneys," and if the intention had been to give a joint authority only, the words "attorney" and "or" would have been wholly useless. To give effect, then, to all the words, it is necessary to construe them distributively, and this is done by the interpretation before stated. They are appointed his attorneys, and each of them is appointed his attorney for the purpose of acknowledging the deed.

Upon these grounds, we are of opinion that the judgment of the court below ought to be

Reversed, and that the cause be remanded, with directions to award a venire facias de novo.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Alexandria, and was argued by counsel, on consideration whereof it is considered, ordered, and adjudged by this Court that there was error in the circuit court in the refusal by the court of the parol evidence offered by a competent witness who was not present at the survey, that the lessor of the plaintiff was in the month of October, 1794, in the possession of the land designated by the lines E.S.G. which was demanded in the action, and designated on the plot in the case by lot number 16 in square number 75, under the claim of title as set forth in the bill of exception, and also in refusing to admit the copy of the deed of John Miller, Jr., to Samuel Eliot, Jr., and from said Eliot to James Greenleaf, the lessor of the plaintiff, in evidence, as is set forth in the bill of exceptions, after the said circuit court

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had admitted in evidence the proceedings in bankruptcy in the same bill of exceptions set forth. It is therefore considered, ordered, and adjudged by this Court, that the judgment of the said circuit court in this cause be, and the same is hereby reversed, and that this cause be and the same is hereby remanded with directions to the said circuit court to award a *venire facias de novo*.

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