Lewis Vs. Marshall

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Appeal No. : 30 U.S. 470

Appellant : Lewis

Respondent : Marshall

Judgement :

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Lewis v. Marshall

30 U.S. (5 Pet.) 470

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

By a statute of Kentucky passed in 1796, several defendants, who claim separate tracts of land from distinct sources of title, may be joined in the same suit.

The statute of limitations of Kentucky, under which adverse possession of land maybe set up, prescribes the limitation of twenty years within which suit must be brought, and provides

"That if any person or persons entitled to such writ or writs or title of entry shall be or were under the age of twenty-one years, *feme covert, non compos mentis,* imprisoned, or not within the commonwealth at the time such right accrued or came to them, every such person, his or her heirs, shall and may, notwithstanding the said twenty years are or shall be expired, bring or maintain his action or make his entry within ten years, next after such disabilities removed or death of the person so disabled, and not afterwards."

The entries on the register of burials of Christ's Church, St. Peter's and St. James' in Philadelphia and the entries of the death of the members of the family in a family bible are evidence in an action for the recovery of land in Kentucky to prove the period of the decease of the person named therein.

The statute of limitations of Kentucky is a bar to the claims of an heir to a nonresident patentee holding under a grant from the State of Kentucky founded on warrants issued out of the land office of Virginia prior to the separation of Kentucky from Virginia if possession has been taken in the lifetime of the patentee. Had the land descended to the heirs before a cause of action existed by an adverse possession, the statute could not operate against them until they came within the state. If adverse possession commences prior to the decease of the nonresident patentee, his heirs are limited to ten years from the time of the decease of their ancestor for the assertion of their claim.

That a statute of limitations may be set up in defense in equity, as well as at law, is a principle well settled.

Statutes of limitations have been emphatically and justly denominated statutes of repose. The best interests of society require that causes of action should not be deferred an unreasonable time. This remark is peculiarly applicable to land titles. Nothing so much retards the growth and prosperity of a country as insecurity of

titles to real estate. Labor is paralyzed when the enjoyment of its fruits is uncertain, and litigation without limit produces ruinous consequences to the individuals. The Legislature of Kentucky has therefore wisely provided that unless suits for the recovery of land shall be brought within a limited period, they shall be barred by an adverse possession.

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The appellants claimed in their bill under the heirs of Charles Willing, deceased, a tract of land in the State of Kentucky by virtue of certain entries made in the lifetime of Charles Willing with the proper surveyor on 27 December, 1783, and amended on 11 and 12 March, 1784, and carried into grant by virtue of legal and valid surveys. This entry was averred to be good and valid. The patent was dated thirty years before the filing of the bill.

The bill states that Thomas Barbor had, by and under a void entry, obtained the legal title, elder in date, to the title held by Charles Willing to a large portion of the land included in the patent to Charles Willing, and that the defendants had become vested with the title to the whole or parts of the land patented to Barbor and are in possession of the same. It prays that those who hold the said land under the elder legal title of Barbor may be decreed to convey the same to them, and for general relief.

The defendants, in their answer, resist the equity asserted by the complainants and assert that the entries of Charles Willing were void. They set up in addition to the entry of Barbor other claims and entries under which they, other than Marshall and Fowler, originally settled and held.

The validity of all that enters was denied by the complainants. These defendants rely upon twenty years' adverse possession prior to the commencement of the suit.

Humphrey Marshall resisted the equity claimed in the bill and asserted in himself a previously acquired title to 12,313 acres, part of the land in contest, under an entry

in the name of Isaac Halbert. That he afterwards acquired from John Fowler an interest in Barbor's patent, exhibiting evidence of this asserted title.

He states that for a valuable consideration he had sold and conveyed, under Barbor's title, certain portions of land to his co-defendants, and exhibited the deeds showing the extent of the same and of the possession of each under the claim of Barbor. That these defendants were found by him in possession under claims adverse to Barbor's, and he compromised with them and gave them conveyances.

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Thomas Barbor, on 23 September, 1804, conveyed the 4,530 acres patented by him to John Fowler.

In 1813, Halbert conveyed his title to H. Marshall. Neither Fowler or Marshall at these dates was in possession of any part of the land under either title, nor has either of them ever been in possession of any part of the interference.

In 1819, Marshall and Fowler entered into a contract by which Marshall was authorized to sell and convey to persons in possession the title of Barbor.

In support of the heirship of the complainants as the heirs of Charles Willing, the patentee, a deposition of William Jackson was taken, who deposed that he was acquainted with Charles Willing, late of Pennsylvania, and that he died in 1798; that Thomas Willing, Richard Willing, Elizabeth Willing, and George C. Willing were his only children and heirs. Also the deposition of A. G. Bird, the clerk of Christ's Church in Philadelphia, who swore that he has the register book of burials of said church, and copies from said book, an entry which is authenticated, and reads as follows: "Burial in Christ's Churchyard, 23 March, 1788, Charles Willing."

Richard Willing, of the City of Philadelphia, deposed that he has the family Bible of his father, Thomas Willing, who, he swears, was very particular in entering the names of the births, marriages and deaths of his, the said Thomas' brothers and sisters, and that in said Bible is the following entry or record: "Charles Willing, son

of Charles and Ann Willing, died at Coventry farm, 23 March, 1788, and was interred in Christ's Churchyard."

The circuit court dismissed the bill, principally on the ground that the statute of limitations of the State of Kentucky, as applied to courts of equity, barred the claim of the complainants

The complainants appealed to this Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

In their bill the complainants charge that Charles Willing, under whom they claim, in his lifetime made an entry with the proper surveyor and on 27 December, 1783, and amended the same on 11 and 12 March, 1784, for 32,000 acres of land on certain Treasury warrants beginning 1280 poles south west of the Lower Blue Licks, &c.;, which entry

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is alleged to be valid and was carried into grant after a legal survey had been made.

The bill further states that Thomas Barbor had, by virtue of a void entry, obtained the legal title elder in date than the patent to Willing for a part of the land covered by Willing's entry, survey, and patent, and that the defendants are in possession of the land and claim title to it under Barbor's patent and other claims. A release of their title is prayed, &c.;

The defendants in their answer insist that Willing's entry is void, and other claims than Barbor's are asserted under which the defendants, except Marshall and Fowler, originally settled.

Marshall sets up a title in himself of elder date under an entry in the name of Isaac Halbert for 12,311 acres. That he afterwards purchased an interest in Barbor's

patent from Fowler and conveyed to his co-defendants. These deeds were executed several years before the commencement of this suit.

The entries under which the defendants claim are some, if not all, of prior date to Willing's, but their validity is contested by the complainants. In defense, an adverse possession of twenty years before the commencement of this suit is relied on.

By the pleadings, the validity of the complainants' entry is involved, and also those under which the defendants claim. If Willing's entry should be held good, it might then be important to examine into the validity of the defendants' entry, which are of prior date. But if Willing's entry should be held bad, there would be an end to the controversy, as Barbor's patent, under which the defendants claim, is older than Willing's. If the title by adverse possession shall be sustained as to all the defendants, no inquiry need be made into the validity of the respective entries.

No exception is taken to joining several defendants in the same suit, who claim separate tracts of land from distinct sources of title. This is allowed by a statute of Kentucky passed in 1796 which was designed to lessen the expense of litigation. The statute under which the adverse possession is set up prescribes the limitation of twenty years, within which

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suit must be brought, and provides

"That if any person or persons entitled to such writ or writs, or such title of entry, as aforesaid, shall be or were under the age of twenty-one years, *feme covert, non compos mentis,* imprisoned or not within the commonwealth at the time such right or title accrued or coming to them, every such person, his or her heirs shall and may, notwithstanding the said twenty years are or shall be expired, bring or maintain his action or make his entry within ten years next after such disabilities removed, or death of the person so disabled, and not afterwards."

It is not pretended that the ancestor of the complainants was ever within the State of Kentucky after possession of the land in controversy was taken by any of the defendants; consequently, had he lived and prosecuted his action, the statute could not bar his recovery. But his representatives, in asserting their right, must bring themselves within the limitation of ten years from the time of his decease if the adverse possession were taken prior to that period. It is therefore important to ascertain the time of Charles Willing's death. To prove this, the following extract from the register book of burials in Christ Church, St. Peter's, and St. James in Philadelphia is read as evidence: "Burial in Christ Churchyard, March 23, 1788, Charles Willing." Signed, Albert G. Bird, clerk, and duly certified by the bishop, &c.; The clerk testifies that the extract is truly copied from the original register book of burials.

Richard Willing, a witness, also states that he is in possession of a family Bible kept by his deceased father, Thomas Willing, Esquire, who was very particular in making entries of the births, marriages, and deaths of all his brothers and sisters and their children, and that the following entry is found in the book, in the handwriting of his father: "Charles Willing, son of Charles and Ann Willing, died at Coventry Farm, 22 March, 1788, and was interred in Christ Church ground."

William Jackson, of Philadelphia, being sworn, states that he was acquainted with Charles Willing, late of the State of Pennsylvania, and that he died sometime in the year 1798, leaving, by his first wife, Thomas Willing, Richard Willing, and

Eliza M. Willing, and by his second wife, George C. Willing, his only children and heirs at law.

If the ancestor of the complainants died in 1788, it is admitted that the adverse possession cannot bar the recovery, as possession was not taken by any of the defendants until after that period.

The entries in the register of burials and in the family Bible are admissible evidence in a case like the present, and if there were no other proof of the death of

Charles Willing, the ancestor of the complainants, they might be considered as showing his death in 1788. But the deposition of Jackson, who was acquainted with Charles Willing, shows that he died in 1798, and he is identified as the ancestor by the names of his children, stated by the witness. This statement is not contradictory to the entry in the register or in the family Bible. There must have been two persons named Charles Willing who died at the periods stated, but the latter was the person in whose name the title set up by the complainants originated.

To bring the defense within the statute of limitations, it must appear that possession of the land was taken by the defendants in the lifetime of Charles Willing. Had the land descended to him heirs before a cause of action existed, by an adverse possession, the statute could not operate against them until they came within the state. But it appears in this case that the adverse possession commenced prior to the decease of Willing, and consequently his heirs were limited to ten years from that time for the operation of their claim. This was not done.

By the testimony, an adverse possession by the defendants and those under whom they claim, except Marshall, for more than twenty years before the commencement of this suit is clearly shown. John Fowler, one of the defendants, though served with process, did not answer the bill, and no decree *pro confesso,* was taken against him in the circuit court. Humphrey Marshall, another defendant, who answered the bill, sets up adverse possession specifically in himself. It appears from his answer that he conveyed, long before the commencement of the suit, to his co-defendants. He

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conveyed to them by deeds in fee simple, "with covenants to refund the purchase money, in case of loss by any adverse claims," which gives to him, as he alleges his in his answer, a right to defend in this suit.

That a statute of limitations may be set up in defense in equity, as well as at law, is a principle well settled. It is not controverted by the counsel for the complainants. But he insists that the statute did not operate against the complainant's title as to the defendants in possession until they acquired Barbor's title.

The defendants entered under titles adverse to that claimed by the complainants. It is not in this view a question whether these titles were paramount to the complainants', in equity or at law. They were adverse and within the provisions of the statute, and if the limitation had run before the commencement of this suit, the right of entry was tolled, and no relief can be given in chancery.

Whatever may have been the state of the title as it regards the defendants, it is difficult to conceive how the complainants could have a right which they were unable to enforce. If the elder patent vested in Barbor the legal title, and might have been set up by the defendants before they claimed under it to defeat an action of ejectment brought by the complainants, they might have sought relief in a court of chancery. Their entry was made prior to the emanation of Barbor's grant; consequently they had the right to contest the validity of his entry.

The limitation act of 1809, which requires suit to be brought within seven years after an adverse possession commences under a connected title in law or equity from the commonwealth, would protect the possession of the defendants. The facts of the case bring them within the provisions of this act, but it has not bee set up in the answers nor relied on in the argument.

statutes of limitations have been emphatically and justly denominated statutes of repose. The best interests of society require that causes of action should not be deferred an unreasonable time. This remark is peculiarly applicable to land titles. Nothing so much retards the growth and prosperity of a country as insecurity of titles to real estate. Labor is

paralyzed where the enjoyment of its fruits is uncertain, and litigation without limit produces ruinous consequences to individuals. The Legislature of Kentucky has

therefore wisely provided that unless suits for the recovery of land shall be brought within a limited period, they shall be barred by an adverse possession.

The Court is of the opinion that the defendants, except Marshall, having brought themselves within the provisions of the act of 1796 in showing an adverse possession of more than twenty years before the commencement of this suit have sustained their defense, and consequently that the bill of the complainants as to them must be dismissed.

As the extent of the interference of Marshall's claim under the patents of Barbor and Halbert and others, with Willing's entry, does not appear from the proof in the cause, and as such proof is essential to enable the court to determine on the respective rights to the parties, the cause may be certified to the court below as to him for further proceedings.

Fowler, one of the defendants, has not answered the bill; the merits of his claim cannot now be investigated. The cause as to him also may be sent down for further proceedings.

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 Kentucky and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed as to all the respondents and appellees except Humphrey Marshall and Fowler, and as to him, the said Marshall, it is adjudged and decreed by this Court that the decree of the said circuit court be and the same is hereby reversed and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein as to the said Humphrey Marshall according to law and justice and in conformity to the opinion and decree of this Court, and it is further adjudged and decreed by this Court that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein as to the said defendant Fowler, who did not answer the bill, and against whom there was no decree.