Peyton Vs. Stith

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SooperKanoon Citation : sooperkanoon.com/79315

Court : US Supreme Court

Decided On : 1831

Appeal No. : 30 U.S. 485

Appellant : Peyton

Respondent : Stith

Judgement :

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Peyton v. Stith

30 U.S. (5 Pet.) 485

APPEAL TO THE CHANCERY SIDE OF THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Ejectment -- Jenkin Phillips, on 18 May, 1780,

"enters one thousand acres on the southwest side of Licking Creek on a branch called Bucklick Creek on the lower side of said creek, beginning at the mouth of the branch and running up the branch for quantity, including three cabins."

A survey was made on this entry 20 November, 1796, taking Bucklick Branch, reduced to a straight line as its base, and laying off the quantity in a rectangle on the northwest of Bucklick. A patent was granted to Phillips on this survey on 20 June, 1796. This entry is sufficiently descriptive

according to the well established principles of this and the courts of Kentucky, and gave Phillips the prior equity to the land, which has been duly followed up and consummated by a grant within the time required by the laws of Virginia and Kentucky without any laches which can impair it. The proper survey under this entry was to make the line following the general course of Bucklick the center instead of the base line of the survey, and to lay off an equal quantity on each side in a rectangular form, according to the rule established by the Court of Appeals in Kentucky and by this Court.

Peyton claimed the land under an entry made by Francis Peyton, and a survey on 9 October, 1784, and a patent on 24 December, 1785, so that the case was that of a claim of the prior equity against the elder grant, which it is admitted carried the legal title.

Stith took possession as tenant of the heirs of Peyton under an agreement for one year at twenty dollars per year. Possession was afterwards demanded of him on behalf of the lessors, which he refused to deliver, and a warrant for forcible entry and detainer was on their complaint issued against him according to the law of Kentucky, and on an inquisition he was found guilty, but on a traverse of the inquisition he was acquitted and an ejectment was brought against him by the lessors. Eight days after the finding of the inquisition, Stith purchased the land from Phillips. This is the case of an unsuccessful attempt by a landlord to recover possession from an obstinate tenant, whose refusal could not destroy the tenure by which he remained on the premises or impair any of the relations which the law established between them. The judgment on the acquittal concluded nothing but

the facts necessary to sustain the prosecution and which could be legally at issue; title could not be set up as a defense; Stith could not avail himself of the purchase from Phillips. A judgment for either party left their rights of property wholly unaffected except as to the mere possession; the acquittal could only disaffirm the forcible entry, as nothing else was at issue; the tenancy was not determined; Peyton was not ousted, and the possession did not become less the possession of the landlord by any legal consequences as resulting from the acquittal.

In the case of *Willison v. Watkins,* 3 Pet. 44, this Court considered and declared the law to be settled that a purchase by a tenant of an adverse title claiming under or attorning to it or any other disclaimer of tenure with the knowledge of the landlord was a forfeiture of his term; that his possession became so far adverse that the act of limitations would begin to run in his favor front the time of such forfeiture, and the landlord could sustain an ejectment

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against him, without notice to quit, at

any time before the period prescribed by the statute had expired, by the mere force of the tenure, without any other evidence than the proof of the tenancy, but that the tenant could in no case contest the right of his landlord to possession or defend himself by any claim or title adverse to him during the time which the statute has to run. If the landlord, under such circumstances, suffers the time prescribed by the statute of limitations to run out without making an entry or bringing a suit, each party may stand upon their right, but until then the possession of the tenant is the possession of the landlord.

From the time of the purchase by Stith from Phillips, although it became adverse for the specified purposes, it remained fiduciary for all others.

The same principles which would prevent a tenant from contesting his landlord's title in a court of law would apply with greater force in a court of equity, to which he would apply for the quieting of a tortious possession and a conveyance of the legal title. If the relations existing between them could deprive them of defense at law, a

court of chancery could not afford him relief as a plaintiff during their continuance. Before he can be heard in either in assertion of his title, he must be out of possession unless it has become legalized by time, and even then there may be cases where an equitable title had been purchased under such circumstances as could justify a court of equity in withholding it, and to a *mala fide* purchaser.

A patent for unimproved lands no part of which was in the possession of anyone at the time it issued gives legal seizin and constructive possession of all the land within the survey.

Courts of equity adopt the same rule as to possession to bar a recovery in ejectment as courts of law.

Joseph Stith, the appellee, filed a bill for an injunction to stay perpetually proceedings by the appellants on a judgment obtained by them in an ejectment instituted by them as the devisee of Francis Peyton against Joseph Stith, the appellee.

The relief sought by the complainant in the circuit court was founded on the allegation that one Jenkin Phillips, under whom the complainant claimed, made the first entry on the land in controversy, although it was admitted that the plaintiffs in the ejectment held under the eldest patent.

The circuit court decreed a perpetual injunction as to so much of the land as fell within a certain location made under a survey ordered by that court within the bounds of Jenkin Phillips' conveyed to the complainant. From the decree, the respondents appealed to this Court.

The facts are fully stated in the opinion of the court.

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MR. JUSTICE BALDWIN delivered the opinion of the Court.

The subject of this controversy is a tract of land situated on Kingston Fork of Licking Creek, and Buck Lick Creek, a branch thereof. Stith, the complainant below, claims title under an entry made by Jenkins Phillips on 18 May, 1780, in the following words.

"Jenkins Phillips enters one thousand acres on the southwest side of Licking Creek on a branch called Back Lick creek on the lower side of said creek, beginning at the mouth of the branch and running up the branch for quantity, including three cabins."

A survey was made on this entry on 20 November, 1795, taking Buck Lick Branch, reduced to a straight line as its base, and laying off the quantity in a rectangle on the northwest side of Buck Lick. A patent was granted to Phillips on this survey on 26 June, 1796, who, on 8 February, 1814, conveyed to Stith 666 acres thereof, including the land in controversy. Stith was then in possession of the land under the circumstances which will be hereafter referred to.

The appellant claimed, under an entry made by Francis Peyton for 1,000 acres, a survey on 9 October, 1784, and a patent on 24 December, 1785, so that the case presented was of Stith claiming the prior equity against the elder grant, which, it is admitted, carried the legal title. No question arose on the validity of Peyton's entry, as his elder grant was conclusive unless an equity arose in Phillips by his prior entry; but the validity of this entry was questioned by the appellant on several grounds, involving no general principles which are necessary to be settled by the Court, but only those arising on matters of fact and detail, which have no bearing on the merits of the case.

We entertain no doubt of the validity of the entry; its calls are sufficiently descriptive according to the well established principles of this and the courts of Kentucky, and give Phillips the prior equity to the land, which has been duly followed up and consummated by a grant within the time required by the

laws of Virginia and Kentucky, without any laches which can impair it.

This entry was much contested, both parties objecting to the survey as executed in November, 1795. The circuit court was of opinion that the entry ought to be so surveyed as to make the line following the general course of Buck Lick, the center instead of the base line of the survey, and to lay off an equal quantity on each side in a rectangular form, according to the rule established by the Court of Appeals in Kentucky in Harding 59, 367; 1 Bibb. 79, 107; 2 Bibb. 122; 4 Bibb. 153, 383; and in this Court in 15 U. S. 2 Wheat. 323, with which we fully concur.

As the survey of 1795 and the one directed by the circuit court both embrace all the land in dispute about which any contest arises, it is unnecessary to notice them minutely, as in our opinion the entry and survey of Phillips gave him an equitable title which attached to the land elder than Peyton's, and would entitle the complainant to a decree unless the case discloses such facts as, independent of the original titles, present a bar to the relief he asks.

It is alleged by the appellant that one Jeremiah Wilson, in the year 1792 or 1793, came to the land in question within the lines of Peyton's patent and resided there until the month of March, 1795, when he took a lease for five years from the agent of Peyton, and continued to reside there for some years; that from Wilson's first settlement there was a continued uninterrupted possession of the land by tenants and persons holding under Peyton and his heirs, till Stith, the complainant, took possession as tenant of Peyton's heirs under an agreement with one Mitchell, who acted as their agent under a verbal authority from some of them, and that he remained there until December, 1813, when possession was demanded of him on behalf of the appellants, which he refused to deliver up. Whereupon a warrant of forcible entry and detainer was on their complaint issued by a justice of the peace on 27 January, 1814, and an inquisition taken on 1 February finding Stith guilty, but that on a traverse of the inquisition in April following, he was acquitted. An ejectment was then brought against him by the appellants and judgment rendered for the plaintiffs at the November term of the circuit court,

1816, when the present bill was filed, praying for an injunction against further proceedings on the ejectment and a conveyance of the legal title to the land recovered. An injunction was ordered. The respondents, in their answer, allege that the complainant was put into possession as the tenant of their ancestor by his agent, but afterwards took protection under Jenkins Phillips with the fraudulent purpose of cheating and defrauding him.

To this answer a special replication was put in by the complainant averring that he did not enter as tenant aforesaid, and sets up the proceedings of forcible entry and detainer and his acquittal, and relies on them for further replication in bar of the allegation. An amended answer was by leave of the court and on terms afterward filed averring that the complainant rented the land and entered thereon as the tenant of Peyton, and continued to reside as such tenant until he purchased from Phillips, and that he ought not to be permitted to set up any adverse title until he would surrender possession to the respondents. They rely on their uninterrupted possession, plead the act of limitations of 1809 as a bar to the relief sought by the bill, and aver that the bill ought not to be sustained, as the complainant is colluding with another, contrary to every principle of morality.

To this amended answer the complainant demurred 1. because the act of 1809 was a violation of the compact between the States of Virginia and Kentucky; 2. if the law is not void, the respondents cannot avail themselves of it, as they were not, and the complainant was, settled on and actually in possession of the premises in question, when the bill was filed, holding and claiming under the title set forth in his bill; 3. that the respondents had not the actual and continued possession for the number of years required by the law next preceding the filing of the bill, but were ousted and possession held by complainant; 4. that the complainant and respondent were in actual litigation in the action of ejectment of their relative rights under their titles on 1 January, 1816, and long before, and until the filing of this bill.

On these pleadings and a great mass of depositions taken in the cause, the circuit court rendered a decree for the complainant. On a careful examination of the whole record, we are

abundantly satisfied that the appellants have fully established the fact of the tenancy of Stith at the time he entered on the land. It is positively sworn to by three witnesses, and contradicted by none. His demurrer to the amended answer admits it most distinctly, as well as the continuance of the tenancy down to his purchase from Phillips. If this part of the case rested only on the evidence in the cause, unsupported by the demurrer, we should require nothing more to satisfy our minds, but connected with the solemn admission on record, it presents a case cleared of all possible doubt.

The agreement by which he rented the land was for one year at a rent of twenty dollars, payable in November, 1811. By continuing in possession, he remained a tenant from year to year, his possession being in law the possession of Peyton or his heirs, with all the relations of landlord and tenant subsisting between them in full force.

It appears that Stith refused to surrender up the premises on a demand made by the agent of Peyton in December, 1813, in consequence of which he instituted a proceeding before a justice of the peace in pursuance to the law of Kentucky relating to forcible entry and retainer. 4 Littell's Laws 182. This law contains provisions similar to the statutes of Richard III, adopted or substantially reenacted in all the states, and authorizes the same proceedings against tenants who, after the expiration of their term, refuse to restore the possession to the landlord.

On this proceeding an inquisition was found against Stith on 1 February, 1814, but he was acquitted on a traverse tried in April following. The record does not state explicitly the object of this process, whether it was to proceed for the forcible entry or only for the detainer; the warrant is in the form directed by the second section of the law, embracing both, which are charged as having been committed on 22 December, 1813. This, connected with the proof in the cause and the admission of the tenancy of Stith in his demurrer to the amended answer to the bill, leaves no doubt that the proceeding was against him as a tenant holding over and coming within the provisions of the 16th section of the law. This is the more apparent when

there appears no evidence that prior to the purchase from Phillips eight days after the

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finding of the inquisition, Stith had done any act disavowing his tenancy except the refusal to surrender possession. Thus considered, the case is an unsuccessful attempt by a landlord to recover possession from an obstinate tenant, whose refusal could not destroy the tenure by which he remained on the premises or impair any of the relations which the law established between them. The effect of the acquittal extended no further than to deprive the landlord of the benefits expected from this process and turn him round to the ejectment which he afterwards brought. The judgment on the acquittal concluded nothing but the facts necessary to sustain the prosecution, and which could be legally in issue. If a case is made out within the 16th section of the law, it declares "the tenant shall be adjudged guilty of a forcible detainer," and this was the matter to be inquired into. Title could not be set up as a defense; Stith could not avail himself of the purchase from Phillips; a judgment for either party left their rights of property wholly unaffected except as to the mere possession, and the acquittal could only disaffirm the forcible detainer, as nothing else was in issue. It was conclusive on the landlord as to that, but in all other respects the rights and relations of the parties remained as before the institution of the process. The tenancy was not determined; Peyton was not ousted, and the possession did not become less the possession of the landlord by any legal consequences resulting from the acquittal, unless the relative situation of the parties as landlord and tenant became changed by the purchase from Phillips after the inquisition and before the traverse.

In the case of *Willison v. Watkins,* 3 Pet. 44, decided at the last term, this Court considered and declared the law to be settled that a purchase by a tenant of an adverse title, claiming under or attorning to it, or any other disclaimer of tenure with the knowledge of the landlord, was a forfeiture of his term; that his possession became so far adverse that the act of limitations could begin to run in his favor from the time of such forfeiture, and the landlord could sustain ejectment against him without notice to quit, at any time before the period prescribed by the statute

had expired, by the mere force of the tenure, without any other evidence than the proof of the tenancy; but that the tenant could in no case contest the

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right of his landlord to possession or defend himself by any claim or title adverse to him during the time which the statute has to run.

If the landlord suffers it to run out without making an entry or bringing a suit, each party may stand upon their right; but until then, the possession of the tenant is the possession of the landlord.

Tested by these principles, the purchase from Phillips in 1814 can have no effect on the merits of this case. Though the possession of Stith became from that time adverse for these specified purposes, it remained fiduciary for all others. He could not assert an adversary title without surrendering possession. The law recognizes him as having no rights of property in the lands unless such as grow out of tenure; his title must remain dormant while he retains possession for a less term than prescribed by law; it may become active whenever he abandons the possession, or it is protected by the limitation. The same principles which would prevent a tenant from contesting his landlord's title in a court of law would apply with greater force in a court of equity to which he would apply for the quieting of a tortious possession and a conveyance of the legal title. If the relations subsisting between them could deprive him of defense at law, a court of chancery could not afford him relief as a plaintiff during their continuance. Before he can be heard in either in assertion of his title, he must be out of possession unless it has become legalized by time, and even then there may be cases where an equitable title had been purchased under such circumstances as would justify a court of equity in withholding their aid to a *mala fide* purchaser.

It is not necessary to decide whether this is such an one, since we are very clear that the present complainant can on no principle of law or equity have any claims on the interference of this Court to prevent the respondents from obtaining, by their judgment in ejectment, a restoration of the devised premises. This is his right

by the terms and effect of the tenure on the faith of which the one party gave and the other received possession. As the possession of the plaintiff has been continuous from the first entry as a tenant, his remaining after the purchase from Phillips is neither an ouster

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nor disseizin of Peyton so as to put him to the assertion of his right under his patent. The possession of Stith must be interrupted and its continuity broken before he can be permitted to sustain any proceeding founded on the equitable title thus acquired. For admitting his possession to be so far adverse that the limitation began to run from February, 1814, the right of the plaintiffs in the ejectment to possession on the termination of the tenancy remains unimpaired, and is as much to be respected in a court of equity as of law, it being an attribute and incident of the tenancy which attaches to it notwithstanding any act of the tenant short of a voluntary restoration of the premises or undisturbed occupation for seven years by the law of 1809.

This view of the case is fatal to the proceeding in equity commenced while the complainant is residing on the land demised and before the expiration of three years from the commencement of his disclaimer or adversary holding with the knowledge of Peyton.

There is another objection to the relief sought for by the complainant which seems to the Court to be conclusive. On an attentive examination of the evidence returned with the record, we are of opinion that a continued and uninterrupted possession for twenty years in Peyton and his heirs prior to the filing of the bill has been fully proved. There appears to have been no point of time since the first entry of Wilson in 1792 or 1793 within which the premises have been unoccupied by him; as Peyton held the legal title, the possession under him extends to the bounds of his survey, and is as complete to the whole as if the actual occupation was coextensive with his grant.

It is proved without contradiction that the land was in the woods, wholly unimproved, when Wilson first entered, and there is no evidence to show that when he leased from Peyton in March, 1795, any other person was upon the ground. His patent gave him legal seizin and constructive possession of all the land within his survey. *Barr v. Gratz,* 4 Wheat. 222; *Green v. Liter,* 8 Cranch 250.

Though Wilson's first entry was without claim of title in himself or any other, his attornment to the title of Peyton in 1795, will make his possession relate back to his first entry,

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and connected with the legal possession, give to Peyton all the benefits of actual occupation from that time. But even confining him to the period of actual occupation under his title; it appears that twenty-one years and eight months had elapsed before the filing of the complainant's bill. This would afford at law a complete bar to an ejectment under the title of Phillips, and courts of equity adopt the same rule by analogy. *Hughes v. Edwards,* 9 Wheat. 489. *Elmendorf v. Taylor,* 10 Wheat. 152.

The continuity of the possession does not appear to have been broken; there is evidence of an attempt made by Phillips and Riley, his son-in-law, to tamper and collude with the tenants to attorn him, and some of the witnesses speak of declarations of some of the tenants of their having some sort of connection with his title; but in what way does not satisfactorily appear. There is no evidence of any agreement between him and any of them; on the contrary, there is clear evidence of the tenancy, of all the occupants under Peyton, from the entry of Wilson, down to the lease to Stith, and no fact is disclosed in any of the depositions, which would in law amount to a disclaimer of the tenure by any of the tenants, an attornment to Phillips, or possession averse to the landlord. There seems nothing which would make out such an adverse possession in Phillips as would interrupt that of Peyton, and though there are some circumstances in evidence of an equivocal character; they cannot amount to a disseizin or ouster, or

dissolve the relations resulting from the original acknowledged relations between him and his tenants, which continued until the filing of the bill. Such continued possession for twenty years, under the legal title of Peyton, constitutes a complete bar to all the relief prayed for in the bill. It is therefore the opinion of the Court that the decree of the circuit court be

Reversed, and that the cause be remanded with instructions to dismiss the bill of the complainants, with costs but without prejudice to the right of the complainant accruing or vested in him by any deed or contract with Luckett or any other person in relation to any part of the land contained in either of the surveys of Peyton.