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Greenleaf Vs. Birth

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Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 292

Appellant : Greenleaf

Respondent : Birth

Judgement :

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Greenleaf v. Birth

34 U.S. (9 Pet.) 292

ERROR TO THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA IN THE COUNTY OF WASHINGTON

SYLLABUS

Where there is no evidence tending to prove a particular fact, the court is bound so to instruct the jury when requested, but it cannot legally give any instruction which shall take from the jury the right of weighing what effect the evidence shall have.

An instruction to the jury founded on part of the evidence only is error.

The case is fully stated in the opinion of the Court, delivered by

MR. JUSTICE Mc LEAN.

The plaintiff commenced an action of ejectment against the defendant, and on the trial showed a legal title to the premises in dispute, deduced from the patentee, by mesne conveyances, down to 13 May, 1796. This title was not controverted by the defendant, as he claimed under it, but he read in evidence the following deeds and documents to show that the title to the premises in controversy, was out of the plaintiff and in himself.

1. Articles of agreement dated 10 July, 1795, between the plaintiff, Robert Morris, and John Nicholson, in which the plaintiff sold all his title to a great number of lots in the City of Washington, for the consideration specified, reserving all lots which had been sold previously, supposed to be nine hundred and ninety, and also certain other lots designated.

2. A deed of conveyance by the plaintiff to Morris and Nicholson in pursuance of the above articles of agreement, dated 13 May, 1796. In this deed there is the following clause,

"excepting nevertheless, out of the lots, squares, lands and tenements above mentioned all that square marked and

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distinguished on the plat of the said City of Washington by the number 500, all that other square lying next to and south of the said number 506, &c.;, and excepting also all such squares, lots, lands or tenements, as were either conveyed or sold or agreed to be conveyed, either by all or either of them, the said James Greenleaf John Nicholson and Robert Morris, or any of their agents or attorneys, to any person or persons whatsoever, at any time prior to 10 July, 1795."

3. A deed from Morris and Nicholson, dated 26 October, 1796, to William Duncanson, William Deakins, Jr., and Uriah Forrest, for the consideration of $50,000, for a great number of squares in Washington City, and among others, square 75, all of which squares were stated to be worth $212,068. In this deed there is excepted, "such part of the said squares, and all and every of them, as may have been heretofore sold by James Greenleaf or by them the said Morris and Nicholson."

4. A deed from William Duncanson to Deakins and Forrest, dated 16 August, 1797, which conveyed to them all his interest in the squares recited in the above deed from Morris and Nicholson.

5. The last will and testament of William Deakins, which vested in his brother, Francis Deakins, the right of the testator to the above squares, for certain uses expressed in the will.

6. A deed from Francis Deakins to Uriah Forrest, dated 31 May, 1802, for lot 17, in square 75, being the property in dispute, together with other lots in the same and other squares.

7. The following instrument to Shaw and Birth:

"We agree to convey to John Shaw and James Birth, their heirs or assigns, the lots number 16 and 17 in square number 75 in the City of Washington, assuring it against our heirs, and all persons claiming under us, on their paying two notes of this date, each for $450.02, bearing interest from and since 1 September last past -- one payable 1 September next and the other 1 September, 1801. Witness our hands and seals this 16 October, 1799."

"URIAH FORREST, [SEAL]"

8. A deed from the assignees of U. Forrest to John Shaw

and James Birth dated 23 November, 1807, for the lot in controversy.

9. A deed by the trustee of Shaw to Birth, the defendant, for the same lot, dated 7 August, 1828.

10. A letter from Forrest to W. Cranch, the trustee of Greenleaf, stating that he had sold lot 17 with others, to which, he understood, Cranch had a claim as part of the estate of Greenleaf, and a proposition is made that, should the property eventually be decided to belong to the estate of Greenleaf the purchase money should be received in lieu of the property. This letter is without date.

11. The reply of Mr. Cranch dated 2 November, 1799, in which he consents to the proposition on certain conditions.

Thomas Monroe, a witness, was introduced by the defendant, who stated in substance that the first occupation of the lot in controversy, known to him, was in May, 1802. There was then a house on said lot, in which Shaw and Birth resided. This lot is bounded by the main avenue leading from the President's house to Georgetown. That the plaintiff was frequently in the city in the years 1794 and 1795, but witness did not see him in Washington between the years 1795 and 1802. He heard soon after the transaction of the contract of General Walter Stewart with Greenleaf Morris and Nicholson for the purchase of the lot in controversy, and several other lots and squares in Washington. That Stewart built some houses and commenced others which were left unfinished when he failed in business, and that he died insolvent sometime about the year 1796. That after the deed from plaintiff to Morris and Nicholson, they seemed to have the management and control of the property conveyed by that instrument, and also to be generally recognized as having the settlement of the sales of the joint property of Greenleaf Morris and Nicholson, made before said conveyance, and as having the right to receive the purchase money from the several purchasers, and the witness states that one Davis acted as agent for general Stewart respecting his purchases, and that after his death Davis continued to act as agent for his representatives.

And it was also proved by defendant that the said lot 17, in square 75, was assessed on the corporation books to

Shaw and Birth, from the year 1803 to the year 1828, and that the first assessment of corporation taxes was made in the year 1803. It was also proved that square 75 is not either of the squares described in the deed from plaintiff to Morris and Nicholson as lying next to and south of square 506 and the one adjoining that square on the south. Defendant also proved that Shaw and Birth took possession of lot 17 after their agreement with Forrest in October, 1799, and prior to that time it was under the superintendence of Joseph Forrest as the agent of U. Forrest.

And the plaintiff, to explain and rebut the evidence introduced by the defendant, proved the contents of a written contract under the hands and seals of Morris, Nicholson, and Greenleaf on the one part, and Walter Stewart of the other, dated 19 February, 1795, in which Morris, Nicholson, and Greenleaf bargained and sold and covenanted to convey to said Stewart on 1 June thereafter, certain lots and squares in the City of Washington, and among others, the lot now in controversy. And to lay the foundation for the introduction of a copy of this agreement, the deposition of Walter C. Livingstone was read, in which he states that he has diligently searched in various places among the papers of Nicholson for the original contract with Stewart, without being able to find it. That Nicholson died some years ago, insolvent. That the deponent received from W. P. Farrand a paper purporting to be a copy of said contract, a copy of which the deponent annexed to his deposition.

The affidavit of the plaintiff was also read, stating that duplicates of the original agreement with Stewart were signed, one of which was taken by the affiant and the other was delivered to Stewart. That the affiant left his original with William Cranch of Washington City, who was then acting as agent for him, and he believes that the agreement was delivered to Nicholson by Cranch sometime in the year 1796. That affiant has never seen the paper since, although he has made diligent search for it among his own papers and at many other places where he could expect to find it.

William Cranch being sworn, states, that for several years he acted as the agent of the plaintiff, and had the charge of his papers, &c.; That his agency extended to property in

which Nicholson and Morris were interested with the plaintiff. By means of this agency he became acquainted with the transactions of the above parties in relation to their property in Washington, and he believes that on 10 July, 1795, and 13 May, 1796, there was an existing valid contract between Morris, Nicholson, and Greenleaf and the late General Walter Stewart for the sale, by the former to the latter of the lot in controversy. That he received from Greenleaf, then in Philadelphia, in a letter dated 19 February, 1795, a paper purporting to be a copy of such an agreement, under the hands and seals of the parties, by which the square 75 in Washington, with other squares, was contracted to be conveyed to Stewart on or before the 1 June, 1795. That after the decease of Stewart, George Davis, of Philadelphia, acted as the agent of the representatives of Stewart in relation to the property. That he has a strong impression that he saw the original contract with Stewart, and if he ever had the original, he has no doubt he compared it with a copy which he had previously made in a book, and which copy he sets forth in his deposition. Various other facts are stated by the witness as to notice given by him to certain purchasers, under Morris and Nicholson, of lots included in the Stewart contract, and which were excepted in the deed of 13 May, 1796, from the plaintiff to Nicholson and Morris, but he does not recollect of ever having given notice to Shaw and Birth or either of them.

It was insisted in the argument of this case that the copy of the Stewart contract which was admitted as evidence to the jury should have been excluded; as a sufficient foundation for the admission of a copy was not laid; and that the paper read was a copy of a copy.

This objection is sufficiently answered by saying that the defendant can only take advantage of it on his own exception. The case is now before the court on the exceptions of the plaintiff.

The evidence being closed, the plaintiff, by his counsel, moved the court to instruct the jury

"that the evidence produced on the part of the defendant does not show a sufficient legal title to the premises in controversy vested in him by the documents and deeds read in evidence."

The language of this instruction would seem to imply that

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to make good his defense, the defendant must establish a legal title in himself.

When this case was before the court on the former writ of error, the defendant insisted that the deed from the plaintiff to Nicholson and Morris showed an outstanding title; the court said

"the defendant sets up no title in himself, but seeks to maintain his possession as a mere intruder, by setting up a title in third persons with whom he has no privity. In such a case, it is incumbent upon the party setting up the defense to establish the existence of such an outstanding title, beyond controversy."

The court did not say that the defendant could not show an outstanding title unless he exhibited some evidence of title in himself, but that where an intruder relies upon an outstanding title, he must establish it beyond controversy.

In the present case, the defendant gave in evidence to the jury a deed of conveyance from Morris and Nicholson to Duncanson, William Deakins, Jr. and Uriah Forrest, which covered the property in controversy unless it was excluded by the exception of "such parts of the said squares, and all and every of them, as may have been heretofore sold." And also a deed from Duncanson to Deakins and Forrest, and a deed from the devisee of Deakins to Forrest, and a deed from the assignees of Forrest to Shaw and Birth, and also a deed executed subsequently to the commencement of the action from the trustee of Shaw to Birth.

From this exhibition of title, it appears that the defendant Birth had a legal title to one-half of the lot in controversy when the suit was commenced, unless it was excluded by the exception in the deed from the plaintiff to Morris and Nicholson. And whether this exception excludes the lot depends upon other evidence than that which the deeds referred to afford, and of the effect of which, a part of it being in parol, the jury are the proper judges. It would seem, therefore, that the circuit court, when requested to instruct the jury that the defendant had not proved a sufficient legal title in himself, very properly refused to give the instruction.

But the court, upon the prayer of the defendant's counsel, gave the following instruction.

"If the jury should believe from the evidence that, prior to October, 1799, Uriah Forrest

was in possession of the premises in the declaration mentioned, and that he agreed to sell the same to Shaw and Birth on 16 October, 1799, and that said Shaw and Birth, and the defendant claiming under them, have been in possession of the same ever since, and that they have paid the taxes on the same to the corporation of Washington ever since 1803, when city property was first assessed, and that no claim or demand for said premises was ever made upon them or said defendant until the bringing of this suit in 1818, then it is competent for the jury to presume that the title to said premises passed from said James Greenleaf by the deed of 13 May, 1796, and that the said premises were not included in any of the exceptions of said deed."

All the facts hypothetically stated in this instruction may be admitted, and yet the conclusion attempted to be deduced from them does not necessarily follow.

The possession of the defendant did not enable him to plead in bar the statute of limitations, nor had the ordinary time elapsed which authorizes the presumption of a title. That the length of possession and the other facts stated in the instruction were proper subjects of consideration for the jury may be admitted, but the

objection to the instruction is that it was founded on only a part of the evidence in the case.

It does not embrace any of the facts brought before the jury by the plaintiff in relation to the contract with Stewart. This contract was introduced to show that in February, 1795, the lot in dispute was sold to Stewart, and was consequently within the exception of "all such squares, lots, lands or tenements, as were either conveyed, or sold, or agreed to be conveyed," which was contained in the deed from the plaintiff to Morris and Nicholson of 13 May, 1796.

It is incumbent on the defendant, who claims under this deed, to show that the lot in question does not come within the exception. And the plaintiff may show that it does come within the exception, and consequently that no title to this lot passed by the above deed. And if no title passed out of the plaintiff under this deed, then the fee remains in him, and he has a right to recover possession of the premises.

This was the main point in the case, but the evidence, which, the plaintiff insisted, proved the lot in controversy to be

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within the exception, was, by the instruction, excluded from the consideration of the jury. They were authorized to presume a conveyance of the lot by the deed of 1796 upon the existence of facts wholly disconnected with Stewart's contract, and the existence of which might be admitted without impairing the force of that contract. This was clearly erroneous. It was proper for the jury to consider this contract connected with the other evidence, and to draw their conclusions not from a part, but the whole of the facts in the cause.

The counsel for the plaintiff further prayed the court to instruct the jury that

"the evidence was not sufficient to prove that the said contract between Morris, Nicholson and Greenleaf on the one part, and W. Stewart on the other, had been annulled or rescinded between the parties at any time prior to the execution of the deed by the plaintiff to Morris and Nicholson in May, 1796."

If this instruction be considered as asking the court to determine on the effect of the evidence, it was properly refused. It is the province of the jury to weigh and decide on the sufficiency of the evidence, and from the words of the instruction it would seem to be conceded that there was some evidence of the rescission of the contract, as the court was asked to instruct the jury that the evidence was not sufficient to prove the fact. Where there is no evidence tending to prove a particular fact, the court is bound so to instruct the jury when requested, but it cannot legally give any instruction which shall take from the jury the right of weighing the evidence and determining what effect it shall have. In this view, the circuit court did not err in refusing the above instruction.

As the instruction given on the prayer of the defendant was founded on a part of the evidence only, the judgment of the circuit court must be

Reversed and the cause remanded for further proceedings.

This cause came on to be heard on the transcript of the record from the circuit 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

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adjudged and ordered 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 to the said circuit court with directions to award a *venire facias de novo.*

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