Piatt Vs. Vattier

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Decided On : 1835

Appeal No. : 34 U.S. 405

Appellant : Piatt

Respondent : Vattier

Judgement :

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Piatt v. Vattier

34 U.S. (9 Pet.) 405

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

A bill was filed in the Circuit Court of Ohio for a conveyance of the legal title to certain real estate in the City of Cincinnati, and the statute of limitations of Ohio was relied on by the defendants. The complainant claimed the benefit of an

exception in the statute of nonresidence and absence from the state, and evidence was given tending to show that the person under whom he made his claim in equity was within the exception. The nonresidence and absence were not charged in the bill, and of course were not denied or put in issue in the answer. *Held* that the court can take no notice of the proofs, for the proofs, to be admissible, must be founded upon some allegations in the bill and answer. If the merits of the case were not otherwise clear, the court might remand the cause for the purpose of amending the pleadings.

There was in this case a clear adverse possession of thirty years, without the acknowledgment of any equity or trust estate in anyone, and no circumstances were stated in the bill or shown in evidence which overcame the decisive influence of such an adverse possession. The established doctrine of the law of courts of equity, from its being a rule adopted by those courts, independent of any legislative limitations, is that it will not entertain stale demands.

On 6 December, 1827, the appellant, a citizen and resident of the State of Kentucky, filed a bill in the Circuit Court of the United States for the District of Ohio setting forth that in the year 1789, when the City of Cincinnati was first laid out, the country being then a wilderness and the town plat a forest of timber, certain lots in the said city were allotted as donations to those who should make certain improvements within given periods of time, and the evidence of ownership, consisting of the certificate of the proprietors, was transferred from one person to another by delivery as evidence of title. That the lot No. 1 on the said plat, now occupied as the Cincinnati Hotel, was allotted to one Samuel Blackburn, who, before the conditions of the donation were fulfilled, transferred his right to one James Campbell, who soon thereafter transferred it to one John Bartle, who, in the summer of the year 1790, took possession of the same and completed the improvements

required by the terms of the donation. That said Bartle continued to occupy said lot and the building thereon erected by himself first and subsequently by his tenants

Elliot and Williams and by his tenant Abijah Hunt for several years, having the certificate of the proprietors of the town as his evidence of title, and the said Bartle, having become embarrassed in his circumstances, mortgaged the said lot to one Robert Barr of Lexington, Kentucky, of whom, and his heirs, if deceased, nothing was known, for the sum of about $700, to the payment of which the rents reserved to said Bartle from the tenants in possession were to be and a large amount was in fact appropriated and paid. That the said Bartle, having been upset in crossing the Ohio River and thrown into the same, lost his certificate for said lot, and this fact coming to the knowledge of one Charles Vattier, a citizen and resident of the State of Ohio, who, it is prayed, may be made defendant to the bill, and the said Bartle being then in very reduced circumstances, the said Vattier contriving and intending to defraud the said Bartle of the said lot, then become considerably valuable, went to Lexington and purchased of said Barr the mortgage given on said lot by said Bartle, which he took up, and having obtained from Abijah Hunt, then the tenant of said Bartle, the possession of the said lot in the absence of said Bartle from the country, the said Vattier obtained from John Cleves Symmes, in whom the legal title was, a conveyance for said lot.

That said Vattier, having thus fraudulently obtained the possession of and title to said lot, afterwards sold the same to one John Smith, who had full notice and knowledge of the original and continued claim of said Bartle to the same, which said Smith is since deceased, and his heirs, if any are alive, are unknown to the complainant, and the said Smith, after occupying the same for a time, sold the same to one John H. Piatt, who had full notice and knowledge of Bartle's claim thereto; said John H. Piatt is since deceased, leaving Benjamin M. Piatt and Philip Grandon and Hannah C. his wife, citizens and residents of the State of Ohio, his heirs at law, with others not citizens of this state, and who cannot therefore be made defendants. And the said John H. Piatt, in his lifetime, mortgaged the same to the President, Directors, and Company of the Bank of the United States, under

which mortgage the said President, Directors, and Company of the Bank of the United States have obtained possession and complete title, with full notice and

knowledge of the claim of said Bartle. And the said President, Directors, and Company of the Bank of the United States have sold the same to one John Watson, a citizen and resident of this state, who, it is prayed, may be made defendants to this bill, the said Watson being in the actual possession of said premises, but has not paid the purchase money or obtained a deed therefor.

The bill further shows that the said Bartle asserted to the said Vattier, to the said Smith and to the said Piatt his right to said premises at various and different times, but from poverty was unable to attempt enforcing the same in a court of equity or elsewhere, and the complainant has recently purchased from said Bartle his right to said lot and obtained a conveyance from him for the same. The bill prays that the said President, Directors, and Company of the Bank of the United States may be decreed to deliver possession of said premises to the complainant and account for and pay the rents and profits thereof to him and execute a quiet claim deed therefor to him, or in case the said President, Directors, and Company of the Bank of the United States be protected in the possession thereof, that Charles Vattier be decreed to account for and pay to the complainant the value thereof upon such principles as shall be deemed just and equitable, and for other and further relief, &c.;

The Bank of the United States filed an answer denying any knowledge of the facts alleged in the bill as to the title of Bartle to the property in question and asserting a regular legal title to the same in those under whom they hold the same. They assert a possession of the property in Charles Vattier, from 1797 up to July 1806, when the property was purchased by John Smith, and was afterwards, in 1811, sold by the sheriff by virtue of a *fieri facias,* as the property of John Smith, and bought by John H. Piatt, under whom and whose heirs the property is held by conveyances, commencing in 1820, by mortgage, by deed in fee simple from the heirs of John H. Piatt in 1823, and by a release of the dower of the widow of John H. Piatt at the same time, for which release the bank paid to the said widow $11,000.

Upon this lot of ground John H. Piatt made extensive and

costly improvements, and in particular erected the Cincinnati Hotel.

The answer states that the bank, at the time of the purchase, knew nothing of the claim of the complainant or of Bartle, and that they claim a complete title to the lot under John C. Symmes, Charles Vattier, John Smith, and John H. Piatt, and his heirs and representatives and widow, as above stated, and they allege that said Vattier took possession of said lot about the year 1799, and that said Vattier and those claiming under him have continued in the uninterrupted possession of said premises ever since, being a period of more than twenty-eight years.

The answer of Charles Vattier denies all the allegations in the bill which assert his knowledge of the title, said to have been held by Bartle to the property, and asserts a purchase of the property claimed by Robert Piatt from Robert Barr of Lexington, Kentucky, and that a complete legal title to the same had been made to him by John Cleves Symmes, holding the said legal title. That he came fairly into the possession of this property, and at that time had not the least notice or knowledge of the supposed equitable claim of the said Bartle to the lot. He further states that while he lived on said lot, he frequently saw Bartle, who was often in the house on the lot; that said Bartle never made known to him or intimated to him that he had any claim or title to the lot; that while he was the owner of the lot, he made improvements on the same, of which Bartle had knowledge. He does not believe or admit that said Smith had any notice of the several matters and things set forth in the bill at the time he received a conveyance for said lot from this defendant, as before stated, or that he knew or had heard anything of the supposed right or claim of said Bartle to said lot. He further states that ever since he took possession of said lot in the year 1797, there has been a continued possession of the same under his title thus acquired from said Symmes by the successive owners as set forth in the bill. He knows nothing of the inability of said Bartle, on account of his poverty, to assert his title to said lot, if he had one, nor does he know that the said Robert Piatt has purchased from the said Bartle his right to said lot and obtained a conveyance from him for the same, and therefore he requires full proof of the same.

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The complainant filed a general replication.

The depositions of a number of witnesses were taken and filed in the case, and on 19 December, 1831, the circuit court made a decree dismissing the bill and stating that the equity of the case was with the defendants and that the complainant was not entitled to the relief sought.

The complainant appealed to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from the decree of the Circuit Court of the District of Ohio in a suit in equity in which the present appellant was original plaintiff.

In June, 1827, the plaintiff purchased of John Bartle the lot of land in controversy, which is asserted to be worth from $50,000 to $70,000, for the consideration, as stated in the deed of conveyance, of $3,000, and the present suit was brought in December of the same year. The bill states that when the City of Cincinnati was laid out in 1789, the country being then a wilderness, certain lots of the city were allotted as donations to those who should make certain improvements, and that the evidence of ownership of such lots was a certificate of the proprietors, which was transferable from one to another by delivery. That lot, number one, on the plat of the city (the lot in controversy) was allotted to Samuel Blackburn, who transferred his right to one James Campbell who transferred it to Bartle in 1790, and the latter completed the improvements required by the terms of the donation. That Bartle continued to occupy the lot under this certificate of title for several years, when, becoming embarrassed, he mortgaged the lot to one Robert Barr of Lexington, Kentucky, of whom, the bill states, and his heirs, if deceased, the plaintiff knows nothing, for the sum of $700, for the payment of which the rents received by Bartle from the

tenants in possession were to be appropriated and paid. The bill then alleges that Bartle afterwards lost the certificate in crossing the Ohio River; that Charles Vattier, one of the defendants, fraudulently purchased the mortgage of Barr and obtained possession of the lot from the tenants in the absence of Bartle from the country, and acquired the legal title from John C. Symmes, in whom it was vested. That Vattier afterwards sold the same to one John Smith, who is since deceased, and his heirs, if any are alive, are unknown to the plaintiff, and who had full notice of Bartle's title.

That Smith afterwards sold the same to one John H. Piatt, since deceased, whose heirs are made defendants, who also had notice of Bartle's title; that Piatt, in his lifetime, mortgaged the same to the Bank of the United States, which has obtained possession and complete title, with the like notice. The bill further charges that Bartle asserted his right to the premises to Vattier, Smith, and Piatt at various times, but from poverty was unable to attempt enforcing the same in a court of equity or elsewhere, and that the plaintiff has recently, in December, 1827, purchased Bartle's right and obtained a conveyance thereof. The bill then states that the plaintiff had hoped that the bank would have surrendered the possession, or in case it refused so to do, that Vattier would have accounted with the plaintiff for the value thereof, taking an account of the mortgage money paid to Barr of the improvements, rents, profits, &c.; But that the bank has refused to surrender the possession, and Vattier has refused to account. And it then prays a decree against the bank to surrender the possession and account for the rents and profits and to execute a quiet claim, or if the bank is protected in the possession, that Vattier shall be decreed to account and for general relief.

In their answers, Vattier and the Bank of the United States assert themselves to be *bona fide* purchasers for a valuable consideration of an absolute title to the premises without notice of Bartle's title, and they rely on the lapse of time also as a defense. The bill, as to the heirs of J. H. Piatt, was taken *pro confesso,* they not having appeared in the cause.

From the evidence in the cause it appears that Vattier and those claiming title under him have been in possession of the premises, claiming an absolute title thereto adverse to the title

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of Bartle ever since 20 March, 1797, the day of the date of the conveyance from Symmes to Vattier. At the hearing in the circuit court, the bill was dismissed, and the cause now stands before this Court upon an appeal taken from that decision.

Various questions have been made at the argument before us as to the nature and character of Bartle's title, and if he had any valid title, whether the purchasers under Barr had notice of it. With these and some other questions we do not intermeddle because ,in our view of the cause, they are not necessary to a correct decision of it.

The important question is whether the plaintiff is barred by the lapse of time, for we do not understand that the adverse possession presents, under the laws of Ohio, any objection to the transfer of Bartle's title to the plaintiff if Bartle himself could assert it in a court of equity. This question has been argued at the bar under a double aspect -- first upon the ground of the statute of limitations of Ohio, and secondly upon the ground of an equitable bar by mere lapse of time, independently of that statute.

In regard to the statute of limitations, it is clear that the full time has elapsed to give effect to that bar, upon the known analogy adopted by courts of equity in regard to trusts of real estate, unless Bartle is within one of the exceptions of the statute by his nonresidence and absence from the state. It is said that there is complete proof in the cause, to establish such nonresidence and absence. But the difficulty is that the nonresidence and absence are not charged in the bill, and of course are not denied or put in issue by the answer, and unless they are so put in issue, the court can take no notice of the proofs, for the proofs to be admissible must be founded upon some allegations in the bill and answer. It has been supposed that a different doctrine was held by Lord Hardwicke in *Aggas v.*

Pickerell, 3 Atk. 228, and *Gregor v. Molesworth,* 2 Ves. 109, and by Lord Thurlow in *Deloraine v. Browne,* 3 Bro.Ch. 632. But these cases did not proceed upon the ground that proofs were admissible to show the party, plaintiff, to be within the exception of the statute of limitations, when relied on by way of plea or answer, and the exception was not stated in the bill or specially replied, but upon the ground that the omission

in the bill to allege such exception could not be taken by way of demurrer. And even this doctrine is contrary to former decisions of the court, [Footnote 1] and it has since been explicitly overruled, and particularly in *Beckford v. Close,* 4 Ves. 476; *Foster v. Hodgson,* 19 Ves. 180, and *Hovenden v. Lord Annesley,* 2 Sch. & Lefr. 637-638. And the doctrine is now clearly established that if the statute of limitations is relied on as a bar, the plaintiff, if he would avoid it by any exception in the statute, must explicitly allege it in his bill or specially reply it, or, what is the modern practice, amend his bill if it contains no suitable allegation to meet the bar. [Footnote 2] In the present case, if the merits were otherwise clear, the court might remand the cause for the purpose of amending the pleadings, and supplying this defect. But in truth, the answers, though they rely generally on the lapse of time, do not specially rely on the statute of limitations, as a bar, and the case may therefore well be decided upon the mere lapse of time, independently of the statute.

And we are of opinion that the lapse of time is, upon the principles of a court of equity, a clear bar to the present suit independently of the statute. There has been a clear adverse possession of thirty years without the acknowledgement of any equity or trust estate in Bartle, and no circumstances are stated in the bill, or shown in the evidence, which overcome the decisive influence of such an adverse possession. The established doctrine -- or as Lord Redesdale phrased it in *Hovenden v. Annesley,* 2 Sch. & Lef. 637, 638, "the law of courts of equity" -- from its being a rule adopted by those courts, independently of any positive legislative limitations, is that it will not entertain stale demands. Lord Camden, in *Smith v. Clay,* 3 Brown's Ch. 640, note, stated it in a very pointed manner. "A court of

equity," said he,

"which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept upon his rights or acquiesced for a great length of time. Nothing

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can call forth this Court into activity but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation of suit in this Court."

The same doctrine has been repeatedly recognized in the British courts, as will abundantly appear from the cases already cited, as well as from the great case of *Cholmondeley v. Clinton,* 2 Jac. & Walk. 1. [Footnote 3] It has also repeatedly received the sanction of the American courts, and was largely discussed in *Kane v. Bloodgood,* 7 Johns.Ch. 93, and *Decouche v. Saratiere,* 3 Johns.Ch. 190. And it has been acted on in the fullest manner by this Court, especially in the case of *Prevost v. Gratz,* 6 Wheat. 481, 5 Cond. 142; *Hughes v. Edwards,* 9 Wheat. 489, 5 Cond. 648; *Willison v. Matthews,* 3 Pet. 44; and *Miller v. McIntire,* 6 Pet. 61, 31 U. S. 66 .

Without, therefore, going at large into the grounds upon which this doctrine is established, though it admits of the most ample vindication and support, we are all of opinion that the lapse of time in the present case is a complete bar to the relief sought, and that the decree of the circuit court dismissing the bill ought to be

Affirmed with costs.

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 Ohio and was argued by counsel, on consideration whereof it is decreed and ordered by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

[Footnote 1]

See South Sea Company v. Wymondsell, 3 P.Wms. 143, 145, and Mr. Coxe's note; Cooper's Eq.Pl. 254, 255; *Smith v. Clay,* 3 Bro.Ch. 640, note.

[Footnote 2]

See Belt's note to the case of *Deloraine v. Browne,* 3 Bro.Ch. 640, n. 1; *Miller v. McIntire,* 6 Pet. 61, 31 U. S. 64 .

[Footnote 3]

See also Beckford v. Wade, 17 Ves. 86; *Barney v. Ridgard,* 1 Cox.Cas. 145; *Blannerhassett v. Day,* 1 Ball. & Beatt. 104; *Hardy v. Reeves,* 4 Ves. 479; *Harrington v. Smith,* 1 Bro.Par.Cas. 95.