

Dubois Vs. Hepburn

Dubois Vs. Hepburn

SooperKanoon Citation : sooperkanoon.com/79524

Court : US Supreme Court

Decided On : 1836

Appeal No. : 35 U.S. 1

Appellant : Dubois

Respondent : Hepburn

Judgement :

DuBois v. Hepburn - 35 U.S. 1 (1836)

U.S. Supreme Court DuBois v. Hepburn, 35 U.S. 10 Pet. 1 1 (1836)

DuBois v. Hepburn

35 U.S. (10 Pet.) 1

Page 35 U. S. 2

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Construction of the fourth section of the Act of Assembly of Pennsylvania passed 15 March, 1815, providing for the sale of lands for taxes.

The law of Pennsylvania authorizing the redemption of lands sold for taxes ought to receive a liberal and benign construction in favor of those whose estates will be otherwise divested, especially where the time allowed is short, an ample indemnity given to the purchaser, and a penalty is imposed on the owner. The purchaser suffers no loss; he buys with full knowledge that his title cannot be absolute for two years; if it is defeated by redemption, it reverts to the lawful proprietors.

It would seem not to be necessary for the purposes of justice or to effectuate the objects of the law that the right to redeem should be narrowed down by a strict construction.

It comports with the words and spirit of the law to consider any person who has an interest in lands sold for taxes as the owner thereof for the purposes of redemption.

Any right which in law or equity amounts to an ownership in the land, any right of entry upon it, to its possession or enjoyment, or any part of it which can be deemed an estate in it makes the person the owner so far as it is necessary to give him the right to redeem.

The law does not require a payment or tender; an offer and refusal is made equivalent to a receipt of the money by the treasurer, and authorizes a recovery of the land by suit as if no sale had been made.

The plaintiff in error instituted an ejectment for a tract of land situated in Lycoming County, in the State of Pennsylvania, and exhibited a title, regularly deduced, under a patent granted to Joseph Fearon, dated 19 September, 1796.

The title claimed by the defendant was derived from a purchase at a sale of the land made by the Treasurer of the County of Lycoming on 12 June, 1826, for county and road taxes, regularly assessed on the same; the county taxes prior to 1 February, 1825, and the road taxes on 22 April, 1825. The whole of the land in

controversy was sold for five dollars and fifty-two and a half cents, the alleged amount of the taxes and costs. On 15 July 1826, the treasurer of the county conveyed the premises to the defendant.

It appeared in evidence that the heirs and legal representatives of Joseph Fearon, the patentee of the land in controversy, were the children of Abel Fearon and Robert Fearon and the brothers of Joseph Fearon, both brothers having died in the lifetime of the patentee, and on 26 March, 1825, partition of the real estate of Joseph Fearon was made between the two branches of the Fearon family, by which the premises in this ejectment were, *inter alia*, allotted to the heirs of Abel Fearon in consideration of a moiety of the lands of the intestate having been allotted to the heirs of William Fearon. On 27 March, 1827, partition of the portion of the real estate allotted to the heirs of Abel Fearon, and the tract of land in controversy became the property by this partition of Jacob Fox and wife, late Elizabeth Fearon, from whom the plaintiff in the ejectment held, by intermediate conveyances, the premises in controversy in fee simple.

The plaintiff, in order to overthrow the alleged tax title set up by the defendant, gave in evidence an alleged redemption of the said tract, No. 5615, by a tender both to the county treasurer and the defendant, within two years after the said sale, of the full amount of the said taxes and costs and twenty-five percentum upon the aggregate amount thereof, as called for by law.

Page 35 U. S. 3

The case came on for trial by a jury at January term, 1833, and the plaintiff's counsel requested the court to instruct the jury

"1. That under the act directing the mode of selling unseated lands for taxes, and its several amendments and supplements, any person may legally pay the taxes due on such land."

"2. That any man who may legally pay such taxes may legally redeem such land sold for taxes within the term specified in said acts."

"3. That any person has a right to redeem such land so sold by a payment of the tax, costs, and percentage, within the time named in the said acts."

"4. That any person having or believing himself to have an interest in the lands so sold has a right to redeem the same within the period named in the said act."

"5. That any person connected by blood or by title with the owner or supposed owner of the lands so sold has a right so to redeem the same."

"6. That any person having the charge of such lands from the owner, during his life, after his decease intestate, and without a countermand of such charge, has a right to redeem such lands so sold."

"7. That the treasurer under the said acts is an officer ministerial, and not judicial, and that he is bound to receive, under the above acts, the redemption money for the land so sold under the facts severally above set forth."

"8. That the treasurer has no authority to decide in whom the title or ownership of such lands so sold and offered to be redeemed, is vested."

"9. That the refusal of said treasurer to receive the redemption money for lands so sold is equivalent to and dispenses with a tender of the same."

"10. That if the plaintiff Oliver S. Wolcott and the defendant Andrew D. Hepburn were citizens of different states at the time of the action brought -- that is to say that Andrew D. Hepburn was a citizen of Pennsylvania, and Oliver S. Wolcott was a citizen of Connecticut, or of any other state of the United States, the jurisdiction of this Court attached, and that such jurisdiction

Page 35 U. S. 4

was not divested by any change of citizenship or domicile by the said Oliver S. Wolcott, after the institution of this suit."

"11. That a citizen of the United States, born in the State of Connecticut, who resided until his marriage and settled there upon his marriage, gained thereby a

citizenship and domicile by origin; which is not divested or changed unless there be proved a citizenship and domicile acquired by the said Oliver S. Wolcott elsewhere, in some other state or jurisdiction."

"12. That any person holding an interest in land as tenant in common, on which taxes have been previously assessed and are unpaid, has a right to redeem the said land from a sale for said taxes, within two years thereafter, although he has been divested of his interest in said land by a partition after said assessment, and before the sale for taxes."

The court, on the points presented by the counsel for the plaintiff, gave the following answers.

"1. The law is as here stated. Any person may legally pay the taxes assessed on unseated lands, under the several acts of assembly of this commonwealth directing the mode of selling unseated lands for taxes."

"2 and 3. But no one has a right to redeem such land so sold, but the owner or owners, his, her, or their agent or attorney."

"4. Any person having an interest in land so sold, has a right to redeem the same within the period named in the said act, but a mere opinion without right of having an interest, confers no power to redeem."

"5. Any person connected by title with the owner, or supposed owner of the land so sold, has a right to redeem the same, but the right does not exist in a relation by blood because of that relationship."

"6. The decease of a person intestate being the owner of such lands is a revocation of the authority of one who had the charge of them from the deceased, yet, under some circumstances, he may redeem lands so sold which were under his charge, notwithstanding the decease of the owner intestate. But where the owner was of full age, and had actual notice, as in this case, from the county treasurer of the sale of the land for taxes, and of the

name of the purchaser, and of the time within he had power to redeem, and disavows any agency, and declares he will incur all risk, the interference of another person to redeem, not asserting any authority from the owner to do so, would not affect the title of the purchaser of land so sold."

"7 and 8. It is true that the treasurer, under the acts referred to, is a ministerial, and not a judicial, officer, but the said acts did not bind him to receive the redemption money for the land so sold under the facts severally above set forth. The decision of the county treasurer cannot affect the legal rights, either of the owner or purchaser, and he has no authority to determine in whom the title or ownership of such land so sold and offered to be redeemed is vested. But before he receives the redemption money it is his duty to satisfy himself that the person tendering it is either owner, or agent, or attorney for the owner."

"9. It lands are so sold and a county treasurer refuse to receive the redemption money from a person duly authorized to tender it, it is not necessary to make an actual tender of it."

"10 and 11. In substance these instructions have already been given to the jury, but I repeat them in the language of the plaintiff's counsel."

"12. The court instruct you on this point as requested by the plaintiff's counsel. Its application, however, to the case before you must be tested by the facts connected with it and given in evidence. The county tax, for which in part the land in question was sold, was assessed prior to 26 March, 1825, the date of the deed of partition to which Robert Quay is a party. But it appears, from the certificate of the supervisor of roads, that the assessment of the road tax on the land in dispute was made 22 April, 1825, and filed in the proper office 3 May following, after Robert Quay and wife had parted with all their interest in the land. And by the act of assembly for the sale of unseated lands for taxes, unseated land may be sold for *any part* of the taxes due. This land being, therefore, sold for the arrearage of tax as well as for the assessment made before the execution of the deed of partition, Robert Quay could have no legal right derived from his having been once part owner of it, to tender *all* the taxes due for the purpose of redemption. "

The defendant's counsel requested the court to instruct the jury as follows:

"1. That if, from the testimony disclosed, they believe that Oliver S. Wolcott was not a citizen of the State of Connecticut on the 22d September 1830, but had lost his domicile then, the plaintiff cannot recover."

"2. That from the testimony disclosed the taxes for which the land was sold were assessed, and that the deed from the treasurer to the defendant, on the *face of it*, vests in him a complete title to the land in controversy."

"3. That under the fourth section of the Act of 13 March, 1815, when lands have been sold for taxes, none but the owner, or his agent duly authorized, can redeem the land, and any offer made by a stranger and without authority from the owner to redeem lands so sold, would not affect the title of the purchaser at treasurer's sale."

"4. That if the jury believe the testimony of Joseph F. Quay, of Robert Quay, Sr. and Robert Quay, Jr., they were neither of them the agent of Jacob Fox, under whom the plaintiff claims, when Robert Quay, Jr. called upon William Harris the treasurer, in May, 1828, to attempt to redeem the tract of land in dispute, therefore plaintiff cannot recover."

"5. That if the jury believe the testimony of William Harris and what he has testified to in relation to the declarations of Jacob Fox when he saw him in Philadelphia, in March, 1828, and in Williamsport, October, 1828, neither of said Quays were the agent of Jacob Fox, nor can be plaintiff set up their acts now to defeat the defendant's title."

"6. That if the jury believes that the Quays made the offer to redeem, through Robert Quay, Jr., for their own benefit, all the acts of Robert Quay, Jr., in relation to the redemption are void as it regards the present defendant, and do not destroy his treasurer's title."

"7. That if the jury believes that Robert Quay made the offer to redeem under a mistaken supposition that he was the owner, or had an interest therein, and when he discovered the mistake disclaimed any further act, such offer to redeem cannot effect the title of the defendant as purchaser at treasurer's sale. "

Page 35 U. S. 7

The court gave the following answer to the defendant's points:

"That if it should appear from the testimony that Oliver S. Wolcott, lessee of the plaintiff, was a citizen, and domiciled in the State of Pennsylvania on 25 September, 1830, when this suit was brought, this Court has no jurisdiction,"

and the plaintiff cannot recover.

The jury found a verdict for the defendant, and judgment having been entered on the same, the plaintiff prosecuted this writ of error.

Page 35 U. S. 17

MR. JUSTICE BALDWIN delivered the opinion of the Court.

The land in controversy was granted to Joseph Fearon by the Commonwealth of Pennsylvania, by patent bearing date 19 April, 1794, from whom the plaintiff deduced a regular chain of title to himself. The defendant claimed in virtue of a sale for taxes on the 12 June 1826, by the Treasurer of Lycoming County, who, by his deed dated 15 July, 1826, conveyed the land to the defendant.

No question arose in the court below as to the original title of the plaintiff, or the regularity of the sale for taxes; the case turned upon the redemption of the land, pursuant to the fourth section of the law of Pennsylvania, passed 15 March 1815, providing for the sale of lands for taxes. This section is as follows:

"If the owner or owners of land sold as aforesaid, shall make or cause to be made, within two years after such sale, an offer or legal tender of the amount of the taxes for which the said

lands were sold, and the costs, together with the additional sum of twenty-five percent on the same, to the county treasurer, who is hereby authorized and required to receive and receipt for the same, and to pay it over to the said purchaser on demand, and if it shall be refused by the said treasurer, or in case the owner or owners of lands so sold shall have paid the taxes due on them previously to the sale, then and in either of these cases, said owner or owners shall be entitled to recover the same by a due course of law, but in no other case and on no other plea shall an action be sustained."

It appears by the record that before 1 February, 1825, this land was assessed for county tax ninety cents, and on 22 April, 1825, with road tax, one dollar and twenty cents; it was sold in June, 1826, for five dollars and fifty-two cents, the amount of taxes and costs, and purchased by the defendant; that in May, 1828, Robert Quay gave his son written directions to pay the county treasurer the taxes and costs for which the land was sold, together with the addition of twenty-five percent, whereupon the son offered to pay the same to the treasurer, who refused to accept it, on the ground that his father was not the owner and was not authorized to redeem the land; on a similar offer made to the defendant, he also refused for the same reason. No formal tender was made, or any specific sum offered; but the son had a sufficient sum with him to pay all that was by law necessary to pay, and offered to pay it.

At this time the title to the land was in this situation:

Joseph Fearon, the patentee, died in 1810, intestate and without issue, seized of the land in controversy, together with a number of other tracts of land in the same part of the country: he had two brothers, Abel and William, who died in his lifetime, leaving issue, to whom the estate of their uncle descended in equal shares.

The children of Abel Fearon were Robert, Joseph, Sarah, and Elizabeth; Sarah married Christopher Scarrow, and resided in England; Elizabeth married Jacob Fox, in England in 1812; where they resided till 1827, when they removed to

Philadelphia; where Robert and Joseph resided, and where Fox and wife continued to reside.

Page 35 U. S. 19

The children of William Fearon were John William, Nancy, married to Samuel Brown living in Center County, James, residing in Philadelphia, and Sarah, married to Robert Quay, residing in Lycoming County, in which the land in question is situated.

James Fearon was the administrator of his uncle Joseph, and paid some taxes on the unseated lands of which he died seized. It was understood that those heirs who, from their situation, could most conveniently do it, should look after the unseated lands in their neighborhood, but no definite arrangement seems to have been made for the payment of the taxes due on the lands.

The lands remained undivided, or so far as appears, without any attempt at partition by the heirs till 26 March, 1825; when Robert Quay and wife, Samuel Brown and wife, James and William Fearon (who survived their brother John), the children of William Fearon, executed a deed of partition to Joseph Fearon, Elizabeth Fearon, Christopher Scarrow and Sarah his wife, the children of Abel, the consideration of which is thus expressed:

"For and in consideration of a quantity of land estimated in value equal to that hereinafter described, to be conveyed by a like release executed by the heirs and legal representatives of Abel Fearon, deceased, and for the sum of one dollar to them in hand paid,"

&c.;, "have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim unto Joseph Fearon," &c.;, "to have and to hold the said tracts of land, lots, and premises above described, unto the said Joseph," &c.;, "their heirs and assigns forever," with covenant of special warranty. This deed included the land in question, and was recorded in Center county, 26 May 1825. Robert Fearon had previously died.

No special allotment was made by this deed to the children of Abel Fearon in severalty, nor do they appear to have ever conveyed to the children of William, or to have done any act accepting the partition made by the deed of March, 1825, either separately or jointly, as the representatives of their branch of the family, until Fox and wife removed from England to Philadelphia in 1827. On 13 November, 1827, a paper was executed purporting to be an indenture of partition made between Joseph Fearon, Jacob Fox and wife, and Christopher

Page 35 U. S. 20

Scarrow and wife, reciting the deed of March, 1825, and dividing among themselves in severalty the lands and lots conveyed to them by that deed; the tract in question was allotted to Fox and wife. This paper was signed by Joseph Fearon, Jacob Fox, and Elizabeth his wife, who acknowledged it the same day in due form, before a justice of the peace of the County of Philadelphia. It also purported to be executed by Scarrow and wife by their attorney Nathaniel Nunnelly, but was not acknowledged by him till 4 October 1828; it was recorded in Lycoming County 25 October 1828. That this deed was not in fact executed by Nunnelly in 1827 appears by his acknowledgment, which states it to have been done in virtue of a power of attorney executed by Scarrow and wife on 5 June, 1828. That power appears to have been executed on 25 June, 1828, constituting Nunnelly and Jacob Fox, the attorneys of Scarrow and wife, with power to Nunnelly alone giving full authority over all their property held as one of the heirs of Joseph Fearon, the uncle. It took no notice of the deed of partition from the heirs of William Fearon to the heirs of Abel, but throughout was predicated on the fact of the estate of Joseph Fearon remaining undivided in the hands of the children of his two brothers as tenants in common. No construction can be given to it by which to make it operate as an acceptance of the partition made by the deed of 1825, or any release of the right of Mrs. Scarrow to claim her undivided share of the whole estate of her uncle. There was besides a fatal objection to the power of attorney, as there was no separate examination of Mrs. Scarrow or any acknowledgment by her; the proof of its execution was by the oath of a subscribing witness only. It was afterwards duly acknowledged on her separate examination

on 8 September, 1832.

On the same day, Scarrow and wife, by their deed, reciting the deeds of partition of 1825, made by the heirs of William Fearon, and of 13 November, 1827, by Joseph Fearon, and Fox and wife, Nunnelly their attorney, in October, 1828, confirmed them all according to their several allotments. This deed was regularly acknowledged in England on a separate examination, and recorded 10 June, 1833.

Page 35 U. S. 21

On 16 April, 1830, Fox and wife conveyed the tract in question to Valentine, under whom the plaintiff claimed, which conveyance was ratified and confirmed by the deed of confirmation by Scarrow and wife on 8 September, 1832.

In March, 1827, James Fearon, the administrator of Joseph Fearon the uncle, was informed of the sale of several of the tracts of land belonging to the estate for taxes, of which the tract in question was one. In February, 1828, the Treasurer of Lycoming County came to Philadelphia, where he met Jacob Fox, Nunnelly, and Joseph Fearon; he gave them a statement of the tracts which had been sold, and advised them to redeem them or they might be lost. Fox at first appeared disposed to redeem, but Nunnelly opposed it; Fox finally said he would run the risk, as they intended to start in a few days to see the lands; but he paid no attention to them, nor made any offer or attempt to redeem till October, 1828, after the time of redemption had expired. Some negotiation took place between Fox and the defendant afterwards concerning the land in question which proved abortive. Fox continued to assert his claim to the land till he sold it to Valentine in 1830. Quay made the offer to redeem without any authority from Fox, but from a sense of duty to the heirs, who, he said, would reimburse him if it fell into their hands, and on the expectation that he would, at some time own it.

It thus appears that before the execution of the deed of partition on 26 March, 1825, Robert Quay was, in right of his wife, entitled to an undivided share of the land in question, and continued so entitled until his interest was divested by the

legal effect of that deed. The question is when it took effect as a severance of the joint interest which all the heirs of Joseph Fearon had in his estate; it could not be by the mere delivery of the deed by the heirs of William Fearon to any other than the heirs of Abel Fearon and on an acceptance by them individually. A partition is inchoate till made by all parties or till made by one and accepted by the others; there must be a deed of partition, a partition *in pais*, or such acceptance of a deed or partition as would amount to an estoppel before the estate can be held in severalty. In this case, the heirs of Abel Fearon do not appear to have been conusant of the deed of 1825 at the time

Page 35 U. S. 22

it was made, and neither of them had done any act which could amount to an acceptance of the allotment therein made until its ratification by Fox and Joseph Fearon by their deed of 13 November, 1827, dividing among the heirs of Abel Fearon the several tracts and lots of land conveyed to them undivided. But this left the partition open till Scarrow and wife would become parties to it, which was not till the signature of Nunnelly, their attorney, in October 1828, in virtue of the power of attorney executed in June, 1828. As, however, this power was not acknowledged by Mrs. Scarrow so as give any authority to affect her real estate, her interest remained undivided till the deed of confirmation of 8 September, 1832, which ratified the partition of 1825 by the solemn act of partition in 1827 among the heirs of Abel according to the previous allotment, both of which were specially recited and confirmed. This, being in law equivalent to a deed from them to the heirs of William Fearon of the residue of the estate of Joseph Fearon, consummated the partition by the act of all the parties in interest. The deed of 1825 then took effect as a divestiture of the interest of Quay and wife in the land in question by relation to its date, but while the partition was *in fieri*, the estate remained undivided. This was in accordance with the terms of the deed of 1825, the consideration of which was a conveyance to be executed by the heirs of Abel Fearon of a quantity of land to be estimated equal to what was thus conveyed by the heirs of William. The intention of the parties thus corresponding with the legal effect of their deeds, it is perfectly clear that till the consummation of the partition

in 1832, Quay and wife held an undivided interest in the land in question, as owners thereof in common with the other heirs of Joseph Fearon, and the only remaining question is whether he had a right to redeem from a sale for taxes in May, 1828.

A law authorizing the redemption of lands so sold ought to receive a liberal and benign construction in favor of those whose estates will be otherwise divested, especially where the time allowed is short, an ample indemnity given to the purchaser, and a penalty is imposed on the owner. The purchaser suffers no loss; he buys with full knowledge that his title cannot be absolute for two years; if it is defeated by redemption, it reverts to

Page 35 U. S. 23

the lawful proprietors. It would therefore seem not to be necessary for the purposes of justice, or to effectuate the objects of the law, that the right to redeem should be narrowed down by a strict construction. In this case, we are abundantly satisfied that it comports with the words and spirit of the law to consider any person who has any interest in lands sold for taxes as the owner thereof for the purposes of redemption. Any right which in law or equity amounts to an ownership in the land, any right of entry upon it, to its possession, or enjoyment, or any part of it, which can be deemed an estate in it, makes the person the owner, so far as it is necessary to give him the right to redeem. The decision of this case does not make it necessary to go further than to determine that Quay, as a part owner, had a right to redeem; that he caused an offer to redeem to be made to the treasurer within two years, as well as to the defendant, both of whom refused to accept the redemption money. This brings the case within the provisions of the law; it does not require a payment or tender; an offer and *refusal* is made equivalent to a receipt of the money by the treasurer, and authorizes a recovery of the land by suit, as if no sale had been made.

In instructing the jury that Quay had no right to redeem, there was therefore error in the court below; the judgment must consequently be

Reversed and a venire de novo awarded.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Pennsylvania, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the judgment of the district 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 district court, with directions to that court to award a *venire facias de novo*.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com