

Poole Vs. Fleeger

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SooperKanoon Citation : sooperkanoon.com/79588

Court : US Supreme Court

Decided On : 1837

Appeal No. : 36 U.S. 185

Appellant : Poole

Respondent : Fleeger

Judgement :

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Poole v. Fleeger

36 U.S. (11 Pet.) 185

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF WEST TENNESSEE

SYLLABUS

The plaintiffs in the Circuit Court of West Tennessee, instituted an ejectment for a tract of land held under a Virginia military land warrant, situate south of a line called Mathews' Line, and south of Walkers Line, the latter being the established

boundary between the States of Kentucky and Tennessee, as fixed by a compact between these states, made in 1820, by which compact, although the jurisdiction over the territory to the south of Walker's Line was acknowledged to belong to Tennessee, the titles to lands held under Virginia military land warrants &o.;, and grants from Kentucky, as far south as "Mathews' Line," were declared to be confirmed, the State of Kentucky having, before the compact, claimed the right to the soil as well as the jurisdiction over the territory, and having granted lands in the same. The compact of 1820, was confirmed by Congress. The defendants in the ejectment claimed the lands under titles emanating from the State of North Carolina in 1786, 1794, 1795 before the formation of the State of Tennessee and grants from the State of Tennessee in 1809, 1811, 1812, 1814, in which the lands claimed by the defendants were situated, according to the boundary of the State of Tennessee, declared and established at the time the State of Tennessee became one of the states of the United States. The circuit court instructed the jury that the State of Tennessee, by sanctioning the compact, admitted in the most solemn form that the lands in dispute were not within her jurisdiction, nor within the jurisdiction of North Carolina, at the time they were granted, and that consequently the titles are subject to the compact. *Held* that the instructions of the circuit court were entirely correct.

It is a part of the general right of sovereignty belonging to independent nations to establish and fix the disputed boundaries between their respective limits, and the boundaries so established and fixed by compact between nations become conclusive upon all the subjects and citizens thereof and bind their rights and are to be treated to all intents and purposes as the real boundaries. This right is expressly recognized to exist in the states of the Union by the Constitution of the United States, and is guarded in its exercise by a single limitation or restriction only, requiring the consent of Congress.

The grants under which the defendants in the circuit court claimed to hold the land were not lightly made, because they were originally beyond the territorial boundary of North Carolina and Tennessee; this is, by necessary implication, admitted by the compact between the States of Kentucky and Tennessee.

In the ordinary course of things, on the trial of a cause before a jury, if an objection is made and overruled as to the admission of evidence and the party does not take any exception, he is understood to waive it. The exception need not indeed then be put in form or written out at large and signed, but it is sufficient if it is taken and the right reserved to put it in form within the time prescribed by the practice or the rules of the court.

Where a will devising lands made in one state is registered in another state in which the lands lie, the registration has relation backwards, and it is wholly immaterial whether the same was made before or after the commencement of a suit.

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"In the State of Tennessee, the uniform practice has been for tenants in common in ejectment to declare in a joint demise and to recover a part or the whole of the premises declared for, according to the evidence adduced."

John Fleeger and others, the defendants in error, instituted an action of ejectment in 1832 to the September term of the Circuit Court of the United States for the District of West Tennessee to recover a tract of land containing two thousand seven hundred and twenty-seven acres lying in Montgomery County in the State of Tennessee and lying south of "Walker's Line," the established boundary line between the State of Kentucky and the State of Tennessee, and north of a line called "Mathews' Line," which is in latitude 36°30' north, being the line which by the Constitution of the State of North Carolina was declared to be the true northern boundary line of the State of Tennessee, and which is described as such by the charter of King Charles II.

The original title of the plaintiffs in the circuit court was a Virginia military warrant, No. 2,685, dated 3 March, 1784, for six thousand acres of land in favor of John Montgomery, and the plaintiff's read in evidence the will of Frederick Rohrer, to whom a grant from the State of Kentucky, as the assignee of John Montgomery, was issued on 24 February, 1796.

The will of Frederick Rohrer, made, and duly admitted to probate in Pennsylvania, of which state he was a citizen, was not registered in the State of Tennessee until after the institution of this suit.

The plaintiffs introduced in evidence a compact made on 2 February, 1820, between the States of Kentucky and Tennessee, which, after reciting that those states were desirous of terminating the controversy which had so long existed between them relative to their common boundary, and the appointment of commissioners for that purpose, proceeds to declare that the boundary and separation between the States of Kentucky and Tennessee shall be as follows:

"ARTICLE 1. The line run by the Virginia commissioners in the year 1779-1780, commonly called 'Walker's Line,' as the same is now reputed, understood, and acted upon by the said states, their respective officers and citizens, from the southeastern corner of Kentucky to the Tennessee River, thence with and up the said river

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to the point where the line of Alexander and Munsell, run by them in the last year under the authority of an Act of the"

Legislature of Kentucky entitled "An act to run the boundary line between this state and Tennessee, west of the Tennessee River, approved February 8, 1819," would cross said river, and thence with the said line of Alexander and Munsell to the termination thereof, on the Mississippi River below New Madrid.

"ARTICLE 4. The claims to lands lying west of the Tennessee River and north of Alexander and Munsell's line, derived from North Carolina or Tennessee, shall be considered null and void, and claims to lands lying south of said line and west of Tennessee River derived from Virginia or Kentucky shall in like manner be considered null and void."

"ARTICLE 5. All lands now vacant and unappropriated by any person or persons claiming to hold under the States of North Carolina or Tennessee east of the

Tennessee River and north of the parallel of latitude of 36 degrees 30 minutes north shall be the property of, and subject to the disposition of the State of Kentucky, which state may make all laws necessary and proper for disposing of and granting said lands or any part thereof, and may by herself or officers do any acts necessary and proper for carrying the foregoing provisions of this article into effect, and any grant or grants she may make therefor shall be received in evidence in all the courts of law or equity in the State of Tennessee and be available to the party deriving title under the same, and the land referred to in this article shall not be subject to taxation by the State of Tennessee for five years except so far as the same may in the meantime be appropriated by individuals."

ARTICLE 6. Claims to land east of the Tennessee River, between Walker's Line and the latitude of thirty-six degrees and thirty minutes north, derived from the State of Virginia in consideration of military services, shall not be prejudiced in any respect by the establishment of Walker's Line, but such claims shall be considered as rightfully entered or granted, and the claimants may enter upon said lands, or assert their rights in the courts of justice, without prejudice by lapse of time, or from any statute of limitations for any period prior to the settlement of the boundary between the two states; saving, however, to the holders and occupants of conflicting claims, if any there be, the right of showing such entries or grants to be invalid, and of no effect, or that they have paramount and superior titles to the land covered by such Virginia claims.

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"ARTICLE 7. All private rights and interests of lands between Walker's Line from the Cumberland River, near the mouth of Oby's River, to the southeastern corner of Kentucky, at the point where the boundary line between Virginia and Kentucky intersected Walker's Line on the Cumberland Mountain, and the parallel of thirty-six degrees thirty minutes north latitude, heretofore derived from Virginia, North Carolina, Kentucky, or Tennessee, shall be considered as rightfully emanating from either of those states, and the States of Kentucky and Tennessee reserve to themselves respectively the power of carrying into grant claims not yet perfected,

and in case of conflicting claims (if any there be), the validity of each claim shall be tested by the laws of the state from which it emanated, and the contest shall be decided as if each state respectively had possessed the jurisdiction and soil, and full power and right to authorize the location, survey, or grant, according to her own rules and regulations."

ARTICLE 8. It is agreed that the foregoing articles shall receive the most liberal construction for effecting the objects contemplated, and should any disagreement arise as to the interpretation, or in the execution thereof, two citizens of the United States, but residents of neither Kentucky or Tennessee, shall be selected, one by the executive of each state, with power to choose an umpire in case of disagreement, whose decision shall be final on all points to them submitted.

ARTICLE 9. Should any further legislative acts be requisite to effectuate the foregoing articles and stipulations, the faith of the two states is hereby pledged that they will unite in making such provisions, and respectively pass such laws as may be necessary to carry the same into full and complete effect.

This treaty was ratified by acts of the several Legislatures of the States of Kentucky and Tennessee in 1803.

The plaintiffs also proved that the Legislature of Tennessee had by several acts recognized Mathews' Line as being in the position of 36 degrees 30 minutes north, and that, according to observations made by commissioners appointed by the Governor of Tennessee, Walker's Line was about eight statute miles north of the true meridian of 36 degrees 30 minutes. They proved that the land in controversy was to the south of Walker's Line, and between it and Mathews' Line, and that Mathews' Line was run conformably to the observations of the commissioners.

The defendants objected to the introduction of the will of Frederick

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Rohrer as evidence, 1st, upon the ground that the *probate* and *certificate* were not such as to authorize its registration in this state; 2d, upon the ground that said

will was registered in Tennessee since the institution of this suit, and more than twelve months after the death of the testator, and therefore could only take effect from the date of registration. But these objections were overruled by the court, and the will was read to the jury by the plaintiffs, as evidence of title.

The defendants proved that all the lands in their possession lie south of Walker's Line from a half to two miles distance.

The defendants likewise objected to the evidence of title offered by the lessors of the plaintiffs upon the ground that their title was a tenancy in common which would not in law support a joint demise, and they moved to nonsuit the plaintiffs upon this ground. But their objection and motion were overruled by the court, with an intimation that the point would be considered on a motion for a new trial.

No exception to the opinion of the court in permitting the will to be read was taken in the progress of the trial, nor was it stated that the right to do so was reserved. The practice of the court is for exceptions to be taken after trial if deemed necessary.

The defendants read to the jury the following grants, to-wit, No. 1629, from the State of North Carolina to Thomas Smith, for six hundred and forty acres, dated 27 April, 1792. No. 1140, from the State of North Carolina to James Ross, for two hundred and seventy-four acres, dated 14 March, 1786. No. 102, from the State of North Carolina to N. Hughes for 316 acres, dated 7 March,

1786. A grant from the State of North Carolina to Samuel Barton for one thousand acres dated 9 of July, 1797. A grant from said state to Duncan Stewart for 370 acres, dated 17 November, 1797. A grant from said state to John McNairy, for 274 acres, dated 6 December, 1797.

The defendants also read the following grants from the State of Tennessee, to-wit: No. 913, to John Shelby for 320 acres, dated 6 March, 1809; another grant from the State of Tennessee to John Shelby for 100 acres dated 8 March, 1814; a grant from the State of Tennessee to Robert Nelson for 300 acres dated 17 April, 1811; a grant from Tennessee to William E. Williams for 80 acres dated 6 November,

1812.

The defendants then read to the jury regular conveyances, deducing the title to themselves from the different grantees above mentioned,

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and proved that said grants covered their possessions respectively, except that each of the defendants whom the jury found guilty of the trespass and ejectment, in the declaration mentioned, were in possession of portions of land not covered by any grant older in date than the grant from the State of Kentucky to Frederick Rohrer, under which the lessors of the plaintiffs claim.

The defendants also proved that the different grantees above mentioned, under whom they claim, took possession of the different tracts of land contained in the grants by them read on or about the dates of said grants, and that they and those deriving title under them have continued in possession of the same ever since, claiming the lands as their own.

The defendants then read to the jury the statute of Virginia passed on 7 December, 1791, ch. 55, recognizing and confirming Walker's Line, as the boundary between that state and North Carolina. Also the act of Virginia, passed on 18 December, 1789, ch. 53, s. 14, 15, proposing to erect the district of Kentucky into an independent state. Also the act of Congress, passed on 4 February, 1791, ch. 78, s. 1, 2, assenting to the erection of the said District of Kentucky into an independent state, at a certain future time, and upon certain conditions. Also the compact between the States of Tennessee and North Carolina.

The defendants then proved that the States of North Carolina and Tennessee had claimed up to Walker's Line as the true line of boundary between those states and the States of Virginia and Kentucky; from the time at which it was run, up to the time of the treaty between Tennessee and Kentucky, made for the settlement thereof in 1820.

The defendants also proved that the county lines of Tennessee were Walker's Line on the north. That in her legislative, judicial, and military capacity, Tennessee always claimed possession, and acted up to said line as the northern boundary of the state. That the process of her courts ran up to said line, and were executed up to it. That all criminal acts committed to the south of said line, and north of the southern boundary of Tennessee, were tried and punished in the State of Tennessee, and not in the State of Kentucky, and instances were proved where persons put upon trial in Kentucky for criminal offenses, had been acquitted, upon the sole ground that the offenses

were committed on the south side of Walker's Line. That the inhabitants south of said line all paid taxes in the State of

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Tennessee, and not in the State of Kentucky. That they were always enrolled as militia of the State of Tennessee, and mustered as such, up to said line. That they always voted at elections in Tennessee as citizens thereof, and not in Kentucky. That in fact, the State of Tennessee was in full and entire possession of all the lands lying to the south of said line, at and before the emanation of the grant to Frederick Rohrer, under which the lessors of the plaintiffs claim title, and from the time of the earliest settlements that were made in that part of the country, which took place long before the dates of the titles under which either of the parties claim.

The defendants also proved that the State of Kentucky, so far as regards the establishment of her county lines, the service of her militia, the payment and collection of taxes, the regulation of her judicial process, and of the right to vote at elections, conformed to Walker's Line as her southern boundary. The defendants also gave in evidence the observations made by Jefferson and Fry, and by Walker and Henderson, and those associated with them, and also proved that the latitude of Walker's Line had, since the running thereof, been taken by Gen. Daniel Smith, a man of science, and who was along with Walker at the running of his line, and that the latter observation of Gen. Smith found Walker's Line to be about in latitude

thirty-six degrees thirty minutes. Defendants also proved that some years since the latitude had been taken by a scientific gentleman, and from the result of his observation, Walker's Line was two or three miles too far south. It also appeared in evidence that Merewether Lewis, on his return from the expedition to the mouth of Columbia River, had taken an observation somewhere on Cumberland Mountain, and that after taking it, he had written a letter to some person in Kentucky, giving it as his opinion that Walker's Line was too far north; and that after the reception of said letter there was much talk in the Mate of Kentucky about claiming to the true latitude of thirty-six degrees and a half, but it did not appear that any definitive public act of the State of Kentucky had been done in consequence of the reception of the information aforesaid, from Merewether Lewis, or that, so far as Walker's Line extended west, the relative possessions and claims of the two states had been interfered with in any way. But it did appear that about the year 1819, shortly after the treaty with the Chickasaw tribe of Indians by which the lands lying in Kentucky and Tennessee between the Mississippi and Tennessee Rivers, were acquired, Kentucky sent two commissioners, Alexander

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and Munsell, to begin at a point on the Mississippi River, exactly

in the latitude of thirty-six degrees and a half, and to run a line from thence east, to where the same would intersect the Tennessee River, and that said commissioners reported to Kentucky that they did so begin, and so run a line, and that the point where it would have crossed the Tennessee River, was about eleven miles to the south of where Walker's Line reached said river on the east side thereof. Walker's Line never was extended further west than Tennessee River.

The court instructed the jury that as by the compact between Kentucky and Tennessee the boundary line of thirty-six degrees and thirty minutes north was fixed several miles south of Walker's Line and of the land in controversy, the titles of the defendants were subject to the compact, and could only be sustained under it. That the State of Tennessee, by sanctioning the compact, admitted in the most solemn form that the lands in dispute were not within her jurisdiction, nor within the

jurisdiction of North Carolina, at the time they were granted, and that consequently the titles are subject to the condition of the compact.

After the verdict of the jury, the defendants moved the court to grant them a new trial, which motion was overruled by the court.

The verdict of the jury was in favor of the plaintiffs, on which the circuit court entered judgment. To the instructions given by the court to the jury, on the several interlocutory questions raised on the trial, and in overruling the motion for a new trial, the defendants excepted, and tendered a bill of exceptions, which was signed by the court.

The defendants prosecuted this writ of error.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is the case of a writ of error to the judgment of the Circuit Court of the United States for the District of West Tennessee. The original writ was an ejectment, brought by Fleeger and others (the now defendants in error) against Poole and others (the now plaintiffs in error) to recover a tract of land containing 2,727 acres in Montgomery County in Tennessee, lying south of Walker's Line, so called, which constitutes the present boundary line between the States of Kentucky and Tennessee, and north of Mathew's line, so called, which is exactly now in latitude 3630' north, which by the Constitution of North Carolina is declared to be the true northern boundary line of the state, and is so described in the charter of King Charles II.

At the trial, the original plaintiffs proved their title to be as devisees of one Frederick Rohrer, who claimed it by a grant of the State of Kentucky, dated 24 February, 1796, in part satisfaction of a Virginia military land warrant, held by Rohrer as

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assignee of one John Montgomery. They also read in evidence the compact between the States of Kentucky and Tennessee of the second of February, 1820. The defendants claimed title under certain grants from the State of North Carolina of various tracts comprehending the premises in question, dated in 1786, 1792, and 1797, and also under certain grants from the State of Tennessee in 1809, 1811, 1812 and 1814, from which they deduced a regular title to themselves, and they proved that the same grants covered their possessions respectively, except that each of the defendants, whom the jury at the trial found guilty of the ejectment, were in possession of portions of land not covered by any grant, older in date than that to Rohrer. The defendants also proved that the different grantees under whom they claimed, took possession of the different tracts of land contained in their grant, on or about the date thereof, and that they and those deriving title under them, have continued in the possession of the same ever since.

Various other evidence was introduced by the defendants, the object of which was to establish that Walker's Line had been for a long time acted upon as the boundary line between North Carolina and Virginia, before the separation of Kentucky and Tennessee therefrom; and that after that separation Tennessee had continued to exercise exclusive jurisdiction up to that line, with the acquiescence of Kentucky, until the compact of 1820. As our judgment turns upon considerations distinct from the nature and effect of that evidence, it does not seem necessary to repeat it on the present occasion.

By the compact of 1820, between Kentucky and Tennessee (art. 1), it was agreed that Walker's Line (which was run in 1780) should be the boundary line between those states; and by the sixth article it was further agreed that

"claims to land east of Tennessee River, between Walker's Line and the latitude of 3630' north, derived from the State of Virginia, in consideration of military services, shall not be prejudiced in any respect, by the establishment of Walker's Line, but such claims shall be considered as rightfully entered or granted, and the claimants may enter upon said lands, or assert their rights in the courts of justice without prejudice by lapse of time, or from any statute of limitations for any period prior to the settlement of the boundary between the two states, saving, however, to the

holders and occupants of conflicting claims, if any there be, the right of showing such entries or grants to be invalid, and of no effect, or that they have paramount and superior titles to the land covered by such

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Virginia claims. "

By another article (the 4th), it was further agreed that

"all lands now vacant and unappropriated by any person claiming to hold under the States of North Carolina or Tennessee, east of the Tennessee River, and north of the parallel of latitude of 36 degrees 30 minutes north shall be the property of and subject to the disposition of the State of Kentucky."

Upon the whole evidence in the cause, the court instructed the jury

"that as by the compact between Kentucky and Tennessee, the boundary line of thirty-six degrees thirty minutes north was fixed several miles south of Walker's Line, and of the land in controversy, the titles of the defendants were subject to the compact, and could only be sustained under it. That the State of Tennessee, by sanctioning the compact, admitted in the most solemn form that the lands in dispute were not within her jurisdiction nor within the jurisdiction of North Carolina at the time they were granted, and that consequently the titles were subject to the conditions of the compact."

To this opinion of the court the defendants excepted, and the validity of this exception constitutes the main subject of inquiry upon the present writ of error, the jury having found a verdict in favor of the plaintiffs upon this opinion and judgment having been rendered in conformity thereto in the court below.

We are of opinion that the instruction given by the court below is entirely correct. It cannot be doubted that it is a part of the general right of sovereignty belonging to independent nations to establish and fix the disputed boundaries between their respective territories, and the boundaries so established and fixed by compact between nations become conclusive upon all the subjects and citizens thereof,

and bind their rights and are to be treated, to all intents and purposes as the true and real boundaries. This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the states of this Union unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right that it is expressly recognized by the Constitution and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress. The Constitution declares that "No state shall, without the consent of Congress, enter into any agreement or compact with another state," thus plainly admitting that, with such consent it might be done, and in the present instance that consent has been expressly given. The compact, then, has full validity, and all the

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terms and conditions of it must be equally obligatory upon the citizens of both states.

Independently of this broad and general ground, there are other ingredients in the present case equally decisive of the merits. Although in the compact Walker's Line is agreed to be in future the boundary between the two states, it is not so established as having been for the past the true and rightful boundary; on the contrary, the compact admits the fact to be the other way. While the compact cedes to Tennessee the jurisdiction up to Walker's Line, it cedes to Kentucky all the unappropriated lands north of the latitude

of thirty-six degrees thirty minutes north. It thus admits what is in truth undeniable -- that the true and legitimate boundary of North Carolina is in that parallel of latitude, and this also is declared in the charter of Charles the Second and in the Constitution of North Carolina to be its true and original boundary. It goes further and admits that all claims under Virginia to lands north of that boundary shall not be prejudiced by the establishment of Walker's Line, but such claims shall be considered as rightfully entered or granted. The compact does, then, by necessary implication admit that the boundary between Kentucky and Tennessee is the

latitude of thirty-six degrees thirty minutes, and that Walker's Line is to be deemed the true line only for the purpose of future jurisdiction.

In this view of the matter it is perfectly clear that the grants made by North Carolina and Tennessee, under which the defendants claimed, were not rightfully made, because they were originally beyond her territorial boundary, and that the grant, under which the claimants claim, was rightfully made because it was within the territorial boundary of Virginia. So that upon this narrower ground, if it were necessary -- as we think it is not -- to prove the case, it is clear that the instruction of the court was correct.

And this disposes of the argument which has been pressed upon us that it is not competent for a state, by compact, to divest its citizens of their titles to land derived from grants under the state, and that it is within the prohibition of the Constitution, that "No state shall pass any law impairing the obligation of contracts." If the States of North Carolina and Tennessee could not rightfully grant the land in question, and the States of Virginia and Kentucky could, the invalidity of the grants of the former arises not from any violation of the obligation of the grant, but from an intrinsic defect of

title in the states. We give no opinion, because it is unnecessary in

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this case whether this prohibition of the Constitution is not to be understood as necessarily subject to the exception of the right of the states, under the same Constitution, to make compacts with each other in order to settle boundaries and other disputed rights of territory and jurisdiction.

In the progress of the trial, one or two other objections were made which may require some notice. The defendants objected to the introduction of the will of Frederick Rohrer, under which the plaintiffs claimed as devisees, as evidence, first because the probate and certificate of that will (it having been made and proved in Pennsylvania) were not such as to authorize its registration in the State of Tennessee; secondly because the will was not registered in the State of

Tennessee until after the institution of this suit. The court overruled the objection. But it does not appear that any exception was taken to the opinion of the court upon this point at the trial. On the contrary, the record states that

"No exception to the opinion of the court permitting the will to be read was taken in the progress of the trial, nor was it stated that the right to do so was reserved. The practice of the court is for exceptions to be taken after trial, if deemed necessary."

Under these circumstances, some difficulty has arisen as to the propriety of taking any notice whatsoever of this objection. In the ordinary course of things at the trial, if an objection is made and overruled as to the admission of evidence and the party does not take any exception at the trial, he is understood to waive it. The exception need not, indeed, then, be put into form or written out at large and signed, but it is sufficient that it is taken, and the right reserved to put it into form, within the time prescribed by the practice or rules of the court. We do not find any copy of the will or any probate or certificate thereof in the record, or any registration thereof, and it is therefore impossible for us to say whether the ground assumed in the first part of the objection is well founded or not. This leads us strongly to the inference that the objection was intentionally waived at the trial. The second ground is clearly unmaintainable, for if the registration was rightfully made in Tennessee, it has relation backwards, and the time of the registration is wholly immaterial, whether before or after the institution of the suit.

Another objection made by the defendants at the trial was to the

evidence of title offered by the lessors of the plaintiff upon the ground that this title was a tenancy in common, which would not in

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law support a joint demise. This objection was overruled with an intimation that the point would be considered on a motion for a new trial. No exception was taken to this ruling of the court, and the new trial was, upon the motion, afterwards refused. The party not taking any exception, and acquiescing in the intimation of the court, must be understood to waive the point as a matter of error and to insist upon it

only as a matter for a new trial. But it is unnecessary to decide the point upon this ground, for in the State of Tennessee the uniform practice has been for tenants in common in ejectment to declare on a joint demise, and to recover a part or the whole of the premises declared for according to the evidence of title adduced. This was expressly decided by the court in *Barrow's Lessee v. Nave*, 2 Yerger 227-228, and on that occasion the court added that this practice had never been drawn in question as far as they knew, or could ascertain, and in fact no other probably could be permitted after the Act of 1801, ch. 6. sec. 60, which provided, "That after issue joined in any ejectment on the title only, no exceptions to form or substance shall be taken to the declaration in any court whatever."

The judgment of the circuit court is therefore

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 West Tennessee, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.

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