Watkins Vs. Holman

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SooperKanoon Citation : sooperkanoon.com/79765

Court : US Supreme Court

Decided On : 1842

Appeal No. : 41 U.S. 25

Appellant : Watkins

Respondent : Holman

Judgement :

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Watkins v. Holman

1 U.S. (16 Pet.) 25

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

Ejectment to recover possession of a lot in the City of Mobile, Alabama. The defendants, in the circuit court, claimed title to the land under Lucy Landry, who was the devisee of one Geronio, who having been in possession of the lot at the

corner of St. Francis and Royal Streets, occupied it until his death. On the arrival of Lucy Landry at age, she occupied the lot as her own property, and in 1818 she sold and conveyed it by deed to certain persons, stating the eastern boundary in the deed to be the Mobile River. These persons on the same day conveyed the premises to Oliver Holman, who entered on it and improved it by erecting houses and a wharf upon it, and continued to occupy it as a merchant in co-partnership with one Charles Brown, who lived in Boston, until December, 1822, when he died, leaving as his heirs the lessors of the plaintiff. The possession of Lucy Landry of the lot commenced in 1800 and extended on Royal Street, and on the east, followed the high water mark on the river. The land was not subject to inundation, though in many places the water ran across it. Until the improvements made by Holman, the lot was not susceptible of occupancy. There was a ridge of high land formed of shells and artificial deposits, to the east of which, to the river, the lot was situated, and the ridge was protected by the Spanish authorities, no person being permitted by them to improve on the ground or to remove the earth. It was called "The King's highway," or landing place. Questions as to the title of the proprietors of the adjacent lots above Water Street to the lots extending to the river prevailed until 1824, when on 26 May, 1824, a law was passed which granted the lots known as water lots under the Spanish government to the owners of the adjacent grounds. The improvements were made by Holman in 1819 or 1820. The defendants below gave in evidence, to maintain their title, the title to them from Lucy Landry, through her grantees to Oliver Holman, a title bond from Holman to Brown for half of the lot in controversy, by which a deed was to be executed two years after the date of the bond, and an act of the Legislature of Alabama, passed in December, 1823, after the decease of Holman, authorizing the administratrix of Holman, then residing in Boston, where administration of the estate of the deceased had been granted to her, to sell the real estate of which he died seized, in the City of Mobile, for the payment of his debts, the estate being insolvent, a deed made in pursuance of a sale of the premises under the act of assembly and in conformity to the provisions thereof, and also the record of certain proceedings in the Supreme Court of Massachusetts wherein a license was given to the administratrix to make a deed in pursuance of the title bond to Brown, and the deed made under this authority. The questions which arose in the case and on

which the court decided were first, whether the act of the Legislature of Alabama authorizing the sale of the estate of Holman was constitutional and valid; second, whether the proceedings in the Supreme Court of Massachusetts were operative and authorized the administratrix to convey the title; third, whether a volume of state papers published under the authority of Congress was evidence; fourth, whether the lessors of the plaintiff below had established a legal title; fifth,

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whether the defendants in the circuit court had not established a title in themselves independent of and adverse to the title they had derived under Oliver Holman.

The relation of landlord and tenant in nowise exists between the vendor and vendee, and this is especially the case where a conveyance has been executed.

A mere intruder on land is limited to his actual possession, and the rights of a riparian proprietor do not attach to him. The case of *Mayor of New Orleans v. United States,* 10 Pet. 662, cited.

The Act of Congress of 26 May, 1824, relinquished the rights of the United States, whatever they were, in the lot in question, to the proprietor of the front lot.

A volume of state papers published under the authority of an act of Congress and containing the authentication required by the act is legal evidence. In the United States, in all public matters, the journals of Congress, and of the state legislatures are evidence, and also the reports which have been sanctioned and published by authority. This publication does not make that evidence which intrinsically is not so, but it gives in a most authentic form certain papers and documents. The very highest authority attaches to state papers published under the sanction of Congress.

The deed executed by the administratrix of Holman, in pursuance of the license given by the Supreme Court of Massachusetts, by which nearly a moiety of the property of Holman, in Mobile, described in the title bond to Brown, was conveyed to Brown, was inoperative. The deed was executed under a decree or order of the

Supreme Court in Massachusetts and by virtue of a statute of that state. It is not pretended that it was authorized by any law of Alabama, and no principle is better settled that the disposition of real estate, whether by deed, descent, or by any other mode, must be governed by the laws of the state where the land is situated.

A court of chancery, acting *in personam,* may well decree the conveyance of land in any other state, and may enforce their decree by process against the defendant. But neither the decree itself nor any conveyance under it except by the person in whom the title is vested can operate beyond the jurisdiction of the court.

It is not perceived why a court of law should regard a resulting trust more than any other equitable rights, and any attempt to give effect to these rights at law through the instrumentality of a jury must lead to confusion and uncertainty. Equitable and legal jurisdictions have been wisely separated, and the soundest maxims of jurisprudence require each to be exercised in its appropriate sphere.

The act of the Legislature of Alabama which authorized Sarah Holman, resident in Boston, the administratrix of Oliver Holman, to sell the estate of which Holman died seized in the City of Mobile was a valid act, and the deed made under that statute, according to its provisions, was legal and operative, and was authorized by the Constitution of Alabama.

On the death of the ancestor, the land owned by him descends to his heirs. They hold it subject to the payment of the debts of the ancestor, in those states where it is liable to such debts. The heirs cannot alien the land to the prejudice of creditors. In fact, and in law, they have no right to the real estate of their ancestors except that of possession until the creditors shall be paid.

No objection is perceived to the power of the legislature to subjecting the lands of a deceased person to the payment of his debts, to the exclusion of the personal property. The legislature regulates descents and the conveyance of real estate. To define the rights of debtor and creditor is their common duty; the whole range of remedies lies within their province.

This was an action of ejectment brought by the defendants, who were plaintiffs in the courts below, to recover possession of stores and a lot of ground in the City of Mobile. The declaration was in the common form; the plea, the general issue. A verdict was rendered in the circuit court for the plaintiffs, and the defendant prosecuted this writ of error.

Upon trial, the plaintiffs below proved that one Geronio was in possession of a lot in the City of Mobile at the corner of St. Francis and Royal Streets; that he occupied the same till his death, when he gave the same to one Lucy Landry; that about the year 1788, Simon Landry took charge of the lot for his daughter Lucy, and when she came to woman's estate, she used and occupied the same as her property. The plaintiff further proved that in 1818, Lucy Landry conveyed the lot to McKinzie and Swett by a deed in which the eastern boundary was laid down as the Mobile River, and included the premises in question in this case. On the same day, McKinzie and Swett conveyed the property to Oliver Holman, who took possession in 1818 and erected houses and a wharf upon the lot and occupied the same as a merchant in co-partnership with one Charles Brown, Brown residing in Boston and Holman in Mobile. Holman died in December 1822, leaving three children. Oliver, with a grandchild of Holman, were the legal heirs of Oliver Holman, deceased, and the lessors of the defendants in error.

The defendants in the circuit court, in order to show title in them to one equal undivided moiety of the premises in question, exhibited a bond, executed by Oliver Holman, the ancestor of the plaintiffs in the ejectment, on 29 September 1821, to Charles Brown, by which Oliver Holman bound himself to give to Charles Brown a quitclaim deed of one-half of the land he had purchased from McKinzie and Swett -- the ground in question, the deed to be executed two years from date if Charles Brown requested. Oliver Holman died soon afterwards, without executing the deed.

Sarah Holman, the widow of Oliver Holman, removed to Boston,

Massachusetts, and there took out letters of administration on the estate of her deceased husband. Charles Brown presented a petition to the Supreme Judicial Court of Massachusetts setting forth, that Oliver Holman had executed to him the bond before stated, by which he bound himself to convey certain property in Mobile to him, being the part of the premises for which this suit was instituted, and that he was prevented conveying the same by death, and praying the court would grant license to and would empower Sarah Holman, the widow and administratrix of Oliver Holman, to execute to him such conveyance of the premises, as Oliver Holman would have been obliged to make and execute if he were then living. The widow and administratrix, Sarah Holman, certified to the court that

"she had read and had notice of the petition, and had no objections to offer why the prayer thereof should not be granted; and signified her consent to the same."

Elisha Read, guardian of Sarah Holman and Oliver Holman, minors, and Catharine Holman, daughter of Oliver Holman, certified that they had read and had notice of the petition and believed the statement therein to be correct, and had no cause to show why the prayer of the petitioner should not be granted, and signified their consent to the same. The court thereupon ordered that Sarah Holman should be licensed to make and execute a deed to Charles Brown of the premises, and accordingly, on 10 March 1824, a deed was executed to the petitioner for the property described in the title bond.

The defendants in the circuit court, also gave in evidence an act of the Legislature of Alabama in the following terms:

"An act to authorize the administratrix of Oliver Holman, deceased, late of the County of Mobile, to sell real estate."

" 1. Be it enacted . . . that the administratrix of the late Oliver Holman, resident in the City of Boston, in the State of Massachusetts, be and she is hereby authorized to sell, by Nathaniel Littlefield and Gorham Davenport, her attorneys in fact, the real estate of which the said Oliver Holman died seized in the City of Mobile on such terms and in such manner as may be deemed most advantageous to the

estate of the deceased."

" 2. And be it further enacted that the said administratrix be and she is hereby authorized by her attorneys aforesaid, on

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the sale of the said estate, to make and deliver to the purchaser or purchasers, as the case may be, a legal conveyance of the same, which shall be as binding as if the same had been made by the said Oliver Holman in his lifetime."

" 3. And be it further enacted that Nathaniel Littlefield and Gorham Davenport, before the sale of the estate aforesaid, shall enter into bond, with sufficient security, payable to the judge of the County Court of Mobile County, for the true and faithful payment of the money arising from the sale of the said estate into the hands of the administratrix thereof, to be appropriated to the payment of the debts due by the said decedent."

On 24 April 1824, by a deed executed in conformity with the law, in consideration of the sum of $15,000 paid to the administratrix of Oliver Holman, the other moiety of the property was conveyed to Charles Brown. The defendants in the circuit court claimed to hold all the premises in controversy by conveyances from the grantee of Charles Brown, made under the license of the Supreme Court of Massachusetts and the act of the assembly of Alabama. It was further in evidence that Oliver Holman erected stores on the lot and used them for four years, when he died.

The lot, which was proved to have been in the actual possession of Geronio, was enclosed, there being a line of fence running from the street on the north, to the southern boundary of the lot, and followed by the meanders of high tidewater mark. There was no person who ever enclosed to the east of this lot or who had ever set up any claim upon it except so far as the facts disclosed the claim of Lucy Landry, under Geronio. The ground in dispute was more than one hundred feet distant from the enclosure of Lucy Landry, and was at all times subject to the influx of the tide, prior to the improvements of Holman. It was in evidence that all the

land east of Lucy Landry's enclosure, before the improvements of Holman, had been used, as all the land on the same line from St. Francis Street to Government Street, on the same line, had been used, as a public landing place by the people under the Spanish government, and that no improvements or obstructions had been erected upon that tract of land.

The circuit court decided that the bond from Holman to

Brown, and the proceedings of the Supreme Court of Massachusetts, and the deed under those proceedings were not sufficient to confer any legal title upon the defendants; these proceedings were without authority and of no effect, and they were admissible as evidence only to show the nature of the defendants' claim of possession. The court also charged the jury that the act of the legislature and all proceedings under it were void and the evidence was competent only to show the defendants' claim and possession, to which decision, as well as to the charge the defendants' counsel excepted

The defendants then offered in evidence a map obtained from the General Land Office at Washington City, purporting to have been made in 1761, and which was certified to have been on file there, made by one _____ _____, surveyor. This map indicated that the city was then laid off unto regular squares, and bounded by streets; that there was a space between the front square and the margin of the river, not divided, and that this space was marked in the two halves, with the word "quai." The defendant gave evidence conducing to prove that the lands sued for were embraced within that space and that it continued to be public and open till Holman's possession and improvements in 1818, and so contended before the jury. The defendants further gave evidence that Holman & Brown were merchants and that the carpenters who built the houses on the lands in dispute were sent out by the said Brown; that Brown & Holman were in partnership as merchants, and that in carrying on their business, these buildings were used as storehouses, that Brown resided in Boston, and had never been in Mobile, and that Holman resided in Mobile; that the store-houses were reputed to be Holman's, and not Holman &

Brown's. After the death of Holman, agents of Holman went into possession; whether instantly or after the execution of the deeds aforesaid, his agents or vendees had enjoyed entire and exclusive possession of the premises. It was further in evidence, that the house in possession of defendants fronted on Water Street, one of the streets of the city.

Whereupon the court charged the jury that if they believed from the evidence that Geronio claimed title to the premises in question, and was in actual possession of a part of the lot of land to which they were then

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attached and remained in possession, claiming title, from and prior to the year 1785 till the time of his death, and that before his death he gave the whole of said lot to Lucy Landry, and that her father thereupon took and held possession of it for her until she arrived at full age, when she took possession and claimed title to the full extent of the boundaries in the deed from her to McKinsie and Swett, and that since the possession of Mobile by the United States, the streets and quai had been so altered by the municipal authorities of said city that the said quai had been discontinued or otherwise abolished, and the said Water Street erected in lieu of it, and that the premises in question were within the boundaries of the said lot conveyed, as aforesaid, by Lucy Landry to McKinsie and Swett and by them to Oliver Holman, and that said Holman entered upon and remained in possession of the said premises from the date of his purchase until the time of his death; the plaintiffs were entitled to a verdict unless the jury believed from the evidence that actual possession was delivered by said Holman to Brown under said bond for title, and that said Brown had remained in possession, and that the possession had been regularly transmitted through those claiming under him to the defendant. The defendant contended that the premises in question were not embraced within the claim of Lucy Landry, but formed a portion of the public quai; that the entry of Holman under the title derived from Lucy Landry, and the building of stores on the lot, gave him no title, and that his heirs could not maintain an ejectment for the lot against those claiming under his partner, Brown. This the court overruled, and the counsel for the defendant excepted.

The defendant's counsel contended that from the bond, the proof in the cause, and the admission of Catharine Holman in the record of the Supreme Judicial Court of Massachusetts thereto attached, it appeared that Holman & Brown were jointly interested in the premises at the period of his entry, that although Brown never was upon the land, the same was held by Holman for their joint benefit, and that though no actual possession was delivered under the bond for title, if those facts were found, Brown or those claiming under him could not be sued for the moiety in the bond without a demand and notice to quit. This the court overruled.

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Mc LEAN, JUSTICE, delivered the opinion of the Court.

The heirs of Holman commenced an action of ejectment against the plaintiffs in error to recover possession of a certain lot in the City of Mobile. On the trial, the lessors of the plaintiffs proved that before the year 1785, one Geronio was in possession of a lot in the City of Mobile at the corner of St. Francis and Royal Streets, which he continued to occupy until his death. Previous to his death, he devised the lot to Lucy Landry, whose father, Simon Landry, took charge of it for his daughter until she became of age, when she occupied it as her own property. In 1818, she conveyed the lot to McKinsie and Swett by deed in which the eastern boundary was stated to be the Mobile River, and it is admitted that the deed embraced the lot in dispute. McKinsie and Swett conveyed the premises on the same day to Oliver Holman, and in 1818 he took possession of the lot in controversy, erected houses and a wharf on it, and continued to occupy it as a merchant in co-partnership with one Charles Brown, who lived in Boston, Massachusetts, until December 1822, when Holman died. He left, as his heirs, the lessors of the plaintiffs.

There was no proof of any paper title in Lucy Landry or her father except the will above stated. Her possession commenced in the year 1800, or prior to that time, and it was proved that her enclosure extended on Royal Street, the whole distance claimed in the declaration, and on the east it followed the high water mark of the

Mobile River. It was proved that Water Street, which runs parallel with Royal Street and the Mobile River, was an irregular bank, reaching from St. Francis Street southerly the length of the city, formed by a deposit of shells and earth, and was higher than any land east of it or any land to which the water extended. This land was not subject to inundation, though in many places the water ran across it.

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Until the improvements by Holman, the lot in controversy was not susceptible of occupancy. Water Street was laid out in 1817 or 1818, and the lot in dispute lies east of that Street and east of the high land above described. The ridge or high land was protected by the Spanish authorities; no person was permitted to remove the earth or improve on the ground. It was called the King's highway and landing place. And after the American authorities took possession, the general impression seemed to be that the ground east of Water Street did not belong to the proprietors of lots west of it. But these proprietors in some instances made entries on this ground, and in others entries were made by the corporate authorities of the city. Under this state of doubt, the Act of Congress of 26 May, 1824, was passed. Holman, it seems, built a wharf and warehouse on the lot in 1819 or 1820, and these were among the earliest improvements made east of Water Street.

The defendants proved that since the year 1823, they or those under whom they claim have had the exclusive possession of the lot, and that they made valuable improvements thereon. They gave in evidence copies of deeds from Lucy Landry to McKinsie and Swett and from them to Oliver Holman. They also exhibited in evidence a title bond, dated 29 September 1821, from Holman to Brown, for half of the land conveyed to him by McKinsie and Swett, excepting certain parts described. The deed was to be executed in two years. A map was also in evidence, purporting to have been made in 1760 by a French surveyor. The map represented the land lying near the river as divided into oblong squares bounded by streets, and that the vacant space between the river and the front line of the square had the word "quai" written upon it. But it is not shown by what authority this map was made, or that it governed in the sale of lots. Until the year 1817, the

King's wharf was the only one in the city.

To explain the nature and extent of Lucy Landry's claim and possession, certain documents from the land office at St. Stephen's, Alabama, were offered in evidence, and also an act of the Legislature of Alabama, passed 21 December 1823, authorizing the administratrix of Oliver Holman to sell the real estate of which he died seized in the City of Mobile. It was proved

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that Holman's estate was insolvent, and it was admitted that the attorneys of the administratrix, named in the act, had given the bond required before the premises in question were sold. The deed made in pursuance of the sale under the act of the legislature was read; also a record of certain proceedings in the Supreme Court of Massachusetts, wherein a license to the administratrix was given to make a deed in pursuance of the title bond to Brown and the deed that was made under this authority.

The court instructed the jury that the act of Alabama was unconstitutional and void, and that no title passed under it, and that the proceedings in the Massachusetts court were inoperative, and did not authorize the administratrix to convey the title. The court also overruled as evidence the documents above offered, contained in a volume of state papers published under the authority of Congress. Exceptions were taken to the rulings of the court and to their instructions to the jury, and on these the questions for consideration arise. The plaintiff in error asks a reversal of these judgments, on two grounds: 1. because the lessors of the plaintiff showed no legal title; 2. because the defendant established a title in himself.

On the part of the defendant's counsel it is contended that as the plaintiff in error claims under Holman, he cannot question his title, and in support of this position the cases of *Jackson v. Bush,* 10 Johns. 223, and *Jackson v. Hinman,* 16 Johns. 292, 293, are relied on. But these are cases in which the lessors of the plaintiff claimed under sheriffs' sales, and the defenses set up were under the defendants in the judgments. The court said

"The rule excluding a defendant against whom there has been a judgment and execution from defeating the purchaser's recovery of his possession by setting up a title in some third person is founded on justice and policy, and the reason of the rule equally applies where such defendant has in the meantime delivered up his possession to another."

The case of *Brant v. Livermore,* cited from the same volume, arose between landlord and tenant. And the decision relied on in *Schauber v. Jackson,* 2 Wend. 14, does not sustain the ground assumed.

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The relation of landlord and tenant in no sense exists between the vendor and vendee, and this is especially the case where a conveyance has been executed. In the language of this Court in the case of *Blight's Lessee v. Rochester,* 7 Wheat. 548,

"The vendee acquires the property for himself, and his faith is not pledged to maintain the title of the vendor. If the vendor has actually made a conveyance, his title is extinguished."

And the Court said,

"The property having become, by the sale, the property of the vendee, he has a right to fortify that title by the purchase of any other which may protect him in the quiet enjoyment of the premises."

To the same effect are the cases of *Society for the Propagation &c.; v. Town of Pawlet,* 4 Pet. 506; *Jackson v. Huntington,* 5 Pet. 402; *Willison v. Watkins,* 3 Pet. 43. In Kentucky it is well established that a purchaser who has obtained a conveyance holds adversely to the vendor, and may controvert his title. *Voorhies v. White's Heirs,* 2 A.K.Marsh. 27; *Winlock v. Hardy,* 4 Litt. 274. And this is the settled doctrine on the subject.

The plaintiff in error contends, as the lessors of the plaintiff have shown no paper title emanating from the government, they must be considered as trespassers, and that their right is strictly limited to the *pedis possessio* of the occupants under whom they claim. That a mere trespasser cannot set up the right of a riparian proprietor unless his enclosures are extended so as to include the alluvial formations.

In the case of *Ewing's Lessee v. Burnet,* 11 Pet. 41, this Court held that an enclosure was not necessary to show possession under the statute of limitations. That for this purpose it is sufficient to show visible and notorious acts of ownership exercised over the premises. In this case, it appears that the proprietors of the contiguous lots, by a deposit of earth and other means, contributed to the new formation on the shore of the river, so that this formation was not wholly attributable to the action of the tides. And it may well be contended that this labor of the proprietors made their claim and possession of the water lot as notorious as if it had been surrounded by an enclosure. It appears too that the

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wharf and warehouse were erected by Holman on the lot in dispute, as soon as it was susceptible of occupation. These facts, connected with the possession of the adjacent lot since 1785, present a strong ground to presume a title. And so far as regards the controversy between the parties to this record, and looking only at the facts and circumstances before us, we think that the lot in dispute may be considered as included in the title of Holman. The position assumed by the plaintiff's counsel that a mere intruder is limited to his actual possession, and that the rights of a riparian proprietor do not attach to him, is correct. He can have no rights beyond his possession. The doctrines of the common law on this subject have been taken substantially from the civil law. In the case of *Mayor of New Orleans v. United States,* 10 Pet. 662, we had occasion to examine this doctrine especially in reference to the laws of Spain.

The Act of Congress of 26 May 1824, entitled "an act granting certain lots of ground to the corporation of the City of Mobile and to certain individuals of said

city," embraces the lot in controversy, whether the title be vested in the lessors of the plaintiff, the defendants in the ejectment, or in the City of Mobile. As no right to this lot is asserted on the part of the city, we can now only consider the law as affecting the title before us. At the time the law was passed, either the plaintiffs or defendant were the proprietors of the front lot, and claimed the water lot with its improvements, and this brings them within any known construction of the act of 1824. It relinquished to the proprietor or proprietors of the front lot, under the circumstances of this case, whatever right, if any, the United States had to the water lot.

The volume of state papers offered in evidence by the defendants we think should have been admitted. This volume was published under an act of Congress, and contains the authentication required by the act. Its contents are therefore evidence. The recital in the preamble of a public act of Parliament of a public fact is evidence to prove the existence of that fact. *Rex v. Sutton,* 4 Maule & Selw. 532; Stark.Evid. 197. The journals of the House of Lords have always been admitted as evidence of their proceedings, even in criminal cases, and the

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journals of the House of Commons are also admissible. It is said that the journals are not evidence of particular facts stated in the resolutions, which are not a part of the proceedings of the House -- as for instance a resolution stating the existence of a popish plot would not be evidence of the fact in a criminal case. *Jones v. Randall,* Cowp. 17; 5 T.R. 465; Doug. 572; Stark.Evid. 199. In this country, in all public matters, the journals of Congress and of the state legislatures are evidence, and also the reports which have been sanctioned and published by authority. This publication does not make that evidence which intrinsically is not so, but it gives in a most authentic form certain papers and documents. In the case under consideration, the volume of documents was offered to show the report of certain commissioners under an act of Congress confirming the title in question. Now this original report, duly authenticated by the Treasury Department, to which it was made, would be evidence, and it is evidence in the published volume. The very highest authenticity attaches to these state papers published under the sanction of

Congress.

We come now to consider the proceedings in the Supreme Court of Massachusetts. These proceedings took place under a statute of that state, and were founded upon the title bond given to Brown by Holman for nearly a moiety of the lot purchased by him from McKinsie and Swett. Brown applied to the court by petition, setting out the title bond and representing that Holman had died without making a deed, and he prayed that Sarah Holman, his administratrix, might be licensed and empowered to execute to him such a conveyance of the premises as Holman would have been obliged to make if he were living. Sarah Holman, as widow and administratrix, certified to the court that she had read, and had due notice of the petition of Brown, and that she had no objection to the prayer of it. And the guardian of Sarah Holmand and Oliver Holman, minors and children of Oliver Holman, deceased, certified that they also had notice, and that they had nothing to allege against the prayer of the petition. The court, on hearing the petition, licensed and empowered the administratrix to make the deed. And in pursuance of this

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order she executed a deed in conformity with the bond to Brown, 10 March, 1824.

That this deed is inoperative is clear. It was executed by the administratrix under a decree or order of the Supreme Court in Massachusetts and by virtue of a statute of that state. The proceeding, it is not pretended, was authorized by any law of Alabama. And no principle is better established than that the disposition of real estate, whether by deed, descent or by any other mode, must be governed by the law of the state where the land is situated. A court of chancery, acting *in personam,* may well decree the conveyance of land in any other state, and may enforce their decree by process against the defendant. But neither the decree itself nor any conveyance under it, except by the person in whom the title is vested, can operate beyond the jurisdiction of the court. The Massachusetts court, in granting this license to the administratrix, did not exercise chancery powers. Neither the administratrix nor the minor heirs were made parties and required to

answer as a procedure in chancery. It was a proceeding at law, informal and summary in its character. The administratrix only was required to execute the conveyance. By the laws of Alabama, she had no power to dispose of the real estate of her husband as administratrix except for the payment of the debts of the estate under the sanction of law.

But the defendants insist that the title bond given to Brown by Holman for a part of the premises constituted a good defense in the action; that, the consideration having been paid, Holman and his heirs held the property in trust for Brown and his assignees; and that a court of law will give effect to the trust, at least so far as to prevent the trustees from recovering the possession against the *cestui que trust.* This doctrine seems to have been sanctioned to some extent in New York in the cases of *Foote v. Colvin,* 3 Johns. 216; *Jackson v. Matsdorf,* 11 Johns. 91; *Seelye v. Morse,* 16 Johns. 197. These decisions may have been influenced somewhat by the statute concerning uses in that state, which subjects the estate of the *cestui que trust* to execution. In one of the cases,

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Spencer, Justice, giving the opinion of the court, says "without the aid of the statute, I consider James Litchfield, if he advanced the purchase money, as having an interest liable to be sold on execution." In the case of *Jackson v. Leggett,* 7 Wend. 377, the court remarks

"The legal estate must prevail. . . . The only exception to the rule is in the case of a resulting trust; in such case the trust may be proved by parol, and the estate of the *cestui que trust* may be sold on execution, and has been so far considered the property of the *cestui que trust* as to be a defense in an action of ejectment."

This was the doctrine of Lord Mansfield in the case of *Armstrong v. Peirse,* 3 Burr. 1899. In *Bristow v. Pegge,* 1 T.R. 758, note a, he lays down the broad doctrine "that a trust shall never be set up against him for whom the trust was intended," and the other judges concurred. It is known that that great judge had a strong leaning to the principles of equity in trials at common law. His successor

seemed to be under a different influence, although he had been Master of the Rolls for some years. This equitable doctrine in a court of law was overruled in the case of *Hodsden v. Staple,* 2 T.R. 684. Lord Kenyon says

"Is it possible for a court of law to enter into the discussion of such nice points of equity? We have no such authority. Sitting in this court, we must look at the record and see whether a legal title is conveyed to the party claiming under these instruments; now there is no color for saying that these give any legal title. Without deciding or presuming to think what a court of equity would do in this case, it is enough for me to say that we are to decide a legal question, and cannot enter into such an entangled equity."

The other judges, except Buller, concurred with the Chief Justice. In *Shewen v. Wroot,* 5 East 132, Lord Ellenborough said

"We can only look to the legal estate, and that is clearly not in the devisees, but in the heir-at-law of the surrenderer, and if the devisees have an equitable interest, they must claim it elsewhere, and not in a court of law. For as to the doctrine that the legal estate cannot be set up at

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law by a trustee against his *cestui que trust,* that has been long repudiated."

And this is the settled doctrine in England on this subject, and, with few exceptions, in this country. In the states where no courts of chancery are established, courts of law, in giving relief, of necessity trench upon an equitable jurisdiction. It is not perceived why a court of law should regard a resulting trust more than other equitable rights, and any attempt to give effect to these rights at law through the instrumentality of a jury must lead to confusion and uncertainty. Equitable and legal jurisdictions have been wisely separated, and the soundest maxims of jurisprudence require each to be exercised in its appropriate sphere. We are clearly of the opinion that the title bond in question constituted no defense in the above action.

Whether any title passed under the Alabama statute is the last point to be considered.

The act authorized the administratrix of the late Oliver Holman, resident in the City of Boston, Massachusetts, to sell, by Nathaniel Littlefield and Gorham Davenport, her attorneys in fact, the real estate of which the said Holman died seized in the City of Mobile "on such terms and in such manner, as may be deemed most advantageous to his estate. . . . The second section authorized the administratrix, by her attorneys, to convey the premises to the purchaser." And the third section provided that before the sale, the attorneys should give bond, with sufficient security, for the faithful payment of the money received by them to the administratrix, "to be appropriated to the payment of the debts of the deceased." Under this law a sale was made and a conveyance executed to Brown by Sarah Holman and her attorneys in fact, 24 April 1824. This act of the legislature, it is contended, is in violation of the Constitution of Alabama, and, with the proceeding under it, is consequently void.

The first section of the second article of the Constitution declares that

"The powers of the government of the State of Alabama shall be divided into three distinct departments, and each of them confided to a separate body of magistracy, to-wit, those which are legislative to one; those which are executive to another; and those which are judicial to another."

And the second

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section declares that

"No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others except in the instances hereinafter expressly directed or permitted."

The passage of the statute, it is insisted, was a judicial act by the legislature, which the Constitution inhibits.

On the part of the plaintiffs in error, a great number of acts of this character by the Alabama Legislature, shortly after the adoption of the constitution, are cited to show a settled construction of that instrument. The defendants in error referred to reports by committees of the legislature which maintained the unconstitutionality of these acts. And it is asserted, and not contradicted, that since that report, under a conviction of its soundness, the legislature has passed no laws on the subject. A manuscript decision of a circuit court in Alabama, in the case of *Campbell and Havre v. Scales,* was read, but the question now under consideration seems not to have been raised. In almost all the states, laws of this description are common, and the titles to an immense amount of property depend upon their validity.

The phraseology of the Constitution of Alabama in regard to the distribution of its powers is somewhat peculiar, but it is not substantially different from the constitutional provisions of some of the other states. The third section of the Virginia Constitution declares that

"The legislative, executive and judiciary departments shall be separated and distinct, so that neither exercise the powers properly belonging to the other."

Indeed, in all the state constitutions, the legislative, judicial and executive functions are vested in different functionaries, and it would seem to follow that the powers thus specially given should be exercised under their appropriate limitations. The inhibition of the Alabama Constitution contains in terms that which necessarily arises from the construction of the constitutions of other states. In some cases it is difficult to draw a line that shall show with precision the limitation of powers under our form of government. The executive, in acting upon claims for services rendered, may be said to exercise, if not in form, in substance, a judicial power. And so, a court, in the use of a discretion essential to its existence, by the adoption of rules or otherwise, may be said to

legislate. A legislature, too, in providing for the payment of a claim, exercises a power in its nature judicial; but this is coupled with the paramount and remedial

power.

But whatever difficulty may arise in certain cases in regard to the exercise of these powers, there would seem to be little or none in the case under consideration. The character of the act in question is essentially remedial. It contains no other feature. An authority is given to the administratrix to sell in a particular manner the property in dispute for the payment of the debts of the intestate. The act does not determine the amount of the debts nor to whom they are payable. It is proved, however that the estate was insolvent. And it is conformable to the settled policy of Alabama to apply the real estate of a deceased person in payment of his debts. The case under consideration, the administratrix residing in Massachusetts and being desirous of selling the property through her attorneys in fact, was not embraced by the general statute on the subject, and hence the necessity of the special authority.

Now how does this act differ in principle from the general law on the same subject? The general law was passed from a knowledge which the legislature had of its expediency and necessity. The special law was passed from a knowledge of its propriety in the particular case. The power exercised in passing the special as well as the general law was remedial. Under the general law, application is required to be made by the executor or administrator to the county court, representing that the personal estate is not sufficient to pay the debts of the deceased; that he left real estate, particularly describing it and praying that it may be sold &c.; A notice is required to be given to the heirs and devisees, &c.;, who are to answer, &c.;, and the court, on the hearing, is authorized to decree a sale of the estate on the petitioner's giving bond, &c.; The mode of procedure under the general law was required by the legislature from motives of expediency, but it by no means follows that it was the only mode they could adopt. In some of the states the heirs or devisees are not required to be made parties by the administrator. His application is *ex parte* to the court, which orders a sale of the real estate to pay the debts of the deceased where the personal estate is insufficient. And

no doubt can be entertained that the legislature may authorize the administrator, by a general or a special act, to sell lands to pay debts, where the personal assets are exhausted, without any application to the court. And in such case the administrator would act on his own responsibility and be accountable to the creditors and heirs for the correct performance of this trust in this as in other parts of his duty. This is a question of power, and not of policy, and on such a question we cannot test the act by any considerations of expediency. Whether the act may be open to abuse, whether it be politic or impolitic, is not a matter now before us, but whether the legislature had power to pass it.

A report in the Senate of Alabama on this subject says

"Upon the death of the ancestor, the real estate owned by him descends to and vests in his heirs, and the title thus vested cannot be divested without some proceeding to which the heir is a party. A minor could not legally assent to the passage of a law authorizing the sale of his real estate, but would have the right to affirm or disaffirm the sale when he arrived at lawful age."

This is laid down on general principles, and without reference to the Constitution of Alabama. As a legal proposition, it is wholly unsustainable. In the first place, it is contrary to the general practice of many of the states and to the received notions of the profession on the subject. Titles in Ohio and in many other states to a vast amount of real property rest upon sales of executors and administrators under the order of a court without making the heirs parties, and it is believed that a doubt of the validity of such titles, where the proceedings have been regular, has never been entertained or expressed. These titles have been contested in state courts and in this Court, and a defect of power to convey a good title in the mode authorized, it is believed, has never been objected. A course of proceeding so extensive, involving interests so great and which has been subjected to the severest legal scrutiny, is no unsatisfactory evidence of what the law is.

But on principle, this proceeding is sustainable. On the death of the ancestor, the land owned by him descends to his heirs. But how do they hold it? They hold it subject to the payment

of the debts of the ancestor, in those states where it is liable to such debts. The heirs cannot alien the land to the prejudice of creditors. In fact and in law, they have no right to the real estate of their ancestor, except that of possession, until the creditors shall be paid.

As it regards the question of power in the legislature, no objection is perceived to their subjecting the lands of the deceased to the payment of his debts, to the exclusion of his personal property. The legislature regulates descents, and the conveyance of real estate; to define the rights of debtor and creditor is their common duty; the whole range of remedies lies within their province. They may authorize a guardian to convey the lands of an infant, and indeed they may give the capacity to the infant himself to convey them. The idea that the lands of an infant which descend to him cannot be made responsible for the payment of the debts of the ancestor except through the decree of a court of chancery is novel and unfounded. So far from this being the case, no doubt is entertained that the legislature of a state has power to subject the lands of a deceased person to execution in the same manner as if he were living. The mode in which this shall be done is a question of policy, and rests in the discretion of the legislature.

The law under which the lot in dispute was sold decides no fact binding on creditors or heirs. If the administratrix and Brown have acted fraudulently in procuring the passage of this act or in the sale under it, relief may be given on that ground. But the act does nothing more than provide a remedy, which is strictly within the power of the legislature.

The judgment of the circuit court is reversed, and the cause remanded for further proceedings, in accordance with this opinion.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, and was argued by counsel. On consideration whereof, it is now here considered, ordered and

adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit

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court with directions for further proceedings to be had therein according to law and justice and in conformity to the opinion of this Court.