

Price Vs. Sessions

Price Vs. Sessions

SooperKanoon Citation : sooperkanoon.com/79913

Court : US Supreme Court

Decided On : 1845

Appeal No. : 44 U.S. 624

Appellant : Price

Respondent : Sessions

Judgement :

Price v. Sessions - 44 U.S. 624 (1845)

U.S. Supreme Court Price v. Sessions, 44 U.S. 3 How. 624 624 (1845)

Price v. Sessions

44 U.S. (3 How.) 624

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

Where a testator devised certain property to his infant daughter, to be delivered over to her when she should arrive at the age of eighteen years, and the daughter, at the age of sixteen, married the executor who had the principal management of

the estate and possession of the property devised, he must be considered as holding it as executor, and not as husband.

The executors had no power to deliver the property to the daughter, or to her guardian, or to her husband, before the happening of the contingency mentioned in the will.

The law of the State of Mississippi providing that a wife should retain such property in her own right notwithstanding her coverture, having gone into operation before the daughter arrived at the age of eighteen years, the distribution to her must be considered to have been made under that law.

The property therefore cannot be responsible for the husband's debts.

The facts were these:

In June, 1836, Russell Smith died, leaving a will, the second section

Page 44 U. S. 625

of which directed that his just debts and funeral expenses be paid, and that for this purpose the force be kept together on his plantation, Sylvan Vale, and prudently managed until that crop or the subsequent one should yield a fund to pay said debts.

The third section bequeathed to his stepson, William D. Griffin, four quarter-sections of land, and seventeen slaves, and continued as follows:

"which property is to be delivered to the said William D. Griffin by my executors when he shall arrive at the age of twenty-one years, and should he, the said William D. Griffin, die before he arrives at the age of twenty-one years, then and in that event the aforesaid property, real and personal, is to be equally divided between my dear beloved brothers-in-law, E. J. Sessions, P. W. Defrance, W. Le Defrance, and Charles A. Defrance, provided they be living; if not, then it is to revert to my estate again, to be disposed of as hereinafter provided."

"4thly. I give and bequeath unto my dear beloved daughter, Martha Ann Smith, all the remaining balance of my estate, real and personal, not mentioned in my bequest to William D. Griffin, and should he and the others before-mentioned, to whom the said legacy was to descend, all be dead, she is also to inherit it, the said legacy to W. D. Griffin; but at all events the property is to be kept together, and the force worked on the plantation until my said daughter, Martha Ann, arrives at the age of eighteen years, at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her, if he lives until he is twenty-one years of age, and if he dies, the mode is pointed out for them to pursue. But should my said daughter, Martha Ann, die before she arrives at the age of eighteen or has an heir of her own body, then the legacy left her, as also that may descent to her from the first legacy (to W. D. Griffin) is to be disposed of as follows, to-wit,"

&c.;

He further appointed E. J. Sessions, P. W. Defrance, John Lane, and George Selser, executors, and John Lane, guardian to his daughter, Martha, the defendant in error in the present suit, who was, at that time, about fourteen years of age.

On 25 July, 1836, the will was admitted to probate, and letters testamentary were granted to three of the executors, *viz.*, Sessions, Lane, and Selser, and Lane was also appointed guardian to the child.

On 8 May, 1838, Sessions, together with Samuel Fernandis, and H. Fernandis, executed to Price the plaintiff in error, two promissory notes, one payable eight months after 1 May, 1838, for \$2,345.11, and the other payable twelve months after 1 May, 1838, for \$2,401.16, both being negotiable and payable at the office of the Planters' Bank, Vicksburg, Mississippi.

In September, 1838, Sessions, one of the executors, married Martha,

Page 44 U. S. 626

the daughter of the testator, she being, at that time, about sixteen years of age.

In August, 1839, Price a citizen of the Republic of Texas, and suing for the use of Gaulley, a citizen of the State of New York, brought suit against the three makers of the notes aforesaid in the circuit court of the United States.

At November term, 1839, he obtained a judgment against the whole three, and in December following issued a *feri facias* upon the judgment.

The property levied upon was suffered to remain in the hands of the possessors, upon their executing a forthcoming bond.

In 1839, the Legislature of Mississippi passed an Act, Acts 72, the 22d and 23d sections of which were as follows:

"SEC. 22. Any married woman may become seized or possessed of any property, real or personal, by direct bequest, demise, gift, purchase, or distribution in her own name and as of her own property, provided the same does not come from her husband after coverture."

"SEC. 23. Hereafter, when any woman, possessed of a property in slaves, shall marry, her property in such slaves and their natural increase shall continue to her notwithstanding her coverture, and she shall have, hold, and possess the same as her separate property, exempt from any liability for the debts or contracts of the husband."

The 24th section gave to a woman who became entitled to slaves, during coverture, the same right which the preceding section gave to those women who possessed slaves at the time of marriage.

In January, 1840, Sessions and wife executed two mortgages, one to the Commercial and Railroad Bank of Vicksburg, of land and negroes, to secure \$21,661.19, and the other to the Planters' Bank, of other land and negroes, to secure \$712.20.

In May, 1840, the forthcoming bond already spoken of was forfeited, the effect of which was equivalent to a judgment against principal and sureties, for debt, interest, and costs.

On 23 November, 1840, the executors of Russell Smith presented their account to the probate court, by which it was received, examined, allowed, and ordered to be recorded, and the executors were discharged from further accounting with the court unless thereafter cited by parties interested.

The estate was made Dr. \$39,345.70

And allowed a credit of 13,636.12

By which it appeared the executors had overpaid . . \$25,709.48

In January, 1842, an alias *feri facias* was issued against Sessions, together with the securities on the forthcoming bond, and levied upon the land and negroes which were devised to Martha by her father.

Page 44 U. S. 627

In February, 1842, Martha claimed the property as her own, and the question was brought before the court below on the validity of said claim.

Upon the trial, the claimant then introduced John Lane, one of the executors, whose competency was objected to by the plaintiff, but was permitted to testify by the court. Said witness testified that Egbert J. Sessions, one of the defendants in the above-named *feri facias*, had acted as executor from the time he qualified as such, in conjunction with the two other executors; that Egbert J. Sessions had taken charge of the plantation and slaves, as executor, and had since had the actual control and management thereof; that the possession of Sessions was joint with the other executors, and the control of the slaves was given to him by the other executors as a matter of convenience, as he, Sessions, lived on the adjoining plantation. The witness further testified that the estate of Russell Smith was unsettled, and that there are now outstanding debts against the estate of Russell Smith, unpaid amounting to upwards of twenty thousand dollars. Witness further testified, that the accounts of the affairs of the estate had been kept and

rendered mostly by Egbert J. Sessions, the witness Lane having made but two annual settlements. Witness stated that he had rendered accounts as guardian of claimant, Martha A. Sessions. Witness further stated that he considered Egbert J. Sessions in possession of the property, in the capacity of executor of Russell Smith; that the claimant and Egbert J. Sessions had intermarried in 1838; that said Sessions was now in possession of the property since the marriage; that no formal act of delivery of the property to E. J. Sessions, by the executors, had taken place since the marriage of the claimant with said Sessions.

The plaintiff proved that claimant was now about twenty years of age, and was sixteen years of age at the time of her marriage with said Egbert J. Sessions, which was in September, 1838.

The plaintiff proved by John Lane that he assented to the execution of the two mortgages above named, by Sessions and wife, the present claimant.

The claimant then proved that the debts enumerated in said mortgage before referred to was, as she believed, in renewal of debts contracted with the bank by Russell Smith in his lifetime, the claimant's father.

Said John Lane further proved that he was a director in one of the banks to which said mortgages are made, that he had assisted Sessions in making the arrangement with the bank, and also assented that he, Sessions, and claimant should mortgage the property to the banks.

This was all the proof in the cause, and thereupon the court instructed the jury,

"That the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to the possession of it until she, the

Page 44 U. S. 628

claimant, arrived at the age of eighteen years; and although she married the defendant in the execution before that time, the title of the property could not be vested in him until the claimant attained eighteen years of age, at which time,

under the will, she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband until she or he had reduced it to possession, which could not be done, by the terms of the will, before she was eighteen years of age. If, therefore, when the act of the Mississippi Legislature, securing to married women their property, free from the debts of their husbands (which went into effect in April, 1839), the claimant had not attained the age of eighteen years, the husband had no legal estate in it, and it could not be subject to this execution, and if they believe from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time jointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property."

"To which instructions of the court the plaintiff excepted, and rendered this his bill of exceptions at the time, before the jury retired from the bar, which he prayed might be signed, sealed, enrolled, and made a part of the record, which is done accordingly."

"J. Mc KINLEY [SEAL]"

Under these instructions the jury found a verdict for the claimant, and to review their correctness, the writ of error was brought.

Page 44 U. S. 633

MR. JUSTICE CATRON delivered the opinion of the Court.

The question arising on the charge of the circuit court is what interest had the husband, Sessions, in the property in controversy at the time it was levied on for his debts. If he had any subject to execution, it was acquired by the marriage with his wife as owner. Her right depended on the will of her father.

Russell Smith died in 1836, in the State of Mississippi, leaving a last will and testament, duly proved in Warren County, 27 July, 1836, leaving E. J. Sessions, P. W. Defrance, John Lane, and George Selser his executors, and also leaving John

Lane testamentary guardian to the testator's only child, Martha Ann Smith. Sessions, Lane, and Selser qualified, as executors.

The testator first provided that his debts should be paid by the proceeds of crops from his plantation, and that the force should be kept together until the crops paid the same, not exceeding two, however.

He next gave to his stepson, William D. Griffin, a section of land and various slaves, to be delivered to this devisee, when he arrived at the age of twenty-one years. But should he die before, then and in that event the property real and personal was to be divided between E. J. Sessions, P. W. Defrance, W. Le Defrance and Charles A. Defrance, provided they should be living -- if not, the property to revert to the estate to be disposed of as thereafter provided.

2. All the remaining balance of the estate real and personal is devised to the daughter, Martha Ann Smith -- and should all of the devisees mentioned in the first clause be dead before William D. Griffin attained twenty-one years of age, then the whole estate was to be inherited by said Martha Ann.

"But at all events [says the will] the property is to be kept together and the force worked on

Page 44 U. S. 634

the plantation until my said daughter Martha Ann arrives at the age of eighteen years, at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her if he lives until he is twenty-one years of age."

The proceeds of the crops to be vested in young slaves in the meantime.

If the daughter should die before she arrive at the age of eighteen or had an heir of her body, then the legacy left her (and that left to Griffin also, if vested in her) are directed to be disposed of otherwise -- in charities &c.;

At about sixteen years of age Martha Ann married Egbert J. Sessions, one of the executors, who had the principle management of the estate, and possession of the property. For the additional facts we refer to the statement of the reporter. On this proof the court instructed the jury,

"That the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to the possession of it until she, the claimant, arrived at the age of eighteen years, and although she married the defendant in the execution before that time, the title of the property could not be vested in him, until the claimant attained eighteen years of age, at which time, under the will, she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband until she or he had reduced it to possession, which could not be done, by the terms of the will, before she was eighteen years of age. If, therefore, when the act of the Mississippi legislature, securing to married women their property, free from the debts of their husbands (which went into effect in April, 1839), the claimant had not attained the age of eighteen years, the husband had no legal estate in it, and it could not be subject to this execution, and if they believe from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time jointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property."

As the legacy was outstanding at the time of the marriage, the title was in the executors, subject first to the payment of debts and then the claim of the devisee, but on the contingency that until the daughter arrive at eighteen or had an heir of her body, she should in the meantime take nothing more than a support, and this whether she married or not, for a marriage was contemplated as possible before the age of eighteen, as the becoming a mother before was provided for, so that the child might take through the mother.

We think it is free from doubt that the executors had no power to deliver possession of the property devised to the daughter before either of the contingencies above occurred, and that an attempt to do so, either to the guardian

or to the husband, would have been

Page 44 U. S. 635

void, because in violation of the manifest intention of the testator. It follows that until the wife arrived at the age of eighteen or had an heir of her body, the husband could only hold possession as executor. Had he died before, then we think it clear the wife would have taken, and not the personal representative of the husband, as the executors could not assent in his behalf to the vestiture of the legacy in possession. Provisions in wills that the executors shall retain the property devised until the devisee is of lawful age, and postponements to later periods, are of common occurrence, the executors, having assumed the trust, are held to its execution -- on their responsibility and prudence the testator relied, and not on future husbands that young and orphan daughters might marry, nor on guardians selected by indiscreet and incompetent minors. These evils are too prominent, and have too long employed the anxious cares of prudent testators, for this Court to lend its sanction in any degree to impair the guards interposed by wills, whereby the rights of possession and enjoyment are withheld from devisees. As the testator could have cut them off altogether if he would, there is no ground for complaint recognized in courts of justice. And yet less ground for complaint is there in a case like the present, where an individual creditor of the husband seeks to defeat the plain provisions of the will by an assumption that the marital rights superseded the executorial duties, and conferred a power to deliver possession which the will expressly prohibited.

Mrs. Sessions attained the age of eighteen in 1840. In April, 1839, the act of Mississippi took effect, by which it is provided that when any woman possessed of property in slaves shall marry, her property in such slaves, and their natural increase, shall continue to her notwithstanding her coverture, and she shall have, hold, and possess the same as her separate property, exempt from any liability for the debts or contracts of the husband. And when any woman during coverture shall become entitled to or possessed of slaves by conveyance, gift, inheritance, distribution, or otherwise, such slaves shall inure and belong to the wife in like manner as is above provided as to slaves which she may possess at the time of

marriage.

As the right of distribution in this case was postponed until after the act of 1839 took effect, the wife could only take the slaves exempt from the husband's debts; we say "could" because it does not appear that the executors of Russell Smith have assented to the legacy and delivered possession to the legatee, Martha Ann.

Without saying more, we are of opinion of the charge of the circuit court to the jury was proper, and that the judgment must be

Affirmed.

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