

United States Vs. Daniel

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Court : US Supreme Court

Decided On : 1848

Appeal No. : 47 U.S. 11

Appellant : United States

Respondent : Daniel

Judgement :

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United States v. Daniel

47 U.S. (6 How.) 11

*ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE
CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH
CAROLINA*

SYLLABUS

An action on the case will not lie against the executors of a deceased marshal where executions had been placed in the hands of the marshal and false returns

made on some of them and imperfect and insufficient entries on others.

The rule respecting abatement is this: if the person charged has received no benefit to himself at the expense of the sufferer, the cause of action does not survive. But where, by means of the offense, property is acquired which benefits the testator, there an action for the value of the property survives against the executor.

As to the form of action, none will lie at common law against an executor where the general issue plea is "not guilty."

In August, 1841, the United States brought an action of trespass on the case against the defendants as executors of Beverly Daniel, late marshal, and at May term, 1843, a verdict was found for the plaintiffs, subject to the opinion of the court upon the following case stated.

Beverly Daniel, being in his lifetime marshal of the District of North Carolina, certain executions, at the instance of the United States, from the District Court of Newbern, came to the hands of one of the deputies of the said marshal, who, in the name and on behalf of his principal, made false returns upon some of them and imperfect and insufficient entries on others. After the death of Daniel, this action on the case was brought against the defendants, his executors, to recover damages for the said false and insufficient returns, and it is contended on the part of the defendants that the action will not lie and is not sustainable against them as executors, and it is agreed by the parties that judgment shall be rendered for the plaintiffs upon the said verdict if the court shall be of opinion that such action is sustainable; otherwise, the said verdict to be set aside and the said action to be discontinued.

The judges being divided in opinion, the cause came up to this Court upon a certificate of such division.

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

This case is brought here from the District of North Carolina on a certificate of a division of opinion by the judges under the act of Congress.

A jury, having been empanelled to try the issues joined,

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found for the plaintiffs and assessed their damages at seven hundred seventy-five dollars and eighty cents. This verdict was taken by consent of parties subject to the opinion of the court on the following case.

"Beverly Daniel, being in his lifetime marshal of the District of North Carolina, certain executions, at the instance of the United States, from the District Court of Newbern, came to the hands of one of the deputies of the said marshal, who, in the name and on behalf of his principal, made false returns upon some of them and imperfect and insufficient entries on others. After the death of Daniel, this action on the case was brought against the defendants, his executors, to recover damages for the said false and insufficient returns, and it is contended that the action will not lie and is not sustainable against them as executors, and it is agreed by the parties that judgment shall be rendered for the plaintiffs upon the said verdict if the court shall be of the opinion that such action is sustainable; otherwise, the said verdict to be set aside, and the action to be discontinued."

And on a motion being made for judgment, the opinions of the judges were opposed on the point reserved.

No action will lie against an executor for a personal wrong by the testator. Com.Dig. Administrator, B. Nor does it lie against the executor of a jailer for an escape. Ibid. Waste does not lie against an executor or administrator, nor an action upon a penal statute. So trover is said not to lie against an executor upon a trover and conversion by his testator, though a different form of action will lie for the same cause. Cowper 371.

If the person charged has secured no benefit to himself at the expense of the sufferer, the cause of action is said not to survive; but where, by means of the

offense, property is acquired which benefits the testator, there an action for the value of the property shall survive against the executor. And it is laid down in Cowper 376 with respect to the form that no action survives where the plea of the defendant must be "not guilty," but where the case survives, some other form must be pursued.

If the deputy marshal, in the misfeasance complained of, received money or property, the marshal being responsible for such acts, the cause of action survived against his executors. But this is not the case made in the present action. It is an action on the case requiring the general issue of "not guilty." If a liability were shown against the deceased marshal, it could not be enforced against his executors in this form. No action, where the plea must be that the testator was not guilty can

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lie, at common law, against the executor. Upon the face of the record, the action arises *ex delicto*, and all private criminal injuries or wrongs, as well as all public crimes, are buried with the offender. 3 Bac.Abr. 539.

The provision in the 10th section of the North Carolina statute, "to prevent the abatement of suits in certain cases" -- which declares that an action of trespass on the case &c.;, shall not abate by the death of either party -- does not affect the above question.

This Court thinks that the action, in the form prosecuted, is not maintainable, and it

Directs the fact to be so certified to the circuit court.

ORDER

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 North Carolina and on the point or question on which the judges of the said circuit court were opposed in opinion and which were certified to this Court for its opinion, agreeably to the act of Congress

in such cases made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court that the action in the form prosecuted will not lie. It is thereupon now here ordered and adjudged by this Court that it be so certified to the said circuit court.

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