

Thorp Vs. Raymond

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 247

Appellant : Thorp

Respondent : Raymond

Judgement :

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Thorp v. Raymond

57 U.S. (16 How.) 247

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The statute of limitations of New York allows ten years within which an action must be brought by the heirs of a person under disability after that disability is removed.

But the right of entry would be barred if an adverse possession, including those ten years, had then continued twenty years, and the right of title would be barred if the adverse possession had continued twenty-five years, including those ten years. Cumulative disabilities are not allowed in the one case or in the other.

Therefore, where a right of entry accrued to a person who was in a state of insanity, the limitation did not begin to run until the death of that person, but began to run then, although the heir was under coverture.

The circumstances of the case are fully stated in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The plaintiff brought an action of ejectment in the court below against the defendant to recover the one-twentieth part of a mill seat and the erections thereon, together with some eighteen acres of land, situate on the River Bronx in the Town and County of Westchester in said state, and, on the trial, gave evidence tending to prove that the premises were owned in fee in 1726 by one Nicholas Brouwer, and that he continued seised of the same as owner down to his death, in 1749; that his heir at law was a grandchild Hannah, then the wife of

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Edmund Turner; that said Turner died in 1805, leaving his wife surviving, but who had been for some years previously, and then was insane, and so continued till her death, in 1822; that at her death she left, as heirs at law surviving her, several children and grandchildren; that one of her surviving children was Jemima Thorp, the mother of the present plaintiff, who was married to Peter Thorp when nineteen years of age; the said Peter died in 1832, and said Jemima, who survived him, died in 1842, leaving the plaintiff and other children surviving. The plaintiff, also, proved the defendant in possession of the premises and rested.

The defendant then proved that, before the year 1801, the premises in question were in the actual possession of one Oliver De Lancy claiming as owner, who in the same year by indenture of lease demised the same to one James Bathgate, for the term of fourteen years; that the said Bathgate entered into possession, and continued to hold and occupy the premises under this lease till 1804, when one David Lydig entered, claiming to be the owner in fee; that said Bathgate attorneyed to, and held and occupied under him, as tenant, down to 1840, when the defendant succeeded as tenant of the premises under the said Lydig; that David Lydig died in 1840, leaving Philip, his only child and heir at law, surviving, and that from the date of the lease to Bathgate, 1st May 1801, down to the commencement of this suit, the premises had been continually held and possessed by De Lancy and the Lydigs, father and son, by their several tenants, claiming to be the owners in fee, and exclusive of any other right or title; and occupied and enjoyed the same in all respects as such owners.

Both parties having rested, the court charged the jury that Hannah Turner took the title to the premises on the death of her grandfather, Nicholas Brouwer, in 1749, as his heir at law, but, that as she was then a *feme covert*, the statute of limitations did not begin to run against her till 1805, on the death of Edmund Turner, her husband, and as she was also under the disability of insanity, in 1801, when the adverse possession commenced, the statute did not begin to run against her estate until her death, this latter disability having continued till then; and, that her heirs had ten years after this period to bring the action. But that the right of entry would be barred if the adverse possession, including these ten years, had continued twenty years, and the right of title would also be barred if the adverse possession had continued twenty-five years, including these ten years. That the ten years having expired in 1832, and the action not having been brought by the plaintiff till 1850, it was barred by the statute of limitations in both respects as

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an ejectment, or writ of right, and that, upon the law of the case, the defendant was entitled to their verdict.

We think the ruling of the court below was right, and that the judgment should be affirmed.

It is admitted, that, if this suit should be regarded in the light of an action of ejectment to recover possession of the premises, the right of entry would have been barred by the statute of New York, the twenty years bar having elapsed since the right accrued, before suit brought. 1 R. Laws of 1813, 185, § 3.

The right of entry of Hannah Turner accrued in 1801, but at that time she was laboring under the disability of coverture, and also of insanity, which latter survived the former, and continued till her death, in 1822. By the saving clause in the third section of the act, the heirs had ten years from the time of her death within which to bring the ejectment, and no longer, notwithstanding they may have been minors, or were laboring under other disabilities, as it is admitted, successive or cumulative disabilities are not allowable under this section. 6 Cow. 74; 3 Johns.Ch. 129, 135. The ten years expired in 1832, which, with the time that had elapsed after the adverse possession commenced, exceeded the twenty years given by the statute. The suit was brought in 1850.

But it is supposed that the saving clause in the second section of this act, which prescribes a limitation of twenty-five years as a bar to a writ of right, is different, and allows cumulative disabilities, and as ejectment is a substituted remedy in the court below for the writ of right, it is claimed the defendant is bound to make out an adverse possession of twenty-five years, deducting successive or cumulative disabilities. This, however, is a mistake. The saving clause in this second section, though somewhat different in phraseology, has received the same construction in the courts of New York as that given to the third section. 12 Wend. 602, 619, 620, 635, 636, 656, 676.

The judgment of the court below is therefore

Affirmed.

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 New York, 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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