

Long Vs. O'Fallon

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Decided On : 1856

Appeal No. : 60 U.S. 116

Appellant : Long

Respondent : O'Fallon

Judgement :

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Long v. O'Fallon

60 U.S. (19 How.) 116

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

Where an administrator sells property which had been conveyed to him for the purpose of securing a debt due to his intestate's estate, his failure to account for the proceeds amounts to a *devastavit*, and renders himself and his sureties upon

his administration bond liable, but it does not entitle the heirs to claim the property from a purchaser in good faith for a valuable consideration.

Nor can the heirs in such a case claim land which has been taken up by the administrator as vacant land and for which he obtained a patent from the United States, although such land was included in the conveyance to him.

Moreover, the facts necessary to sustain the plea of the statute of limitations are proved on the part of the defendant in this case, and no charge in the bill discloses a case of exception from its operation.

This was a bill filed by a part of the heirs of Gabriel Long, Clara V. Long, one of the heirs, having been left out as a complainant on account of her residence in Missouri, but made a defendant to an amended bill after a demurrer had been sustained upon this ground under the following circumstances:

In 1799, the Spanish government surveyed for Antoine Morin a tract of land, fronting on the Mississippi River, supposed to be sixteen arpens in front, having a depth of forty arpens, which, in February, 1809, was confirmed to his widow and heirs, he being then dead. The survey showing, however, that the tract contained more than 640 arpens, that quantity only was confirmed, and the commissioners directed another survey to be made so as to throw off the surplus on the western side of the tract.

In October, 1809, the Morins conveyed the property to Elijah Smith, who, in September, 1812, conveyed it to Alexander McNair.

In 1817, the survey ordered by the board was made, but the surplus quantity was thrown off from the south side of the tract instead of the west, by which means fractional sections 26, 27, 33, 34, and 35, of townships 46, range 7 east, were reunited to the body of public lands.

In 1820, McNair, being indebted to Gabriel Long, mortgaged to him a tract of one hundred and twenty arpens of land, situated on the River Gingrass and fronting on the River Mississippi, and bounded southwardly by land formerly owned by

Clement B. Penrose, northwardly by the land of Joseph Morin, and westwardly by the land now or formerly owned by Joseph Brazeau, being the same land which he had purchased from

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Elijah Smith. The land was three arpens in front by forty in depth, and was nearly or quite identical with the land thrown out as above mentioned.

In October, 1822, Gabriel Long died.

In December, 1822, Alexander McAllister took out letters of administration upon the estate of Long, and on the 19th of February, 1823, commenced suit to foreclose the mortgage against McNair, and obtained a decree of foreclosure in October, 1823, and an order to sell the mortgaged premises.

Although somewhat in advance of the chronological order of events, it is proper here to introduce the following admission of counsel, which was filed in the cause:

"It is admitted in this case that Catharine Dodge was the aunt of Mrs. McNair, wife of Alexander McNair. It is admitted that in the inventory of Alexander McAllister, filed by him as administrator of Gabriel Long, deceased, in the County Court of St. Louis county, said McAllister charged himself with the following debts, as due to said Long's estate from Alexander McNair, viz., note on McNair, \$1,889, drawing 10 percent; note on McNair, \$100; debt on McNair, \$340; in all, \$2,329. That in the settlement of said McAllister, as such administrator, in said court, at the February term, 1828, he was credited by the same amounts charged against him in inventory, the same being desperate as he stated in said settlement."

It is admitted that Mrs. Long, wife of Gabriel Long, after his death, married Alexander McAllister; and after his death, she married Abel Rathbone Corbin, and she is still living.

To resume the thread of the narrative.

In March, 1824, Catharine Dodge took out a patent from the United States for fractional sections 34 and 26, making together a little upwards of 128 acres, and being a part of the land thrown out, as above mentioned, and included in the mortgage from McNair to Long.

In August, 1824, the sale of the mortgaged premises took place under a decree of the court, as above mentioned, when McAllister became the purchaser for the sum of one hundred and twenty dollars.

In September, 1824, Catharine Dodge united with McNair in executing a deed, by way of mortgage to McAllister, in order to secure the payment of two thousand six hundred and fifty dollars, admitted to be due from McNair to McAllister, as the administrator of Long. This deed gave to McAllister the power to sell the premises, *viz.*, fractional sections 34 and 26.

In January, 1828, McAllister entered in his own right fractional sections 27, 33, and 35, containing in the whole about

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nine acres, and being the residue of the lands thrown out by the survey.

On the 10th of August, 1828, Mrs. Dodge, in consideration of the debt due by McNair to McAllister, secured by the mortgage, above referred to, released to McAllister all her right, title, and interest, in the above premises.

In February, 1833, McAllister and wife conveyed to John O'Fallon, for the consideration of twelve hundred dollars, all that tract of land lying on or near the river Gingrass, in the County of St. Louis, being three arpens in front, by forty arpens, more or less, in depth, forming a superficies of one hundred and forty arpens, without recourse, however, to the grantors for any defect of title.

This was the same land which had been mortgaged by McNair, purchased by McAllister at public sale, and conveyed to him in part by Mrs. Dodge. O'Fallon had previously gone into possession of the premises, about the year 1830, under an agreement with McAllister.

In December, 1852, the heirs of Gabriel Long, residing in California and Mississippi, filed their bill against O'Fallon on the equity side of the Circuit Court of the United States for Missouri. The bill alleged that McAllister, being administrator of Gabriel Long and purchasing the mortgaged property, had thereby become a trustee for the use of the heirs; that the deed of conveyance, executed by Catharine Dodge to secure debts due to McAllister and the estate of Long, enured to the benefit of the heirs of Long, as did also the patent for the three fractional sections taken out in his own name by McAllister; that he had never accounted with the heirs for the \$120, which was the purchase money of the mortgaged property; that O'Fallon was a purchaser with notice, in fact and in law, and that the sale made to him by McAllister and wife was fraudulent in fact and in law, and that thereby O'Fallon became a trustee for the heirs of Long to the same extent that McAllister was bound to them.

The defendant, O'Fallon, filed his answer, in which, amongst other matters, he denied that he was a purchaser with notice, asserting, on the contrary, that when he purchased said real estate described in the two deeds made by said McAllister to this defendant -- one in August, 1828, and the other in February, 1833 -- and paid the consideration expressed in said two deeds to said McAllister, this defendant had never heard the title of said McAllister, or his right to sell said real estate, questioned, said McAllister always claimed and treated it as his own and in his own right. If this defendant has had any notice or intimation from anyone that said McAllister's title

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or right to sell said real estate was questioned or questionable, or that he held or claimed it only in trust for other parties, and not in his own individual right, this defendant would not have purchased said real estate or had anything to do with it, and certainly this defendant would not have paid the consideration for said real estate that he did if the title thereto, or right to sell, had been questioned or questionable, for the said price or consideration paid for said real estate to said McAllister, by this defendant was equal to the cash value thereof at that time.

The defendant further alleged that he had been in continuous possession, in good faith under his claim of title for twenty years and upwards next before the bill was filed, and set that up as a bar to the claim of the complainants.

After various proceedings in the case, it came up for argument in April, 1855, when the court dismissed the bill with costs.

The complainants appealed to this Court.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The appellants, a part of the heirs of Gabriel Long, deceased, instituted this suit in the circuit court against the defendant to obtain a decree for a title to, and for an account for the rents and profits of, a parcel of land in St. Louis, Missouri.

The case made in the record is that in 1820, Alexander McNair and wife executed a mortgage deed for the land in controversy to Gabriel Long, to secure a debt not then due. Before its payment, Long died and Alexander McAllister was appointed to administer his estate. In 1823, this administrator obtained a decree in the Circuit Court of St. Louis County for a foreclosure of the mortgage and an order of sale to be executed after a limited period. This order was executed in August, 1824, by a public sale of the property to McAllister, for a small portion of the debt.

The title of McNair before this sale had entirely failed. The Spanish concession and survey under which he claimed the land had been surveyed and located by the officers of the land office so as to exclude this parcel, and in consequence it was subdivided into five fractional sections, and was subject to sale as public land. At the date of the sale by the sheriff, two of these fractions, embracing the whole tract except nine acres, were claimed by Catherine Dodge under a patent from the United States, and the remaining sections were patented to McAllister, as a purchaser, by entry at the land office in 1828.

In September, 1822, Catherine Dodge and McNair agreed to secure the debt due to the estate of Long by a mortgage in favor of McAllister.

The debt was divided into three unequal installments, which were to be paid within three years by McNair, and Mrs. Dodge conveyed her two fractional sections in mortgage, with a power of sale in the event of a default, to secure the performance of the obligation.

McNair failed to make the payments, and in 1828 Mrs. Dodge released to McAllister her equity of redemption and her claim upon him for any surplus from the mortgage, for the consideration of one dollar.

In 1828, the defendant purchased the five fractional sections

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from McAllister for a fair price, and has been in the undisputed possession of the land since 1830. The defendant pleads the statute of limitations in bar of the recovery.

The opinion of the Court is that the conveyances of Mrs. Dodge to McAllister did not invest the heirs of Gabriel Long with an equitable estate, or a particular lien on the property described in them. Their primary object was to create a security, or a fund, for the payment of the debt of McNair and to enable McAllister to dispose of the land in case of its nonpayment, at his discretion, for its discharge. The release executed in 1828 was not made to extinguish any portion of the debt, nor did it remove the obligation of McAllister to convert the security into pecuniary assets. His sale of the land was a legitimate exercise of the powers of an administrator and trustee, and his vendee was not obliged to look to the application of the purchase money. *Tyrrell v. Morris*, Dev. & Batt.Ch. 559. His failure to account was a *devastavit*, for which he and his sureties are liable on their official bond at law, and probably, if the land had been retained by him or any person claiming as a volunteer under him, a court of equity might have permitted the heirs to accept the property instead of the debt due to the estate. But in the present instance the defendant is a purchaser in good faith, and is entitled to hold the property, exempt

from the claims of the plaintiffs. *Rayner v. Pearsall*, 3 John.Ch. 578

Nor can the title for the defendant to the three small fractional sections entered by McAllister at the land office, and which were purchased from him by the defendant after his patent from the United States had been issued, be successfully questioned by the plaintiffs. The estate conveyed to Long by McNair, in mortgage, was known to be without value in 1824. McAllister did not acquire by the sheriff's deed any interest in the land or profit from his purchase. The land was then a part of the public domain, and subject to entry at the land office under the laws of the United States. Without considering whether there was any relation between this administrator and these heirs which precluded the former to purchase the land for his own account, under the principles of equity we are satisfied that the heirs are not entitled to pursue their claim against a purchaser for value, who has not been guilty of fraud or collusion.

The facts necessary to sustain the plea of the statute of limitations are proved on the part of the defendant, and no charge in the bill discloses a case of exception from its operation. [*Piatt v. Vattier*](#), 9 Pet. 405.

Decree of the circuit court affirmed.