

Flowers Vs. Foreman

Flowers Vs. Foreman

SooperKanoon Citation : sooperkanoon.com/80909

Court : US Supreme Court

Decided On : 1859

Appeal No. : 64 U.S. 132

Appellant : Flowers

Respondent : Foreman

Judgement :

Flowers v. Foreman - 64 U.S. 132 (1859)

U.S. Supreme Court Flowers v. Foreman, 64 U.S. 23 How. 132 132 (1859)

Flowers v. Foreman

64 U.S. (23 How.) 132

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

Where a party residing in Maryland sold land in Louisiana with a general warranty to a resident of Louisiana, who was afterwards evicted from a part of it and obtained a judgment against his warrantor, whom he had vouched in,

this judgment could not be rendered effective against the Maryland vendor, because no notice had been served upon him and the appointment of a curator *ad hoc* was not sufficient.

An action of assumpsit having been afterwards brought against him in the Maryland court by the parties interested, the statute of limitations of Maryland was considered to be applicable to the case.

The eviction of the vendee took place when he held the land under a title different from that which had been conveyed to him by his grantor, without the necessity of the execution of a writ of possession.

This was an action of assumpsit brought by Charles Flowers and Alice Flowers, of Louisiana, claiming to be heirs and universal legatees of Charles Mulhollan, against Foreman, surviving partner of Keller & Foreman.

The claim arose in this way:

There was a tract of land in Louisiana which Calvit conveyed to Davis, Davis to Keller & Foreman, and these last to Mulhollan, under a power of attorney dated 21st December, 1827. The attorney conveyed it to Mulhollan with a clause of general warranty.

Mulhollan, on the same day, conveyed a part of it to Reuben Carnal, but nothing more need be said about this deed for the purpose of explaining the questions which arose in this case.

The heirs of Calvit, in 1838, filed a petition in the District Court, Parish of Rapides, State of Louisiana, alleging that they were the sole heirs of their mother, who was the lawful wife of Anthony Calvit; that during the community between said Anthony Calvit and his wife, he purchased said tract of land; that the said wife died, leaving the petitioners her heirs, and their father their natural tutor; that in the year 1822, while petitioners were minors, he sold the whole of said land to A. J. Davis, in violation of the rights of petitioners, who were entitled to one-half thereof as the

heirs of their mother; that said land was then in possession of said Charles Mulhollan and Reuben Carnal, and the petition prays that one-half of said land may be adjudged to them.

Page 64 U. S. 134

Carnal filed his answer, denying the allegations in the petition, alleging that he purchased said land from Charles Mulhollan, who was bound to defend the title, and citing him in warranty in the suit.

Mulhollan filed his answer, denying all the allegations of the plaintiffs and alleging that he purchased said land from said Keller & Foreman under a general warranty, and he prays that said Keller & Foreman, as warrantors, may be cited to defend him in his title and possession and that curators *ad hoc* may be appointed to represent the said warrantors, who are absentees.

In conformity with the prayer contained in Mulhollan's answer, a citation issued not to Keller & Foreman, but to George K. Waters, who is styled curator *ad hoc* of the Parish of Rapides, and said Waters appeared and filed an answer, and undertook to defend the cause for the absentees, on whom no process was served and who had no notice nor knowledge of the case.

The district court gave judgment in favor of the defendant.

The case was appealed, and the Supreme Court of Louisiana, on the 26th of November, 1845, reversed the decision of the district court and ordered, adjudged, and decreed,

"that said James and Coleman Calvit do recover of the defendant, each and respectively, one undivided eighth of the tract of land described in their petition, that they be quieted in their title to the said undivided eighth hereby decreed to them respectively as against the defendant or any person claiming through or under them,"

but with regard to the question of improvements and rents and profits, so far as James and Coleman Calvit were interested, and as to the question of damages between the warrantees, the case was remanded to the district court. And on a rehearing, the supreme court, on the 29th of October, 1845, decreed that its former judgment be maintained as far as it went, and that, in addition to the purposes for which it was ordered to be remanded, it be also remanded for the further purpose of ascertaining whether the price received by the plaintiffs' father and tutor for the property in dispute was applied to the payment of the community debts

Page 64 U. S. 135

of the father and mother of the plaintiffs, to which said James and Coleman were bound to contribute in proportion to their rights thereto, and that in the meantime no writ of possession issue until they have paid the amount which may be found to be due by them on the trial of the cause in the lower court.

During the progress of the cause, Charles Mulhollan died, and Charles Flowers and Alice Flowers appeared therein as his heirs and universal legatees.

Charles Mulhollan died in 1846. Shortly afterwards, Thomas O. Moore the acting executor, paid to James and Coleman Calvit twelve hundred dollars each for their relinquishment of their claims to the tract of land in question.

On the 31st of May, 1853, the district court rendered judgment in favor of Charles Flowers and Alice Flowers against Keller & Foreman, who were represented by the curator *ad hoc*. The judgment was for eight hundred and fifty dollars, with interest thereon, at five percent, from the 14th of November, 1846, and costs.

There being no mode of reaching Keller & Foreman under this judgment, an action of assumpsit was brought against them, as before stated, in the Circuit Court of the United States for the District of Maryland. The defendants pleaded the statute of limitations of Maryland.

The two statutes of this state are the following, *viz.:*

The act of 1715, chapter 23, section 2, provides that all actions upon the case shall be brought "within three years ensuing the cause of such action, and not after," with a saving by section 22 in favor of persons beyond seas.

The act of 1818, chapter 216, section 1, repeals the saving in the act of 1715 in favor of persons beyond seas.

The reader will perceive that the only question in the case was when the statute began to run, whether in 1846 or 1853.

The circuit court granted the following instruction.

"The defendant prays the court to instruct the jury first that the Act of the State of Maryland passed in the year 1715, chapter 23, entitled, 'An act for limitation of certain actions, for avoiding suits at law,' and the Act of said state, passed in

Page 64 U. S. 136

the year 1816, chapter 216, entitled, 'An act to avoid suits at law,' constitute a bar to the recovery by the plaintiff in this case. To the granting of which instruction the plaintiff excepted, and upon this exception the case came up to this Court. "

Page 64 U. S. 143

MR. JUSTICE WAYNE delivered the opinion of the Court.

We shall cite such facts in this record as are necessary to show the relations and obligations of the parties to it under the laws of the State of Louisiana, and in that of the Circuit Court of the United States for the District of Maryland, from which it has been brought here by writ of error.

The plaintiffs are the heirs and universal legatees of Charles Mulhollan, to whom Keller & Foreman sold a tract of land, with an obligation of warranty. On the same day that the conveyance was executed to Mulhollan, he conveyed by deed a part of the land to Reuben Carnal, with a like clause of general warranty.

Afterwards, William J. Calvit, Elizabeth G. Calvit, James A. Calvit, and Coleman W. Calvit filed their petition in the District Court for the Parish of Rapides, alleging that they were the heirs of their mother, the lawful wife of their father, Anthony Calvit, and that they were entitled to half of the land, as it had been purchased by their father during their mother's coverture with him, which superinduced between them a community of acquests or gains -- there having been by them no stipulation to the contrary. And they allege also that their father, as their natural tutor, had sold the land for a part of which they petitioned while they were minors, in violation of their rights.

They further state that Charles Mulhollan and Reuben Carnal were in possession of the land, and ask that one-half of it might be adjudged to them, as the heirs of their mother.

Being thus brought into court, Mulhollan and Carnal filed

Page 64 U. S. 144

their answers. Each deny the allegations of the plaintiffs -- Carnal citing Mulhollan into court as his warrantor -- and Mulhollan alleges in his answer, that he had purchased the land from Keller & Foreman with a general warranty. He asks that they might be cited to defend him in his title and possession and that, as they were absentees from the State of Louisiana, he prayed for the appointment of curators *ad hoc* to represent them in the case.

George K. Waters was designated by the court as their curator, and upon being summoned, appeared in that relation, and, assuming to be the attorney of Keller & Foreman, filed an answer for them. Keller & Foreman, however, never had any knowledge of the suit nor any notice of the appointment of Waters as curator.

Waters, in his answer, cited in warranty the legal representatives of A. J. Davis, deceased, from whom Keller & Foreman had bought the land.

The legal representatives of Davis appeared by George Purvis, their curator, and in their turn cite in warranty, Anthony Calvit, their ancestor's vendor, who was the

father of the plaintiff, by whom the land had been sold to Davis. Anthony Calvit appeared by attorney, denying the petitioner's allegations.

After several continuances, the case was brought to trial in the district court and judgment was entered for the defendants. The plaintiff carried it by appeal to the Supreme Court of Louisiana. The judgment of the court below was reversed on the 26th November, 1845. That court decided that the two youngest petitioners, James and Coleman Calvit, were each entitled to one undivided eighth of the land in controversy, but that William J. Calvit and Elizabeth G. Calvit were excluded from recovering on account of the prescription of ten and twenty years, which Mulhollan had pleaded in his answer. The court then remanded the cause to the district court for further proceedings on the question of improvements, costs, and profits and of damages between the warrantors.

Afterwards, on a rehearing, the supreme court directed a further inquiry to be made for the purpose of ascertaining

Page 64 U. S. 145

whether the price received for the land by the father and tutor of the plaintiff had been applied to the payment of the debts of the community of their father and mother,

"and it ordered, if any of it had been, that James and Coleman Calvit should contribute in proportion to their rights in the land and that, in the meantime, no writ of possession should issue until they had paid the amount which the court below might determine to be due by them."

After the rendition of the supreme court's decree, Charles Mulhollan died. His will was admitted to probate on the 11th July, 1846. On the same day, his death was suggested, and an order was passed to renew the suit in the names of his legal representatives. Three days afterwards, Thomas O. Moore the executor of Mulhollan, paid to James and Coleman Calvit \$2,400 for a relinquishment of their claims to the land in controversy, and of all their rights in the judgment which had been rendered in their favor.

No further proceedings were had in the suit from the 11th November, 1846, to the 30th May, 1853, when the plaintiffs in this suit made themselves parties, as heirs and universal legatees of their uncle, Charles Mulhollan, the original defendant. They adopted his answers and defenses, and ask for judgment against his warrantors, Keller & Foreman, which was given on the following day, in the district court, to which the cause had been remanded, for those purposes only heretofore stated.

Such have been the relations of the parties named in the record in the District and Supreme Court of the State of Louisiana. Whatever was the liability of Keller & Foreman as warrantors of Mulhollan, they never were subjected to the jurisdiction of the district court by any valid proceeding from it to enable that court to carry that liability into a judgment in favor of Mulhollan, their vendee, or in favor of his representatives, Charles and Alice Flowers.

When Mulhollan answered the petition of the Calvits and asked that Keller & Foreman should be cited into court as his warrantors, no citation for that purpose was served upon them to do so. One was issued for and served upon Waters, to represent them as curator *ad hoc*, but that was insufficient

Page 64 U. S. 146

to give to the district court jurisdiction to pronounce judgment against them, though that court did do so. Hence it is that this action of *assumpsit* was instituted to recover damages alleged to have been sustained upon a breach of the warranty of Keller & Foreman to Mulhollan.

In the declaration in this action it is recited that Keller & Foreman had conveyed to Mulhollan a tract of land, with warranty, and that the supreme court had adjudged that James and Coleman Calvit were each entitled to an undivided eighth of the same. They were declared to have entered into the same and evicted Mulhollan from it, in consequence of which Mulhollan, to regain his possession, had paid to James and Coleman Calvit twenty-four hundred dollars for the relinquishment of their claims to the land. To this action the defendant pleaded *non-assumpsit*, and

it was agreed in writing by the counsel in the cause that under such issue, all errors in pleading should be mutually waived and that the defendant was to be permitted under it to rely upon the statute of limitations.

Upon the trial of the case, that point was urged. The statutes of Maryland of the years 1715, ch. 23, and 1818, ch. 216, entitled "Acts to Avoid Suits at Law," were insisted upon as constituting a bar to the recovery of the plaintiff. Such was the instruction given by the court.

There is no error in the instruction. More than three years had elapsed after their right of action had accrued before the plaintiffs brought their suit. Their uncle had been judicially declared not to be entitled to a part of the land by the decree of the supreme court. That, of itself, was an eviction under the law of Louisiana, though the court postponed giving a writ of possession to the parties in whose favor its decree was made for the purpose of having certain points ascertained in which all the parties to the cause were interested -- no one of them more so than Mulhollan himself. The date of the supreme court's decree in favor of the two Calvits is 26th November, 1845, shortly after Mulhollan died. The district court had not then adjudged those points for which the case had been remanded to it.

Page 64 U. S. 147

Before that was done by the court, and soon after Mulhollan's death, his active executor, Moore on the 14th November, 1846, bought from the two Calvits their claim to that part of the land which had been decreed to them by the supreme court. This itself was an eviction, though the supreme court, in deciding upon these rights to the land, had withheld from the Calvits a writ of possession. It is not necessary, to constitute an eviction, that the purchaser of land should be actually dispossessed. 11 Rob. 397. It was also ruled in the same case that an eviction may take place when the vendee continues to hold the property under a different title from that transferred to him by his vendor. In this instance, Mulhollan's representatives held the title to a part of the land, originally bought by him from Davis as a whole, by the purchase of James and Coleman Calvit's undivided

eighth.

The same conclusions had been previously ruled by the same court in *Auguste Landry v. Honore Felix Gamel*, 1 Robinson 362. The court's language is:

"It is true that by the authorities to which we have been referred, the doctrine is well established that in order to constitute an eviction, it is not absolutely necessary that the purchaser should be actually dispossessed. That eviction takes place, although the purchaser continues to hold the property, if it be under a title which is not that transferred to him by his vendor, as if he should extend the property or should acquire it by purchase from the true owner."

Pothier, Vente, No. 96; Troplong, Vente, No. 415; Toullier, vol. 16; Continuation by Duvergier, vol. 1, Nos. 309, 313. Other cases in the Louisiana reports have the same conclusions, but we do not think it necessary to cite them. The rulings in 1 and 11 Robinson announce it to be the uncontested doctrine in the Louisiana courts that actual dispossession is not necessary to constitute an eviction, and that if the purchaser holds under another title than that of his vendee, an eviction may take place. Those decisions cover the case in hand in both particulars, and they show that the purchaser of the land had suffered an eviction by the decree of the supreme court, in the meaning of that term in the law of Louisiana, though a writ of possession had not been issued.

Page 64 U. S. 148

But if that was doubtful, it is certain that the eviction was accomplished when the executor of Mulhollan bought, for the benefit of his testator's estate, the claim to the land which James and Coleman Calvit had acquired.

Mulhollan, by his will, granted to his executors, immediately on his death, full and entire seizin and possession of all his estate, to hold and manage the same until all the legacies given by him were paid over and fully discharged. The signification of a delivery of seizin to an executor will be found in articles 1652, 1664, 1666, 1667, of the Civil Code, and in 35 of Revised Statutes 3. These articles provide that a testator may give the seizin of the whole or of a part of his estate to his

executor, accordingly as he may express himself. The seizin usually continues for a year and a day, but may be prolonged by an act of the court and may be terminated whenever the heirs shall deliver to the executor a sum sufficient to pay the movable legacies. The seizin of the executor is distinct from and paramount to the seizin which the law vested in the heir immediately on the death of his ancestor, and the heir can only deprive the executor of it by providing security for the performance of his obligations. The executor represented the reception, insofar as respects creditors and legatees. *Bird v. Jones*, 5 Ann.La. 645. When the testamentary executor submitted to the title of the Calvits, and paid them for it, that was an eviction, which gave to him a right of action in behalf of the succession against the warrantors of his testator. His right of action passed to the heirs of Mulhollan when he delivered the succession to them or whenever it came to their hands by due course of law. It was delivered to them, and the executor's seizin terminated in the year 1847, though the precise day does not appear in the record. The heirs, upon its termination, were reinstated in all the rights which had been temporarily administered by the executor. Those rights will be found in articles 934, 935, 936, of the Code. One of the effects of those rights is to authorize the heir to institute all the actions which the testator could have done, to prosecute to a conclusion such as had been commenced by the testamentary executor, and to commence all

Page 64 U. S. 149

actions which he had failed to institute belonging to the succession. 15 La. 527; 7 Rob. 183; 2 Ann. 339; 7 Ann. 397. In such a suit by the heirs, the same defenses may be made which could have been applied if the executor's seizin had been continued. But in this instance neither the executor nor the heirs, the plaintiffs in the suit, took any legal step to carry to a judgment Mulhollan's citation of Keller & Foreman in warranty in the District Court of the Parish of Rapides until the 30th May, 1853, more than fourteen years after the eviction of Mulhollan had occurred and after the rights of the Calvits had been bought. The heirs now, however, seek by this suit in assumpsit in the Circuit Court of the United States for the District of Maryland to recover damages from Foreman, the survivor of his partner, Keller, for

the failure of their warranty to Mulhollan, the suit having been commenced between eight and nine years after their right of action had accrued. The defendant relies upon the statutes of limitation of Maryland as his defense to prevent a recovery. We think it must prevail, and that the court below, in giving to the jury such an instruction, committed no error. We therefore direct its judgment to be

Affirmed.

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