

Beaubien Vs. Beaubien

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Court : US Supreme Court

Decided On : 1859

Appeal No. : 64 U.S. 190

Appellant : Beaubien

Respondent : Beaubien

Judgement :

Beaubien v. Beaubien - 64 U.S. 190 (1859)

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Beaubien v. Beaubien

64 U.S. (23 How.) 190

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MICHIGAN

SYLLABUS

Where a bill in chancery was filed by persons residing in Canada, claiming title to property in Detroit which had been in the exclusive possession of the defendants and those claiming under them since 1793, without, as far as appears, any right

being set up by the complainants or by those claiming under them to the title or the possession of the premises until the filing of the bill, or any claim to the rents and profits or to an account as tenants in common, or for partition, or to be admitted to the enjoyment of any right as co-heirs, the case is one resting upon the enforcement of an implied trust, where courts of equity follow the courts of law in applying the statute of limitations.

The averments of concealment and fraud on the part of the defendants, which

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are made in the bill for the purpose of withdrawing the case from the operation of the statute, are too general and indefinite to have that effect.

No acts of fraud or concealment are stated, and the time when even an intention to defraud, which is all that is averred, was discovered was some fifty years after the exclusive possession of the defendants and those under whom they claim had commenced, and this although the parties lived in the neighborhood and almost in sight of the city which has, in the meantime, grown up on the premises.

This was a bill filed on the equity side of the court by John Baptiste Beaubien and twenty-one others, aliens and residents of Canada, against Antoine Beaubien and one hundred and twenty-seven others, thirteen of whom were citizens of Michigan and residents of Detroit. The rest of the defendants were admitted to be parties by order of the court.

The complainants began the history of their title as early as 1745, when the governor and intendant of the territory gave to their ancestor, Beaubien, a concession of land of three arpens in front on Lake Erie by forty arpens in depth, and afterwards, in 1747, the same persons granted to one Barois a concession of two arpens in front by forty arpens in depth adjoining the above. They then traced the title down, as stated in the opinion of the Court.

Some of the defendants demurred to the bill and the rest pleaded that they were *bona fide* purchasers, without notice.

In 1857, the court passed the following decree:

"This cause having been brought on to be heard on the demurrer of the above defendants and others to the amended bill of complaint and the plea of the Right Reverend Peter Paul Le Fevre and Theodore Williams, claiming to be *bona fide* purchasers for a valuable consideration, without notice, of the lands and premises owned and claimed by them on the Antoine Beaubien and Lambert Beaubien farms, described in the bill of complaint and in said plea, and the said demurrer and plea having been argued by G. T. Sheldon, solicitor and counsel, and W. H. Emmons, counsel for said defendants, and Messrs. Burt and Maynard, counsel for the complainants, and

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the arguments of counsel having been duly considered, it is ordered, adjudged, and decreed that the demurrer hereto fore filed of the above defendants, Theodore Williams and the Right Reverend Peter Paul Le Fevre and others, claiming a portion of the lands and premises in the bill of complaint mentioned, as heirs, donees, or otherwise, without valuable consideration, be and is hereby sustained, and the said plea of the said defendants, Right Reverend Peter Paul Le Fevre and Theodore Williams, claiming other portions of said lands and premises in their said plea mentioned as *bona fide* purchasers for a valuable consideration without notice, having been argued by the respective counsel, and the arguments of counsel having been duly considered, it is ordered, adjudged, and decreed that the said plea of the said defendants, Peter Paul Le Fevre and Theodore Williams, be and is hereby sustained, and that the said bill of complaint of the complainants, as to all said land and premises described and set forth in said plea, be and is hereby dismissed."

From this decree, the complainants appealed to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The bill was filed by the plaintiffs against the defendants, claiming to be tenants in common with them in a tract of land now lying in the City of Detroit, each party deriving title from a common ancestor, who made the settlement as early as the year 1745 under a concession from the French government. The tract contained five arpens in front on Lake Erie and eighty arpens back. The ancestor, John Baptiste Beaubien, died in 1793, having had the uninterrupted possession of the property from the time of the concession in 1745, leaving a widow and several children. Two of the sons, Antoine and Lambert, resided with their father at the time of his death, and continued in the possession and occupation with their mother till her death, in 1809.

In 1804, Antoine, one of the heirs in possession, applied to

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the board of commissioners to adjust land claims under the act of Congress of 1804 to confirm his claim to the land, and which was confirmed accordingly, and a patent issued in 1812. Acts of Congress, 26 March, 1804; 3 March, 1805; 3 March, 1807.

Lambert, the other brother, continued in the joint occupation of the tract till his death in 1815, and subsequently, in 1818, Antoine conveyed to the heirs of Lambert a moiety of the premises, and the present occupants and defendants are the descendants of the two brothers, or purchasers from them under this title.

The tract constitutes a portion of the City of Detroit, and is averred in the bill to have been worth, at the time of the filing of it in 1855, from half a million to a millions of dollars, exclusive of the improvements.

The case was presented to the court below on demurrer to the bill, and on pleas by some of the defendants, as *bona fide* purchasers for valuable consideration without notice.

The plaintiffs aver in the bill, in addition to the facts already stated, that they are the descendants of the brothers and sisters of Antoine and Lambert, from whom

the title of the defendants is derived, and that Antoine and Lambert and their descendants possessed and occupied the tract in subordination to the right and title of their co-tenants, and that they were permitted to possess and occupy the same in confidence, that they so held the premises for the common benefit of all parties interested. They further aver that they verily believed that the brothers, Antoine and Lambert, and their legal representatives were acting in good faith in this respect until, about the year 1840 they discovered, after examination and inquiry into the facts and circumstances, that they intended to cheat and defraud them and those under whom they claim of their just rights in the premises.

The bill further states that Antoine, in his lifetime, and his son, who is one of the defendants, and the heirs of Lambert, have conveyed to divers individuals rights in the said tract; that in some instances they made donations without consideration; in others conveyances for a pretended consideration;

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and that there now are in possession, as heirs, donees, and purchasers of different portions of the premises, several hundred persons, most of whose names are unknown to the plaintiffs, which persons set up claims and pretended rights and interests therein. And further that neither Antoine nor Lambert's heirs, down to the year 1834, committed any open or notorious act inconsistent with the rights of the plaintiffs or in any way disavowed the trust and relation as co-tenant, or of brothers or co-heirs, nor in any manner asserted any title to the land to the exclusion of their rights.

The court decreed upon the demurrer to the bill, and also upon the pleas, in favor of the defendants.

The case comes before us on an appeal from this decree. Antoine and Lambert, the two sons of J. B. Beaubien, the common ancestor, and those claiming under them, have been in the exclusive possession of the premises in question since 1793, a period of sixty-two years before the commencement of this suit. The plaintiffs and those under whom they claim, during all this time, as averred in the

bill, resided in Canada, and, as appears, most of them in the County of Essex, in the neighborhood of the premises. The four hundred arpens which, in 1793, were worth some six or seven thousand dollars, now embrace a portion of the City of Detroit, and are worth, with the improvements, over a million of dollars, and, for aught that is averred in the bill or appears in the case, no right has been set up by them or by those under whom they claim to the title or the possession of the premises until the filing of the bill, no claim to the rents and profits, or to an account as tenants in common, or for partition, or to be admitted to the enjoyment of any right as co-heirs.

The case is one, so far as the title of the plaintiffs is concerned, which depends upon the establishment of an implied trust to be raised by the evidence, and hence falls within that class of cases in which courts of equity follow the courts of law, in applying the statute of limitations. *Kane v. Bloodgood*, 7 John.Ch. 91; *Hovenden v. Annesly*, 2 Sch. & Lef. 607.

There are two acts of limitation in the State of Michigan, either of which bars the claim of the plaintiffs:

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1. The Act of May 15, 1820, which limits the right of action to twenty years after the same has accrued, and
2. The Act of November 15, 1829, which limits the right of entry to ten years if the cause of action has then accrued.

The language is:

"No writ of right or other real action, no ejectment or other possessory action &c.;, shall hereafter be sued &c.;, if the cause of action has now accrued, unless the same be brought within ten years after the passage of this act, any law, usage, or custom, to the contrary notwithstanding."

There is no saving clause in this as to infants, *feme covert*s or residence beyond seas.

The pleader has sought to avoid the operation of the limitation by an averment of concealment and fraud on the part of the defendants and those under whom they claim. The plaintiffs aver

"That until within the last few years, your orators and oratrixes, and those under whom they claim verily believed and supposed that the said brothers, Antoine and Lambert, and their legal representatives, were acting in good faith towards them, but that, about the year 1840, they discovered by information, after examination and inquiry into the facts and circumstances of the case, that the said brothers, Antoine and Lambert, and their legal representatives, intended to cheat and defraud them and those under whom they claim of their just rights in the premises."

This averment is too general and indefinite to have the effect to avoid the operation of the statute. The particular acts of fraud or concealment should have been set forth by distinct averments, as well as the time when discovered, so that the court may see whether, by the exercise of ordinary diligence, the discovery might not have been before made. [Stearns v. Page](#), 7 How. 819; [Moore v. Greene](#), 19 How. 69.

Here, no acts of fraud or concealment are stated, and the time when even an intention to defraud, which is all that is averred, was discovered was some fifty years after the exclusive possession of the defendants and those under whom they claim had commenced, and this although the parties lived in the neighborhood and almost in sight of the city, which has in the meantime grown up on the premises.

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We think the statute of limitation applies, and that the decree of the court below should be

Affirmed.

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