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Sheets Vs. Selden's Lessee

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 177

Appellant : Sheets

Respondent : Selden's Lessee

Judgement :

Sheets v. Selden's Lessee - 69 U.S. 177 (1864)
U.S. Supreme Court Sheets v. Selden's Lessee, 69 U.S. 2 Wall. 177 177 (1864)

Sheets v. Selden's Lessee

69 U.S. (2 Wall.) 177

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF INDIANA

SYLLABUS

1. When a deed is executed on behalf of a state by a public officer duly authorized, and this fact appears upon the face of the instrument, it is the deed of the state, notwithstanding the officer may be described as one of the parties and may have

affixed his individual name and seal. In such case the state alone is bound by the deed, and can alone claim its benefits.

2. Accordingly, where the Legislature of Indiana passed two acts, one authorizing the governor, and the other the governor and auditor of the state to sell certain property of the state and to execute a deed of the same to the purchaser on behalf of and in the name of the state, and such property being sold, the governor and auditor executed to the purchaser a deed, naming themselves as parties of the first part, but referring therein to the acts of the legislature authorizing the sale, and to a joint resolution approving the same, and declaring that, by virtue of the power vested in them by the acts and joint resolution, they conveyed the property sold, "being all the right, title, interest, claim and demand which the state held or possessed," such deed was sufficient to pass the title of the state.

2. Land will often pass without any specific designation of it in the conveyance as land. Everything essential to the beneficial use and enjoyment of the property designated is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance.

Accordingly, where the conveyance was of a division or branch of a canal,

"including its *banks, margins, tow-paths, side-cuts, feeders, basins, rights of way, dams, water power, structures,* and all the appurtenances thereunto belonging,"

certain adjoining parcels of land belonging to the grantor which were necessary to the use of the canal and water power, and were used with it at the time, but which could not be included in any of the terms above, in italics, passed by the conveyance.

3. At the common law, the grantee of a reversion could not enter or bring ejectment for breach of the covenants of a lease, and the statute of 32 Henry VIII, giving the right of entry and of action to such grantee, is confined to leases under seal.

4. The term "month," when used in contracts or deeds, must be construed, where the parties have not themselves given to it a definition, and there is no legislative provision on the subject, to mean calendar, and not lunar, months. The term thus held in a lease of the State of Indiana.

5. In the interpretation of contracts, where time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period *from* or *after* a day named, the general rule is to exclude the day thus designated and to include the last day of the specified period.

Accordingly, where leases provided that the rents should be paid semiannually on the first days of May and November, and that if any installment should remain unpaid *for one month front the time it should become due,* all the rights and privileges secured to the lessees should cease and determine &c.;, the one month from the first day of May, within which the payment of the rent due on that day was to be made to prevent a forfeiture, expired on the first day of June following. In the computation of the time, the day upon which the rent became due was to be excluded.

6. Verbal authority is sufficient for a person to act as agent or a lessor in the collection of rent or in demanding its payment.

The State of Indiana, being owner of the Northern Division of the Central Canal and of *certain adjacent lands,* authorized its Board of Internal Improvement to cause any surplus water, of which there was some, along " *with such portions of ground* belonging to the state as *might be necessary to its use,* to be leased." Under this act, leases were made in 1839-1840 -- one to Yandes & Sheets, another to Sheets, each for the term of thirty years.

The leases reserved certain rents, payable semiannually on the first of May and November, and they provided that if any rent should "remain unpaid *for one month* from the time it shall become due," "all the rights and privileges" of the lessees

"shall cease and determine, and any authorized agent of the state, or lessee under the state, shall have power to *enter upon and take possession of the premises,* "

&c.; The first lease, that to Yandes & Sheets, in addition to the use of the water power, in consideration of the rents reserved, leased, also, as necessary, *"for the use of the waterpower hereby leased,"* and for the same term and on the same conditions

"the particular portion of ground belonging to the state at said point, included within the following boundaries,

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to-wit, [here a particular piece of ground was described] containing a little more than half an acre."

The second lease, that to Sheets, in consideration of the rent reserved, leased also for the same term, and on the same conditions as the water power was leased, "such part of the *ground* belonging to the state as in the opinion of the engineer having charge may be *necessary to the use of the water power* hereby leased," to-wit [here also a particular piece of ground, as thus necessary, was described]. The lease to Yandes & Sheets was executed on the part of the state by the President of the Board of Internal Improvement, and by the lessees in this form:

"D. H. MAXWELL [SEAL]"

"President of the Board of Internal Improvement"

"DANIEL YANDES [SEAL]"

"WILLIAM SHEETS [SEAL]"

The lease to Sheets was executed by N. Noble, Acting Canal Commissioner, and Sheets, in this form:

"N. NOBLE"

"Acting Commissioner for the Northern Division"

"of the Central Canal."

"WILLIAM SHEETS"

The "seals" which appear to the lease to Yandes & Sheets were ink scrawls. No seals of any kind appeared on the second lease -- that to Sheets.

Sometime subsequently to the making of these leases, the state passed two statutes. By the first, entitled "An act to authorize the Governor of Indiana to compromise with, and to cause suit to be brought against lessees of the water power of the Northern Division of the Canal," the *Governor* was authorize to sell

"all the right, title, and interest of the State of Indiana, in and to the Northern Division of the Central Canal, and all the rents that shall become due after the sale of the said property and the water power and *appurtenances* thereunto belonging."

By the second, entitled "An act to authorize the sale of the Northern Division of the Central Canal," the *governor*

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and *auditor of the state* were

"authorized to make sale and dispose of all the right, title, interest, claim, and demand which the state holds in the Northern Division of the Central Canal, situate in the said State of Indiana, with all the *water power* and *appurtenances* thereunto belonging,"

and authorizing those officers to convey the same to the purchaser, on *behalf of the state, in the name of the State of Indiana.*

The governor accordingly made public sale of certain property, advertised for sale, as

"being all the right, title, interest, claim, and demand which the state may hold or possess in the Northern Division of the Central Canal, and all the rents which may have become or shall become due after the sale of said property, and the water power, and the *appurtenances thereunto* belonging, including its *banks, margins, tow-paths, side-cuts,* feeders, basins, right of way, dams, water power, structures, and all the *appurtenances* thereunto belonging."

And having reported the sale to the legislature, that body confirmed it, directing him to convey the said portion of the canal, with the rights, privileges, and *appurtenances* to the purchaser in fee.

The governor and auditor of the state (J. A. Wright and E. W. H. Ellis) afterwards executed to F. A. Conwell, who held under the purchaser, an instrument, which made one of the questions in the case. It purported to be made "between *Joseph A. Wright,* Governor of the State of Indiana, and *Erastus W. H. Ellis,* Auditor of said state, of the *first part,* and *F. A. Conwell* of *the second part,* " and recited the sale and referred to the several acts under which the instrument professed to have been executed, which are those hereinbefore recited, and acknowledged the payment of the purchase money.

It then makes known that, by *virtue of the power vested in them by the acts and joint resolution therein named,* "We, Joseph A. Wright, *Governor of the State of Indiana,* and Erastus W. H. Ellis, *Auditor of the said state,* do hereby convey to the said F. A. Conwell," &c.;, in fee, all the estate &c.;, herein described, the description being just as the property was sold, and as the same is above described, nothing, however,

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being described by metes and bounds, or in any form more specific than that above given, and, as the reporter inferred from the argument, neither parcel falling within the specific designation of "bank, margin, tow path, side-cut, feeder, basin, right of way, dam, or structure."

The deed was thus executed and tested:

"In testimony whereof, we have hereunto set *our* hands and affixed the seal of said state, at the City of Indianapolis, the day and year first above written."

"JOSEPH A. WRIGHT"

"Governor"

"ERASTUS W. H. ELLIS"

"Auditor of State"

"C. H. TEST"

"Secretary of State"

"(SEAL OF THE STATE OF INDIANA)"

Selden became owner of the property thus sold by the state, and Sheets, being in possession under the leases which the state had made, and having refused to pay rent, an agent of Selden authorized by parol, formally demanded, on the first day of May, 1860, and afterwards, *on the first day of June,* a short time before sunset, upon the premises, the rents due on the first of May of the year just named. Payment not being made, Selden regarding the lease as forfeited, brought ejectment against Sheets (the only tenant in possession). The premises for which the action was brought were the parcels of land described in the two above leases, executed in 1839-1840 by the Board of Internal Improvement, as property belonging to the state, and leased in connection with the surplus water, because *necessary to the use of such water.* The defenses in substance were:

I. To the deed of the Governor and Auditor.

1. As not executed in the name of the state.

2. As not embracing the premises in controversy.

II. That the leases not being under seal, Selden as grantee of the reversionary interest of the state, could not maintain ejectment upon breach of the covenants to

pay.

III. That the demand for rent, if authorized at all, should have been made on the 31st May, and having been made on

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the 1st June, was too late; moreover, that the agent who made the demand was not authorized in writing.

The court below -- the Circuit Court of the District of Indiana -- held none of these defenses sufficient, and judgment was given for the plaintiff. The same reasons urged against recovery there were taken for reversal in error here.

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MR. JUSTICE FIELD delivered the opinion of the Court.

The objections taken by the defendant in the court below against a recovery and urged in this Court for a reversal of the judgment which require consideration relate 1st, to the validity of the deed executed by the Governor and Auditor of Indiana to pass the title of the state to the premises in controversy; 2d, to the claim by the lessors of the plaintiff of a right to maintain ejectment for the premises upon a breach of the covenants to pay rent contained in the leases of the state; and 3d to the proceedings taken to effect a forfeiture of the leases.

1. The objection to the deed of the governor and auditor is that it is not executed in the name of the state, and does not cover the premises in controversy.

It is true that the form of the deed is not in literal compliance

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with the language of either of the acts of Indiana; it is not in terms between the state, of the one part, and the assignee of the purchasers of the property, of the other part, but it shows a completed transaction between the state and the grantee

named. It refers to the acts of the legislature authorizing the sale; it sets forth a sale made pursuant to their provisions; it mentions the joint resolution affirming the sale; and it declares that the Governor and Auditor in virtue of the power vested in them by the acts and joint resolution convey the property sold, "being all the right, title, interest, claim and demand which the state" held or possessed therein.

In the execution of this instrument, the governor and auditor acted officially, and not personally, and in our judgment the deed was sufficient to pass the title of the state they represented. And it may be stated generally that when a deed is executed or a contract is made on behalf of a state by a public officer duly authorized and this fact appears upon the face of the instrument, it is the deed or contract of the state, notwithstanding that the officer may be described as one of the parties and may have affixed his individual name and seal. In such cases, the state alone is bound by the deed or contract, and can alone claim its benefits. [Footnote 1]

The objection that the deed does not cover the premises in controversy rests upon the fact that it does not convey the parcels of land for which the action is brought by specific designation and description. Such designation and description, though usual, are not always essential. Land will often pass by other terms. Thus, a grant of a messuage or a messuage with the appurtenances will carry the dwelling house and adjoining buildings, and also its orchard, garden, and curtilage. [Footnote 2] The true rule on the subject is this that everything essential to the beneficial use and enjoyment

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of the property designated is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance. [Footnote 3] Thus, the devise of a mill and its appurtenances was held by Mr. Justice Story to pass to the devisee not merely the building, but all the land under the mill and necessary for its use and commonly used with it. [Footnote 4] So a conveyance "of a certain tenement, being one-half of a corn mill situated," on a designated lot "with all the privileges and appurtenances" was held

by the Supreme Court of New Hampshire to pass not only the mill but the land on which it was situated, together with such portion of the water privilege as was essential to its use. [Footnote 5] And the exception of a factory from a mortgage deed was held by the Supreme Court of Massachusetts to extend to the land under the factory and the water privilege appurtenant thereto. [Footnote 6]

In the deed from the governor and auditor, the property conveyed is designated as

"all the right, title, interest, claim, and demand, which the state may hold or possess in the Northern Division of the Central Canal &c.;, and all the rents which may have become or shall become due after the sale of said property, and the water power, and the appurtenances thereunto belonging, including its banks, margins, tow-paths, side-cuts, feeders, basins, right of way, dams, water power, structures, and all the appurtenances thereunto belonging."

This language is comprehensive enough to carry the several parcels of land described in the declaration. These parcels are described in almost identical language in the leases executed by the Board of Internal Improvement on behalf of the state. The law providing for leasing the surplus water, authorized at the same time the leasing of "such portions of ground belonging to the state as might be necessary to its use," and the leases specify those particular

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parcels as being necessary to the beneficial use and enjoyment of the water.

2. The objection that the lessors of the plaintiff, as grantees of the reversionary interest of the state, cannot maintain ejectment for the premises upon breach of the covenants to pay rent contained in the leases of the state rests upon the supposition that the leases are not under seal.

It is conceded that at the common law, the grantee of a reversion could not enter or bring ejectment for breach of the covenants of a lease, and that the statute of 32 Henry VIII, giving the right of entry and of action to such grantee, was confined to leases under seal. The statute speaks of conditions, covenants, and

agreements contained in indentures of leases, demises, and grants; language only applicable to sealed instruments. That statute was adopted in Indiana as early as 1818, but a law of the state passed in 1843 alters its rule and extends its remedies to all leases.

3. The objection taken to the proceedings for the forfeiture of the leases is that the demand for the rent was not made on the proper day, not by properly authorized agents.

The demand was made on the first day of May and also on the first day of June. The first demand was premature; the question is as to the demand on the latter day. The leases provided that the rents should be paid semiannually on the first days of May and November, and that if any installment should remain unpaid *for one month from the time it should become due,* all the rights and privileges secured to the lessees should cease and determine, and any authorized agent or lessee of the state should have power to enter and take possession of the premises.

By the term "month" as here used is meant a calendar, and not a lunar month. The Legislature of Indiana has attached this meaning to the term when it is used in the statutes of the state, but has not defined its meaning in contracts or deeds, and it is contended by the plaintiff in error that, in the absence of any legislative provision on the subject, the term must be construed in these instruments to mean lunar, and not calendar, months. But this view cannot

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be sustained. The term is not technical, and when the parties have not themselves given to it a definition, it must be construed in its ordinary and general sense, and there can be no doubt that in this sense calendar months are always understood. The reasons upon which a different rule rests in England with reference to other than mercantile contracts, do not outweigh this consideration. [Footnote 7]

The rent becoming due on the first day of May, the one month from that time within which the payment was required to be made to prevent a forfeiture, expired on the

first day of June following. In the computation of the time, the day upon which the rent became due was to be excluded. The general current of the modern authorities on the interpretation of contracts, and also of statutes, where time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period *from* or *after* a day named, is to exclude the day thus designated and to include the last day of the specified period. "When the period allowed for doing an act," says Mr. Chief Justice Bronson,

"is to be reckoned from the making of a contract or the happening of any other event, the day on which the event happened may be regarded as an entirety, or a point of time, and so be excluded from the computation. [Footnote 8]"

The parties who made the demand for rent were duly authorized by the lessors of the plaintiff. Authority in writing was not essential; verbal authority was sufficient for the purpose.

Judgment affirmed.

[Footnote 1]

Hodgson v. Dexter, 1 Cranch 345; *Stinchfield v. Little,* 1 Greenleaf 231; *State v. McCauley,* 15 Cal. 456.

[Footnote 2]

Shepherd's Touchstone 94.

[Footnote 3]

Sparks v. Hess, 15 Cal. 196.

[Footnote 4]

Whitney v. Olney, 3 Mason 280.

[Footnote 5]

Gilson v. Brockway, 8 N.H. 465.

[Footnote 6]

See also, to the same effect, *Wise v. Wheeler,* 6 Iredell 196, and *Blaine's Lessees v. Chambers,* 1 Sergeant & Rawle 169.

[Footnote 7]

Gross v. Fowler, 21 Cal. 392; *Strong v. Birchard,* 5 Conn. 361; *Brown v. Harris,* 5 Grattan 298.

[Footnote 8]

Cornell v. Moulton, 3 Denio 16; *see also Bigelow v. Wilson,* 1 Pickering 485.

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