

Evans Vs. Patterson

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 224

Appellant : Evans

Respondent : Patterson

Judgement :

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Evans v. Patterson

71 U.S. (4 Wall.) 224

ERROR TO THE CIRCUIT COURT FOR

THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

1. The court reproves the practice of making bills of exception a sort of abstract or index to the history of the case, and so of obscuring its merits.

2. Where a party claiming land as owner, under the laws of Pennsylvania, brings ejectment in the name of the original warrantee and recovers against a father and subsequently producing a deed poll from the warrantee, made previously to the date of the ejectment and deraigning title to himself, brings another ejectment in his own name against a son, who on his father's death kept possession of the same land, such two suits are an estoppel and within the Act of Assembly of Pennsylvania of the 13th of April, 1807, which declares that

"where two verdicts shall, in any suit of ejectment between the same parties, be given in succession for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought. "

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3. But where a plaintiff deraigns title regularly from the warrantee, and the defendant shows no title, the question of estoppel is of no importance.

The State of Pennsylvania in 1792 granted a warrant to survey a certain tract of land to William Barker. Barker, the warrantee, conveyed his interests to Daniel Broadhead. Broadhead died, and James Patterson bought his title from his heirs. But he had not, or at least could not find or prove the existence of any "deed poll" from Barker, conveying the warrant to Broadhead. However, using the name of Barker, the warrantee, he brought ejectment in 1831 against a certain Eli Evans and some other persons who were in possession of the land. Evans and these others set up in defense that Barker did not appear, and that his existence was uncertain, and that Patterson, asserting himself as he did, to be owner of the land, could not bring suit in Barker's name. But the court decided that under the peculiar system of land law of Pennsylvania, he could, and he had verdict and judgment accordingly. On error to the supreme court of the state (*Ross v. Barker*, 5 Watts 391), that tribunal affirmed the judgment; holding to the doctrine previously declared in *Campbell v. Galbraith*, [[Footnote 1](#)] that in Pennsylvania a beneficial owner was entitled to use the name of a warrantee, though such warrantee was ignorant both of the action and that trust.

For some reason, however, Patterson did not get possession of the land. Eli Evans, against whom the ejectment had been brought, died, leaving a son, Elihu Evans, upon the land. Patterson, who had in the meantime found a deed poll from Barker, the warrantee, to Broadhead, brought, A.D. 1855, a suit against this Elihu Evans, deraigning the title regularly from the warrantee to himself and obtaining verdict and judgment. But still he did not get into actual or permanent possession. Elihu Evans yet maintained occupation.

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Patterson, who was a citizen of Ohio, now brought a third ejectment -- the suit below -- in his own name against the said Elihu. This was in the Circuit Court of the Western District of Pennsylvania. He put in evidence the records of the two judgments just mentioned, proved his actual ownership at the time when the first suit (that in the name of William Barker), was brought, showed the identity of the land, now demanded with that recovered in the former suits, and that Elihu Evans was a son of Eli Evans, and in possession. He here rested; asserting that he had shown two recoveries for the same land, and claiming the benefit of them under a statute of Pennsylvania, passed 13 April, 1807, which enacts that

"where two verdicts shall in any suit in ejectment between *the same parties* be given in succession for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought."

The defendant contended that the first ejectment having been instituted in the name of William Barker, the warrantee, after he had conveyed all his right and title to the land in controversy to Daniel Broadhead, as appeared from the evidence, there was no privity, and therefore the first verdict and judgment should not be counted against him, and prayed the court so to instruct the jury, which the court after argument of counsel declined to do, and charged the jury that if the evidence in the case was believed by them, the plaintiff had two verdicts and judgments for the land in controversy, which were conclusive in favor of his title, and he was entitled to recover.

The case was now here on error, the record showing a long and confused bill of exceptions, with recitals of all the deeds, and minute descriptions of the land and of the tracts bounding it.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The bill of exceptions (so called) in this case, is a sort of abstract or index to the history of a case tried in the Western District of Pennsylvania. Protesting against attempts at mystifying the merits of a case by such records, we shall proceed to notice the single error which it is supposed that the court has committed in the charge to the jury.

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The case cannot be made intelligible without a brief notice of the very peculiar land law of Pennsylvania. The proprietors of the province, in the beginning, allowed no one man to locate and survey more than three hundred acres. To evade this rule in after times, it was the custom for speculators in land to make application in the names of third persons, and having obtained a warrant to take from them what was called a "deed poll," or brief conveyance of their inchoate equitable claim.

Pennsylvania, until of late years, had no courts of equity. Hence, in an action of ejectment, the plaintiff might recover without showing a legal title. If he had a prior inchoate or equitable title, either as trustee or *cestui que trust*, he might recover. The courts treated the applicant, or warrantee, as trustee for the party, who paid the purchase money, or paid even the surveying fees; for the purchase money, under the location or application system, was not paid at the time, and sometimes never. When the state succeeded to the title of the proprietors, the application system was abandoned, and warrants were granted on payment of the purchase money for the number of acres for which his warrant called. Hence, where the claimant of the warrant was unable to show his deed poll, he might recover by showing that he paid the purchase money; that the warrantee, whose name was

used, was therefore trustee for him. And an ejectment might also be maintained in the name of the warrantee, although he had no beneficial interest in the land, and had no knowledge of the institution of the suit. See *Campbell v. Galbraith*, [[Footnote 2](#)] and also *Ross v. Barker*, [[Footnote 3](#)] which was decided on the title now in question.

To come to the history of the present case. Daniel Broadhead was the owner of the warrant in the name of William Barker. He had died intestate. The defendant in error had bought up the titles of the different heirs, and found Eli Evans, the father of the plaintiff in error, and others in possession, claiming title as settlers. But as the *deed poll* from

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Barker to Broadhead could not be found, the defendant in error brought his first ejectment in the name of the warrantee, and recovered. The objection was made that Patterson, the defendant in error, could not maintain his suit in such form. But the supreme court, in the cases above cited, determined that he could.

Afterwards, finding the same parties or their privies in possession (A.D. 1855), he brought another ejectment in his own name, and having found the lost deed poll to Broadhead, he was able to deraign his title regularly from the original warrantee, and had another verdict and judgment in his favor.

In the case now before us, Elihu Evans, the plaintiff in error, had succeeded to the claim of his father, Eli Evans. On the trial, the defendant in error had again deraigned his title from Barker, the warrantee, and gave in evidence also his two former recoveries. As he had already shown a title regularly deraigned from the original warrantee, and the defendant Evans had shown no title at all, the two former verdicts were unnecessary, but were conclusive, according to the laws of Pennsylvania, between the same parties and their privies.

The only objection made by Evans was to the conclusiveness of the two verdicts, because the first suit was in the name of Barker, and, as now appeared by the deed to Broadhead, that Barker had no title. When the recovery was had in his

name, it was argued that such "verdict and judgment should not be counted." The record showed that at the time the first ejectment was brought, Patterson had bought up the title from Broadhead's heirs; that the suit was carried on by him in the name of the warrantee for his own use. No objection was made to the admission of the first verdict and judgment, because the parties defendant were not the same, or for want of privity between the defendant and the parties defendant in the former action. But it was contended that the first verdict and judgment "should not be counted against him" for want of privity between the plaintiffs. There was satisfactory evidence that Patterson

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was the real party in interest, and conducted both suits, and had recovered, in the first suit in the name of a trustee, and in the second in his own name, as " *cestui que trust* " of the equitable estate -- as where one suit was in a real or fictitious lease from John Doe, and the other in the name of Richard Roe. The jury were instructed that if they believed the evidence that Patterson was the real party in both suits, the two verdicts and judgments were conclusive.

But the plaintiff below having deraigned title from the warrantee, and the plaintiff in error having shown no title, the question as to the estoppel was of no importance, as the court were bound to instruct the jury, that without its aid, their verdict should be the same.

The plaintiff in error having failed to show any error in the record, the judgment is affirmed.

[[Footnote 1](#)]

1 Watts 78.

[[Footnote 2](#)]

1 Watts 78.

[[Footnote 3](#)]

5 *id.* 391.

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