

Barrows Vs. Kindred

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 399

Appellant : Barrows

Respondent : Kindred

Judgement :

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Barrows v. Kindred

71 U.S. (4 Wall.) 399

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

SYLLABUS

Although when statute abolishing its fictitious forms places the action of ejectment on the same footing with other actions as to the conclusiveness of the judgment, the court will give effect to the same; yet where a plaintiff in ejectment is defeated

in one suit, where he claimed through a power of attorney rightly ruled out on the trial as void, he will not be held to be concluded in a subsequent action where he claims under a new deed made by the executors themselves. Having acquired a new and distinct title, he has the same right to assert it without prejudice from the former suit as a stranger would have had it passed to him.

The statute of Illinois regulating the action of ejectment abolishes all fictions. Its twenty-ninth section provides that

"Every judgment in the action of ejectment rendered upon a verdict shall be conclusive as to the title established in such action upon the party against whom the same is rendered and against all persons claiming from, through, or under such party by title accruing after the commencement of such action, subject to the exceptions hereinafter named,"

exceptions not material to be noticed. With this statute in force, the plaintiff in error brought an action of ejectment against the defendant in error in the court below, and upon the trial produced a chain of title, consisting of a patent

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from the United States to Whitney, a deed from Whitney to Vose, the will of Vose, and a deed *from his executors* to the plaintiff. *This deed was dated March 18, 1861.*

The validity of these several links was not denied. They made the chain of title complete, and *prima facie* entitled the plaintiff to recover the premises in controversy.

The defendant thereupon gave in evidence the record of a judgment relating to the same premises -- rendered in a former action of ejectment -- wherein the plaintiff in error was the plaintiff, and James R. Gordon was defendant. The judgment was in favor of the latter. *This suit was begun on the 12th June, 1858, and ended June 5, 1859.*

The defendant also proved that he was in possession as the tenant of Gordon; that in the former action set forth in the record in question, the plaintiff, Barrows, gave in evidence the same patent from the United States to Whitney, the same deed from Whitney to Vose, a power of attorney from the executors of Vose to S. A. Kingsley, authorizing him to sell and convey the premises, a deed from the executors *by Kingsley as their attorney in fact*, to Scroggs, and a deed from Scroggs to the plaintiff. *This power of attorney from the executors and the deed executed by Kingsley were ruled out as void.*

The defendant proved further that the deed from the executors of Vose to the plaintiff was given upon the same consideration as the former deed by their attorneys in fact to Scroggs.

The evidence being closed, the plaintiff asked the court to charge the jury that the record and evidence relating to the former trial constituted no bar to his right to recover in this action. This the court refused to do, and thereupon charged that the record in connection with the evidence did constitute a bar. The jury found accordingly for the defendant.

To the admission of each of the several parts of this evidence, to the refusal of the court to charge as asked, and to the charge given, the defendant excepted.

The correctness of these instructions was the question now before this Court.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

The question of error in the instructions given by the court is the hinge of the controversy between the parties. The statute of Illinois regulating the action of ejectment abolishes all fictions. The twenty-ninth section provides that

"Every judgment in the action of ejectment rendered upon a verdict shall be conclusive as to the title established in such action upon the party against whom the same is rendered and against all persons claiming from, through, or under

such party, by title accruing after the commencement

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of such action, subject to the exceptions hereinafter named."

It is not claimed that the exceptions referred to affect this case.

Where a judgment is rendered for the plaintiff, the title upon which he recovered is thereby established and the construction and effect of the statute are obvious. He must recover in all cases, if at all, upon the strength of his own title, and not upon the weakness of his adversary's. It is not incumbent upon the defendant to show any title. Where a plaintiff shows no title and is therefore defeated, it is not easy to perceive how any title can be said to have been established in the action, or how, under the statute, the result can affect his right to bring a new action for the same premises. We are not advised of any authoritative interpretation of the statute in this aspect by the courts of Illinois. If one were shown, we should follow it. But in the view which we take of this case it may be conceded that the judgment has the same effect upon the parties and those in privity with them as a judgment in a common law action. As a general proposition, such a judgment is a bar to any future litigation between the parties and all claiming under them touching the subject involved in the controversy. It is conclusive of their rights, and shuts the door to further inquiry. This is an elementary principle of all civilized jurisprudence. It has been and will be applied in this Court upon all proper occasions. It is a principle of repose, and fruitful of good. When the legislature of any state has seen fit to divest the action of ejectment of its ancient characteristics and to place it upon the same footing with other actions, we have not failed to give full effect to the legislative intent by maintaining the conclusiveness of the judgment, as in other cases.

But in our judgment this principle has no application to the case before us.

The suit between Barrows and Gordon was commenced on the 12th of June, 1858, and terminated on the 5th of June, 1859.

The deed from the executors of Vose to Barrows bears date on the 18th of March, 1861. Upon the trial of the case of *Barrows v. Gordon*, the power of attorney from the executors and the deed executed by Kingsley were properly ruled out as void. They were not in the case. Barrows had no title to the premises in controversy, and judgment was given against him. This may be admitted to be conclusive as to his want of title at that time, and whether the decision of the court as to the power of attorney and the deed made under it was erroneous or not, it would have been a bar to another action attempted to be maintained upon the same state of facts. But this did not deprive Barrows of the right to acquire a new and distinct title, and, having done so, he had the same right to assert it without prejudice from the former suit which would have accompanied the title into the hands of a stranger. At the termination of that suit, the executors had not passed the title to anyone. They did not transfer it for more than a year afterwards.

How, then, can it be said to have been involved in or in any wise affected by the prior litigation? The plaintiff could no more be barred than any other person who might have subsequently acquired the title. In refusing to instruct and in instructing as appears by the record, the court committed an error.

The judgment is therefore reversed with costs and the cause will be remanded to the court below with directions to proceed inconformity with this opinion.