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Deery Vs. Cray

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 72 U.S. 795

Appellant : Deery

Respondent : Cray

Judgement :

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Deery v. Cray

72 U.S. (5 Wall.) 795

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND

SYLLABUS

1. No person can rely on an estoppel growing out of a transaction to which he was neither a party nor a privy and which in no manner touches his rights.

Hence, where a plaintiff claims under A. and his deed, defendants who do not claim under it cannot set up its recitals as estoppels.

2. Where an heir conveys both as heir and also as executor under a power in a will which his deed recites, the fact that his deed thus acknowledges a will does not estop a party claiming under the deed to assert that the grantor inherited as heir.

3. Where numerous leading facts point to the conclusion that every part of a large tract of land (an old manor) divided into several parts has been held under an ancient deed (one of the year 1785), from the date of the deed till the present time, the fact that every link of the title in a

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part of the tract cannot now be specifically shown is not enough to avoid the presumption that the tract is held under such deed.

4. The presumption being established, recitals in the deed consistent with the other evidence in the case may be used as proof against persons who are not parties to the deed and who claim no right under it.

5. A certificate by the proper officers that a *feme covert* being "privately examined apart from and out of the hearing of her husband," acknowledged &c.;, is a sufficient compliance with the Maryland statute of 1807, which requires the examination to be "out of the presence" of the husband. The expressions are equivalent.

6. When it is sought to apply the rule that a court of error will not reverse where an error works no injury, it must appear beyond doubt that the error complained of neither did prejudice nor could have prejudiced the party against whom the error was made.

Hence where by an error of the court below a plaintiff had not been allowed to introduce the first item of her testimony, and had no interest therefore to show anything which might avoid the proof of the other side -- proof which, though apparently fatal to her case, even though the error had not been made, she might

possibly have avoided if the court bad not committed the error, but had given her a standing in the case which would have made it avail her to avoid such opposite proof -- the judgment was reversed.

This was an action of ejectment brought in the Circuit Court for the District of Maryland, by Eliza C. Deery, to recover an undivided third part of a tract of land called Kent Fort Manor, on Kent Island, in Queen Anne's County, Maryland. The defendants were Cray, Bright, and others, occupying different parts of the tract.

Miss Deery, the plaintiff, was the daughter of Elizabeth Chew, who married William Deery, and afterwards, in second marriage, Eli Beatty. The Elizabeth Chew thus married was the daughter of Samuel Lloyd Chew the younger, who died about the year 1796 intestate, leaving the said Elizabeth Chew, and also three others, his children and heirs-at-law. The effort of the plaintiff was to trace title, from the original patentee of Kent Fort Manor to her grandfather, Samuel Lloyd Chew, from whom she claimed through her mother, who died the wife of Eli Beatty in 1838. Title was shown regularly enough down to a certain William Brent, of Virginia.

In the progress of the trial she took six bills of exception to rulings of the court on the admissibility of evidence.

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It is only necessary to refer to the fourth and sixth exceptions, those being the only ones considered by this Court, because, as the court said, the fourth referred to and embodied all that was contained in the three previous bills of exception on the same subject, and because the conclusions of the court on the question raised by that bill of exceptions rendered the matter involved in the fifth unimportant.

As regarded this fourth and this sixth exception, the case was thus:

1. *As to the fourth.* Having read to the jury without objection evidence tending to show title and possession of the land in the above-mentioned William Brent from the year 1767, the plaintiff offered to read a copy of a deed, certified from the proper recording office, purporting to be made by Elinor Brent, executrix, and

Daniel Carroll Brent and William Brent, acting executors, [Footnote 1] of the last will and testament of the William Brent first mentioned, conveying the manor to Samuel Chew. This deed recited that William Brent, Sr., deceased, by his last will and testament, bearing date January 7, 1782, constituted the persons aforesaid executors of the said will, and authorized them to sell and convey in fee simple the land and premises described in the said deed, and that William Brent, who united in the conveyance as executor, was also heir-at-law of the said William Brent, senior. The deed then undertook by apt language, to convey by virtue of the will, and William Brent also conveyed as heir-at-law, and they jointly and severally covenanted to warrant the title. The *plaintiff offered no evidence of the existence of the will* under which the executors professed to act, *nor of the heirship of William Brent,* one of the grantors, *other than what was contained in the recitals of the deed;* and for want of such proof the court rejected the deed. Proof had been made of fruitless search among title papers and records for the will recited.

The plaintiff then offered a mass of testimony designed to show that the possession of the land had passed with the

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said deed, and had been held under it, and in consistency with it, for such a length of time as to raise a presumption of the truth of one or both of the recitals above mentioned.

To understand this testimony the better, it may be stated that the whole tract is divided first into two parts by a line, below which lies a part called "the lowermost half part," now claimed by the defendant Cray. The upper half is divided into three parts, one to the east called Long Point farm, another next westwardly called the Indian Point (or Green's Creek) farm, and a third, more westerly yet, about which there was no dispute. The three together make up the northern half.

The evidence thus offered in support of the deed was partly documentary and partly parol. Taking the former chronologically, it presented:

1. The will of Samuel Chew, the grantee, in the deed dated November 24, 1785, about six months after the date of that conveyance to him. He died the succeeding year. By this will he devised Kent Fort Manor to his wife, Elizabeth Chew, for life, and after her death to his son, Samuel Lloyd Chew.

2. A mortgage of Kent Fort Manor by Samuel Lloyd Chew to Charles Carroll of Carrollton, dated February 20, 1789, shortly after the death of his father.

3. A deed from Philip Barton Key to Arthur Bryan, dated May 7, 1798, conveying

"all that moiety or half-part of Kent Fort Manor, on Kent Island, in Queen Anne's County, being the lowermost half-part of said tract of land called Kent Fort Manor, and is the same land and half-part of which Mrs. Chew was heretofore seized."

This deed had a full covenant of warranty.

4. An agreement of counsel that the land thus conveyed to Arthur Bryan was partitioned among his heirs in 1802 by the Chancery Court of Maryland and allotted to Susanna Tait, sister of said Arthur.

5. A deed from Samuel A. Chew, son of Samuel Lloyd

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Chew, dated March 6, 1838, conveying to Thomas Murphy Long Point farm, a part of Kent Fort Manor.

6. A deed from said Samuel A. Chew to James Bright, Jr., dated January 4, 1840, conveying Indian Point farm, another part of said manor.

These two farms, as already said, were on the north half of the manor, and form no part of the land conveyed by Key to Bryan.

All these documents were copies, properly certified to come from the recording offices where such deeds should rightfully be recorded.

The parol evidence showed that Samuel Chew, first of the name and grantee in the deed, died in 1786; that his son, Samuel Lloyd Chew, second of the name, died in 1796, leaving as his heirs Samuel A. Chew, third of the name, Bennett Chew, Henrietta Chew, and Elizabeth Chew. The plaintiff, as already said, was daughter of the last-named person, and in that right claimed the property in controversy. Elizabeth Chew, widow of the first Samuel Chew and his devisee for life of the property, died in 1807. It was further shown that one William Bryan, who in 1802 resided on Long Point farm and Indian Point farm, and who had resided there for several years previous, stated repeatedly that he held his possession under the Chews; that in 1825, Samuel A. Chew, third of the name and uncle to plaintiff, took possession of about five hundred acres of the north part of said manor, west of Long Point and Indian Point farms, which he held until his death, in 1843, and that the same was not held under that title; that Robert Tait, son and heir of Susanna Tait, was in 1825 in possession of the southern half of the manor, and sold it to Richard Cray, his son-in-law, and that possession was now held under that title.

All this being finally offered with the deed, they were rejected by the court, to which rejection an exception -- the fourth one in the case -- was taken.

2. *As to the sixth exception.* In the further progress of the trial some of the defendants offered in evidence a deed from the plaintiff's mother, then married to Beatty, to Samuel A.

Chew, her uncle, purporting to convey all her interest in Kent Fort Manor. As the plaintiff claimed as heir-at-law of her mother, this deed, if admitted, was apparently destructive of her claim. Her counsel objected to the admission of the deed on the ground that it was defectively acknowledged.

By statutes in Maryland, *femes covert* can convey their lands by deed acknowledged before two justices of the county court, such acknowledgment being made by the woman " *out of the presence* and hearing of her husband;" the

clerk of the court certifying that they were the "justices of the said court." In the case of the deed from the plaintiff's mother, now offered, the acknowledgment in that part relating to the presence of the husband, ran thus:

STATE OF MARYLAND, to-wit:

"Be it remembered, that on this 26th of October, 1821, personally appeared before us, two *justices of the peace of the State of Maryland for Washington County,* the above-named Eli Beatty and Elizabeth his wife, and Henry C. Schnebly and Henrietta Maria his wife, party grantors in the foregoing instrument of writing, and severally acknowledged the same to be their and each of their act and deed &c.;, and the said Elizabeth C. Beatty, wife of Eli Beatty &c.;, being by us, two justices of the peace as aforesaid, respectively, *privately examined apart from and out of the hearing of their and each of their husbands,* whether they and each of them doth make their acknowledgment of the said instrument of writing willingly and freely &c.;"

The certificate of the clerk under the court's seal was:

"STATE OF MARYLAND, WASHINGTON COUNTY, *ss:* "

"I hereby certify that &c.;, whose names are signed to the above acknowledgment, *were, at the time of signing thereof, and still are, justices of the peace for the county aforesaid, duly commissioned and qualified, and to all their acts as such full faith and credit is, and ought to be, given, as well in courts of justice as thereout.* "

The objections made by the plaintiff to this certificate of acknowledgment were:

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1. That it did not show that the justices who took the acknowledgment had been sworn into office; nor

2. That they were justices of the county for which they took the acknowledgment; nor

3. That Mrs. Beatty had been examined "out of the presence of her husband."

But the court overruled the objections, and an exception -- the sixth in number on the record -- was taken.

The case was now here on the exceptions.

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MR. JUSTICE MILLER delivered the opinion of the Court, and -- having stated the facts of the offer of the copy of the deed from the executors of W. Brent and of the offer of the mass of testimony designed to show that possession had so passed with the deed, and had been held under and in consistency with it for such a length of time as to raise a presumption of the truth of one or both the recitals in it -- went on as follows:

Before we proceed to examine the sufficiency of this evidence for the purpose for which it was offered, we shall notice a criticism of defendants' counsel in regard to the matter in the recitals, of which proof can be received. It is said that by the recital of the existence of a will which authorizes

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the executors of William Brent, Sr., to convey the land, William Brent, Jr., and Samuel Chew, the grantee, and all persons claiming under them, are estopped from denying the existence of such a will and from claiming any benefit from the fact that William Brent, Jr., was heir-at-law, and conveyed as such heir, as well as executor. The proposition does not seem to us to be well founded. It may be very true that William Brent and the other grantors in that deed were estopped as against Samuel Chew to deny the truth of anything recited in the deed. And if any controversy growing out of that transaction had ever arisen, in which Samuel Chew or any person claiming under him was adversary to William Brent or any person claiming in his right, the person claiming under the latter would have been estopped from denying the existence of such a will as that described in the deed, or that said Brent was heir to William Brent, Sr. But suppose that William Brent,

some years after the execution of this deed, had brought an action of ejectment against a person who derived no right under the deed, but who claimed adversely to the title of both Brent and Chew, would William Brent, in that case, have been estopped from claiming as heir of his father by the recital of the will in his deed to Chew? Clearly not, for the simple reason that no person can rely upon estoppel growing out of a transaction to which he was not a party nor a privy, and which in no manner touches his rights. There is no mutuality, which is a requisite of all estoppels. That is precisely the case before us. The plaintiff claims under Brent and his deed. Defendants claim nothing under that deed, and deny all connection with the title it purports to give. They are strangers to it, and have no right to set up its recitals as estoppels.

There is another reason why there can be no such estoppel. It was the manifest intent of all the parties to the deed that it should convey such title as might be conveyed under the will, and if that should be invalid, convey such title as William Brent had as heir-at-law. These purposes did not necessarily defeat each other. There might have been a will,

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and it might have been doubtful whether it had been executed with the formalities necessary to transmit title to land in Maryland, or to authorize the executors to do so. In such case the purchaser had a right to take, also, for his security, a conveyance from the heir-at-law. If he could do this by a separate instrument, there is no reason why he could not do it in the same instrument which professed to convey by authority of the will. The very nature of the case, therefore, precludes the idea of estoppel, for, to say that a party claiming under that deed is estopped to assert that William Brent inherited the land as heir-at-law, is to deprive him of a right conferred by the deed, and which was one of the essential conditions of its acceptance.

If, then, the testimony offered by plaintiff was sufficient to raise the presumption that William Brent was heir-at-law of the party who died seized, or that such a will existed as that recited in the deed, then that instrument should have been read to

the jury.

The evidence offered in support of the deed may be divided into that which is documentary and that which is parol.

It is not necessary that we should go into a minute examination of the effect of this testimony. We are satisfied that it affords a reasonable and fair presumption that every part of Kent Fort Manor has been held under the deed from William Brent and his co-executors to Samuel Chew, from its date in 1785 till the present time. In reference to the north half of the manor, there can be no reasonable doubt of this proposition, for no one is in possession of any part of it who does not hold under Samuel Chew, grandson of the grantee, and son of Samuel Lloyd Chew, to whom the manor was devised by that grantee. It is maintained, however, that in reference to the southern half of the manor, which is proved to have been held under the deed from Philip Barton Key to Arthur Bryan, from the date of that deed in 1798 to the present time, there is a hiatus which can be filled by no presumption. If, however, we recall the statement in Key's deed to Bryan, that the land which he is

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conveying "is the same land and half-part of Kent Fort Manor of which Mrs. Chew was heretofore seized," we can have no difficulty in presuming that in some way Key had become the owner of Mrs. Chew's title. The lapse of time and the reference to her seizin would be sufficient to authorize a jury to presume a conveyance by Mrs. Chew to Key, or to someone from whom he derived title. This consideration is strengthened by the fact that Key covenants to warrant the title to the land against all persons whomsoever. It is unreasonable to believe that in the very deed in which he makes this covenant he would admit Mrs. Chew's former seizin and point to her title, unless he had in some way become invested with that title, especially as she was still living and could have asserted her right against Key's grantee, if she had not in some manner parted with it.

Is it requiring too much to presume from these facts that one or both the recitals in the rejected deed, and on which its power to convey this land depends, are true? Not a single circumstance is to be found inconsistent with the fact that William Brent, one of the grantees in that deed, was son and heir to William Brent, Sr. Nor is there anything except the failure to find it inconsistent with the existence of such a will as is recited in that deed. When we consider that William Brent, Sr., died in Virginia; that all the grantees in the deed resided there; that the system of recording and proving wills had not then become so general and so well understood as it has since, and that for eighty years no occasion has arisen for the production of that will, the failure to find it by parties who have no other relations with the Brents than this one transaction of their ancestors does not argue so forcibly against its existence at that time, as to overthrow the presumption arising from long possession of this manor, held under the supposition of the existence of such will.

That recitals of this kind in an ancient deed may be proved as against persons who are not parties to the deed and who claim no right under it is too well settled to admit now of controversy. Such is the doctrine of this Court in *Carver v.*

Jackson, [Footnote 2] and in *Crane v. Astor and Morris.* [Footnote 3] The only question is whether the facts justify such a presumption, and we must say that if they can do so in any case, we do not see how the inference can be resisted in the case before us.

It follows that the circuit court erred in refusing to admit the deed offered by plaintiff as set out in the fourth bill of exceptions.

2. In the further progress of the trial, some of the defendants offered in evidence a deed from the plaintiff's mother to Samuel A. Chew, her uncle, purporting to convey all her interest in Kent Fort Manor. As plaintiff's efforts, as far as developed, had been to establish a title as heir-at-law of her mother, of course this deed, if admitted, was fatal *prima facie* to her claim. Her counsel objected to the

admission of the deed, and his objection being overruled, he took his sixth bill of exceptions, which we now proceed to examine.

All the objections made to this deed relate to the certificate of acknowledgment. The first two are unimportant. They are that it does not appear that the justices of the peace who took the acknowledgment were sworn into office, or that they took the acknowledgment in the county of which they were justices. We think that it is a presumption of law from the facts stated in the certificate of the justices, and of the clerk of the county court, that both these requirements were complied with.

But it is also strenuously urged that the deed is void because the certificate does not show a compliance with the law of Maryland then in force concerning the privy examination of married women. The act of 1807, which was in force at that time, required this examination to be conducted out of the presence and hearing of the husband, and the point is made that it does not appear from the certificate that Mrs. Beatty, the mother of plaintiff, was examined *out of the presence of her husband,* with whom she joined in the conveyance. The certificate recites

"that the said Elizabeth

C. Beatty, wife of Eli Beatty, and Henrietta Schnebly, wife of Henry Schnebly, being by us, justices of the peace as aforesaid, respectively, privately examined apart from, and out of the hearing of their, and each of their husbands, did,"

&c.; Now, although the words "out of the presence" are not used here, we are of opinion that the words which are used show necessarily and conclusively that the examination was had out of the presence of the husband.

In the first place, it was had *privately.* As the object of the statute was not to provide for strict privacy from all persons, but only privacy from the husband, it is to be supposed that it was in this sense the justices used the word. It is also stated that she was examined *apart* from her husband. This expression is still stronger, and can mean nothing less than that the husband was not present when she was

examined, and, to make it still clearer that this examination, private and apart from her husband, was out of his presence, it is further certified that it was out of his hearing.

Some decisions of the Supreme Court of Maryland have been cited to show that the rule there is a strict one as to the agreement between the certificate and the statute, but none which overturns the doctrine recognized by that court, as it has been by all others, that equivalent words, or words which convey the same meaning, may be used instead of those to be found in the statute. We are satisfied that within this principle the certificate in this case is a compliance with the act of 1807, and that there was no error in admitting the deed to be read to the jury.

It is claimed that, if we shall find this deed to be valid, we must affirm the judgment, although we may find error in the previous rulings of the court, upon the ground that this conveyance shows that plaintiff has no title to the land, and that therefore such error is without prejudice to her rights. We concede that it is a sound principle that no judgment should be reversed in a court of error when the error complained of works no injury to the party against whom the ruling was made. But whenever the application

of this rule is sought, it must appear so clear as to be beyond doubt that the error did not and could not have prejudiced the party's rights. In the case before us, this is not so clear. The plaintiff, by reason of the error of the court, had never been permitted to introduce the first step in the proof of her case. She had no interest in offering to show anything which might avoid the force of the deed read by defendants. If she could have proved it a forgery it would have done her no good in this suit, because she had failed, under the erroneous ruling of the court, to make out a *prima facie* case for herself. We cannot assume here that she might not have successfully avoided the effect of that deed, if the court had given her a standing in the case which would have made it avail her to do so.

The judgment of the circuit court must therefore be reversed, and the case remanded, with directions to award a new trial.

[Footnote 1]

Described in the deed like their testator as "of Virginia."

[Footnote 2]

29 U. S. 4 Pet. 1.

[Footnote 3]

31 U. S. 6 Pet. 598. *See also Raymond v. Dennis,* 4 Binney 314; *Stokes v. Daws,* 4 Mason 248.

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