

Case No. 4,025.

DOUGHERTY v. EDMISTON.

{Brunner, Col. Cas. 194;²Cooke, 134.}

Circuit Court, D. Tennessee.

1812.

GRANT TO DECEASED PERSON—RIGHTS OF HEIRS UNDER.

By the common law nothing passes to the heirs under a grant to a deceased person; but under the statute an entry and grant in the name of a deceased person, founded on a removed warrant, will pass the land to the heirs, if the entry be in the lifetime of the grantee.

The plaintiffs' ancestor, George Dougherty, made an entry in 1784, upon which a warrant issued. A law was passed by the state of North Carolina providing that if any person should lose the land which they should enter, the person so losing it might remove his warrant to any other vacant and unappropriated land. The land first entered by Dougherty in 1784, from some cause or other, could not be held; in consequence of which, upon the aforesaid warrant another entry was made, after the land office opened, in 1807, upon which, in the same year, a grant issued. This last entry, and the grant thereon, was made in the name of George Dougherty, who was proved to have died many years before. The legislature of North Carolina made a provision that if any person made an entry and then died, his heirs should inherit the land, although the grant might issue in the name of decedent. The question was, whether any interest could pass to the heirs of George Dougherty under these circumstances?

Haywood and Whiteside, for plaintiffs.

Dickinson and Cooke, for defendant.

TODD, Circuit Justice. It cannot be questioned but that at common law a grant to a deceased person passed no estate to his heirs; or in other words, nothing passed by the grant. But the legislature of North Carolina, supposing this principle to operate inconveniently, in the year 1779 passed a remedial law on the subject and declared that where a man made an entry, and then died before a grant issued, the estate should pass to his heirs, although the grant issued in his name after his death. The warrant which authorized the entry in 1807 was founded upon a previous entry made in 1784, during the lifetime of George Dougherty. If that entry had been directly carried into a grant in the name of Dougherty, although after his death, yet the estate would have passed to his heirs under the act of 1779, before alluded to. This would have been the fact if the first entry had been special; but it was not special, and therefore it was re-entered in 1807. Shall not this last entry relate back to the first? Not in such a manner, I admit, as to make the claim, in point of priority, good from 1784, but for the purpose of bringing it within the act of 1779. The act of 1779 should be construed liberally. It is a remedial law, and should be construed so as to advance the remedy and suppress the mischief. I am of opinion that this case comes fairly within the spirit and meaning of it. I do not consider the entry made

DOUGHERTY v. EDMISTON.

in 1807 entirely as an original entry, but rather as a re-entry. And there is the less difficulty in giving this construction, as no inconvenience results from it, and because it works no injury to any person.

McNAIRY, District Judge, accorded with the opinion of Judge TODD as to the act of 1779 being remedial. He, however, very much doubted whether the grant could pass any estate to the heirs of Dougherty. He said he would acquiesce in the opinion, though he was far from being satisfied.

² [Reported by Albert Brunner, Esq., and here reprinted by permission.]