FELLOWS v. PEDRICK.

Case No. 4,724.
{4 Wash. O. O. 477.}[1]

Circuit Court, E. D. Pennsylvania. Oct. Term, 1824.

DEED—EVIDENCE OF ACKNOWLEDGMENT—EVIDENCE—JUDGMENT IN FORMER SUIT RELATING TO SAME MATTER—EJECTMENT—ACCEPTANCE OF SURVEY BT STATE—TITLE UNDER FOREIGN STATE—LIMITATIONS.

1. The magistrate's certificate of the acknowledgment of a deed is sufficient to admit it in evidence, though it he not under seal. This is under the statute of Pennsylvania.

2. The record of a judgment in ejectment brought by a person, under whom the lessor of the plaintiff claims, in favour of the defendant, was admitted in evidence, but not as conclusive.

3. If defendant in ejectment do not set up a title under the state, it is not competent for him to allege negligence in the plaintiff in not having surveyed his warrant in time. It is sufficient if the survey was accepted at the land office.

4. A title under Connecticut, cannot avail the defendant in ejectment for any purpose in Pennsylvania.

5. The act of Pennsylvania of 1813, 25th of March (6 Smith's Laws, 61), merely repeals the act of the 11th of March, 1800 (3 Smith's Laws, 421), which repealed the act of limitations of 1785, after two years from the date of the former act, except as to those who should bring their actions within the two years; and, as to these, the act of 1800 continues in force, and no person claiming, or who has claimed title under Connecticut, can, at any time, set up a title by length of possession as a bar, or as a ground for recovery in ejectment.

Ejectment for two hundred acres of land in Luzerne county. The title of the lessor originated in a warrant dated the 1st of July, 1784, which was duly surveyed in August, 1789, and returned about the year 1803, when a patent was granted by the state. The title was then regularly deduced from the grantee to the lessor of the plaintiff. The plaintiff then gave in evidence the record of recovery in ejectment of the land in dispute, against the defendant, at the suit of Samuel Dewitt, under whom the lessor of the plaintiff in this action claims. That suit was commenced in the year 1814. Judgment was confessed, and a writ of habere facias possessionem issued in April, 1815, which was not fully executed in consequence of the defendant agreeing to rent the land of Dewitt for one year. He, nevertheless, although noticed to quit at the end of the year, continued the possession.

One of the title deeds offered in evidence was objected to by the defendant's counsel, on the ground that the magistrate's certificate of its acknowledgment is not under his seal, which the act of assembly requires. But the court overruled the objection, upon the authority of the case of Whitmire v. Napier, 4 Serg. & It. 290.

The defendant gave in evidence a deed from Dyer, administrator of Fell, to Richard Halstead, for a patch of land of six hundred acres, (including the land in question,) which recites that the said land was surveyed by two persons appointed by the directors of a certain company. Also, a deed from Richard Halstead for the same land, dated in 1793,

to the defendant. He also proved that the defendant entered into the possession of the land in dispute in the year 1791; built upon and improved the same, and has continued in possession ever since. He also offered in evidence the record of an ejectment brought for this land against the defendant by William Searl, one of the persons under whom the plaintiff claims, when a verdict was rendered in favor of the defendant. This was objected to, but admitted by the court, not as conclusive, but to have such weight as the jury might think it entitled to. The principal question discussed at the bar, was, whether the plaintiff was barred by the length of the defendant's possession from 1791 to 1815, when he agreed to rent

the land for one year? It was contended by the counsel for the plaintiff, that the act of limitations passed in the year 1785, March 26th, was repealed by the act of 11th of March, 1800, as to the land in question, which is claimed by the defendant under a Connecticut title. That act declares (4 Dall. Laws, 582; 3 Smith's Laws, 421) that the act of limitations of 1785 shall be repealed in respect to lands lying within the seventeen townships in Luzerne county, or which is claimed under Connecticut, or the Susquehanna Company. The act of the 25th of March, 1813, enacts that "two years from and after the passing of this act, the act entitled, &c. (the above act of the 11th of Mar ch, 1800) shall be, and the same is hereby repealed, and the act of March 26, 1785, entitled, &c. (the act of limitation) shall, after the expiration of the second two years, be taken and construed to extend as fully and effectually to that part of the commonwealth against every person whomsoever, except those who shall have brought their action for the recovery of their possessions within the said, period of two years, as in any other parts of the same." See 6 Smith's Laws, 61. Dewitt, under whom the plaintiff claims, having brought his ejectment for the land in question in the year 1814, within the time limited by this act, it was contended, that the act of limitations, as to his title, remains in operation, and cannot be set up against him. On, the other side, it was contended, that the exception in the act of 1813 applies only to the action which should be brought within the two years, and not to the title of the plaintiff in any subsequent action brought by or against him. That although the defendant was estopped by the parol lease to him, from setting up a possession gained by the lease against the lessor of the plaintiff, he was not precluded thereby, nor by those acts, from asserting the prior title, gained by twenty-one years possession antecedent to the recovery against him.

Mr. Rawle, for plaintiff.

Mr. Tilghman, for defendant.

WASHINGTON, Circuit Justice (charging jury). The plaintiff has laid before the court an unexceptionable paper title, from the warrant down to the conveyance of the land in dispute to himself. An objection has been made to the length of time which intervened between the survey of the warrant, and Its return to the office. But as the defendant does not set up a title under the state adverse to the plaintiff's, it is not competent for him to charge the plaintiff with negligence in any of the steps taken previous to the grant. It is sufficient that the survey was returned and accepted at the land office.

The defendant sets up no title under the state, and as to the title under Dyer, which appears to have been derived under Connecticut, it cannot avail him for any purpose whatever. How far it destroys his title by length of possession, will depend upon the correct construction of the acts of 1800 and 1813, which are relied upon by the plaintiff's counsel. It is perfectly clear, that, if the act of 1813 had not passed, the act of limitation could not be set up in a case where the defendant claims, or has at any time claimed

title under the Susquehanna Company, or in any way under the state of Connecticut, to lands within this state. What then is the effect of the act of 1813? We think it is merely to repeal the repealing act of 1800, after two years from the date of the former act, except as to those persons who should bring their actions within the two years; and as to them, the act of 1800 continues in force in like manner as if the act of 1813 had never passed. The consequence is, that, against those who brought their actions, within the two years, no person claiming, or who has claimed title under Connecticut, can, at any time, set up a title by possession, either as a bar, or as a ground of recovery in ejectment To give to the act 1813 the construction contended for by the defendant's counsel, would be to render it absurd, and altogether inefficient. It would make the act declare, that though possession should give no title to the defendant in the action which should be commenced within the two years, it should, nevertheless, give him a title in the action which he might bring, immediately after he was turned out of possession, to recover back "the land. This could have no other effect but to encourage litigation, since an ejectment to recover back the land, would, in all eases, be brought if the title of possession could, in such action, be asserted. It would have been much better for all parties not to have made the exception at all, if such was its meaning, and have permitted the defendant, in the first ejectment to set up his possession as a bar.

The opinion of the court, therefore, is, that the plaintiff is not barred by the twenty-one years possession of the defendant prior to the recovery against him by Dewitt.

Verdict for plaintiff.

[1] {Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.}