Benjamin F Smith et al

vs

Jos A Case

In addition to what Capt Post has submitted in his written argument herein, we desire simply to suggest, that whatever apparent conflict there may be in the decisions of the Courts in the several States upon the question as to whether the disability of one of several tenants in common will protect those barred by the Statute of Limitations, we feel confident that it will appear to the Court that those authorities which are cited by plff are predicated upon the peculiar language of the Statutes of the different States wherein such decisions have been made, and the reasonings of those Courts are not at all applicable to a proper construction of the Statutes of this State upon the same subject & the case at bar. This Court has decided in 4 Gilm 316 & 17, that the reasoning of the Kentucky Courts upon Limitations & the suing out of writs of Error are not applicable to Statutes of this State and place the decision upon the ground, of the right of each party to sue out the writ independent of the other and therefore held that a disability as to one

[3363-10]

will not protect those not laboring under any disability, In other words the Statute of limitations begins to run as to each from the time of the removal of the disability of each, It will be seen that the authorities cited by plff are most of them based upon those Kentucky decisions which we think in effect are regarded by this Court in the case above cited as not good authority in construing our Statute of limitation in reference to writs of Error, which is precisely similar in its phraseology to the Statute relied upon by deft in Error. If then the reasoning of the Kentucky rule ceases, the rule itself must cease. We think the Court in 4 Gilm, in effect give a construction to the Statute under Consideration, which being similar to the one there before the Court should be governed by the same rules.

Many of the cases cited by plffs are in reference to several disabilities existing in the same person and are consequently foreign to the question before the Court in this case,

It will be seen in Angell on Limitations 397. 8 & 9. in the text, that the principal contention for is clearly laid down, as also in the notes where the authorities are copiously collated upon the same subject, as also in the other cases to which we have called the attention of the Court in our briefs

Then we submit to the Court whether in the first place we have not shown a valid title derived from the guardians sale, The Court having obtained jurisdiction in the manner pointed out by statute, it cannot effect the validity of the sale and the title under it, that the Court may have erred in the exercise of its jurisdiction.

If in the next place the Court is of the opinion that the title of deft is not good as title paramount, then we insist that he has shown claim & color of title made in good faith, possession and payment of taxes ~~& taxes~~ for seven successive years which bars all the pltffs below except the one for whom judgment was given. Entertaining this view of the case we respectively submit the case for the consideration of the Court.

Tupper & Nelson
for Deft

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156

Benj. F. Smith et al

vs

Jos. A. Race

Argument of Defts

Filed Jan 21/62

Wm. L. Turner

Clk