No. 12360

Supreme Court of Illinois

Monroe

---

vs.

McCoy

71641

№ 51

Eleanor Thorow

to

Alexander McCoy

51

1236

1857

Elbrana Monroe } Supreme Court June term 1856
vs
Alexander McCoy } And now comes the said appellant by his attorney and says that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error Wherefore the said court rendered judgment in favor of the said appellee and against the said appellant when by the law of the land the court should have rendered a judgment in favor of said appellant

And the said court erred in overruling the Motion for a new trial

Wherefore appellant says that said judgment may be reversed and for nothing esteemed

E A Powell
atty for appellant

And the said Appellee comes and says there is no error in the record proceedings & judgment & this he is ready to enquire by the record

[illegible]
Atty

Proceedings at a term of the Circuit Court begun and held at the Court House at the City of Peoria in and for the County of Peoria in the State of Illinois on the Second Monday of May in the year of our Lord one thousand eight hundred and fifty six it being the twelfth day of said month,

Present the Honorable Jacob Gale, Judge of the Sixteenth Judicial Circuit in the State of Illinois David D. Irons Sheriff and James L. Bartman Clerk, to wit;

5/1236-2

2

Wednesday May 14th A.D. 1856

Alexander McCoy
John Warren
vs
Eleanor Morrow

Ejectment.

This day came the plaintiffs, the said Alexander McCoy in person and the said John Warren by Grove & McCoy his attorneys and the said defendant Eleanor Morrow by Powell & Hopkins her attorney and by their agreement leave is given to the plaintiffs to file an amended declaration herein on behalf of the said Alexander McCoy as of the November Term of this Court A. D. 1855 when the original declaration herein was filed which Amended declaration is substituted for the original declaration and the original declaration by agreement withdrawn, and thereupon the said Amended declaration having been filed by agreement of parties a trial by jury is waived and all matters both of law and fact arising in this cause are submitted to the Court for trial without the intervention of a jury, on an agreed statement of facts filed

in the case, and the Court not being fully advised in the premises took time to Consider.

Be it remembered that afterwards to wit on the 14th day of June A.D. 1856 there was filed in the office of the Clerk of the Circuit Court of the County of Peoria in the State of Illinois ~~an agreed statement of facts~~ bill of exceptions said to a certain cause wherein Alexander McCoy is plaintiff and Eleanor Morrow is defendant which said bill of exceptions ~~is~~ is as follows

"Alexander McCoy vs Eleanor Morrow – Be it remembered that this cause came on to be heard upon the following agreed state of facts made and agreed upon between the parties and was submitted to the Court without the intervention of a jury.

"Alexander McCoy
vs
Eleanor Morrow
} Circuit Court, Peoria County, May Term A.D. 1856.

In Ejectment.

This suit was brought by the Plaintiff to recover the possession of the undivided half of the South east quarter of Section Number twenty (20) in Township number Eleven (11) North of the Base line of Range number Seven (7) East of the fourth Principal meridian in Peoria County.

It is hereby agreed between the parties to this suit, that the said Plaintiff claims title to the undivided half of said land under the following described chain of title viz.

1/

1. Patent from the United States to Allen Sturdevant dated December 15th 1817.

2. A deed from Allen Sturdevant to Ebenezer T. Warren dated August eleventh A.D. 1818. which deed was duly recorded in the State Recorders office soon after its execution.

3. That said Ebenezer T. Warren departed this life on or about the 10th day of August A.D. 1832 in the county of Adams in the State of Illinois, that said Ebenezer T. Warren left as his sole heirs him surviving John Warren, and Ann W. Warren since intermarried with William Mc. Vaughn they being his only children and heirs.

4. A deed from Ann W. Vaughn and William Mc. Vaughn to Henry Warren bearing date May 1st A.D. 1849. conveying by quit claim "all the right title and interest which we have (the said Ann W. Vaughn & William Mc. Vaughn) in any way in any lands that were formerly owned by said Ebenezer T. Warren or in what said Warren had any title or interest in the Counties of Peoria, Warren, Knox, Fulton, Mercer, Adams, Mc. Donough, Schuyler, Pike, Calhoun and Putnam or in any other other lands in

the Military Bounty tract in the State of Illinois" which deed was recorded in the Recorders office of Peoria county Illinois on the 29th day of March A.D. 1855.

5. That said Henry Warren by deed bearing date June 10th A.D. 1854. conveys to Alexander McCoy the plaintiff in this suit all his right title and interest to the S E qr. 20 T 11 N. R 7 E. being the land in controversy which deed has never been recorded.

6. That the declaration in this cause was served on the defendant on the 23d day of November A.D. 1855. and filed in Court December 11th 1855. at the November Term of the Peoria County Circuit Court A.D. 1855. And that defendant was in possession of the premises at the time the declaration was served.

It is further agreed between the parties to this suit that the defendant claims title to said tract of land as follows. to wit

1. That said Ebenezer T. Warren died intestate on or about the 10th day of August A.D. 1830 in the County of Adams State of Illinois

[12360-4]

2. That letters of Administration on the estate of said Ebenezer T. Warren deceased were duly granted to Willard Keyes by the Probate Judge of Adams County Illinois on the 28th day of October A.D. 1830.

3. That an inventory and appraisers Bill of the personal property and effects of the said Ebenezer T. Warren deceased was duly made and filed in the Probate Court of Adams County aforesaid by said administrator in due time and according to law.

4. That a Sale Bill of the personal property and effects of the said Ebenezer T. Warren deceased was duly filed by the said Administrator in said Probate Court.

5. That a final settlement of the said estate was made by the said Administrator on the 5th day of December A.D. 1837 so far as the effects had been inventoried and claims had been been filed and allowed against said estate.

6. That no inventory of any real estate owned by said Ebenezer T. Warren at the time of his decease had been made and filed in the Court

7

of Probate at any time prior to the final settlement of said Administrator as mentioned in Number five of this agreement as above stated.

7. That on the 29th day of August A D 1855 the said Willard Keeyes administrator of said estate of Ebenezer T. Warren deceased filed in the County Court of Adams County Illinois an Inventory of the real estate belonging to the estate of said Ebenezer T. Warren deceased in which Inventory is the said South east quarter of Section number twenty (20) in Township number Eleven (11) North of the base line of Range number Seven (7) East of the fourth Principal meridian the land in controversy.

8. That at the August term of the County Court of Adams County Illinois A. D. 1855. There was a claim duly presented, filed, proved & allowed in said Court in favor of John Ware for the use of William C. Coudy against the estate of Ebenezer T. Warren deceased for the sum of Eight thousand eight hundred and thirty eight dollars ($8838) And also at the same term of Court another claim was proved and allowed against said estate in favor of the Kennebec Bank for the use of

William R. Goudy for the sum of Ten thousand one hundred and forty five dollars ($10145) making in all the sum of Eighteen thousand nine hundred and eighty three dollars ($18983)

9. That at a term of the County Court of Adams County Illinois held on Monday the 7th day of January A.D. 1856 pursuant to law the said Willard Keys administrator of said Ebenezer T. Warren deceased presented his petition for authority to sell real estate of which the said Ebenezer T. Warren died seized to pay the debts of said deceased which petition was against John Warren, Ann W. Vaughn and William M. Vaughn sole heirs at law of said Ebenezer T. Warren deceased

10. That at the said January term of said County Court of Adams county Illinois held on the 7th day of said Month A.D. 1856 on the presentation of said petition and the said defendants and all other persons interested being duly notified according to law by publication in the Quincy Herald a newspaper published in the city of Quincy in the County of Adams and State of Illinois for three weeks successively

9

Commencing at least six weeks before the presenting of said petition of the intention of said Administrator of presenting the same to said Court for the sale of the whole or so much of the real estate of which said Ebenezer Y. Warren died seized as will be sufficient to pay the debts of said deceased and requesting all persons interested in the real estate of said deceased to show cause why the real estate should not be sold for the purpose of paying the debts of said deceased in pursuance of the statute in such case made and provided, the said Court rendered a decree for the sale of the real estate of which said Ebenezer Y. Warren died seized and as mentioned and described in said petition (in which petition was mentioned and described the said South East quarter of Section number twenty (20) in Township number Eleven (11) North of the base line of Range number seven (7) East of the fourth Principal Meridian being the land in controversy) or so much thereof as may be necessary to pay the debts of said deceased

II. That said Willard Keyes Administrator as aforesaid in pursuance of said decree proceeded to sell the said tract of land having given the notice required by law

[12360-6]

and at the place mentioned in said decree did on the 16th day of April A.D. 1856 at the door of the Court House in the city of Peoria Illinois expose at public vendue the said S.E. Qr. Sec 11 N. R 7 E. of the fourth principal meridian between the hours of Ten O'clock A.M. and two O'clock P.M. of said day in pursuance of the terms of said decree and struck off and sold said tract of land above described to Eleanor Morrow defendant in this suit for the sum of two hundred and ninety eight dollars she being the highest and best bidder therefor that said McCoy was present at the sale and gave notice to all bidders at the sale that he claimed title to the 1 one half of said premises under conveyance and from said Vaughn and wife

12. That said Willard Keys administrator as aforesaid in pursuance of said sale so made by him on the —— day of April A.D. 1856, did make, execute, acknowledge and deliver to the said Eleanor Morrow a deed for the aforedescribed premises which deed recites at large the said decree so rendered as aforesaid.

11

It is hereby agreed between the parties to this suit that this cause shall be submitted to the Judge of the Circuit Court of Peoria county without the intervention of a jury upon the facts herein agreed upon without producing any of the papers, ~~of the~~ records, or deeds mentioned in this agreement the same as if all such papers records and deeds were shown, and that the Court shall decide said cause according to law.

It is further agreed that if either party shall be dissatisfied with the judgment of the Court in the premises, he or she may take an Appeal to the Supreme Court without giving bond, and that this agreement may be made a Bill of exceptions to be signed by the Judge.

Peoria May 14th 1856.

Rowe & McCoy for
A. McCoy
Towell & Hopkins
Attys for Deft "

The Court after hearing the arguments of Counsel found the issues for the plaintiff to which finding of the Court the defendant then and there by her ~~Counsel~~ Counsel excepted and moved the Court for a new trial for the following reasons, First, the Court found against law, Second, the Court found against the evidence, which motion the Court overruled and rendered judgment in favor of the said plaintiff and against the said defendant,

[2360-7]

12

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria, in and for the County of Peoria in the State of Illinois, on the second Monday of May in the year of our Lord one thousand eight hundred and fifty six it being the twelfth day of said month, Present the Honorable Jacob Gale Judge of the Sixteenth Judicial Circuit in the State of Illinois, David D. Irons, Sheriff and James L. Bateman, Clerk, to wit:

Wednesday June 4th A.D. 1856.

Alexander McCoy
vs Ejectment.
Eleanor Morrow.

This day came again the parties to this cause by their respective attorneys and the Court having heard arguments of Counsel and being fully advised in the premises does find that the defendant is guilty of unlawfully withholding from the possession of the said Alexander McCoy the premises in the amended declaration mentioned that the said Alexander McCoy has a title thereto in fee simple and does assess his damages by reason of the premises at one cent.

Thereupon the defendant entered a motion for a new trial in this cause which motion was overruled by the Court, Therefore it is considered by the Court

that the said Alexander McCoy have and recover of the said Eleanor Morrow possession of the premises in the amended declaration mentioned, to wit: the undivided half of the South East quarter of section number Twenty (20) Township number Eleven (11) North of the base line of Range number Seven (7) East of the fourth principal Meridian in Peoria County and that a writ of possession issue therefor, that he have and recover of defendant one cent his damages aforesaid and also his Costs and Charges in this behalf expended and that execution issue therefor.

The defendant prayed an appeal from this judgment to the Supreme Court of this State which is allowed her without filing an appeal bond according to the agreement & stipulation of the parties on file.

To which Opinion of the Court in overruling said motion for a new trial and rendering judgment for the plaintiff the said defendant then and there by her Counsel excepted and prayed that this her bill of exceptions might be allowed which is accordingly done,

Jacob Gale, Seal

State of Illinois,
County of Peoria, ss. I, James L. Bartman, Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois do hereby certify that the foregoing is a correct transcript from the records of the proceedings ~~in a~~ wherein judgment was rendered on behalf of Alexander McCoy, plaintiff and Eleanor Morrow was defendant as the same appears of record and on file in my office. In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office at Peoria, this 10th day of June A.D. 1856.

James L. Bartman, Clerk

[2360-9]

Eleanor Monroe } Supreme Court June Term 1856
vs
Alexander McCoy } And now comes the said appellant by E A Powell her attorney and says that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error because said judgment was rendered in favor of said appellee & against said appellant when by law it should have been

Eleanor Monroe appellee
Court
vs
Alexander McCoy
appellee
Record

Filed 7 June 13 1856
R Leland
Clerk

51

Alexander McCoy & al. vs Eleanor Morrow

Argument. Powell & Hopkins for Defendant.

This case shows that Ebenezer Warren died intestate, on the 10th day of August AD 1830 at Adams County in the State of Illinois. having an interest in the South East quarter of Section Twenty in Township Eleven North of the base line of Range Seven East of the Fourth Principal Meridian. being in the County of Pike State of Illinois.

That on the 28th. day of October AD 1830 administration upon the estate of said Warren deceased was duly granted to, and entered upon by Willard A Keyes of said Adams County

That said Administrator filed in said Adams County Court an Inventory and Appraisment Bill and also a Sale Bill. all according to law

That said Administrator made a final settlement of said estate with said Court on the 5th day of December AD 1837

That said tract of land in controversy was not mentioned or contained in said Inventory, Appraisment Bill or Sale Bill.

That at the August Term of the Adams County Court AD 1835. a claim not before presented or allowed. was presented to said Court against said estate in favor of John Wore for use of Wm C Goudy

12360-2

for the sum of $8838.00 and a claim against said Estate in favor of the Kenmebec Bank for the use of Wm C Goudy for the sum of $10145.00 both of which claims were allowed by said Court and that the said interest of the said Warren in said tract of land was discovered to said Administrator, and

That thereupon on the 29th. day of August AD 1853 said Administrator filed in the said County Court of Adams County an Inventory of said newly discovered effects of the said Warren, to wit, said tract of land in controversy among many others, which had not been previously inventoried or administered upon

That at a term of the said Adams County Court held on the 7th day of of January AD 1856 the said Administrator presented a petition to said Court, against John Warner, Ann Waughn and William Vaughn only heirs of said E. Warner deceased, to sell said newly discovered interest of said Warren in said real estate for the purpose of paying the claims aforesaid against said estate aforesaid.

That notice of the presentation of said petition was published according to law in the Sunny Herald requiring all persons interested in said estate to appear and show cause why said petition should not be granted

That on said 7th day of January AD 1856

said County Court of Adams County ordered and decreed that said Administrator sell said real estate mentioned in said petition or so much thereof as was should be necessary to pay said claims against said Estate.

That said Administrator gave notice of said sale as required by law and pursuant to said order of said Adams County Court and did on the 16th day of April A.D. 1856 at the door of the Court House in the County of Peoria between the hours of 10 o'clock AM and 3 o'clock PM sell the said tract of land to the Defendants he being the highest & best bidder therefor

That on the 16th day of April A.D. 1856 said Willard A Keys Administrator as aforesaid executed & delivered to Defendant a deed in due form of law conveying to her the interest of said intestate in said property tract of land

But that in the mean time, to wit, on the 1st day of May A.D. 1849 Ann W Vaughn and Wm Vaughn, heirs of the said Warner deceased conveyed an undivided half of said tract of land to Henry Warren, and that said Henry Warren conveyed the same to the Plaintiff on the 10th day of June A.D. 1854.

We maintain that the land in question was chargeable with the debts of the deceased and that the

[12360-10]

title thereto passed to the Defendant by the Administrators deed, and that the heir could convey no title except such as might remain after the debts against the deceased were paid

1 The case shows that there were debts against the estate remaining unpaid after the personal estate had been exhausted. If In such case the 103 Section of the Statute of Wills provides that the Administrator shall proceed in manner therein pointed out to have the lands of the intestate sold to pay such debts. and the case of

Gore vs Brazier 3rd Mass 523. Drinkwater vs Drinkwater 4 Mass 354. Vanzycle vs Richardson 13 Ills. 171 decide that lands are still liable to be sold to pay debts of intestate although they may have been aliened by the heir

And the case of Vanzycle vs Richardson and cases there cited decide that under our Statute a lien in favor of the creditors is reserved upon all lands of the intestate for payment of debts. and that the heir cannot alien or incumber the lands to the prejudice of creditors

2 Has lapse of time operated to render ineffective the conveyance of the administrator to the defendants? We contend not.

1 Claims may be allowed after the expiration of 2 years, limited by Statute for presentation, to be paid pro rata out of effects not before ri-

vertised or accounted for
Thorn vs Weston 3 Gil. 26. People vs White
11 Ills. 341. Judd vs Kelly 2b 211. Rowen
vs Kirkpatrick 14 Ills. 1
2 No limitation was pleaded to
bar the claims allowed against the estate
An Administrator is not bound to take
advantage of Statutory limitation in favor of estate.
Williams on Executors page 1535
Although he must take advantage of special
limitation of 4 years in Massachusetts yet he
is not bound to of the general Statute limitation
Brown vs Anderson 13 Mass 201
Thompson vs Brown 16 Do 172
Emerson vs Thompson 16 D 429
Kents vs Wells 3 Pick 140
For aught that appears in the case a new
promise on the part of the administrator
may have existed which would have defeated
the Statutory bar if pleaded
Williams on Executors page 1658
Head vs Manning 5 J. J. Marshall 255
Chapman vs Dixon 4 Har & J.
But we claim that the correctness of
the allowance of these claims cannot in this
suit be inquired into It must have been
done at all before the County Court allowing the
claims or on an appeal taken from that Court

3 There is no limitation of twenty years barring the intestate interest in the premises prior to the sale by the Administrator or the Creditors lien thereon. because. although twenty years had elapsed since administration was taken out. yet there had been no adverse possession in any other person.
In order to constitute a bar by lapse of twenty years there must ~~been~~ be some one in adverse possession in whose favor the limitation runs? The case shows no such fact.

4 But although there is no actual bar by limitation. yet a material consideration in this case is whether the Creditors were guilty of any laches by which they lost their lien upon the real estate of Warren upon deficit of personal estate sufficient to pay their claims
We think it very clear that they were not.

Section 81 of the Statute of Wills requires Administrators, within three months from the date of letters of administration, to file with the Court an Inventory of all real and personal estate coming to their possession or knowledge.
This Inventory was duly filed by said Willard A Keyes but did not contain said tract of land in controversy Consequently said Warren deceased was not then known to have had any interest in said tract of land

The 115 th section of the Statute of Miss requires claims to be presented within 2 years of the granting of letters of administration These claims were not presented within that time & consequently not to participate in the avails of property previously inventoried

But the same section provides that claims not presented within that time limited may be paid out of assets or property not previously inventoried or accounted for.

How long there after administration granted may newly discovered effects be inventoried and used to discharge debts against the estate

We say very clearly, at any time so long as there are subsisting claims against the estate ~~and~~ whenever unInventoried effects come to the knowledge of the Administrator.

The Court in the case of Thom against Watson 5 th of Gil 29 in giving construction to this section use this language "It does not prevent the bringing an action at any distance of time provided the creditor can find property not previously inventoried or accounted for by the Administrator". and again in the same case that upon a claim allowed after the expiration of two years the creditor may have further proceedings "in case he should ever afterwards be able to find other estate not inventoried or accounted for"

$12360-15

In the case of Sloo vs Pool 15 Ills 47 it is decided that where an administrator does not inventory real estate till after the expiration of the two years limited by Statute that it is liable for debts not presented within the two years It is intimated that in Vannyck vs Richardson 13 Ills 171 that the creditor may lose his lien upon the real estate of the intestate by grossladhes or unreasonable delay But in this case the creditors are guilty of no laches or delay in enforcing their lien against the land but did so at the earliest possible moment To be sure the claims might have been presented and allowed sooner. and the creditors took the risk that the administrator might plead Statute limitation against them in not doing so but they pursued the lein against the land untainted with the least laches or delay

Section 89 of the Statute of Wills requires administrators to file additional Inventories of effects, title to personal and real property of all kinds as the same shall come to their knowledge. In pursuance of this section said administrator keyes filed in said Adams county court and Inventory containing the tract of land in question. on the 29th day of August 1853 which was not before scheduled or inventoried consequently up to this time no knowledge ex

ister on the part of the Administrator that his intestate had any interest in the land in dispute.

On the seventh day of the following January the application was made for an order of Court to sell this land to pay the said debts. Could they have well pursued their claim sooner? What would have constituted laches on the part of the creditors in this matter? Why very clearly we think they must have been guilty of unreasonable delay after they had found other estate of the intestate unaccounted for. The case fails to show any such fact, but on the contrary it appears that they pursued the land as soon as it was discovered and inventoried. The statute names the same term for the payment of debts not presented within the two years, upon the property not previously inventoried or accounted for, that it does ~~in force~~ for the payment of claims presented within that time upon property inventoried ~~upon~~ within that time. And the time which intervenes between the expiration of the two years and the discovery by the creditor where claim has not been previously allowed, of estate not previously inventoried or accounted for is just as much within the period limited by Statute for enforcing that class of claims as the period of two years is for enforcing the claims allowed within that time. And it would be singular indeed if the creditor acting within the time prescribed by Statute should be guilty of laches, much less of "gross laches ~~& delay~~" and unreasonable delay!!

5/2340-13

In fact he must be guilty of unreasonable delay after discovering the facts mentioned in the statute before he can be chargeable with laches at all
The case of Vanwyck vs Richardson 13. Allen, was an action brought ten years after the decease of the intestate and the land had been aliened by the heir. That was a proceeding in chancery to enforce the creditors lien and of course proceeds upon the fact that the applicant had knowledge of the intestates interest in the land from the first. yet that case enforces a lien after ten years the creditor ~~had~~ knew it to exist
But in this case the lien is enforced immediately upon its discovery
We insist that there is no laches, and that it is the obvious intent of the statute that the creditor should have his remedy against estate not previously inventoried or accounted for provided he should enforce it within a reasonable time after discovering the estate
We apprehend that the case of Thompson vs Brown 16 Mass 172. Scott vs Hancock 13 Mass. 162. Brown vs Anderson 13 Mass. 201 & Allen Petitioner 15 Mass 58 are relied upon to show the defendants title affected with laches.
But these will be found to be all cases giving construction to the peculiar statute of Massachusetts making no connection for the payment of claims not presented within the time limited by statute out of estate not inventoried

also
and containing a limitation of four years forever barring all claims not presented within that time, unless suit is previously brought or disabilities exist on the part of the creditor, and which limitation the administrator is obliged to take advantage of (though not of the general statute of limitation) And it will be seen that the land in controversy in all the cases referred to had, unlike that in the present case, been previously inventoried by the administrator

And further. There are cases where either the administrator had been guilty of great delay in not executing the license to sell for many years after it had been granted, or where the administrator had sold land without the authority of a license. It having been previously acted upon and exhausted or having been granted contrary to the said statute after the lapse of four years But those cases, as we understand them, form no authority or analogy applicable to the present, the court not acting regularly within its jurisdiction, or the administrator not acting regularly under the authority of the court

4 But we maintain, in addition to the above, that the question of Latches in the creditors as well as all other, of the County Court of Adams County and those acting under its authority is not open to investigation in this proceeding

The 103 section of the statute of Wills requires

that administrators before presenting a petition for license to sell real estate shall publish notice &c six weeks successively in the nearest newspaper, of their intention to do so requesting all persons interested to show cause why the land should not be sold The case shows that this publication was made as the Statute requires
In some instances, as under some of the Massachusetts acts, actual notice by the administrator must be given to all persons interested. But such is not the case in this State The case of Bolls vs Rouse 3rd Gilman 409 decides that notice advertised according to the Statute is notice to every one interested, and any one having an interest may appear & defend the application
The Plaintiff might & ought to have resisted the application for license to sell before the Adams County Court, and if dissatisfied with the order of said Court, taken an appeal therefrom but those proceedings cannot be inquired into or revised collaterally in this suit. If the County Court of Adams County had jurisdiction of the matter in which it acted, and the Defendants title is acquired regularly under its authority, whether that Court exercised its powers providently or improvidently, whether it erred or otherwise in granting said license, will not be collaterally examined in this proceeding.
Buckmaster vs Carlin 3d Gil 104 and such is the decision of Kinney vs Greer 13 Ills 432

In a proceeding between the claimant under the Administrator and a claimant under the heir of an intestate. the Court cannot go back and examine into the correctness of granting the license to sell the land in controversy.
Perkins vs Fairfield 11 Mass 227
Bowers vs Harris 7 Mass 292

The only questions which the Court can inquire into in this case, are whether the Adams County Court had jurisdiction of the subject matter in which they acted; whether the Plaintiff had actual or constructive notice of the pendency of said petition, and whether the Defendant's title is regularly derived under the license. All of which the case shows affirmatively.

Powell & Hopkins

[12360-15]

51

Alexander McCoy
vs.
Eleanor Morrow

McCoy v Mrs Morrow
Argument

Argument

Filed May 4, 1857
S. Leland
Clerk

51

H. B. Hopkins.

ALEXANDER McCOY,
vs.
ELANOR MORROW.
} In the Supreme Court: Ejectment.

The Record in the case shows that both parties claim title to S. E. qr. 20, 11 N, 7 E. from Ebenezer T. Warren. That they admit the title to be in said Warren at the time of his death.

That said Warren died 10th of August, A. D., 1830: and letters of administration were granted to Willard Keyes on the 28th day of August, 1830, by the county court of Adams county, in this state.

That the Plaintiff below bought his title from Henry Warren, the grantee of Anne W. Vaughn and William M. Vaughn, one of the heirs of said Warren, on the 10th day of June, A. D., 1854. Twenty-three years and ten months after the decease of said Warren, and more than twenty-three years after letters of Administrations were granted on his estate, and without any notice whatever of any outstanding indebtedness against said estate.

The Record also shows that the claim, under which defendant below derives her title, was not filed against said estate until the August term of the Adams County Court, A. D., 1855, more than one year after plaintiff had purchased from Henry Warren, the grantee of one of the heirs, and more than six years after said heir had sold to Henry Warren, and after the deed from said heir had been recorded.

1. The plaintiff below claims that whatever lien the statute may reserve on the lands of an intestate, to secure payment of debts against his estate, in this case is lost, by the unreasonable delay of the creditors in filing their claims. See Vansyckle et al., vs. Richardson et al., 13th Ill.; page 173. Ricard vs. Williams, 5th volume condensed reports, S. Court U. S., page 246. Sumner vs. Childs, 2 Conn. Rep. 607.

2. If the lien is not perpetual on the land it ought certainly, at least, be barred after the same lapse of time that real estate actions are barred, and that in this case 25 years having elapsed after the letters of Administration were taken out, before the creditors presented their claims, they were certainly barred, and had lost whatever lien they might have had upon the land.

3. Although the claim was allowed by a court of competent jurisdiction, and decree obtained under said allowance to sell the land from same court, yet the lien being lost by the laches and delay of the creditors, any power to sell thus derived under the law, and not from the act of the party, is void, and would not revive the lien, and therefore cannot take any title whatever. See Ricard vs. Williams, vol. 5 condensed reports, U. S. 246.

GROVE & McCOY.

51

McCoy vs. Morrow

Filed Apr 27, 1857

L. Leland

Clerk

Eleanor Morrow appellant
vs
Alexander McCoy appellee
} Supreme Court

Abstract of the case

This was an action of Ejectment brought by Alexander McCoy vs Eleanor Morrow to recover the possession of the undivided half of the S E. qr of S 11 T 11 N R 7 E of the 4th principal Meridian

The case was submitted to the court without a jury upon an agreed State of facts

It was agreed that the plaintiff
Page below deduced a regular Chain of title
to the undivided half of said tract of
4 land through mesne conveyances from the
U S to Ebenezer T Warren, That said
Warren died in August 1830 leaving as
his only heirs John Warren & Ann M
Vaughan. That Ann M Vaughan and William
Vaughan her husband by deed bearing
date May 1st 1849 conveys her interest
4 in said land to Henry Warren and the
said Henry Warren by deed bearing
date June 10 th 1854 Conveys the undivided half of said tract to said McCoy

~~The~~ It was agreed on the trial that the appellant claimed title as follows Viz

Ebenezer T Warren died
seized of said tract of land in August

[1230-17]

5 A D 1830 That letters of administration
was granted on his estate to Wellaver
Skeys by the Probate Court of Adams
County Illenois in October 1830 That
an inventory and appraisement bill of
the personal estate of said deceased
6 was duly made and filed in the
Probate Court of said County by the said
administrator in due time and according
to law That a Sale bill was also duly
filed as required by law

That a final settlement of
said estate was made by the administrator
6 on the 5th of December 1837 so far as the
effects had been inventoried and claims
had been filed and allowed against
said Estate

That no inventory of any real
6 estate of which said Warren died seized
had been filed in the Probate Court prior
to the final settlement as aforesaid

That on the 29th day of August
7 1855 the said Administrator filed in the
County Court of Adams County an inventory
of real estate of which said Warren died
seized amongst which is the aforesaid land

That at the August term of said
7 County Court 1855 Claims against said Estate
were duly presented filed and allowed
amounting to over $18000

8 That at the January term

of the County Court of Adams County 1856
The said administrator presented a petition
for an order to sell said land amongst
other lands Due notice of the application
for such order was given by publication
as required by law That the order for sale
was made at said term

That the administrator by
virtue of said order of sale on the 16th
day of April 1856 in due form of law
sold said land to Eleanor Monow the
appellant and duly deed the whole of
said tract to her

The Court below on the facts
contained in the agreement which facts
are fully set out in the bill of exceptions
found the issue for the plaintiff to which
finding of the court the appellant excepted
and moved the court for a new trial
for the following reasons Viz
1st The court found against law
2 The court found against evidence
which motion was overruled and judgment
rendered in favor of the plaintiff
below to which opinion of the court in
overruling said motion and rendering
the judgment aforesaid the appellant excepted
and now assigns for Error
1 General Error
2 In overruling Motion for new trial

E A Powell
atty for Appellant

12360-187

Eleanor Monroe
by
Alex McCoy
Abstract

Filed June 18. 1856
L. Leland
Clerk