No. 13173

Supreme Court of Illinois

Shackelford

vs.

Bailey

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Journal [illegible]

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Samuel [illegible]

13172

1859

STATE OF ILLINOIS, } THIRD GRAND DIVISION,
SUPREME COURT. } *APRIL TERM, A. D.* 1859.

JAMES M. SHACKELFORD
vs.
SAMUEL P. BAILY.

Appeal from Tazewell.

Brief for Appellant.

The second tax deed offered in this case ought to have been rejected. It did not give such a description of the land as to enable any one to locate it. The patent showed the fee-simple title in Shackelford, and the tax title offered by Baily was no defense. It had no judgment to support it; nor was the land assessed or listed for assessment; nor was any assessment returned as required by law. That such a tax title is no defense, the following authorities fully prove: Marsh vs. Chestnut, 14 Illinois Rep. 223; Young vs. Thompson, 14 Illinois Rep, 380; Billings vs. Detten, 15 Illinois Rep. 218. The eleventh section of the act of 1839, Real Estate Statutes, page 245, requires a list and copy of the list to be filed with the clerk by the assessor. See, also, section 14, same act, and tenth section of act of March 6, 1843, Real Estate Statutes, page 283. See, also, Graves vs. Bunn, 11 Illinois Rep. 431.

The lists required by these sections must be certified by the proper officers. Johnson vs. Goodridge, 15 Maine Rep. 29; Colby vs. Russell, 3 Greenleaf Rep. 227; Sibly vs. Smith, 2 Michigan Gibbs Rep. 498

Consequently, even with the payment of the taxes for seven years, neither the deed or sale gave him the title to any definite thirty-four acres upon which the taxes could be paid. The deed was void for want of a sufficient description. Lafflin vs. Herrington *et. al.*, 16 Illinois Rep. 301; Erwin vs. Helm, 13 Seargent & Rawle Rep. 151; 1 New Hampshire Rep. 93; Ballance vs. Forsyth, 13 Howard (U. S.) Rep. 18. All of the above cases decide that a tax deed describing the land as the one in this case was void.

B. S. PRETTYMAN and JAMES ROBERTS, for Appellant.

820-142

Shackelford

vs

Baily.

Appeal by Baily

Filed May 5, 1859

D. Leland

Clerk

STATE OF ILLINOIS, } THIRD GRAND DIVISION,
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820-142

Shackelford

vs

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Appellants Brief

Filed May 5. 1889

L Leland

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STATE OF ILLINOIS, } THIRD GRAND DIVISION,
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820-142

Shechelford

vs

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Appelts Brief

Filed May 5. 1889

L. Leland

Clerk

Dismissed
no judgment.

STATE OF ILLINOIS, } THIRD GRAND DIVISION,
SUPREME COURT. } *APRIL TERM, A. D.* 1859.

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Brief for Appellant.

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B. S. PRETTYMAN and JAMES ROBERTS, for Appellant.

Pleas to a term of the Circuit Court begun and held at the Court House in the City of Peking within and for the County of Tazewell and State of Illinois on the Second Monday of the Month of October in the Year of our Lord One thousand Eight Hundred and fifty Eight Before the Hon James Davidson Judge of the 8th Judicial Circuit of the State of Illinois

Be it Remembered that on the day of April A.D. 1857 An agreement was filed in the words and figures following, to wit

State of Illinois
Tazewell County } Circuit Court

James M. Shackelford
vs
Samuel P. Baily } Ejectment

It is agreed by the parties hereto that this agreement and the Bill of Exceptions herein shall be taken as the Record in this cause

and the facts therein sets forth, shall be taken as all of the proofs in this behalf, and the Supreme Court may decide upon the merits of this case as shown by the Bill of Exceptions and Matters and things therein contained

B. S. Pettyman
Atty for Plff

April 15. 1839

Saml. V. Baily
Atty pro se

And now heretofore, towit on the Second day of April A.D. 1839, a Bill of Exceptions was filed in said cause in the words and figures following, towit,

State of Illinois } S. Circuit
Tazewell County } Court, October term 1838

James M. Shackelford
vs
Samuel V. Baily } Bill of Exceptions.

Be it remembered that on the trial of this cause, the Plaintiff introduced ~~the following~~ a patent from the Government, dated July 1st 1840, It was there admitted on the part of the defendant, that at the time

of the commencement of this suit. that he was in possession of the land for which this suit was brought

The Plaintiff there Rested

The Defendants then introduced the following Deed.

Know all men by these Presents that whereas at the September Term 1843 of the Circuit Court of Tazewell County a Judgment was obtained in said Court in favour of the State of Illinois against the South East quarter of the South East quarter of Section two in Township Twenty four North, Range five West 3d Principal Meridian, for the sum of one Dollar and Sixteen cents bring the amount of Taxes, Interest and cost, apessed upon said Tract of Land, for the Year 1842, and Whereas on the 18 th day of September A.D. 1843 Benjamin Briggs, Sheriff of the County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the 16 th day of September A.D. 1843 And to him directed, did expose to Public Sale at the Door of the Court House in the County afore-

said, in Conformity with all the requisitions of the Statute, in such case made and provided, the tract of land above described for the satisfaction of the Judgment so rendered as aforesaid, and whereas, at the time and place aforesaid M Jackabery of the County of Tazewell and State of Illinois, having offered to pay the aforesaid sum of One Dollar and Sixteen for Seven acres of said land, which was the least quantity bid for, the said tract of land was stricken off to him at that price and the said M. Jackabery having duly assigned his certificate of purchase to Samuel P. Bailey, Now therefore I Robert W. Briggs Sheriff of said County of Tazewell and successor of Benjamin Briggs Sheriff as aforesaid for and in Consideration of the sum of One dollar and sixteen cents to me in hand paid by the said M Jackabery at the time of the said sale, and by virtue virtue of the Statute in such case made and provided, have granted, bargained

and sold and by these presents do grant bargain and sell unto the said Samuel P Bailey his heirs and assigns Seven Acres off of the East side of the South East quarter of the South East quarter of Section two in Township Twenty four. North Range five West 3d Principal Meridian
To Have and to Hold unto him the said Samuel P. Bailey, his heirs and assigns forever, subject however to all the rights of redemption provided by Law.

In Witness Whereof I, Robert W. Briggs Sheriff as aforesaid by virtue of the authority aforesaid, have hereto subscribed my name and affixed my seal this 17th day of March 1848.

R. W. Briggs (L.S.)
Sheriff Tazewell Co

State of Illinois }
Tazewell County } ss

I J A Jones clerk of the Circuit Court in and for said County do hereby certify that this day personally appeared

6.

before me, R. W. Briggs Sheriff of said County, whose signature is subscribed to the foregoing Deed of Conveyance, and acknowledged that in his official capacity he had Executed the same voluntarily and freely for the purposes therein expressed

Witness my hand and official Seal at Fremont this 17th day of March AD 1848

Seal

J. A. Jones - Clerk

To the introduction of which the Plaintiff Objected for the reason that there was no sufficient description of the Land in question and that there was no date to the Deed and no Jurgment a Receipt to Support the Same, which Objection was overruled by the Court, to which the Plaintiff at the time excepted. The Defendant then introduced ~~the following~~ Tax Receipts, to wit for the Years 1848 1849 1850 1851 1852 1853 1854 1855 1856 & 1857. also tax receipt for Year 1843, Taxes paid by M Jackaborn Assignee of Bailey.

The Defendant then Offered in evidence the following Deed with the ack-

7. nowledgement and Certificate of Record-
-ing.

Know all men by these presents that Whereas at the September Term 1844 of the Circuit Court of Tazewell County a Judgment was obtained in said Court in favour of the State of Illinois Against the South East quarter of ~~Section~~ the South East quarter of Section Two in Township Twenty four North Range five West 3d Principal Meridian, containing thirty four Acres, for the Sum of fifty cents, being the amount of Taxes Interest & Costs assessed upon said Tract of Land for the Year 1843 and Whereas on the Seventeeth day of September 1844 Robert W Briggs Sheriff of the County aforesaid, by virtue of a Receipt issued out of the Circuit Court of the County aforesaid ~~by virtue~~ dated the 14th day of September 1844 and to him directed did expose to public Sale at the Door of the Court House in the County aforesaid, in conformity with all the requisitions of the Statutes in Such case made and provided

the Tract of Land above described for the Satisfaction of the Judgment so rendered as aforesaid, and Whereas, at the time and place aforesaid M Jackabery of the County of Tazewell and State of Illinois having offered to pay the said Sum of fifty cents for the whole of said Tract of Land, was stricken off to him at that price. And the said M. Jackabery having duly assigned his certificate of purchase to Samuel P. Bailey, Now therefore I, Robert W. Briggs Sheriff as aforesaid for and in consideration of the said Sum of Fifty cents to me in hand paid by the said M. Jackabery at the time of ~~the~~ said Sale, and by virtue of the Statutes in Such Case made and provided have granted, bargained, & Sold and by these Presents do Grant Bargain and Sell unto the said Samuel P. Bailey, his heirs and assigns thirty four Acres of the South East quarter of the South East quarter of Section two in Township Twenty four, North Range five West 3d Principal Meridian

9 To have and to hold unto him the said Samuel P. Bailey, his heirs and assigns forever. Subject however to all the rights of Redemption provided by Law. –

In Witness Whereof I Robert W. Briggs Sheriff as aforesaid by virtue of the Authority aforesaid have hereunto Subscribed my name and affixed my seal this day of 184

R. W. Briggs (L.S.)

State of Illinois }
Tazewell County } ss.

I. J. A Jones Clerk of the Circuit Court in and for said County do hereby Certify that this day personally appeared before me R. W. Briggs Sheriff of said County whose Signature is Subscribed to the foregoing Deed of Conveyance and acknowledged that in his official capacity he had executed the same, for the purposes therein expressed. Witness my hand and Official Seal at Tremont this 15th day of March A.D. 1848

(Seal) J A Jones Clerk

To the introduction of which the

Plaintiff objected for the reasons. That it did not sufficiently describe the Land in question. That the Deed, had no date, and there was no sufficient Judgment and precept to support it. all of which objections were overruled by the Court, and Deed Read in Evidence, to which the Plaintiff at the time excepted

The Plaintiff then proved then proved that there was no regular Judgment in the Circuit Court of Tazewell County Illinois rendered against the Land in question for any Year for Taxes, that the Land was Sold in 1848 for the Taxes of the Year 1847 in said County. The Plaintiff then introduced the Clerk of the County Court and proved by him, that there was no certified lists to assessments for 1842 or 1843. that there were Books Containing the Numbers of the Land in question, but none of them, were certified to be such by the assessors, but were labelled "Assors lists".

The Plaintiff then called R. W.

11 Ireland who testifies — "I was clerk of the County Court of Tazewell County Illinois from 1849 to 1853 as was also Deputy Clerk the year 1847 and the Labells were put on in 1847 for our convenience. Alexander B. Davis was assessor for the Year 1843. There is no Record of any return of the assessment by him for that Year in the Office of the County Court or Elsewhere. I have Known Bailey as a practicing Lawyer since 1850 He was frequently at the Court House examining the Records.

John A. Jones, Sworn. "I was clerk of the Circuit Court of Tazewell County Illinois from 1837 to 1856 The Defendant was a Practicing Lawyer in this Court during all that time — I have seen him examine the Records frequently". A L Davison, Sworn, says "I have known the Defendant since 1837, he has been a practicing more or less all that time. I thought Mr Bailey a good Lawyer, but we were all Boys together.

The Foregoing was all the evidence given the Case. —

The Court then give the following Instructions for the Plaintiff.

The Court then gave the following instructions for Defendant. That the Date of the Patents is no evidence of the time the land was entered

To the giving of which instructions the Plaintiff at the time ~~excepted~~

The Jury returned a Verdict for the Defendant. And Plaintiff moved for a New Trial for the following reasons,

1st The Verdict was against law and evidence

2d The Court improperly allowed the Sheriffs Deeds to be read in evidence,

3d The Court gave improper instructions

Which motion ~~for new trial~~ was overruled by the Court, to which the Plaintiff at the time excepted, And now prays this Bill of exceptions be signed and sealed, which is done.

James Harriott (SS)

State of Illinois
Tazewell County ss

I Merrill C Young Clerk of the Circuit Court within and for said County and State aforesaid do hereby certify the foregoing to be a true and correct copy of the proceedings of Court, Bill of Exceptions and other papers agreed upon as constitute the case in a certain cause therein mentioned

Witness Merrill C Young Clerk and the Seal of said Court at Pekin this 29 nd day of April AD 1859

Merrill C Young Clerk

Saml. P. Bailey
vs
Jas M. Shackelford

Sup Court April Term 1859

The said Bailey comes & says that neither in the record & proceedings aforesaid nor in the giving of the judgment aforesaid is there any error wherefore he prays that the same may in all things be affirmed

A. L. Davison
for Deft in Error

320
James M. Shackelford
vs
Saml P. Bailey
Record

Filed Apl. 26. 1859
P. Allen
Clk.
$5.00

State of Illinois } 3d Grand Division
Supreme Court } April Term 1859

vs

James M Shadlefora }
Samuel P. Boily } Appeal from Lasalle

And now comes the appellant and says that in the record and proceedings aforesaid there is manifest error in this to wit.

1st The Court erred in admitting the Sheriffs Deeds.

2d The Court erred in giving the instructions asked by respondent.

3d The Court erred in refusing to grant a new trial.

The Court erred in each decision given in the case. For which errors appellant prays the judgment may be reversed.

B F Pettyman &
James Roberts
pr appellant.

320-142

Joanna M Thornhill

vs

Samuel P Bailey

Record & assignt

of errors

~~Filed April 26 1888~~

Filed April 26. 1888

L. Leland

Clerk

James M Shacelford
Plff. in Error
vs
Samuel P Bailey
Deft in Error

Sup Court
3rd Division
April Term 1859

Argument for Deft in Error

This was an action brought by the Plff in Error of Ejectment against the Deft in Error for the recovery of a piece of Land in Tuzewee County. The Case was tried in that County where the Deft in Error recovered a verdict & Judgment

The Plff in Error proved his title to the land by a patent from the U. S. & rested. The Defts defence was that he claimed the land by virtue of 2 deeds from the Sheriff of said County & the payment of taxes for seven succeeding years. The deeds were produced & proved before the jury and plain proof was made of the payment of taxes for the succeeding seven years thus bringing the Defendant clearly within our Statute of Limitation he having color of ~~Title~~ title

The jury having found that Defendant in Error had color of Title made in good faith which they necessarily must have done as the very foundation of their verdict. and in as much as no evidence was given of bad faith the finding so far as good faith is concerned is conclusive and the Court will not disturb it on the ground of want of good faith.

It seems to me that the only point in this case worthy of any consideration is whether

the deeds introduced were such color of title as is contemplated by our Statute and if that point is found for Deft in Error then the Judgment ought to be affirmed as there is no irregularity or Error in the proceedings which could have prejudiced the Deft in Error unless there was error in holding that said deeds were Color of Title

The cases cited by the Plffs in Error showing the requisites of a tax title have no application to this action It was not attempted by the deft in Error to show that he had a tax title If he had procured a good tax title his claim would have been good & indefeasible without any regard to his subsequent payment of taxes or without any help from the seven years statute of Limitation — To hold that a party in order to defend his possession under our limitation laws must have a good title is in Effect rendering our Statutes upon that subject of no practical Effect but a mere snare & delusion — For if the same title is required to defend under them that would be without, I would like to know of what use are all those Statutes of Limitations?

On the contrary Every statute of Limitation ever passed are laws of repose for the purpose of allowing such rights & defences as were incapable of being made successfully by lapse of time to ripen into lawful rights in other words to make such good as were bad & unavoidable before the lapse of

of time fixed by the Statute so that parties after such lapse of time might rest in security upon their rights acquired certain that our Courts would protect them in them — And these Statutes are founded upon public policy & public justice and ought to be fairly carried out. and there should be no more doubt that a party may avail himself of a Statutory Limitation than there is of a party having a right to avail himself of any other Statutory provision —

Evidently the Statutes of Limitation were made if for any object at all for the very purpose of helping bad titles and in no sense for the benefit of good —

It only remains then to consider whether the deeds given in evidence & held by Deft in Error in good faith is such claim & color of title as is contemplated by our Statutes

It will be seen by reference to the record page 3 to 5 — That on the 17th day of March 1848 the deft received a Sheriffs deed made upon a sale of taxes in 1843 for taxes of 1842 for 7 acres off the East side of the land in controversy

And on page 7 to 9 inclusive it appears that he received a deed for thirty four acres of said Land — by virtue of a sale of the whole tract made in 1844 for the taxes of 1843 which deed was acknowledged 15 March 1848

It will appear from an inspection of this last deed that it describes the land in controversy as follows to wit The South East quarter of the South East quarter of section two in Township Twenty four North Range 5 west 3 principal meridian

containing thirty four acres This recital in the Sheriffs deed is all the evidence there is in the case showing the number of acres in the tract The grant of the Sheriff is of thirty four acres of said price and as it is described as containing only 34 acres it is contended that as to the whole tract the Sheriffs deed was Color of Title even tho' the tract may have contained more land of which there is nowhere any evidence

The objection to the admission of the deed on account of its bearing no date I deem unworthy of notice and therefore dismiss it with the single remark that every body knows that a deed takes effect from delivery & that the want of a date is wholly immaterial —

The instruction given by the Court for Deft in Error and which is assigned for Error — was evidently true in every respect The patent does not profess to be issued on the day of the purchase of the land but refers to a former entry of the land at the Land office without giving the date of such Entry — At any rate it in no manner can effect the question whether or not these deeds were claim'd color of title — I maintain that a deed from an officer authorized to sell land for taxes especially if in the ordinary form of such deeds is color of Title under which any person may be permitted to act and to hope

at least that he has received a good title or at all events that he will have such title upon the payment of taxes for seven consecutive years the faith of the State being pledged that the 7 years payment of taxes will ripen it into an indefeasable title

Goewey vs Wing 18 Ill 238
Woodward vs Blanchard 16 Ill 424
Newland vs Marsh 19 Ill 376

There was evidence given at the circuit to show that Bailey was a lawyer with a view of prejudicing the case and showing that the tax deeds must have been received in bad faith. But this question has been effectually settled by the jury who have found the "good faith" and of course no other use can be made of such evidence

It seems to me that this judgment is clearly right and accordant with the decisions of this court and ought not to be disturbed

A L Davison for
Deft in Error

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320-142

A M Shackelford
Plff in Error

vs

S. P. Bailey
Deft in Error

Arg. for Deft in Error

A L Davison

Filed May 6, 1859
L. Leland
Clerk