No. 8814

Supreme Court of Illinois

Wm.B. Warren

---

vs.

City of Jacksonville

71641

ABSTRACT:

SUPREME COURT—DECEMBER TERM, 1853.

WILLIAM B. WARREN
vs.
JACKSONVILLE. } [S. S.]

This was an action of ejectment brought by Warren against the town to try the right of a strip of land situated on the west side of McHenry Johnston's addition to Jacksonville, being a part of the north 1-2 of the west 1-2 of the north-east 1-4 of sec. 20, 15 north 10 west; and now in the use of said town, and claimed as a street. It appears that this land belonged to one Chandler, and was sold by him to Gov. Duncan, and was claimed by him as private property to the day of his death, and that the U. S. Marshall, by virtue of a judgment of the U. S. District Court, and execution thereon, sold said land at a Marshall's sale, and the same was purchased by Col. Warren, and he obtained a Marshals deed therefor.

The town claims this tract because of the following state of facts:

The land was never endorsed, but like other open land about the town, had been traveled over.

State street, in Jacksonville, run westward across this 80 acres, dividing it into two 40 acre lots, and Chandler laid out an addition to the town of Jacksonville on the south side of said street, on the south half of said 80 acre lot.

Chandler laid out a tier of lots on the north side of said State street, as a part of his addition, beginning on the west side of the tract in controversy, and running north 180 feet. This tier of lots was all the lots laid out upon the north half of said 80 acres, and no street whatever was laid out by Chandler on said north half of said 80 acres.

While the land was in this situation Chandler sold all his interest in said 80 acre lot of land to Gov. Duncan.

Duncan never laid out and recorded any part of said land into town lots, alleys or streets, but proceeded to sell various parts of said land in various places; and those persons took possession of those tracts and improved them, leaving this, with various other parts of said tract, open.

In that part of Chandler's addition situated on the south half of said land, there is a street running from State street south directly opposite said land in controversy. This street did not extend to any part of this land.

On the 26th of January, 1836, Thomas T. January sold to Duncan lots 8, 9 and 10, in McHenry Johnston's addition to Jacksonville, and made to Duncan a deed therefor, for which Duncan paid him $1,000.

In that deed January inserted the following clause:

"And also all the interest which the said January holds in the railroad square, laid off by said Duncan, on the lands bought of Dr. E. Chandler, one half of which was deeded by said Duncan to said January, but in conveying his interest on said square to said Duncan, it was understood that said Duncan is to open Church street as far north as lot number 21 in said Johnston's addition, or to north street, and has full power to close the said square, or to sell or to dispose of it as he, said Duncan, may think proper."

This deed was duly recorded and a copy thereof was read in evidence against Warren, but was objected to by him as improper testimony.

A deed made by Duncan to said January for the said railroad square, dated in 1845, was also read in evidence against Warren, notwithstanding his objections.

Certain plats were in evidence, which plats are here before the court as they were in the court below, to be taken as evidence by consent.

It was in proof that in 1835 a church was built on a lot in Chandler's addition on State street, and adjoining to the land on the west.

It was proved that a strip of land on the east side of said land was enclosed about the same time, leaving this lot of land open, and that it has remained unenclosed ever since; and like other open land, had been traveled over by the people in getting from one part of the town to the other ever since, and for more than seven years before the commencement of this suit, but no public street or road was ever located over said land by the owner or by any one else; yet it had been traveled over as a street two or three years before Duncans death.

It was admitted upon the trial that Warren, the plaintiff, had seen the record of the record of the two deeds read in evidence some time before he purchased at the Marshalls sale, and this was all the evidence in the cause.

By consent and upon this evidence, the cause was tried by the court, and a verdict rendered for the defendant, and the case is brought to this court by appeal by Warren, and the following questions are presented to this court for its adjudication and decision:

Warren contends,

1st. The use of this land by the people of Jacksonville, by traveling over it for seven years, is not evidence of its having been dedicated to the public for a street.

2d. The deed made by Duncan to January of an interest in railroad square not having any relation whatever to the land in controversy, was improperly admitted as evidence.

3d. The copy of the deed made by January to Duncan was improper as evidence against Warren to prove that Duncan had agreed to dedicate this tract of land to the public as a street.

4th. The tract of land sued for and to which Warren proved title, extended north far beyond the lot in Johnston's addition, to which Church street was to be opened as stated in January's deed, which land lying north of that point, no right whatever was shown by the defendant, yet the court found against Warren for that land too.

5th. The Circuit Court should have rendered a judgment for Warren for all of said land, but most certainly for all that part of said land north of said lot 20, mentioned in Johnston's addition.

All this will be understood by the court upon the inspection of the record, and said plats admitted as a part of the record in the case.

The instructions given and refused in a former trial of this cause are improperly embodied in this record and make no part of this case.

M. M'CONNEL,
for Plaintiff in Error.

[illegible]

William B Warren
vs
Trustees of Jacksonville
&
abstract

WM. B. WARREN, vs. JACKSONVILLE, } Ejectment, abstract of authorities, and points relied on by the Plaintiff below, and here in error.

Bouvier's Institutes, p 484, 486; Saunders, 175 A; State 45. p 349, S 6; Storey vs. Odlin, 12 Mass rep. 159; Gacethet vs Bethume 14, Mass 49, 55; Lawton vs Revers 2d M'Cords R 445; Lajoy vs Primm, 3d Mass 529; Dill vs Crosby, 2d Pickering 466; Thomas vs Marshfield 14 Pick 240; Gloucester vs Beach 2d Pick 60; [note] Kirk vs Smith, 9th, Wheaton 241; Baker vs Falls, 16 Mass. 488, 520; Cincinnati vs White, 6th Peters 431; Mills & Co. vs St Clair co 31 Scam 55; Melford vs. Pratt, 4 Pick 222

Canal Trustees vs Hawn Ill. R. 554

Manly vs Gibson, 13, Ill 308 &c.

Godfrey vs the city of Alton, 12 Ill 29

This lot of land is claimed by the corporation of Jacksonville as a street, and the claim is founded upon the prescriptive right, growing out of its having been travelled over by the public about seven years, by sufferance of Governor Duncan, in his life time.

This plaintiff now contends that to enable the defendant to hold this land for the public under this claim the public must have had the *adverse exclusive uninterrupted enjoyment of the land as a public street twenty years.*

It is also claimed that Duncan dedicated this lot of land to the public as a street, and because of said dedication, this defendant must hold the said land as a corporation.

Upon this point it is contended that to enable the trustees to hold this land as a street, it must be shown that some one of the former owners laid out the land into lots, streeets, and alleys, of the town, and this is one of the streets laid out, and acknowledged and recorded in said town plat.

Miller vs Bagwell 3d M'Cord 429; Massun vs Noble 11th Ill. 532; Lansing vs

To prove that Duncan intended to dedicate this land the deeds from January to Duncan, and Duncan to,

3 M'Cord R 253:4. As to estoppel under the Genl issue

Montgomery, 2d, John R. [illegible]; Boling vs. Mayor, 3d, [illegible] 563,

Miller vs Bagwell 3 M'Cord 429.

Murphy vs Barmitt 1st Law R 106; Blight vs Rochester, 3d M'Cord, 535; Crandall vs Gulap, 12th, Conn. 565; Adams vs Moore 7th, Greenleaf 76

12 Conn R 370

2d Smith's leading cases 516, 577, 520, 521, 536, 576: Lansing vs Montgomery, 2d Johnst 382: Guild vs Richardson, 6th Pickering 364; Howard vs Mitchell 14 Massachusetts 241; Shelton vs Alleox, 11, Connecticut 240; Lord vs Bigelow, 8th Vermont 461; Sawyer vs Hoyt, 2d, Tyler's Rep 288

January, referred to in the abstract, are offered as an estoppel.

Warren, plaintiff in error, now contends that this defendant is a stranger to that deed, and have no right to use it as an estoppel.

It is contended that the statement in this deed by January that Duncan shall open a street, is not such a *resital* as the rule upon that subject requires. It does not state that any fact exists, or any act *has* been done. The statement is prospective and not retrospective.

Warren contends that to enable the town to set up this deed as an estoppel against his claim to this land, it must be proven that Duncan accepted this deed from January, and acted upon it, and accepted and enjoyed the property therein conveyed. Nothing of that kind being proven in this case.

The 17th section of this ejectment law gives the defendant in ejectment a right to plead the general issue, and ever thing that might have been given in evidence under the old form of a suit in ejectment, or in a writ of right, may be given in evidence under the general issue in this case. This act does not prohibit the pleading any special matter in separate special pleas.

The plea in this case is the general issue, under which plea it is contended this estoppel, cannot be given in evidence. *It must be specially plead.*

M. M'CONNEL,
for Plaintiff in Error.

See Illinois Transportation Co v City of Alton 11 or 12 Ills R
Dedication by resital in a deed.

David A. Smith for Defendants

2 Greenl Ev Sec 662 Public road is evidenced by dedication &c — and this is proved by the act of dedication — and acceptance — and needs no one to receive it

12 Ills R 29 A case of dedication of the wharf at Alton.

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M. M'CONNEL,
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As to proof of a right by prescription
10th Peters 437 Bottom of the page Elliott vs Pearl

[8814-3]

Col William B. Warren
Jacksonville Ills

Warren
vs
Jacksonville

List of plaintiffs authorities

3d McCords Rep 429 253.4 538
2d Johnson Rep 382
3d Randolph Rep 563
4th Littell Rep 272
12th Connecticut Re 365 378
7th Greenleaf Rep 565 86 76
6th Pickering Rep 364
14th Massachusetts Re 241
11th Connecticut Re 240
8th Vermont Rep 461
~~2d Iglers Rep 283~~
12th Illinois Rep 30.38 ~~532~~
(Prescription)
2d Bouvairs Inst 484.486
2d Pickering 466
13th Pickering 240
6th Wendall 288

Same 175 A. Stat 45 p 349.56
12 Mass R 159
14 " " 49.55
2 McCord 445
8 Mass 529
14 Pick 240
9 Wheat 241
16 Mass 488.520
6 Pet 431
3 Scam 55.
4 Pick 222
11 Ills 554 C. T. v Haven
13 Ills 308
19.55
11 Ills 532
1 Law R 106
2 Smith L.C. 516.520.1.536.576.7
2 Greenlf Ev Sec 662
10 Pet 437
60 not

A B S T R A C T :

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All this will be understood by the court upon the inspection of the record, and said plats admitted as a part of the record in the case.

The instructions given and refused in a former trial of this cause are improperly embodied in this record and make no part of this case.

M. M'CONNEL,
for Plaintiff in Error.

Points Decided

Judgt reversed – and hold dedication good for Church street to North street

Warren

v

Jacksonville

Abstract

8814