Wilson Vs. Speed

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 283

Appellant : Wilson

Respondent : Speed

Judgement :

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Wilson v. Speed

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ERROR TO THE DISTRICT

COURT OF KENTUCKY

Syllabus

An assignee of a preemption warrant is held to be a competent witness if the facts intended to be proved by his testimony do not tend to support the title of the party producing him.

A general dismissal of the plaintiff's caveat, in Kentucky, does not purport to be a judgment upon the merits.

Error to the District Court of Kentucky on a judgment which dismissed the caveat of Wilson against Speed.

The caveat was in these words:

"Let no grant issue to James Speed, a citizen of the State of Kentucky, for 139 acres of land, said to be surveyed upon an entry of 200 acres by virtue of a Treasury warrant, number 13,800, 24 November, 1782, and the survey dated 10 November, 1797, because John Wilson, a citizen of the State of Virginia, claims the same, part by virtue of a survey made on his settlement right of 20 January, 1786, and part by virtue of a survey made on the entry of his preemption warrant on 20 January, 1786, for Andrew Cowan and assigned by him to William Dryden, for his use, which claims are of a superior nature to the said Speed's. April 22, 1799."

"JOHN WILSON"

The facts appearing upon the record, so far as they are pertinent to the questions before this Court, were as follows:

In the year 1776, Wilson made an improvement by raising a crop on the land, and built part of a cabin.

In consequence of this improvement, he obtained, on 16 February, 1780, a certificate for a settlement right to 400 acres and a right of preemption to 1,000 acres.

On the same day, Andrew Cowan obtained a certificate for the preemption of 1,000 acres on account of marking and improving the same in the year 1776, adjoining the lands of John Wilson on the north side, to include his improvement.

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On 23 October, 1780, Andrew Cowan entered a preemption warrant for 1,000 acres, on the headwaters of Boon's Mill Creek, to include his cabin and the headwaters of several small branches running into Kentucky and Dick's River. "Also, as assignee of John Wilson's one thousand acres, adjoining the above, including said Wilson's cabin."

On 29, 1783, John Wilson entered

"400 acres of land by virtue of a certificate for settlement lying on a dividing ridge between the waters of Kentucky and Dick's Rivers, to include part of both waters and his improvement."

These 400 acres were surveyed for Wilson on 20 January, 1786, and were never assigned by him.

On the same day, the 1,000 acres, upon the preemption warrant, were surveyed for Andrew Cowan as assignee of Wilson.

On the back of this original certificate of survey was written an assignment purporting to be from Andrew Cowan to William Dryden and attested by "Young Ewing." And also an assignment (made by order of Garrard County Court during the pendency of the present caveat) by certain commissioners in behalf of the heirs of Dryden to William Buford.

On 24 November, 1782, James Speed, the defendant, entered 200 acres upon a Treasury warrant, the survey upon which was the cause of the present caveat.

This survey was for 139 acres, part of the 200, dated 10 November, 1797, and interfered with Wilson's survey of 400 acres, upon his settlement right, and with that for 1,000 acres preemption, which were surveyed in the name of Andrew Cowan as assignee of Wilson. Upon the inquiry into the facts before the jury, the plaintiff Wilson took two bills of exceptions. The first stated that he offered to produce the said Andrew Cowan (who had released to the plaintiff and

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all claiming under him all his, the said Cowan's, right to the land &c.;) to prove that although the preemption warrant for the 1,000 acres was taken out in his name, it was not taken out by him or with his privity, and that although the entry was in his name, it was not made by him or with his privity. And also to prove that he never did and does not now set up any claim or title to the said preemption or any part thereof. Also to prove that the assignment on the original survey of the said preemption, now brought into court by the register of the land office, purporting to be an assignment made by the said Cowan to William Dryden, was not executed by him, the execution of the same not being proved by "Young Ewing," the attesting witness to the same.

But the court was of opinion that the said Cowan was not a competent witness, and excluded him from giving testimony.

The 2d bill of exceptions stated that, after the testimony of Cowan was excluded, the plaintiff offered to produce Charles Campbell to prove that the said assignment, and the signature thereunto as well as the name of the attesting witness, were in the handwriting of William Dryden, to the admission of which testimony the defendant objected, alleging, that "Young Ewing," the subscribing witness, ought to have been produced, and the court being of that opinion, the testimony of Charles Campbell was also excluded, and the caveat was dismissed, with costs.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

In this case, the errors assigned are

1. That testimony has been improperly rejected by the judge of the district court.

2. That the caveat as to that part of the land which was claimed in virtue of the survey on Wilson's settlement right was improperly dismissed.

The caveat, so far as respects the claim of Wilson in virtue of the survey on his preemption warrant, thus stated his title:

"John Wilson claims, by virtue of the survey made on the entry of his preemption warrant for Andrew Cowan and assigned by him to William Dryden for his use."

The preemption warrant issued on Wilson's certificate to Andrew Cowan as assignee thereof; the survey was made in Cowan's name, and is assigned to William Dryden, but the assignment does not purport to be for the use of John Wilson.

At the trial, the plaintiff offered to prove that the assignment to Cowan was made in trust for himself, and that the assignment to Dryden was never made by Cowan. The witness by whom these facts were to be substantiated was Cowan himself. He was objected to by the counsel for the defendant as incompetent, and the objection was sustained by the court. To this opinion of the district judge an exception was taken, and the question proposed is the competency of Cowan to prove the fact that he never was entitled to the land in controversy, and did not make the assignment of the survey.

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We put the release out of the case because it cannot affect the interest of Cowan if he had any, that interest being a liability to the person appearing to be his assignee.

Upon a consideration of this fact and its connection with a caveat brought by Wilson, the witness appears to the Court to stand free from any possible objection on the part of the defendant. It would not appear that he could derive a benefit from proving in this cause that he never was entitled to the land in dispute and never assigned the survey.

But from the facts proposed by the plaintiff, which were before the court, it appears that Dryden had sold to Buford, for whose benefit this caveat was really brought, and it is alleged by the counsel for the defendant that if the testimony of the witness would establish the right of those who might ultimately resort to him under his supposed assignment, and such a suit would be prevented by a decision of this caveat in favor of Wilson, he is therefore an incompetent witness; but the Court does not perceive that this consequence would flow from the testimony, and if it is imagined that Cowan might suspect it, this would constitute an objection rather to his credit than his competency. Cowan therefore was competent to prove the facts to establish which his testimony was offered. But if he had been received and had established those facts, what would have been their amount? They are

"That Cowan never did purchase the said preemption, did not make the entry on the preemption warrant, or survey it, or procure it to be surveyed, and does not now, nor ever did, claim title to the same."

"That the plaintiff, claiming to own the land, did sell it to William Dryden, who sold the same to William Buford, for whose benefit the caveat was brought."

These are the facts which the plaintiff proposed to prove and which are stated on the record. Had they

been proved, it appears to the Court that the caveat ought to have been dismissed. These facts do not support the title set up in the caveat.

It is conceived by this Court that the statements made in the caveat could only be supported by an assignment which, on the face of it, purported to be for the use of Wilson. That an assignment made to Dryden whereby the legal ownership of the survey was conveyed to him, although in fact intended for the benefit of Wilson, would not enable Wilson to maintain a caveat in his own name. It would authorize him to use the name of Cowan, but not to prosecute the suit in his own name. If, however, a contrary practice has been firmly established in Kentucky, the Court would be very unwilling to shake that practice. But in this case the assignment to Dryden was not in fact for the use of Wilson, but of Dryden himself. The testimony, therefore, if received, could only have defeated the plaintiff's action. It cannot be said, therefore, that the judge has erred in dismissing the caveat as to the part claimed under the preemption warrant.

But with respect to so much of the caveat as was supported by the survey on the settlement right, no exception of form or to the testimony has been taken, and it ought not, therefore, to have been dismissed but on the merits. On this point,

therefore, there is error in the judgment of the district court for which it must be

Reversed.

This cause came on to be heard on the transcript of the record of the proceedings of the Court for the District of Kentucky, and was argued by counsel, on consideration whereof it seems to the Court that there is error in the judgment of the district court in this, that the caveat entered by the plaintiff was entirely dismissed, whereas it ought to have been decided on its merits so far as respected that part of the land which was claimed by the plaintiff under his survey of four hundred acres. It is therefore considered by the Court that the said judgment be reversed and annulled,

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and that the defendant pay to the plaintiff his costs. And the cause is remanded for further proceedings.