Hedelston, Samuel vs. Field, Edmund S. April 1832 1st Boone 111/19

#7 Covenant: Affirmed; Husband & Wife Cant Convey estate granted to wife & her heirs during coverture

Deed; Estate; Inheritance; Marriage; Coverture

101.

E S Field
v
S. Hudelson

Pleas before David Todd Judge of the Circuit Court of Boone County in the first Judicial Circuit in the State of Missouri at the Courthouse in Columbia on the 11th day of February One thousand eight hundred and thirty two

Be it remembered that heretofore towit on the sixth day of February One thousand Eight hundred and thirty two Edmund S Field came and filed in the office of the clerk of the Boone Circuit Court a declaration which is in the words and figures as follows towit

preamble

11 State of Missouri County of Boone } In the circuit Court February Term 1832.

Edmond S Field by attorney Complains of Samuel Hudelson of a plea of Covenant broken, For that whereas heretofore towit on the ~~first~~ 1st day of December A D 1831 at the County aforesaid by a Certain deed of bargain and sale then and there made between the said Samuel Hudelson and Jane F Huldelson his wife of the first part and the said Edmund S Field of the second part which said deed of bargain and sale sealed with the seal of the said Samuel Hudelson and Jane F his wife the said plaintiff now brings here into Court the date whereof is the day and year aforesaid and by said Covenant it was witnessed that in Consideration of the sum of two hundred and thirty dollars paid by the said plaintiff to said Hudelson & wife they the said Hudelson & wife for and in Consideration of the same did grant —

Declaration

2 bargain and sell to the said plaintiff and his heirs forever a certain tract of land lying and being situated in the County of Boone State of Missouri being the west half of the South west quarter of section Eighteen of township forty nine & range Eleven containing ninety six acres & $\frac{18}{100}$ of an acre founded on patent no 1708 and pattented to Virginia Samuel and dated 10th day of may A D 1826 and the said plaintiff avers that the said Samuel Hudelson & wife was not at the time of making the said Covenants as aforesaid and the Execution & delivery of said deed as aforesaid seized of an indefeasable estate in fee simple in and to the said tract of land granted bargained & sold as aforesaid and that the same was then not free from incumbrances and the said plaintiff avers as a further breach that the said Hudelson & wife at the time of executing the said deed of bargain & sale as aforesaid did have no right or title to the said land granted bargained & sold as aforesaid and so the said plaintiff in fact says that the said defendant altho often requested so to do hath not kept the said Covenant so by him made as aforesaid and to keep the same with the said plaintiff hath hitherto wholly neglected and refused and still doth neglect & refuse to the damage of said plaintiff three hundred dollars & therefore brings his suit

King Atto for pltff

The following is the plea and issue made in said cause

and the said defendant ~~by his~~ attorney
Comes and defends the wrong & injury when
&c and for plea says that at the time of making
the said deed of bargain & Sale to said plaintiff
as set fourth in said declaration he the said
plea defendant & his said wife were lawfully ~~and~~
~~and indefeasable Estate in fee simple~~ ~~to~~
seized of an indefeasable estate in fee -
simple to the said ninety six $\frac{18}{100}$ acres in
the said Declaration mentioned at and
before the Execution & delivery of said deed
in said declaration alledged and of this
the said defendant puts himself upon the
Country Gordon Atto for deft
Issue And the said plaintiff doth the like
King Atto for pltff

And afterwards to wit on the Eleventh day
of February in the year of our lord One
thousand Eight hundred and thirty two
the following proceedings were had in
said Court to wit

" Edmund S Field plaintiff
against
Samuel Hudelson defendant } Covenant

This day Came the parties aforesaid
by their attorneys and neither party requiring
a Jury the Same is submitted to the Judg-
ment of the Court. Therefore It is Considered
Judgt. by the Court that the defendant Samuel
Huddlson hath not performed the Covenants
in the declaration mentioned but hath
broken the same as the plaintiff in his said
declaration hath alledged and It is Ordered
by the Court, that the said plaintiff recover

against the said defendant Samuel Hudelson the sum of two hundred and thirty two dollars and thirty Cents and also his Costs by him about his suit in this behalf expended in the prosecution of his suit and the said defendant be in mercy &c "

The following is the bill of exceptions filed in this Cause in the words and figures following towit

E S Field } February Term 1832
S Hedelson }

Be it remembered that on the trial of this Cause neither party requiring a ~~Jury~~ a Jury all the matters of fact were submitted to the Court and the plaintiff introduced as evidence to support his Case an agreed state of facts " E S Field vs Sam Hedelston. agreed Case In this Cause the plaintiff and defendant by their attornies do agree upon the following as the true facts in said Cause. 1st That the land sold by the defendant Hedelston to the said plaintiff as set forth in said plaintiffs declaration, is the same land, that was patented by the general Government, to Virginia Samuel and her heirs & assigns - forever on the 10th day of May 1826 by patent No 1708 Containing the same 96 acres & 18/100 of an acre in the said plaintiffs declaration, It is further agreed that the said Virginia Samuel at the time and before the said land was entered and patented to her, was feme Covert being then lawfully married to Edgecomb S Samuel, It is further admitted to be the fact that Edgecomb S Samuel and Virginia his wife on the 6th day of april 1831 sold and conveyed said land by deed in fee simple with

Exceptions

a grammer

warrant, to the said defendant Hidelston, and further that the said defendant Hidel = ston, ~~and further that the said defendant Hidelston~~ on the 1st day of December 1831 sold and Conveyed said land to said plaintiff by a fee simple deed with Covenants of warranty and Seizen, which said deed is the same upon which this present action is founded. Now it is agreed that if Edgecomb S S Samuel and Virginia Samuel his wife can convey to said Hidelston an indefeasible estate in fee simple to said land, and if the conveyance made by said Edgecomb S S Samuel and wife dated on the 6th day of april 1831 as aforesaid does convey an indefeasible estate in fee simple to said land under the facts above refered to, then and in that case it is agreed that the Court shall enter Judgment for the said defendant Hidelston for his costs against said plaintiff, But if the Court shall be of opinion that the said Edgecomb S S Samuel and Virginia his wife cannot by law make a good & indefeasible title in fee simple to said land, for the reason that the same was patented to her and her heirs during her said Coverture with the said Edgecomb S S Samuel then & in that case the Court shall give Judgment for the plaintiff according to the allegations in said plaintiffs declaration. King Atto for plaintiff

Gordon Atto for Defendant

and also a patent from U S to Virginia Samuels. The United States of America, Certificate No 1708. To all to whom these presents shall Come greeting, Whereas Virginia Samuel of the state of Kentucky has deposited in the general land office of the United States patent

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a certificate of the Register of the land office at Franklin Missouri whereby it appears that full payment has been made by the said Virginia Samuel according to the provisions of the act of Congress of the 24th of April 1820 entitled an act making further provision for the sale of the Public lands for the west half of the South west quarter of Section Eighteen of Township Forty nine of Range Eleven in the district of lands offered for sale at Franklin Missouri Containing Ninety six acres and Eighteen hundredths of an acre, according to the official plat of the survey of the said lands returned to the General land office by the Surveyor General which said tract has been purchased by the said Virginia Samuel. Now Know ye that the United States of America in Consideration of the premises and in Conformity with the several acts of Congress in such Case made and provided have given and granted and by these presents do give and grant unto the said Virginia Samuel and to her heirs the said tract above described, To Have and to Hold the same together with all the rights privileges immunities and appurtenances of whatsoever nature thereunto belonging unto the said Virginia Samuel and her heirs and assigns forever In testimony whereof I John Quincy Adams president of the United States of America have caused these letters to be made patents and the Seal of the General land office to be hereunto affixed Given under my hand at the City of Washington the tenth day of may in the year of our lord One thousand Eight hundred and twenty six and of the Independence of the United States the fiftieth

Seal

by the president J Q Adams

Geo Graham Commissioner of the General Land office. Recorded vol 4 page 229 Exd

also a deed from Samuel and wife who was patentee to Hudelson, This ~~deed~~ Indenture made, and and entered into on the twenty sixth day of aprile in the year of our lord one thousand eight hundred and thirty one — between Edgecomb S S Samuel and Virginia Samuel his wife of the County of Rolls and State of Missouri of the One part and Samuel Hudelson of the County of Boone and State aforesaid of the other part Witnesseth That said Edgecomb for and in Consideration of the sum of one hundred and sixty dollars in hand paid by the said Samuel Hudelson to the said Edgecomb S S Samuel and wife the receipt whereof is hereby acknowledged, the said Edgecomb S S Samuel and Virginia his wife hath bargained sold aliened and Conveyed and by these presents do bargain sell ~~alien~~ and Convey to the said said Samuel Hudelson and his heirs a certain tract or parcel of land lying and being — situate in the County of Boone and State aforesaid being the west half of the south west quarter of section Eighteen of Township forty nine of Range Eleven in the district of lands offered for sale at Franklin Missouri Containing ninety six acres and Eighteen hundredths founded on a patent No. 1708 issued to Virginia Samuel dated tenth day of may A D Eighteen hundred and twenty six to have and to hold the aforesaid tract of land, and bargained premises together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the said

deed from Edgecomb S S Samuel and wife to Samuel Hudelson

Samuel Hudson and his heirs forever and the said Edgecomb S Samuel and Virginia Samuel his wife do for themselves their heirs executors or administrators warrant and forever ~~defend the premises~~ defend the title by these presents to the said Samuel Hudson and his heirs executors and administrators against the lawful Claims or claims of all and every person or persons whatever In testimony whereof the said Edgecomb S Samuel and Virginia Samuel have hereunto set their hands and affixed their seals. the day and year above written Edgecomb S Samuel (Seal)
Signed Sealed and delivered Virginia Samuel (Seal)
in presence of —

State of Missouri }
County of Ralls }

Be it remembered that at a Circuit Court held within in and for the County of Ralls aforesaid on this 6th day of June in the year of our lord One thousand Eight hundred and thirty one personally appeared before the Judge of the said Court in open Court Edgecomb S Samuel and Virginia Samuel his wife proved to be the same persons whose names are subscribed to the written and foregoing instrument of writing as having executed the same by the Oaths ~~of~~ of Robert L Samuel and Sarah E Carter both personally known to the Judge of the said Court and thereupon the sd Edgecomb S Samuel and Virginia Samuel his wife acknowledged the said instrument of writing to be their act and deed hand and seal for the purposes therein mentioned and the said instrument & the contents thereof being explained to the said Virginia Samuel by the Judge of said Court and she the said Virginia Samuel being examined by the said Judge separate and apart from her husband whether she executed the said deed

or instrument of writing voluntarily freely and without Compulsion or undue influence of her said husband and the said Virginia did upon said Examination acknowledge the said instrument of writing to be her act and deed, and that she ~~[illegible]~~ Executed the same voluntarily freely and without Compulsion or undue influence of her said husband ~~[illegible]~~ and wished not to retract Given under my hand as Clerk, and the Seal of the said Court at New London in the County aforesaid the day and year above written

(Seal) Charles Glascock Clerk

State of Missouri } set. This deed from
County of Boone }

Edgecombs S S Samuel and Virginia his wife To Samuel Hedelson was produced before me the undersigned ~~Clerk~~ ~~Recorder of Boone~~ Clerk and Recorder of Boone County on the 13th day of August 1831 for record and having been duly acknowledged and Certified the same with such Certificate is admitted to record in my office and is duly recorded in Book D page 71 & 72 - given under my hand as recorder aforesaid

Roger N Todd R B C

also a deed from Hudelson and wife to the plaintiff This Indenture made and entered into on the first day of December in the year of our Lord One thousand eight hundred and thirty one between Samuel Hedelson and his wife Jane

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F. Hudelson of the County of Boone and state of Missouri of the one part and Edmund A Field of the County and state aforesaid of the other part witnesseth that for and in Consideration of the sum of two hundred and thirty dollars in hand paid by the said Edmund A Field to the said Samuel Hudelson and wife the receipt whereof is hereby acknowledged the said Samuel Hudelson and Jane F his wife hath bargained sold aliened and conveyed and by these presents do grant bargain sell alien and convey to the said Edmund A Field and his heirs a certain tract or parcel of land lying and being situate in the County of Boone and State aforesaid being the west half of the south west quarter of Section Eighteen of township forty nine and Range Eleven in the district of lands offered for sale at Franklin in Missouri containing ninety six acres and Eighteen hundredths — founded on patent 1708. issued to Virginia Samuel dated tenth day of may A D Eighteen hundred and twenty six and — Conveyed by Edgecomb & Samuel and Virginia Samuel his wife to me — Samuel Hudelson by deed bearing date the twenty sixth day of april in the year of our lord One thousand Eight hundred and thirty one To Have and to Hold the aforesaid tract of land and bargained premises together with all and singular

Deed from Hudels

the heredetrements and appertainences belong
ing or in any wise apertaining to the said
Edmond S. Field and his heirs for ever
and the said Samuel Hudleson and
Jane F. His wife do. for. them selves there
ares exeutors or. administrators warent and
for. ever. defend the title by these presents
to the said Edmond S. Field and his
ares executors and administrators against
the Lawfull claim or claims of all and
every person or persons what ever. in
Testimony where of the said Samuel
Hudleson and Jane F Hudleson his wife
who here by relinquish her right of
dower. have here unto set there hands
and seals the day and Year. above
written

Signed sealed and delivered in presents of } Samel Hudleson (S)
Jane F Hudleson (S)

State of Missouri }
County of Boone } ss

Be it Remembered that on the first day
of December in the year of our lord
Eighteen hundred and thirty one before me
a Justice of the peace within and for the
County aforesaid personally Came Samuel
Hudelson and Jane F Hudelson both person
ally known to me (S) to be the person whose
names are subscribed to the foregoing instrument

of writing as having executed the same and severally acknowledged the same to be their act and deed for the purposes therein ~~Contained~~ mentioned she the said Jane F Hudelson being by me first made acquainted with the Contents thereof, and examined separate and apart from her husband whether she executed the said deed and relinquishes her dower to the lands and tenements therein mentioned Voluntarily freely and without Compulsion or undue influence of her said husband acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned Voluntarily freely and without Compulsion or undue influence of her said husband, Taken and Certified the day and year aforesaid

James Kirtly Justice of the peace

State of Missouri
County of Boone } Set

I Roger N Todd clerk of the Boone Circuit Court do hereby Certify that the foregoing twelve pages Contains a true perfect and Complete transcript of the record in a Case lately pending in the Boone Circuit Court wherein Edmund S Field was plaintiff and Samuel Hudelson was ~~a~~ Defendant

In Witness whereof I have hereto set my hand and affixed the Seal of the said Boone Circuit Court at office on this 30th day of march 1852

Roger N Todd
Clerk

of writing as having executed the same and severally acknowledged the same to be their act and deed for the purposes therein ~~Contained~~ mentioned she the said Jane F Hudelson being by me first made acquainted with the Contents thereof and examined separate and apart from her husband whether she executed the said deed and relinquishes her dower to the lands and tenements therein mentioned Voluntarily freely and without Compulsion or undue influence of her said husband acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned Voluntarily freely and without Compulsion or undue influence of her said husband, Taken and Certified the day and year aforesaid

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Clerk

which was all the evidence introduced in the Cause, the defendant thereupon moved the Court for Judgment for defendant which motion the Court Overruled and give Judgment for the plaintiff to which Opinion of the Court — the defendant excepts and tenders this his bill of exceptions which was signed and sealed — accordingly and made a part of the record

David Todd (Seal)

1832 (1)

Fuld
v
Henderson

Filed 2. April
1832. G. Byrne Clk

S. Hadleston
vs
E. Field

In the Supreme court
1st Judicial district
April Term 1832

The plaintiff in this cause assigns for errors to the judgment of the court below, the following,
1st That is the court below erred in ~~not~~ giving judgment on the statement of facts and the case made out as set forth in the bill of exceptions, for the plaintiff in the court below when they should have given judgment for the plaintiff in this court who was defendant in the circuit court. he therefore prays the court for a reversal of this cause &c.

Phaydon atto for
Plaintiff in error

Hedeston
vs
Field

assignment
of errors

Filed 3d April
1832
G Bynum Clk

Hebelston vs Field } Appeal from Boone Circuit Court.

This was an action of covenant brought by the Appellant against the Appellee in the Boone Circuit Court. The case was agreed & submitted to the court without a Jury - verdict & judgment for the Plaintiff from which the Defendant below appeals to this court. The facts as preserved by the Bill of Exceptions are; - "that the land sold by the "defendant Hebelston to the plaintiff Field as set forth in said plaintiffs declaration is the same land that was patented to Virginia Lamme & her heirs & assigns forever on the 10th of May 1826. - "that the said Virginia Lamme at the time & before the land was patented to her, was a feme covert being lawfully married to Edecomb S. S. Lamme; that Edecomb S. S. Lamme & Virginia his wife on the 6th of April 1831 sold & conveyed said land by deed in fee simple, with covenant of warranty to the defendant Hebelston; that Hebelston on the first of December 1831 sold & conveyed the same by deed in fee, with covenants of warranty & seisin which said deed is the same upon which the present action is founded." The sole question raised is, whether Lamme & wife by their deed to Hebelston conveyed to him an indefeasible estate in fee simple in & to the land which had been patented to the wife?

In settling this question we need ~~only look~~ to the

provisions of the Act regulating conveyances Revised Code p 215, which after prescribing the manner in which the several deeds should be executed, proved & acknowledged, declaring their effect &c provides in the 12th Section p. 221. that nothing contained in the Act "shall be construed "to authorize any husband & wife to convey any "estate granted to the wife & her heirs during "coverture" no covenant or warranty contained "in any deed (conveying the real estate of the wife) shall "in any manner bind or affect such married "woman or her heirs further than to convey from her "& her heirs effectually her right & interest expressed "to be granted or conveyed in such deed or conveyance; "Nor shall any thing therein contained be con=" =strued to authorize any husband & wife to convey "any estate granted to the wife & her heirs during "coverture". - This is precisely such a case as the proviso describes & on which the restraint of alienation is imposed. - The conveyance from Samuel & wife to Hedelston was inoperative to pass the title & the circuit court adjudged correctly in so deciding. The Judgment is therefore affirmed with costs. -

M. M. Gis Sd
G Tompkins
R Wash

S. Hudleson
vs ⅔ opinion
E. S. Field –

To be printed.

Filed April 6th 1832
G. Bynum clk

Hedleston Appellant
vs
Fila appellee.

In the Supreme court 1st
Judicial district April Term 1832

This cause came from the circuit court for the county of Boone, the facts are these the appellant Hedleston, purchased a tract of land the same mentioned in the plaintiffs declaration, from E. S. Samuel & wife, the land having been patented to Virginia Samuel the wife of said E. S. Samuel. at the time of her coverture, Hedleston sold said land to the defendant in error with a clause of seizen & warranty in the deed, and the only question to be decided by the court is. does the latter clause of the 12 section of the act

regulating conveyances, revised code page 221 prohibit said Samuel and wife from selling and conveying a fee simple title to said land having been granted to the wife and her heirs during coverture. The plaintiff in error will insist that the proper construction to be given to that clause of the statute under consideration does not prohibit the the husband & wife from selling land granted to the wife and her heirs, in the manner that the land under consideration was granted or patented to said Benjamin Samuel and ask of the court a reversal of this judgment.

Hayden attorney for plff in Error.

S Hedelston
vs
E. S. Field

Plaintiff's
Brief

Samuel Hedelston — Appellant
vs
Edmond F Giles Appellee

In the supreme court 1st Judicial district. April Term 1832.

This cause came from the circuit court for the county of Boone on a writ of error taken by the appellant against the appellee, from a judgment given by the circuit court in favor of said Appellee, founded on an action of covenant for a breach of warranty as to title to said land in the plaintiffs declaration mentioned. The facts in the cause were agreed on by the plaintiff and defendant in the circuit court, which are embodied in the bill of excep=tions in this cause; they are shortly these. The tract of land in controversy was patented by the general Government to Virginia Samuel, while she was a feme covert, being at the time lawfully married to Edgecomb S. S. Samuel, said Samuel and Virginia his wife, sold and conveyed said land to Samuel Hedelston the appellant, by deed purporting to convey a general warranty title, afterwards said Hedelston sold and conveyed said land to the said Appellee in this cause by general warranty deed, with covenants of seizen, all of which will appear by reference to said patent.

and the deed from Samuel and wife to Hedelston and also the deed from Hedelston & wife to said Feild the appellee in this court. ~~which are all of them~~ all of which are set forth in the bill of exceptions in this cause.

And now the only fact that ~~presents itself~~ is presented to this court for consideration, is the construction that is to be given to the latter clause of the 12th section of the "act regulating conveyances" revised code page 221. which is in the following words, "nor shall any thing "therein contained be construed to authorize any husband and wife to convey "any estate granted to the wife and her "heirs during coverture"

It is one of the first principles in the construction of Statutes, that an adherence to the letter must be abandoned only, when by such adherence, the leading or primary objects of the legislature are to be defeated, but in this case the intention of the legislature is too plain and manifest, to admit of a different construction from the plain import and meaning of the words themselves.

Whenever a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consiquently, no room is left for construction, and it is only when from a view of the whole law, or from other laws in pari materia it must be evident that the intention

~~of the~~

of the legislature is different from the literal import of the terms employed to express it in a particular part of the law, that you can depart from the literal meaning of the words, and resort to interpretation from construction.

These rules as to the construction of Statutes being applied to this case, it is manifest that only one meaning can be given to that part of the Statute now under consideration, and that is, what the words literally import themselves, ~~and~~ that ~~is~~ when any estate has been granted to a woman and her heirs at the time that she was a feme covert, that her and her husband cannot sell and convey the same, in such manner, and such estate as the deed from Samuel & Sarah in this case purports to convey.

The act cannot be so construed as to mean that the husband & wife shall not be authorised to convey any estate granted to the wife, and her heirs, which estate is to continue during the coverture, for if the estate is only to continue during the coverture then the word heirs — is made inoperative, but it is a word of inheritance, and must be intended to mean something in the ~~act~~ law under consideration.

The appellee therefore concludes by asking of the court an affirmance of the judgment of the court below. G. W. King atto for appellee —

Saml. Hedelston
vs
E. S. Feild appellee

Defendants
Brief
King atto.

The latter clause
of the 12th Section
of the act regulating
conveyances. Revised
code page 221.