

SUPREME COURT OF GEORGIA

Page v. Jones

186 Ga. 485 (1938) · Decided June 17, 1938

SUMMARY

The Georgia Supreme Court affirmed a directed verdict subjecting real property to execution on a judgment against the claimant’s deceased mother. The court held that the execution was not dormant, characterized the 1914 instrument as testamentary rather than a deed, and explained the requirements for possession to discharge a judgment lien under Georgia Code § 110-511. The court also held that any evidentiary errors were harmless under the circumstances.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Hutcheson, Justice                                                                                                                                                                                                                                    |
| JURISDICTION          | Georgia                                                                                                                                                                                                                                               |
| DECIDED               | June 17, 1938                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Claimant Dassie Page filed a claim to real property levied upon under a fi. fa. issued against the estate of Mary Holland. The trial court directed a verdict for the plaintiff in fi. fa., overruled Page's motion for new trial, and Page excepted. |
| STANDARD OF REVIEW    | Whether the evidence authorized the directed verdict and whether alleged evidentiary and burden-of-proof errors were harmless in light of the entire record.                                                                                          |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                                                                        |
| PARTIES               | Dassie Page v. W. L. Jones                                                                                                                                                                                                                            |

TOPICS

- real estate
- probate
- title disputes
- civil procedure
- remedies

PRACTICE AREAS

- real estate
- probate
- civil procedure
- judgment liens
- remedies

## QUESTIONS PRESENTED

1. Whether the execution was dormant when it was levied in 1937.
2. Whether the 1914 instrument was testamentary in character rather than a deed.
3. Whether Page established the actual, open, notorious, good-faith, and exclusive possession required to discharge the judgment lien under Code § 110-511.
4. Whether the directed verdict for the plaintiff in fi. fa. was authorized by the evidence.
5. Whether the trial court's alleged burden-of-proof and evidentiary errors required reversal.

## HOLDINGS

1. The execution was not dormant because it was timely entered and had recorded entries of nulla bona before the levy and claim.
2. An instrument expressly made and published as the maker's last will and testament, containing testamentary language and a proper attestation clause, is testamentary in character and is not a deed merely because its granting clause uses language appropriate to a deed.
3. To discharge a judgment lien under Code § 110-511, the claimant's possession must be actual, open, notorious, in good faith, and exclusive, and there must be notice of the adverse possession or circumstances sufficient to put the judgment creditor on inquiry.
4. The directed verdict for the plaintiff in fi. fa. was authorized because the evidence did not show when Page acquired qualifying possession or that she possessed the property for the statutory period.
5. The court expressly declined to decide whether a person who supports an owner under an agreement that the owner will execute a will devising property becomes a bona fide purchaser for value under Code § 110-511.
6. Any error in treating the levy entry as evidence that the judgment debtor died in possession was harmless because the claimant introduced evidence showing that she claimed through the judgment debtor and the directed verdict was properly supported by the entire record.
7. Any error in excluding the 1914 will because of an allegedly vague property description was harmless and did not require reversal.

## KEY QUOTATIONS

*“A paper reciting: “I [the maker], being in good health and of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made,” and containing an attestation clause reciting that the paper is “signed, sealed, published., and delivered by the” maker “as and for her last will and testament,” and that the witnesses, four in number, have subscribed their names in the maker’s presence and in the presence of each other, and which at the time of its execution is delivered to the party for whose benefit it is made as the will of the maker, ‘though the devising or granting clause may contain language appropriate to a deed in some respects, is not a deed, but is an instrument testamentary in character.” (at 490)*

*“the possession required by the statute must be actual, open, notorious, in good faith, and exclusive; and to make the possession such as would displace the lien of the judgment, some sort of notice of the adverse possession should appear, or at least such circumstances as to put the plaintiff in fi. fa. on inquiry”* (at 491)

## FACTUAL BACKGROUND

Mary Holland received a judgment against her in 1918, and the resulting execution was later levied on real property described as belonging to her estate. Her daughter, Dassie Page, claimed the property, asserting that Holland had transferred it through a 1914 instrument styled as a will and a 1934 deed, in consideration of Page's support and care of Holland. Page and her witnesses described her control of the property, but the evidence also showed that Holland continued to reside on the property, exercised acts of ownership, rented it, and received proceeds from transactions concerning it.

## PROCEDURAL HISTORY

A judgment obtained in 1918 resulted in a fi. fa. that was levied in 1937 on real estate claimed by Dassie Page. Page asserted ownership based on a 1914 instrument characterized as a will and a 1934 deed from Mary Holland. The trial court excluded the will, directed a verdict finding the property subject to the execution, and denied a new trial. The Supreme Court of Georgia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Dye v. Dye, 108 Ga. 741, 33 S.E. 848
- Hale v. Robertson, 100 Ga. 168, 27 S.E. 937
- Edwards v. Stinson, 59 Ga. 443
- Johnson v. Oliver, 138 Ga. 347, 75 S.E. 245
- Blalock v. Denham, 85 Ga. 646, 11 S.E. 1038
- Cox v. Prater, 67 Ga. 588
- Ponder v. Graflin, 88 Ga. 186, 14 S.E. 203
- Williams v. Hart, 65 Ga. 201
- Smith v. Haire, 58 Ga. 446