Nicholson et al. v. Eureka Lumber Co., 75 S.E. 730 (1912)
Supreme Court of North Carolina.
Sept. 11, 1912.

Appeal from Superior Court, Beaufort County; Webb, Judge.

Action by P. A. Nicholson and another against the Eureka Lumber Company. From a judgment for plaintiffs, defendant appeals. Affirmed.

HOKE, J.

Both parties claimed title to the land in controversy under Ruel Windley, deceased; the plaintiffs, by deed purporting to be from Sadie Delany and her husband, the said Sadie (nee Sadie Tooker) being the grandchild, and only heir at law of James Windley, to whom Ruel Windley had devised it. This deed, admitted in evidence over defendant's objection, was from Sadie Delany and her husband, Thomas, to P. A. Nicholson, plaintiff, bore date of December 12, 1908, and had been duly registered in Beaufort county on acknowledgment formally correct as follows: "State of Texas, McLennan County; I, Delia Sadler, a notary public in and for the said county of McLennan, do hereby certify that Thomas Delany and wife, Sadie Delany, personally appeared before me this day and acknowledged the due execution of the within deed of conveyance; and the said Sadie Delany, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto. Witness my hand and notarial seal this the 14th day of December, 1908. Delia Sadler, Notary Public, McLennan County, Texas."

[1] It was chiefly urged for error by defendant that there was no testimony amounting to legal evidence that the Sadie Delany, grantor in said deed, was the Sadie Delany (nee Tooker) who was the grandchild and heir at law of James Windley, deceased; but, on the facts in evidence, the position cannot be sustained. On this question a witness, Wm. Draper, testified in substance that James Windley was dead, and all of his children had died without descendants, except Lovey, who married one Capt. Tooker; that she died, leaving two children; that one was drowned in a mill pond, and Sadie Tooker, the surviving child, married Thomas Delany, and was now in Waco, Tex.; that he had received several letters from her, and answered them, which he had at home, the letters being about this land. There was other testimony from this witness as to this 100 acres, the land in controversy, which was the James Windley land, and as to its correct location. On cross-examination, the witness stated that this Sadie Tooker was named Sadie Delany before she ever left Bath, N. C.; that he had never seen her husband, and had never seen Sadie Delany write in her life; did not know her husband, except what was said about him in these letters; "that he answered the letters he received from Mrs. Delany, and received replies from her; that he got the replies out of the post office and had them at home now." A motion to strike out this testimony was properly overruled, and the identity of name, the subject-matter of the correspondence, and attendant circumstances, were in our opinion *731 amply sufficient to justify the conclusion, as stated, that the grantor in plaintiff's deed and Sadie Delany, the sole surviving grandchild and heir at law of James Windley, were one and the same person. Freeman v. Loftis, 51 N. C. 524; 1 Greenleaf (16th Ed.) § 43 a; Lawson, Presumptive Evidence, p. 309; 16 Cyc. p. 1055.

[2] It was further objected that the acknowledgment is invalid because taken by a woman. The only evidence that the officer taking this acknowledgment was a woman is the fact that

the certificate is signed, "Delia Sadler, a notary public in and for said County of McLennan," and in favor of the stability of titles and the regularity of judicial proceedings we might, if required, rest the case here on the position that it does not sufficiently appear that this notary was a woman; but, whether man or woman, we think it entirely safe to hold that, having been intrusted by the state of Texas with a notarial seal and having acted and professed to act in that state as a notary public, it will be assumed that she was rightfully appointed to that office, and that she acted rightfully in taking this probate, until the contrary is made to appear. As an open question this would be so from convenience, and the position is, we think, in accord with authority. Piland v. Taypor, 113 N. C. 1, 18 S. E. 70; Jones on Evidence (2d Ed.) § 41; Elliott on Evidence, § 103. The controversy between these litigants was really one of boundary, dependent largely on the correct location of plaintiffs' deeds: "Beginning on an oak at or near the head of Ashe Branch," and thence various specified courses and distances, inclosing the property. Under a comprehensive charge the jury have established the location as contended for by plaintiffs, and after careful examination we find no good reason for disturbing their verdict.

[3] The objection made that the court in its charge ignored or disregarded evidence tending to show that a proper allowance for the variation of the magnetic needle would give the land a somewhat different placing is without merit. It would seem from the testimony that the theoretical variation was controlled to some extent by an old and marked line, and, further, there are no data in the record from which the court could determine that any substantial change in the location would have resulted. Apart from this, a perusal of his honor's charge will disclose that he directed the jury to make the allowance for the variation which the facts would require; the language of the court in reference thereto being in part as follows: "The burden is upon the plaintiffs to satisfy you by the greater weight of the evidence that the defendant has cut within their lines, the course of which will be determined by the lines of

the grant and the proper variation for the difference in time."

We find no reversible error in the record, and the judgment in plaintiffs' favor is affirmed.

No error.

CLARK, C. J., did not sit in this case, being related to some of the parties, but on the collateral question as to whether the certificate of a notary public in Texas to a legal instrument is valid here or not, because it appears that she was a woman, observes that each state or country is sole judge of the qualifications for voters and for office therein, and that such matter cannot be inquired into in any other jurisdiction. In Great Britain the chief executive in two of its longest and most brilliant reigns--Queen Victoria and Queen Elizabeth--was a woman, and the same is true even of Russia, whose most brilliant reign was that of Catherine the Great. In six states of this country, and in many foreign nations, women have now equal suffrage with men, and usually the right of suffrage carries with it the right to hold office. While the women have the full right of suffrage in only six states of this country, they vote in school matters and on local assessment in most of the other states. These are matters for each jurisdiction to settle for itself, and when a certificate of a notary public is sent to this state from another under a notarial seal, our courts cannot go back of it to inquire into the qualifications of the officer, though it cannot be doubted that a notary public is a public office, for "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." Const. U. S. art. 4, § 1 (Comp. St. 1901, p. lxxxviii). At common law in England women held not only the office of queen, but that of sheriff and others. Some courts in this country (but none in England) have held that at common law she could not be a notary public. 29 Cyc. 1068, 1071, where the matter is fully discussed.

160 N.C. 33, 75 S.E. 730, Am.Ann.Cas. 1914C,202

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