

Campbell Law Review

Volume 1
Issue 1 1979

Article 10

1979

Property - Public Documents in the Hands of Private Collectors

Samuel R. Clawson

Follow this and additional works at: <http://scholarship.law.campbell.edu/clr>

Recommended Citation

Samuel R. Clawson, *Property - Public Documents in the Hands of Private Collectors*, 1 CAMPBELL L. REV. 179 (1979).

This Note is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.

PROPERTY—PUBLIC DOCUMENTS IN THE HANDS OF
PRIVATE COLLECTORS—*State v. West*, 293 N.C. 18, 235 S.E.2d
1950 (1977).

More Strings on Government Paperwork

INTRODUCTION

Institutional and private collectors have for many years played a major role in the continuing effort to collect and preserve valuable historical documents. A sizable number of these documents, estimated at 20-25%, are of public origin.¹ The decision of the North Carolina Supreme Court in *State v. West*² may well have a significant, if not inhibiting, effect upon the activities of these collectors. In *West*, the State of North Carolina successfully sued to recover two bills of indictment issued over two centuries ago from the possession of an individual collector. This note will review the court's decision in *West* and attempt to assess its impact.

THE CASE

On February 3, 1975, the State of North Carolina instituted a civil action to recover two bills of indictment, executed in 1767 and 1768, from defendant. The distinguishing feature of the indictments, other than their age, was that both were signed by William Hooper, who later signed the Declaration of Independence. In its complaint, the State alleged that it was the lawful owner and custodian of all public records, including court records, and that defendant was in wrongful possession of two of such public records. Plaintiff demanded that defendant return the documents to the State.³ Defendant answered alleging that he was in lawful possession of the two documents which he had acquired in good faith for value on the open market. Defendant further denied the State's interest in the two indictments.⁴

At trial in superior court, there was evidence that defendant, a

1. Record, vol. 293, at 63, *State v. West*, 293 N.C. 18, 235 S.E.2d 150 (1977). These percentages are based on the testimony of Charles Hamilton. Hamilton was qualified as an expert witness in the field of historical documents and manuscripts.

2. 293 N.C. 18, 235 S.E.2d 150 (1977).

3. *Id.* at 21, 235 S.E.2d at 151.

4. *Id.* at 21, 235 S.E.2d at 151-52. In the amended answer, the defendant interposed the defense of the statute of limitations in bar to the plaintiff's claim. On appeal, the defendant did not rely on this defense. *Id.* at 24-25, 235 S.E.2d at 153-54.

North Carolina resident, purchased the two indictments from the Charles Hamilton Galleries, Inc. in New York City in 1974. Prior to this purchase, both individual and private institutional collectors had possessed the documents for an indeterminable period of time.⁵ The State offered evidence that the two documents had been filed in the King's Court for the District of Salisbury, North Carolina, under the sovereign authority of King George III. Neither party offered direct evidence as to circumstances of how or when the two documents were removed from the custody of the court.

Upon denial of a motion for summary judgment by the State, the superior court dismissed the action with prejudice. The court held that the State had failed to rebut the presumption of good title in defendant who had acquired the documents in good faith. In effect, the court held the State must prove that the documents had left its possession in an irregular manner.

On appeal, the North Carolina Court of Appeals reversed the judgment of the superior court.⁶ The court of appeals held that upon evidence by the State that the documents had been docketed in the King's Court, it followed as a matter of law that the documents were required to be retained in the custody of the sovereign and could not be removed except upon authority of the sovereign. Therefore, in the absence of any evidence by defendant that the State had authorized removal or had abandoned the documents, the State was entitled to recover possession.

The North Carolina Supreme Court affirmed the decision of the court of appeals holding that the State established its right to possession of the two indictments upon proof of title as successor in sovereignty to King George III without proof to the contrary that the sovereign or its successor intentionally had abandoned or lawfully transferred the documents.

BACKGROUND

Despite the fact that historical documents of public origin have been traded openly and commonly among private collectors, there are only a few cases reported in which a state has claimed the right to recover such documents held by individuals or private institu-

5. *Id.* at 23-24, 235 S.E.2d at 153. The Charles Hamilton Gallery as agent for Robert Loy of East Bend, N.C., sold the documents to defendant. Loy acquired the two indictments from J.H. Knight of Winston-Salem, N.C., and from the Greensboro Historical Museum in 1972. There was no evidence presented establishing possession prior to the 1972 transactions. *Id.*

6. *State v. West*, 31 N.C. App. 431, 229 S.E.2d 826 (1976), *aff'd*, 293 N.C. 18, 235 S.E.2d 150 (1977).

tions.⁷ In two of these cases, the respective courts considered the public or private nature of the documents and its effect on the government's claim to the documents.

In *United States v. First Trust Company of St. Paul*,⁸ the First Trust Company, as executor, brought an action to quiet title to certain documents written by William Clark of the famed Lewis and Clark expedition. The United States intervened claiming superior title by virtue of the fact that the documents were written during an expedition sponsored by President Thomas Jefferson.⁹ The United States Court of Appeals for the Eighth Circuit noted the dichotomy of law relating to public and private documents.

If Clark's notes are the written records of a government officer executed in the discharge of his official duties, they are public documents and the ownership is in the United States. The government concedes that possession of the res by [. . . viz, a private individual] affords a presumption of ownership and that burden of proof is upon the government to establish superior title. Accordingly, if the government established that these were the written records of a public official made in discharge of the duties of his office, the government should have prevailed.¹⁰

The court of appeals held that there was sufficient evidence for the district court to find that the documents were the private papers of Clark "unofficial in character and therefore not the work product of a government representative engaged in the performance of his duties."¹¹ In holding that the government was not the owner of the documents and therefore not entitled to possession, the court acknowledged that had the documents been public in nature the result would have been opposite.

In *Manning v. Anderson Galleries, Inc.*,¹² the court noted the public or private nature of the documents and its effect on the state's claim. In *Manning*, the State of Georgia intervened in a suit between the executor of Manning's estate and a commercial dealer

7. *First Trust Co. v. Minnesota Historical Society*, 146 F. Supp. 652 (D. Minn. 1956), *aff'd.*, 251 F.2d 686 (8th Cir. 1958); *Manning v. Anderson Galleries, Inc.*, 130 Misc. 131, 222 N.Y.S. 572 (S. Ct. 1927); *Mayor of New York v. Lent*, 51 Barb. 19 (N.Y. Sup. Ct. 1868); *e.g.*, *De La O v. Acoma*, 1 N.M. 226 (1857) (The court upheld a claim by the Pueblo Indians to recover possession of a deed executed by the sovereign of Spain granting certain lands to the Indians. The defendant had offered to sell the deed to the Indians at what the court considered an extortionate price.)

8. 146 F. Supp. 652 (D. Minn. 1956), *aff'd.*, 251 F.2d 686 (8th Cir. 1958).

9. *Id.* at 654.

10. 251 F.2d 686, 688 (8th Cir. 1958).

11. *Id.* at 690.

12. 130 Misc. 131, 222 N.Y.S. 572 (S. Ct. 1927).

hired by the estate. The estate delivered to Anderson Galleries a will which the State of Georgia had probated in 1771. The historical significance of the will was that Button Guinnett, one of the signers of the Declaration of Independence, had signed the attestation clause of the will. The State claimed title and the right of possession of the will based on its contention that the will was a public document and that the State had never voluntarily relinquished title.¹³ The Supreme Court of New York held that the State of Georgia did not prove its claim of superior title based on the contention that it was a public document.¹⁴ The court held that the common practice during the colonial times was for the state to record the will and to return the document "as private papers to their owners."¹⁵ Thus without evidence of either the authority of a statute or a legal custom granting a right to the state to retain a private paper in public custody, the State of Georgia could not establish the superiority of title over that of the estate.

In *Mayor of New York v. Lent*,¹⁶ plaintiff brought suit to recover possession of a letter written in 1785 by George Washington to the Mayor of New York City. Defendant bought the letter from the estate of a distinguished book collector. In holding for plaintiff, the court allowed that the very nature of the document gave notice to defendant that it was the property of the City of New York. The court stated:

Its style, address, and responsive character to a legislative act, should of itself be regarded as having imparted notice to all, that from the moment of its reception and sending it became the property of the corporation to whom it was addressed. Unlike other personal property, which ordinarily possesses but little, if any distinctive mark which might place individuals upon inquiry, this letter, so written, in such terms, and so addressed, held [. . . viz, the current possessor] to constantly recurring notice of its ownership by the corporation.¹⁷

The court in *Lent* further acknowledged that the defendant failed to explain how the document lawfully entered the hands of a private individual. Without a satisfactory explanation of legal alienation by the city, the court upheld the right of the city to possession and ownership based on the evidence of original title in the city.¹⁸

13. *Id.* at ____, 222 N.Y.S. at 574.

14. *Id.* at ____, 222 N.Y.S. at 577.

15. *Id.* at ____, 222 N.Y.S. at 576.

16. 51 Barb. 19 (N.Y.S.Ct. 1868).

17. *Id.*

18. *Id.*

In drawing from the holdings and the dicta of the above-mentioned cases, several factors must be established in order for a state to maintain a successful action against a private holder of an historical document. In the first instance, the document claimed by the state must be a public rather than private document. In proving that the document is public, the state establishes its priority of ownership or title. Upon proof of title in the state, the burden is then on defendant to show that his possession was obtained lawfully. In *First Trust Co.* and *Manning*, the governmental body failed in the first instance to establish that the documents in question were public documents. In *Lent*, the public nature of the document was established by its very style and character. Nonetheless, defendant still could have prevailed upon proof that he lawfully acquired the document. However, defendant failing to prove the same, the plaintiff was awarded possession of the document.

ANALYSIS OF THE CASE

Writing for the majority in *State v. West*, Justice Lake stated the issue before the court: "Our concern in the determination of this appeal is solely with the determination of the property right of the State in the two documents in question."¹⁹ The court addressed two issues in determining the rights of the State. The first issue was whether the State had established its priority in title to the two indictments.²⁰ The second issue, to be addressed if the State did establish its title, was whether the State had abandoned the documents or authorized the custodian of the documents to transfer possession to another.²¹

One of the problems the court faced was the fact that the documents were issued during the period of King George III's sovereignty over North Carolina. In order to prove its priority in title, the State first had to establish title to the indictments in the sovereign, King George III. Then, the State had to establish that title to the indictments passed to the State of North Carolina as successor in sovereignty. In establishing King George's title, the court looked to the legislative acts of the Colonial Assembly of North Carolina which authorized the appointment of clerks to the various colonial superior courts and whose duties included the safekeeping of the court's records.²² The court in *West* recognized that once the clerk

19. 293 N.C. at 25-26, 235 S.E.2d at 154.

20. *Id.* at 32, 235 S.E.2d at 158.

21. *Id.*

22. Acts of the Colonial Assembly of North Carolina, 1776 (2d Session, 1776), c.1.

of the court filed the documents, the indictments were "no longer the private property of the draftsman, but became part of the records of the King's Court and, therefore, property of the King."²³

With title to the indictments established in King George III as sovereign of colonial North Carolina, the court then turned its attention to the issue of whether title to the documents passed to the State of North Carolina. In holding that such title did pass, the court considered the nature of sovereignty in light of the usurpation of the sovereignty of the King by the rebel colonials. The court noted that a "change of sovereignty transfers but does not alter the right of the former sovereign to his official, as distinguished from his personal property."²⁴ The court reasoned that sovereignty and, in turn, the rights accorded to sovereignty are constant even in the face of changes in actual governing body of a particular state. When one government replaces another, whether by constitutional or violent means, the new government succeeds in title to the public property of the former government.²⁵ Thus in succeeding to the property of the King, the State of North Carolina succeeded in title to the two indictments in question in the *West* case.

With title established in the State of North Carolina, the court then considered whether the defendant had sustained the burden of his affirmative defense of abandonment. Quoting from *Church v. Bragaw*,²⁶ the court outlined the elements of abandonment.

The word 'abandonment' has a well defined meaning in the law [. . .]. It is the giving up of a thing absolutely, without reference to any particular person or purpose, and includes both the intention to relinquish all claim to and dominion over the property and

[T]he Chief Justice is hereby empowered to appoint experienced and Discreet Clerks of the Superior Court; who shall each give bond, with good and sufficient Security, to our Sovereign Lord the King, his Heirs, and Successors, in the Penalty of Two Thousand Pounds, for the Safekeeping of the Records, and Faithful Discharge of his Duty in Office.

Id. at s.5.

23. 293 N.C. at 26, 235 S.E.2d at 155.

24. *Id.* at 27, 235 S.E.2d at 155.

25. *E.g.*, *United States v. Huckabee*, 83 U.S. 414 (16 Wall. 1873) (where the Supreme Court stated: "Complete conquest . . . carries with it all the rights of the former government . . . , the conqueror . . . becomes the absolute owner of the property conquered from the enemy, nation, or state."); *United States v. McRae*, L.R. 8 Eq. 69 (1869) (where the English court held in a suit by the U.S. to recover funds held by an English bank for the conquered Confederate States of America that any government succeeding to another government regardless of method succeeds to all the public property of the former government).

26. 144 N.C. 126, 56 S.E. 688 (1907). *E.g.*, 1 AM. JUR. 2d *Abandoned, Lost, or Unclaimed Property* § 36 (1962).

the external act by which this intention is executed, and that is, the actual relinquishment of it, so that it may be appropriated by the next comer.²⁷

It was in light of this definition that the court considered the evidence presented by the defendant in the determination as to whether the affirmative defense of abandonment had been sustained.

The court noted that nothing in the record indicated a manifestation of intention by the King of England or the State of North Carolina to abandon the documents.²⁸ The sovereign and its successor to sovereignty owned the documents and only they could form and manifest the intent to abandon. The Clerk of the Superior Court of Justice of the Salisbury District, or his successor, as mere custodian of the documents was incompetent to manifest the requisite intent.²⁹ In discounting the defendant's theory that the State had discarded the documents on the premise that they were no longer of any consequence, the court felt that it was more probable that the indictments had been removed intentionally after the value of Hooper's signature was recognized.³⁰ The court noted that other indictments of the same period remained in possession of the State indicating that there had not been wholesale discarding of documents in the Salisbury district.³¹

The State having sustained the burden of proving its title to the two indictments and the defendant having failed to carry the burden of proof as to abandonment or lawful transfer by the State, the court affirmed the decision of the court of appeals holding that "the State had established its right to possession to the documents."³²

CONCLUSION

With the decision in *State v. West*, the State of North Carolina unequivocally established its right to claim and recover public documents held by individuals or private institutions. In future actions the state is in the favorable position of merely having to prove its original title in the document. This would appear from the opinion

27. 144 N.C. at 129, 56 S.E. at 689-90.

28. 293 N.C. at 30, 235 S.E.2d at 157.

29. *Id.* at 32, 235 S.E.2d at 158. As agent of the sovereign, the intentional discarding of the documents would not constitute abandonment unless the sovereign gave prior authorization, or the sovereign subsequently ratified the unauthorized act. *Id.*

30. *Id.* at 31, 235 S.E.2d at 157.

31. *Id.*

32. *Id.* at 32, 235 S.E.2d at 158.

in *West* to amount to a historical exercise of showing that the document once was owned by the state. On the other hand, the holder of the document is in the unenviable position of having to prove abandonment or lawful transfer of title by the state. Thus without substantial evidence indicating abandonment or transfer, the defendant invariably will fail to sustain the burden and, therefore, lose possession of the document.

As the court in *West* alluded in several instances, it is a matter for the General Assembly to alleviate any inequities, real or perceived, arising from the decision.³³ Justice Copeland noted in his dissent in *West* that the probable effect of the decision will be to "drive documents and records underground and out of the State."³⁴ In order to prevent this predicted result, the legislature should address the problem and seek to form some manner of accommodation with private collectors.

Samuel R. Clawson

33. *Id.* at 25, 33, 235 S.E.2d at 154, 158.

34. *Id.* at 33, 235 S.E.2d at 159. Justice Copeland would reverse on the grounds that the State failed to carry the burden of proof in establishing title to the documents. *Id.*