Pickering Vs. Lomax

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Appeal No. : 145 U.S. 310

Appellant : Pickering

Respondent : Lomax

Judgement :

Pickering v. Lomax - 145 U.S. 310 (1969)
U.S. Supreme Court Pickering v. Lomax, 145 U.S. 310 (1892)

Pickering v. Lomax

No. 342

Argued and submitted April 27, 1892

Decided Hay 16, 1892

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ERROR TO THE SUPREME COURT

OF THE STATE OF ILLINOIS

SYLLABUS

The Treaty of Prairie du Chien, 7 Stat. 320, made grants of lands to certain Indians upon condition that they should never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States. One of those grantees conveyed his land in 1858 by a deed which had endorsed upon it the approval of the President, given in 1571. The state court of Illinois held that the Indian had no authority to convey the land without permission from the President previously obtained.

HELD

(1) That this ruling of the state court raised a federal question.

(2) That the permission thus given by the President to the conveyance, after its execution and delivery, was retroactive, and was equivalent to permission before execution and delivery, as no third parties had acquired an interest in the lands.

The Court stated the case as follows.

This was an action of ejectment brought by Pickering against John A. Lomax and William Kolze to recover two parcels of land in Cook County, Illinois, which had originally been granted by the United States to certain Indians under the Treaty of Prairie du Chien of July 29, 1829. A jury was waived, the case tried by the court, and a judgment rendered in favor of the defendants. The plaintiff thereupon sued out a writ of error from the Supreme Court of Illinois, which affirmed the judgment of the lower court.

Upon the trial, in order to establish his title, the plaintiff offered in evidence article 4 of the Treaty of Prairie du Chien, 7 Stat. 321, which, so far as the same is material, reads as follows:

"There shall be granted by the United States to each of the following persons (being descendants from Indians), the following tracts of land, *viz.:* to Claude Laframboise, one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816; . . . to Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins, above and adjoining the tract herein granted to Claude Laframboise. . . . The tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States."

Plaintiff then offered in evidence a copy of the patent issued December 289, 1843, signed by President Tyler under the provisions visions of the above treaty, granting the lands, including those in litigation, to Alexander Robinson for himself and children. The patent also contained the provision:

"But never to be leased or conveyed by him, them, his, or their heirs to any person whatever without the permission of the President of the United States."

The next instrument in plaintiff's chain of title was a decree in a suit in partition instituted February 22, 1847, in the Cook County Court of Common Pleas between Alexander Robinson and his children, and evidence to show that the lands in question were set out to Joseph Robinson, one of the children.

The following deeds were then put in evidence:

Deed dated August 3, 1858, from Joseph Robinson and wife to John F. Horton, which had endorsed upon it the approval of the President of the United States, which approval was dated January 21, 1871.

Deed from Leon Straus, administrator, etc., of the estate of John F. Horton, deceased, to Moses W. Baer, dated October 6, 1863, and made in pursuance of an order of sale by the County Court of Cook County for payment of debts.

Several intermediate conveyances of the premises down to a deed dated November 10, 1866, from Henry H. Dyer and wife to Aquila H. Pickering, the plaintiff.

The defendant introduced no evidence, but at the close of the plaintiff's case moved that the plaintiff's testimony be

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excluded, and the case dismissed, upon the ground that the deed of August 3, 1858, from Joseph Robinson and wife to John F. Horton was made in direct violation of the terms of the patent as to obtaining the approval of the President to the conveyance.

This motion was sustained, the court being of the opinion that Robinson had no authority to convey without obtaining the permission of the President beforehand; that the subsequent sanction obtained by persons claiming title under Robinson was invalid, and that even if such sanction would have the effect of giving force to the deed, yet as the grantee under that deed was dead, the administrator's deed would not carry any title to the purchaser from the administrator, but that if any title accrued by reason of the sanction of the President, it would be to the heirs of Horton.

Thereupon the court rendered judgment for the defendant, which was affirmed by the Supreme Court of Illinois, 120 Ill. 293, and the plaintiff sued out a writ of error from this Court.

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MR. JUSTICE BROWN, after stating the facts in the foregoing language, delivered the opinion of the Court.

This case turns upon the question whether the act of Congress prohibiting Indian lands from being conveyed except by permission of the President is satisfied by his approval endorsed upon a deed thirteen years after its execution and after the death of the grantee and the sale of the land by his administrator.

1. A preliminary question is made by the defendant in error as to the jurisdiction of this Court. By Rev.Stat. 709, our authority to review final judgments or decrees of

the highest

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courts of a state extends to all cases

"where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity."

The argument of the defendant in this connection is that as the title to the lands did not pass by the treaty, which contained only an agreement to convey, the proviso ceased to be operative when the patent was issued in 1843; that the same restriction upon alienation contained in the patent was one which the Supreme Court of Illinois had considered, and that their construction that no title passed from Robinson and Horton for want of permission of the President of the United States could not be reviewed by this Court. There are two sufficient answers to this contention: first, the proviso in the treaty did continue by its express terms to be operative, so long as the land was owned by the grantees or their heirs, and the object of carrying this proviso into the patent was merely to apprise intending purchasers of the restrictions imposed by the treaty upon the alienation of the lands; second, the case raised the question of the validity of an authority exercised under the United States, *viz.,* the authority of the President to approve the deed thirteen years after its execution and the decision of the Supreme Court of Illinois was against its validity, so that the case is directly within the words of the statute.

2. So far as the main question is concerned, we know of no reason why the analogy of the law of principal and agent is not applicable here -- *viz.,* that an act in excess of an agent's authority, when performed, becomes binding upon the principal if subsequently ratified by him. The treaty does not provide how or when the permission of the President shall be obtained, and there is certainly nothing which requires that it shall be given before the deed is delivered. *Doe v. Beardsley,* 2 McLean 412. It is doubtless, as was said by the Supreme Court of Mississippi in *Harmon v. Partier,* 12 Sm. & Marsh. 425, 427, "a condition precedent to a perfect title" in the grantee, but the neglect in this case to obtain the

approval of the President for thirteen years only shows that for that length of time the title was imperfect, and that no action of ejectment

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would have lain until the condition was performed. Had the grantee, the day after the deed was delivered, sent it to Washington and obtained the approval of the President, it would be sticking in the bark to say that the deed was not thereby validated. A delay of thirteen years is immaterial, provided, of course, that no third parties have in the meantime legally acquired an interest in the lands.

If, after executing this deed, Robinson had given another to another person with the permission of the President, a wholly different question would have arisen. But so far as Robinson and his grantees are concerned, the approval of the President related back to the execution of the deed and validated it from that time. As was said by this Court in *Cook v. Tullis,* 18 Wall. 332, 85 U. S. 338 :

"The ratification operates upon the act ratified precisely as though authority to do the act had been previously given, except where the rights of third parties have intervened between the act and the ratification. The retroactive efficacy of the ratification is subject to this qualification. The intervening rights of third persons cannot be defeated by the ratification."

See also *Fleckner v. Bank of the United States,* 8 Wheat. 338, 21 U. S. 363 . In *Ashley v. Eberts,* 22 Ind. 55, a similar act of the President approving a deed was held to relate back and give it validity from the time of its execution, so as to protect the grantee against a claim by adverse possession which arose in the interim between its date and the confirmation. "Otherwise," said the court, "a mere trespasser, by taking possession after a valid sale and before its consummation, would have power to defeat a *bona fide* purchaser." This case was approved in *Steeple v. Downing,* 60 Ind. 478, 497. In *Murray v. Wooden,* 17 Wend. 531, a conveyance of land by an Indian which, subsequent to its date, had been ratified by a certificate of approbation of the surveyor general in the form prescribed by law was held to be inoperative upon the ground that previous to the granting of

such certificate, the Indian had conveyed to a third person and the deed to such person had been approved in the mode prescribed by law previous to the endorsement of the certificate of approbation of the deed first executed. This was a clear case of rights intervening

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between the execution of the first deed and its approval. In *Smith v. Stevens,* 10 Wall. 321, the right to convey the lands reserved for the benefit of the Indians was expressly vested in the Secretary of the Interior upon the request of anyone of the Indians named, and it was held that, there being no ambiguity in the act which had provided the way in which the lands could be sold, by necessary implication it prohibited their being sold in any other way. "The sale in question not only contravened the policy and spirit of the statute, but violated its positive provisions." In that case, there was no pretense that the requirements of the act had been fulfilled.

Nor do we consider it material that the grantee had in the meantime died, since, if the ratification be retroactive, it is as if it were endorsed upon the deed when given, and inures to the benefit of the grantee of Horton, the original grantee, not as a new title acquired by a warrantor subsequent to his deed inures to the benefit of the grantee, but as a deed, imperfect when executed, may be made perfect as of the date when it was delivered. This was the ruling of the court in *Steeple v. Downing,* 60 Ind. 478.

The object of the proviso was not to prevent the alienation of lands *in toto,* but to protect the Indian against the improvident disposition of his property, and it will be presumed that the President, before affixing his approval, satisfied himself that no fraud or imposition had been practiced upon the Indian when the deed was originally obtained. Indeed, the record in this case shows that the President did not affix his approval until affidavits had been presented showing that Pickering was the owner, and that the amount paid to Robinson was the full value of the land, and that the sale was an advantageous one to him.

We are constrained to differ with the Supreme Court of Illinois in its view of the treaty, and to hold that, so far as this question is concerned, plaintiff's chain of title contained no defect.

The judgment of the supreme court is therefore

Reversed, and the case remanded for further proceedings not inconsistent with this opinion.