

Calhoun'S Lessee vs. Dunning

Calhoun'S Lessee vs. Dunning

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Court : US Supreme Court

Decided On : 1792

Appeal No. : 4 U.S. 120

Appellant : Calhoun'S Lessee

Respondent : Dunning

Judgement :

CALHOUN'S LESSEE v. DUNNING - 4 U.S. 120 (1792)

U.S. Supreme Court CALHOUN'S LESSEE v. DUNNING, 4 U.S. 120 (1792)

4 U.S. 120 (Dall.)

Calhoun's Lessee

v.

Dunning. [[Footnote 1](#)]

Supreme Court of Pennsylvania.

April Term, 1792

EJECTMENT. The inception of the plaintiff's title depended upon an extract from the record of licences, or grants, by Blunston, dated March 1734-5, which was merely a minute in these words 'John Calhoun 200 acres on Dunning's run, called

the Dry Spring, between Jacob Dunning and Ezekiel Dunning.' By the field notes of Cookson, a surveyor, it appeared that there was a survey of the land on the 22d of March 1743-4, for Robert Dunning; but a memorandum was afterwards made by one Morse, a clerk to the surveyor, 'that the land was claimed by the heirs of John Calhoun.' John Calhoun having entered a caveat, the decision of the board of property was pronounced, on the 24th of November 1766, setting forth, 'that under Blunston's license. J. Calhoun took possession and cleared three acres, built a cabin, and returned to Chester county, where he dwelt: that in 1743 one Armstrong got a warrant, but was told by Dunning that the land belonged to Calhoun, of whom he had purchased it: that afterwards Dunning took out a warrant in his own name, and got a survey made, on which a caveat was entered against him: that an ejectment was brought, in which Dunning lost the possession; that Dunning then purchased Armstrong's warrant, got a survey upon it, and now

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claimed a patent: but the board of property ordered the patent to issue to Calhoun.' By will, dated the 19th of September 1752, John Calhoun devised the premises to Rebecca Calhoun, who conveyed the same to James Calhoun, the lessor of the plaintiff, by deed the 20th July 1763; and he, having made a re-survey, on the 5th of September 1788, obtained a patent on the 3d of April 1789. The defendant's claim depended on the following facts: In 1753 Dunning lived on the premises and reaped corn on it so late as 1778. In 1779, one Caruthers was making a fence on part of the land; he continued to live there at the time of the re-survey in 1788; and he was considered as the owner by purchase from Calhoun. But in 1764, a survey was made for Dunning, under Armstrong's warrant, which, as the surveyor affirmed, left the disputed land entirely out of the lines. In an action of trespass, between Dunning and Caruthers, (plea, liberum tenementum) there was a reference, in the year 1783, on which it was awarded, and the award affirmed by the Court, that the line should be run between the parties, so as to leave the disputed land, in the possession of the plaintiff, Dunning. 1st. It was objected, that the record of the action of trespass, could not be read on the trial of the present ejectment, as it was not between the same parties. But, it was answered, that

Caruthers, the defendant then, was now the person really interested, as owner of the land; that Calhoun was merely a trustee; and that, as an action might be brought in the name of the cestui que trust, 1 Dall. Rep. 72. the judgment ought to be admitted. And, by the COURT: We can never acquiesce, in an attempt, so manifestly calculated to evade the truth and justice of the case. Shall it be in the power of a party, by suppressing a deed; or by employing the name of a trustee; to avoid the legal effect of a judgment rendered against him? In the action of trespass, Caruthers pleaded liberum tenementum, as to the very lands now claimed by Calhoun; and Calhoun has never controverted his right. It is plain, therefore, that Calhoun's name is now employed, for the use of Caruthers; and that the parties are really, though not nominally, the same, in both suits. Objection over-ruled. 2d. In the charge to the jury, it was stated,

THE COURT. By the COURT; Blunston's licences have always been deemed valid; and many titles in Pennsylvania depend upon them. The equitable right acquired by the lessor of plaintiff under a license, has been perfected, by a survey, and patent; so that he clearly possesses a legal title to the land in dispute. On the other hand, the defendant has no office right, but rests his pretensions, on an early possession, the exclusion of the disputed

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land in the re-survey of 1764, and the award and judgment, in the action of trespass. Of the equitable circumstances, the jury will judge, with this remark from the Court; that a mere improvement right, ought never to be rendered effectual in favour of a settler, when it commences subsequent to the existence of the legal right, regularly vested in another.

The great objection, however, to the plaintiff's recovery, arises from the award and judgment. To be sure, an award cannot give a right to land; but a report of referees will settle a dispute about land, either in an ejectment, or in an action of trespass. In the case of Fox's Lessee v. Franklin, a similar report has been made, and affirmed. Indeed, such a report is more operative than a verdict: for, a verdict in ejectment is not conclusive; but when parties chuse to adjust their disputes

amicably, they generally agree, that the award shall be final; and, under such an agreement, neither of them can hope again successfully to agitate the same points.

Under this charge, the plaintiff suffered a nonsuit. [[Footnote 2](#)] Footnotes

[Footnote 1](#) Decided at Carlisle, in Cumberland county, Nisi Prius, 11th May 1792, before SHIPPEN and BRADFORD, Justices.

[Footnote 2](#) Decided at Nisi Prius, Carlisle, Cumberland county, in May 1792.

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