

Marshall Vs. Currie

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Court : US Supreme Court

Decided On : 1807

Appeal No. : 8 U.S. 172

Appellant : Marshall

Respondent : Currie

Judgement :

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ERROR TO THE DISTRICT

COURT OF KENTUCKY

SYLLABUS

Loose and vague expressions in an entry of land in Kentucky may be rendered sufficiently certain by the reference to natural objects mentioned in the entry and by comparing the courses and distances of the lines with those natural objects.

Error to the District Court of Kentucky in a suit in chancery in which the plaintiffs in error were the original complainants. The bill complained that the defendant had obtained an elder patent for land covered by the complainants' elder entry, and prayed that the defendant might be compelled to convey to them the legal title.

The only question was whether the entry, under which the complainants claim described the land with sufficient certainty. It was in these words:

"Number two hundred and forty one, Thomas Marshall enters two thousand acres of land on part of a military warrant, number one thousand three hundred and forty-nine, beginning on the bank of Green River, two hundred poles above a beech tree marked D.L. standing on the bank of the river, a few poles below the mouth of a branch, and a small distance above the place called Glover's, upon the opposite side of the river, thence running south seventy-five degrees east one thousand poles, thence north, twenty-five degrees west, and from the beginning up the meanders of the river, and binding thereon so far that a line parallel to the first shall include the quantity. Entered August the sixth, one thousand seven hundred and eighty-four."

The material facts found by the jury, according to the practice of Kentucky, were that the complainants' entry was made on 6 August, 1784, and the defendant's on the day following. That the defendant's patent bears date on 14 June, 1787, and the complainants' patent on 3 June, 1796, and that both patents include part of the same land. That the Green River and the place called Glover's were notorious by those names before and at the time of the complainants' entry. That the watercourse delineated on the plat by the name of Big Branch is a branch running

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into Green River, 596 poles above the place called Glover's and on the opposite side of the river, and existed at the time of the entry. That the beech tree represented in the plat stands on the bank of Green River 18 poles below the mouth of the Big Branch,

"and is a very conspicuous tree, and that the letters D.L. were marked at or near said tree upon a beech about November or December, one thousand seven hundred and eighty three;"

that the beginning corner of the complainants' survey is on the bank of Green River 200 poles next above the said beech tree marked on the plat. That two other watercourses empty into the Green River, one called Clover Lick Creek, below the Big Branch and nearer to Glover's; the other called Embro's Spring Branch, above the Big Branch, both of which are laid down on the connected plat. The jury also found that there is a small branch or drain about 250 yards long, running all the year, between Clover Lick Creek and the lower line of the plaintiff's survey, besides those represented on the plat. That beech abounds all along the bank of Green River opposite to Glover's station and for a considerable distance below and above, except immediately above and below the mouth of the small branch or drain -- and that there was no proof that there was any beech tree marked D.L. standing on 6 August, 1784 (the date of the complainants' entry) upon the bank of Green River a few poles below the mouth of a branch, as described in the complainants' entry.

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JOHNSON, J. delivered the opinion of the Court.

In the argument of counsel in this case, the only point which it has been thought necessary to dwell upon is the legal certainty of the complainants' entry. Pursuing the principle that a plaintiff must recover upon the strength of his own title, and not the weakness of his adversary's, the defendant has not entered into any discussion relative to the sufficiency of his claim to the land in question. The circumstances constituting what in the courts of Kentucky are denominated the calls of the complainants' entry are Glover's Station, Green River, a marked tree on the bank of the river, and a branch emptying itself into the river. The two former are notorious, and the inquiry is can the others be sufficiently ascertained with relation to them. We are of opinion that they can. The only objection that can be

made to the

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identity of the tree and branch with relation to which the complainants have made their survey, and the actual distance of those objects above Glover's Station, the uncertainty attendant upon calling for a tree of which a large number grow along the banks of the river, and the existence of another stream emptying itself into the same river nearer to Glover's Station, and which it is contended will answer the call.

These difficulties, we are of opinion, are all removed by considering the courses called for by the complainants with relation to the courses of the river.

Above Glover's Station, and until you reach the bend of the river above which the complainants' entry is surveyed, the course of the river is east and west. It there assumes a different direction, and its course is north and south. By surveying the entry at the point where the complainants have located their land, it assumes a shape adapted to the course of the river. At any point below where it is situated, and until you reach the place called Glover's Station, it is impossible that it can be located. This circumstance is sufficient in our opinion to establish the branch which was called for, as it is the first you meet with above the bend; and when that is ascertained, there is no longer any difficulty in locating the complainants' land.

The jury finds that the tree called for is very conspicuous, and that previous to the date of the complainants' entry, a tree very near the spot where that is situated was marked D.L. Although a tree of a particular species at a distance not precisely limited may be uncertain where that tree abounds, the impression of a certain mark upon such a tree is a sufficient identification, when accompanied with the other circumstances of this case, which might have been resorted to by a subsequent locator to prove the identity of this tree.

In giving this opinion, the Court is not uninfluenced by an anxiety to save the early estates acquired in that country. Such was the laxity of the rules upon which the rights of individuals depended under the land laws of Virginia that this Court feels

a strong sense of the necessity

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of liberality in deciding upon the validity of entries.

The Court therefore reverses the decree of the district court and decrees a conveyance to be executed by the defendant to the complainants of that part of the land contained in his patent which is included in the complainants' survey, and that each party pay their own costs.

Decree reversed.

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