

Smith Vs. Maryland

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Court : US Supreme Court

Decided On : 1810

Appeal No. : 10 U.S. 286

Appellant : Smith

Respondent : Maryland

Judgement :

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ERROR TO THE COURT OF

APPEALS OF MARYLAND

SYLLABUS

A writ of error lies to the highest court of a state in a case where the question is whether a confiscation under the law of the state was complete before the treaty of peace with Great Britain.

By the confiscating acts of Maryland, the equitable interests of British subjects were confiscated without office found or entry or other act done, and although such equitable interests were not discovered until long after the peace.

Error to the Court of Appeals of the State of Maryland, being the highest court of law and equity in that state, and which affirmed the decree of the Chancellor of Maryland.

The facts of the case appear to be correctly stated in the decree of the chancellor, which was as follows:

"The material facts appearing in this case are that 4 July, 1774, the lands mentioned in the bill were conveyed by Anne Ottey, heir at law of William Ottey, to William Smith, one of the defendants, and that an act of assembly passed in June, 1779, for recording the deed of conveyance which had not been recorded within the time limited by law. That on 5 July, 1774, Smith executed a bond of conveyance to Anne Ottey, widow of William Ottey, and that at the time of passing the act of October, 1780, c. 45, 'to seize, confiscate and appropriate all British property within this state,' he held the said lands under the said deed, subject to the terms of the said bond of conveyance and in trust for the said Anne Ottey, then and now a British subject, and that the lands are now held in the same manner. That on 27 April, 1801, the complainants, Carroll and Maccubbin, gave information of this property being so held to the state's agent, and claimed the composition held out by law on the said information. That on 22 February, 1803, the governor and council agreed to sell the state's right to the said lands to the said Carroll and Maccubbin. That a survey was made and a plat returned and bond given for the purchase money on 30 April, 1803."

"The object of the bill is to compel the defendant Smith to produce in this Court all deeds, papers, and writings respecting the said land and to convey the

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same to the said Carroll and Maccubbin, and for general relief,"

&c.;

"The positions relied on by the complainants in their notes are that the property so held in trust for a British subject, or in which a British subject had an equitable interest but no legal estate, was liable to confiscation under the laws of this state, and was confiscated by it, and that there is nothing in any treaty between the United States and Great Britain to protect the said property or to prevent its being liable to its claim."

"For the defendants it is contended that the 6th article of the treaty of 3 September, 1783, declaring that there should be no future confiscations made had the effect of preventing any transfer by the executive of property which might have been confiscated, but was only legality, and not actually transferred from private to public use or from the possessor to the state, and that such transfer by the executive must be considered as a future confiscation or setting apart for the public property the use of which an individual had, and therefore contrary to the stipulations of the treaty. And it is also contended that under the 9th article of the British treaty of 19 November, 1794 (by which it was agreed that the British subjects who then held lands in the territories of the United States should continue to hold them according to the nature and tenor of their respective estates and titles therein), this property is protected, being then held by the defendant Smith as agent of and for Anne Ottey, a British subject, and therefore then held by her."

"In a case of this nature, where an important question as to the operation of a treaty arises, it would be satisfactory to the chancellor to have the opinion of a court of law or its judges. The late change in the judiciary has, however, rendered the obtaining such an opinion less practicable than it formerly was, and it appears also that the most material ground taken by the defendants has been already decided on by the general court in the case of *Norwood's Lessee v. Owings*. "

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"A number of points were decided in that case, but the one most applicable to the present question was the determination by the court or the opinion expressed that

the State of Maryland, by its commissioners, was in possession of all British property within the limits of the state under and by virtue of the Act of Confiscation, October, 1780, c. 45, and the act of the same session, c. 49, to appoint commissioners, &c.;, and the possession of the said land was in the State of Maryland at the time the said Edward Norwood obtained his escheat warrant, and that no British subject could hold land in the State of Maryland on 19 November, 1794, the time when the treaty was entered into between Great Britain and the United States."

"It is not necessary at this time to declare any opinion as to the intent and meaning of the 9th article of that treaty or to ascertain to what part of the territories of the United States it might have applied. It is sufficient to observe that according to the opinion of the general court, standing as yet unreversed, it could not apply to this state."

"There is nothing in this case to induce the chancellor to determine contrary to that opinion, and if the holding of the land by Smith for Anne Ottey was a holding by her in October, 1780, and occasioned its confiscation, it cannot be considered that she held the land in November, 1794, so as to be enabled, by the 9th article of the treaty with Great Britain then made, to continue to hold it according to the nature and tenor of her estate."

"The words of the 2d section of the Act of October, 1780, c. 45, are, 'That all property within this state (debts only excepted) belonging to British subjects shall be seized, and is hereby confiscated to the use of this state,' and under this general expression it is considered that land in which the legal title was held by a citizen of this state in trust for a British subject (as is the case now in question) was included. "

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"That this was the construction given to the act appears from the subsequent conduct of the legislature and the executive of this state, and particularly by the first section of the Act of 1784, c. 81, which directs that the intendant of the

revenue be authorized and required to call on all persons having confiscated British property in their possession, or the title papers thereof, or relating thereto, to discover and deliver up the same, and if the said intendant has probable and good ground to suspect that any person holds the same in trust for any British subject or conceals the same, or any deeds, writings, or evidence of the titles to such property, he may and shall direct the Attorney General to file a bill in the High Court of Chancery on behalf of this state for the discovery of such trust or concealed property and for delivering up such deeds, writings, and evidence of title to the same; thereupon proceedings shall be had, and decree made according to the rules of the High Court of Chancery in such cases."

"And it will be observed that by the fifth article of the treaty of 1783, the recommendation to be made for a restitution of property confiscated extends to all estates, rights and properties."

"If, then, this property was confiscated and the right to it vested in the state by the Acts of October, 1780, c. 45, and c. 49, the chancellor does not perceive how it can be affected by the sixth article of the treaty of 1783, declaring that there should be no future confiscations made."

"The future acts of confiscation to be restrained by that article were absolute confiscations, and not the dispositions that might be necessary for those which had been made."

"Such dispositions might have been the subject of consideration if the recommendations made for a restitution of property confiscated had been complied with by this state."

"Considering, then, the lands in question to have been

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confiscated, and that the right of the state or those claiming under the state is not affected by either of the treaties which have been relied on, it remains only to inquire as to the grounds of the complainants' application to this court and the

nature of the relief to which they may be entitled."

"The Act of 1802, c. 100, under which the complainants allege that the purchase was made, declares that it shall and may be lawful for any person or persons purchasing as aforesaid any confiscated British property under the authority of this act to prosecute any suit or suits, either in law or equity, in the name of the state for recovery of said property for their use."

"If this property had not been sold, it might have been competent for the state to have proceeded by suit to divest the legal estate from the defendant William Smith, and it seems consonant to equity and to the provisions of the act just mentioned that in the present case it should be vested in the complainants, who were the purchasers from the state."

Then follows the formal part of the decree, that Smith should convey the land to Carroll and Maccubbin. From this decree Smith appealed to the Court of Appeals of Maryland, which confirmed the decree, whereupon he brought his writ of error to this Court under the provisions of the 25th section of the Judiciary Act of 1789, Laws U.S. vol. 1, p. 63, the decision being against the right claimed under the treaty.

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WASHINGTON, J., delivered the opinion of the Court as follows:

This cause comes before the Court upon a writ of error to the Court of Appeals of the State of Maryland, and the first question is has the Supreme Court of the United States appellate jurisdiction in a case like the present? It is contended by the defendants in error that the question involved in the cause turns exclusively upon the construction of the confiscation laws of the State of Maryland, passed prior to the treaty of peace, and that no question, relative to the construction of that treaty did or could occur. That the only point in dispute was whether the confiscation of the lands in controversy was complete or not by the mere operation of those laws, without any further act to be done. If the former, it was admitted on

the one side that the right of Ann Ottey, the British subject, was not saved or protected by the treaty; if the latter, then it was agreed on the other that it was protected and that no proceedings subsequent to the treaty in order to perfect the confiscation could be supported.

This argument proves nothing more than that the whole difficulty in this case depends upon that part of it which involves the construction of certain state laws, and that the operation and effect of the treaty, which constitutes the residue of the case, is obvious so soon as that construction is settled. But still the question recurs is this a case where the construction of any clause in a treaty was drawn in question in the state court and where the decision was against the title set up under such treaty? The only title asserted by the defendants in error to the land in dispute is founded upon an alleged confiscation of them by the State of Maryland and a conveyance to them of the right thus acquired by the state. The title set up by the

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plaintiffs in error for Ann Ottey, and the only one which could possibly resist that claimed by the grantees of the state, is under the treaty of peace, the 6th article of which protects her rights, provided the confiscation, by the laws of the state, was not complete prior to the treaty. The point to be decided was and is whether this be a case of future confiscation, within the meaning of the 6th article of that treaty, and in order to arrive at a correct result in the decision of that point it became necessary, in the state court, and will be necessary in this, to inquire whether the confiscation, declared by the state laws was final and complete at the time the treaty was made, or not. The construction of those laws, then, is only a step in the cause leading to the construction and meaning of this article of the treaty, and it is perfectly immaterial to the point of jurisdiction that the first part of the way is the most difficult to explore.

Although the defendant's counsel admit, and the supreme court of the state may, in this particular case, have decided, that where the confiscation is not complete before the treaty, the estate attempted to be confiscated is protected by the treaty,

still, if according to the true construction of the state laws, this Court should be of opinion that the acts of confiscation left something to be done necessary to the perfection of the title claimed under them which was not done at the time the treaty was made, we must say that in this case the construction of the treaty was drawn in question, and that the decision of the state court was against the right set up under the treaty by one of the parties.

This leads to the consideration of the merits of the cause, which depend upon the question before stated, *viz.*, whether the confiscation of the lands in question was so far complete by the laws referred to, that the title and estate of Ann Ottey was divested out of her and vested in the state prior to the treaty of peace? This must depend upon the true construction of the acts passed in the year 1780, chapters 45 and 49, as it is not pretended that any proceedings were instituted in the nature of an office to complete the forfeiture

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of these lands, upon the ground of alienage or otherwise.

The first law declares generally that

"All property within this state belonging to British subjects, debts only excepted, shall be seized, and is hereby confiscated to the use of this state."

Anticipating, as it would seem, that questions might arise after peace in respect to lands not proceeded against according to the rules of the common law, the legislature in the same session passed a second law appointing certain commissioners by name to preserve all British property seized and confiscated by the former law and declaring the said commissioners to be in the full and actual seizin and possession of all British property seized and confiscated by the said act, without any office found, entry, or other act to be done, with power to the said commissioners, to a point fit persons to enter and take possession of said property for the purpose of its preservation.

It would seem difficult to draft a law more completely operative to divest the whole estate of the former owner and to vest it in the state. The arguments against giving to these laws such an effect are that the expressions used in these laws do not import a confiscation of merely equitable estates, and that no estates were intended to be confiscated, but such as were discovered and seized into the hands of the state prior to the treaty.

It is true that the word "property," used in both laws, means the thing itself, intended to be affected by them, whether it were land or personal property; but then it is equally clear that the thing itself, whatever it might be, ceased, by the operation of these laws, to belong to the British subject and became vested in the commissioners for the use of the state. The *cestui que trust*, though not in possession of the property, was nevertheless the real owner of it, and, if the property or thing itself had come into the actual possession of the commissioners, who would have held it to the use of the state, it would seem difficult to maintain the position that a scintilla of interest

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or estate remained for an instant afterwards in the former owner.

But no act of the commissioners was necessary in order to obtain seizin in the land to support the use thus transferred from Ann Ottey to the state. No seizure was necessary. The second law considers that all property belonging to British subjects was, by the mere operation of the first law, seized and confiscated, and declares that the commissioners were then in the full and actual seizin and possession of the property so seized and confiscated by the first law, though no entry or other act had or should be made or done.

Being thus in the actual seizin under the second law, which seizin had been declared by the first law to enure to the use of the state, it is perfectly immaterial at what time the right of the state to the lands now in controversy, thus completed prior to the treaty, was discovered or at what time actual seizin and possession was obtained. From the time that the second law came into operation, the

possession of the trustees of Ann Ottey either ceased to be legal or it was to be considered as the possession of the commissioners to the new use which had been declared by law. The present suit is between persons claiming under the state and others who either held the lands wrongfully or for the use of the state, and it is in no respect necessary to the perfection of the change of the property produced by the laws of confiscation.

Judgment affirmed with costs.

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