Simms Vs. Guthri

Simms Vs. Guthri

SooperKanoon Citation : sooperkanoon.com/78654

Court : US Supreme Court

Decided On : 1815

Appeal No. : 13 U.S. 19

Appellant : Simms

Respondent : Guthri

Judgement :

Simms v. Guthri - 13 U.S. 19 (1815)
U.S. Supreme Court Simms v. Guthri, 13 U.S. 9 Cranch 19 19 (1815)

Simms v. Guthri

13 U.S. (9 Cranch) 19

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

The land law of Virginia, which gives a right of preemption to those who had marked and improved land before the year 1778, refers that right to the time when the improvement was made and to the time of the passage of the act, and not to

the time when the claim for such preemption was made before the court of commissioners.

If an entry be made by the assignee of a preemption right, it will be good although the name of the assignor be not mentioned in the entry if the entry refers to the warrant and if it mentions an improvement, provided the place be described with sufficient certainty in other respects.

A bill in equity to enjoin a judgment at law is not to be considered as an original bill, and therefore it is not necessary in a court of limited jurisdiction to make other parties if the introduction of those parties should create a doubt as to the jurisdiction of the court.

A complainant in equity cannot obtain a decree for more than he has asked in his bill.

The facts of the case, as stated by THE CHIEF JUSTICE in delivering the opinion of the Court, were as follow:

Charles Simms, the plaintiff in error, having obtained a judgment in ejectment for certain lands lying in Kentucky, in possession of the defendants for which the said Simms held a patent prior to that under which the defendants claimed, a bill of injunction was filed by them praying that he might be decreed to convey to them so much of the land in their possession as was included within his patent.

It appeared in evidence that in the year 1776, a company of whom John Ash was one marked and improved several parcels of land lying on the waters of Salt River. John Ash made an improvement on the waters of the Town Fork of Salt River, soon after which William McCollom, another member of the same company, made an improvement at a spring on the same stream about seven hundred yards below him. Ash complained that McCollom had encroached on his rights by approaching too near him, upon which they agreed to decide by lot who should be entitled to both improvements. Fortune determined in favor of Ash, and McCollom relinquished his rights and improved elsewhere. Ash afterwards amended both improvements and planted peach stones at that which was made by himself.

In April, 1780, before the court of commissioners appointed in conformity with the act generally denominated the previous title law, John Ash obtained a certificate in the following words:

"John Ash, Sr., claimed a preemption of 1,000 acres of land in the District of Kentucky on account of marking and improving the same in the year 1776, lying on the waters of the

Page 13 U. S. 20

Town Fork of Salt River about two miles nearly east from Joseph Cox's land, to include his improvement. Satisfactory proof being made to the court, it is of opinion that the said Ash has a right to a preemption of 1,000 acres of land, to include the above location, and that a certificate issue accordingly."

This certificate was assigned to Terrell and Hawkins, who, in April, 1781, made the following entry thereon in the surveyor's office of the county in which the lands lie:

"Terrell and Hawkins entered 1,000 acres, No. 1226, on the waters of the Town Fork of Salt River, about two miles nearly east from Joseph Cox's land, to include his improvement."

This entry was surveyed and patented, and the defendants claim under it. The date of this patent was on 6 March, 1786.

The entry of Charles Simms was made on 13 April, 1780, his survey on the 25th of the same month, and his patent issued on 19 April, 1783.

The claim under an improvement being of superior dignity to that of Charles Simms, his title must yield to that of the defendants in error if theirs be free from objection.

The land law of Virginia, under which all parties claim, requires that locations shall be made so specially and precisely that other persons may be enabled with certainty to locate the adjacent residuum.

The situation of Kentucky, covered with conflicting titles to land, has made it necessary that this requisition of the law should be enforced with some degree of rigor, while the ignorance of early locators, the dangers to which they were exposed, and the difficulty of describing with absolute precision lands which were held by a very slight improvement made on a single spot, and which could not be immediately surveyed, induced the courts of that country, for the purpose of preserving entries as far as was consistent with law, to frame certain general rules of very extensive application to cases which occurred. One was that the designation of any particular spot of general notoriety, or such a description of it in relation to some place of general notoriety

Page 13 U. S. 21

as would clearly point it out to subsequent locators, would give sufficient notice of the place intended to be appropriated, and that a failure to describe the external figure of the land should be supplied by placing the improvement in the center and drawing round it a square with the lines to the cardinal points, which should comprehend the quantity claimed by the location.

The court below was of opinion that there was sufficient certainty in the certificate of John Ash, Sr., and in the entry afterwards made with the surveyor by Terrell and Hawkins; that the improvement intended to be claimed by Ash was that which he won of McCollom, and that the land should be surveyed in a square form with the lines to the cardinal points, including the improvement won of McCollom in the center. A survey having been made in conformity with this interlocutory decree, the court ordered the defendant below to convey severally to the plaintiffs in that court so much of the land claimed by them as was included in his patent. To this decree Charles Simms has sued out a writ of error.

Page 13 U. S. 23

MR. CHIEF JUSTICE MARSHALL, after stating the facts of the case, delivered the opinion of the Court as follows:

The first error assigned is that the entry and survey of the plaintiff in error being prior to the claim made by Ash before the court of commissioners, gave him a legal right to the land so entered and surveyed, not to be affected by the subsequent claim of Ash.

The words of the act of assembly are

"That all those who, before the said first day of January, 1778, had marked out or chosen for themselves any waste or unappropriated lands and built any house or hut or made other improvements thereon shall also be entitled, on the like terms, to any quantity of land, to include such improvement, not exceeding 1,000 acres, and to which no other person hath any legal right or claim."

The Court is clearly of opinion that the words of the law refer to the time when the improvement was made and to the time of the passage of the act, not to the time when the claim, founded on that improvement, was made to the court of commissioners. If the land, when improved, was waste and unappropriated, if, at the passage of the act, no other person had "any legal right or claim" to the land so improved, such right could not be acquired until that of the improver should be lost.

The second error is that the entry made by Terrell and Hawkins with the surveyor has no reference to the

Page 13 U. S. 24

preemption certificate of Ash, and is therefore not a good and valid entry of Ash's preemption right.

Terrell and Hawkins were assignees of Ash, and this ought to have been expressed in the entry. Those words are omitted. In consequence of their omission, it does not appear whose improvement is to be included.

Upon this point the Court has felt a good deal of difficulty. If the entry with the surveyor could be connected with the certificate of the commissioners, this difficulty would be entirely removed. But the Court is not satisfied that, according to

the course of decisions in Kentucky, such reference is allowable.

The Court, however, is rather inclined to sustain the location, because its terms are such as to suggest to any subsequent locator the nature of the omission which had been made.

Terrell and Hawkins enter 1,000 acres of land, "to include his improvement." It was then a warrant founded on an improvement, and that improvement was made not by them, but by a single person. Of that single person Terrell and Hawkins were, of course, the assignees. The place was described with such certainty as would have been sufficient had the assignment been stated. On coming to the place, Ash's improvement would have been found. The mistake therefore does not mislead subsequent locators. It does not point to a different place. They are as well informed as they would have been by the insertion of the omitted words. The entry, too, contains a reference to the warrant which the law directed to be lodged with the surveyor, and to remain there until it should be returned with the plat and certificate of survey to the land office.

3. It is also objected that some of the defendants in error do not show a complete legal title under Terrell and Hawkins, for which reason they have not entitled themselves to a conveyance from Charles Simms, and that one of them, John Meiggs, has obtained a decree for 140 acres of land, although in the bill he claimed only 100 acres.

Regularly the claimants who have only an equitable title ought to make those whose title they assert, as well as the person from whom they claim a conveyance, parties to the suit. For omitting to do so, an original bill might be dismissed. But this is a bill to enjoin a judgment at law rendered for the defendant in equity against the plaintiffs. The bill must be brought in the court of the United States, the judgment having been rendered in that court. Its limited jurisdiction might possibly create some doubts of the propriety of making citizens of the same state with the plaintiff parties defendants. In such a case, the court may dispense with parties

who would otherwise be required and decree as between those before the court, since its decree cannot affect those who are not parties to the suit.

It is certainly a correct principle that the court cannot decree to any plaintiff, whatever he may prove, more than he claims in his bill. Nothing further is in issue between the parties. It is not necessary to inquire whether anything appears in this cause which can prevent the plaintiff from availing himself of this principle, because the decree will be opened on another point, in consequence of which this objection will probably be removed.

4. The fourth error is that John Ash having two improvements, it is uncertain which he claimed before the commissioners and his entry is on this account void, or if not so then his claim was for the improvement made by himself, and not for that won from McCollom.

It is admitted that if the terms of the entry are such as to leave Ash at liberty to select either improvement, it is void, and that if the terms of the entry confine him to either, he must abide by his original election.

Upon considering the testimony on this point, the Court is of opinion that the entry may be construed to refer to one improvement in exclusion of the other, but that the improvement referred to is the one first made by himself.

Let the several members of this description be examined.

Page 13 U. S. 26

John Ash, Sr., claimed 1,000 acres of land, &c.;, "on account of marking and improving the same in the year 1776."

They were both marked and improved in the year 1776, the one by Ash himself, the other by McCollom. The description proceeds, "lying on the waters of the Town Fork of Salt River, about two miles nearly east from Joseph Cox's land."

Both improvements are on the same watercourse, but that made by Ash is nearer the distance and the course from Joseph Cox's land mentioned in the certificate than that made by McCollom.

If, then, it be not absolutely uncertain to which improvement reference is made in the certificate, this Court is of opinion that the improvement made by Ash himself is designated.

Is there any testimony in the cause which can control the meaning of the terms of the certificate when viewed independent of that testimony?

There is evidence that the improvement at McCollom's Spring was generally known in the neighborhood. But there is no reason to believe that the improvement originally made by Ash himself was not also known, nor is there any reason to believe that he had abandoned it. On the contrary, he added to it by planting peach stones after having won that made by McCollom.

It is also in proof that at the court of commissioners in April, 1780, in conversation with Thomas Polk, whom he then designed to call on to prove his improvement, he said that he intended to settle at McCollom's Spring.

Supposing this to amount to a declaration of his intent to found his claim to a preemption on the improvement commenced by McCollom and completed by himself, that intent not appearing in the certificate and entry, could not control those documents. But the Court is not of opinion that the conversation will warrant this

inference. The whole case shows that Ash retained his claim to both improvements and designed to include both in his preemption. They are both included in his survey. His declaration therefore that he meant to settle at McCollom's Spring, and the subsequent building of a cabin at that spring, no more proves which improvement was the foundation of his title than if he had declared a design to settle at any other place on the same tract of land and had carried that

intention afterwards into execution by building at such place.

This Court is of opinion that there is error in so much of the decree of the circuit court as directs the survey of Ash's preemption to be made on the improvement commenced by McCollom, which is at black A in the plat to which the decree refers, and that the said preemption right ought to be to be surveyed on the improvement originally made by Ash himself, which is at figure 2 in the said plat. The decree therefore must be

Reversed and the cause remanded to the circuit court with directions to conform their decree to the opinion given by this Court.

The decree of this Court is as follows:

This cause came on to be heard on the transcript of the record from the circuit court and was argued by counsel, on consideration whereof the Court is of opinion that there is error in so much of the interlocutory and final decrees of the said court as directs Charles Simms to convey to the plaintiffs in that court the land included in his patent and in the survey directed to be made by that court, of the claim of the said plaintiffs, which survey was ordered to be made in a square form, including the improvement at McCollom's Spring which is designated in the plat by the black letter A in the center, and that the said decrees ought to be reversed and annulled and the cause remanded to the circuit court with directions to cause the said preemption right of the said Ash to be surveyed in a square form with the lines to the cardinal points, and including the improvement originally made by the said John Ash, Sr., which is designated in the plat filed in the said cause by figure 2 in the center, and with further directions

to order the said Charles Simms to convey to the plaintiffs in the circuit court respectively the land included in his patent and lying within their several claims as made in their bill and as sustained by the evidence in the cause. All which is ordered and decreed accordingly.