Preston Vs. Browder

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Court : US Supreme Court

Decided On : 1816

Appeal No. : 14 U.S. 115

Appellant : Preston

Respondent : Browder

Judgement :

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Preston v. Browder

14 U.S. (1 Wheat.) 115

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF EAST TENNESSEE

SYLLABUS

The Act of Assembly of North Carolina passed November, 1777, establishing offices for receiving entries of claims for lands in the several counties of the state, did not authorize entries for lands within the Indian Boundary, as defined by the

Treaty of the Long Island, of Holston, of July, 1777. The act of April, 1778, is a legislative declaration, explaining and amending the former act, and no title is acquired by an entry contrary to those laws.

This was an action of ejectment commenced by the plaintiff in error in that court. On the trial of the cause, the plaintiff produced and read in evidence an entry made on 25 February,

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1778, in the name of Ephraim Dunlap, for 400 acres of land in the point between Tennessee and Holston Rivers. Also a grant to said Dunlap, issued in virtue of and founded upon said entry, under the great seal of the State of North Carolina, dated 29 July, 1793, which grant was duly registered. The plaintiff also produced and read in evidence a deed of conveyance, with the certificates of probate and registration endorsed, from Dunlap, the grantee, to John Rhea. Also a deed of conveyance from said Rhea to the lessor of the plaintiff. It was also proved that the land lies within the boundaries of what was the State of North Carolina at the time of making said entry, and within the County of Washington; likewise within the territory ceded by the State of North Carolina to the United States in 1789, and within the now County of Blount, in the District of East Tennessee; that it lies on the south side of Holston River, and between Big Pigeon and Tennessee River, and west of a line described in the 5th section of the Act of the General Assembly of North Carolina passed in April, 1778, chap. 3. Also within the tract of country secured to the Indians in 1791 by the Treaty of Holston, and that the Indian title thereto was relinquished in 1798 by the Treaty of Tellico. The defendant produced and gave in evidence a grant from the State of Tennessee to himself, made out and authenticated in the manner prescribed by the laws of Tennessee, and dated 18 May, 1810, which covers and includes the whole of the land in his possession, and for which this suit was brought. The

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plaintiff, by his counsel, moved the court to charge and instruct the jury

"That an entry was actually made with the entry taker of Washington County, within which the land lay; that the entry was evidence that the consideration money was paid as required by law; that paying the consideration money, and making the entry, created a contract between the State of North Carolina and the said Dunlap, which vested a right in him to the land in dispute, and that it was not in the power of the legislature, at a subsequent period, to destroy the right thus vested, or rescind said contract, without the consent of the said Dunlap. That having the same land afterwards surveyed and granted, in the manner prescribed by the laws of North Carolina, vested in the said Dunlap and his heirs a complete title both at law and in equity, and that the conveyance from Dunlap to Rhea and from Rhea to the lessor of the plaintiff vested a complete legal title in him, and therefore he was entitled to a verdict."

Which charge and instruction the court refused to give to the jury, but on the contrary charged and instructed them

"That the said entry and grant were both null and void, and vested no title whatever the said Dunlap, because at the time of making said entry and obtaining said grant, the land included therein lay in a part of the country where the laws of North Carolina had not authorized their officers to permit lands to be entered, or to issue grants therefor, and although the entry and grant might have been made in the form required

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by law, yet no interest whatever passed from the State of North Carolina to Dunlap thereby, and therefore they ought to find a verdict for the defendant."

A verdict was rendered accordingly, and a judgment pronounced thereon. To which charge and instruction the plaintiff's counsel excepted, and the cause was brought into this Court by writ of error.

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TODD, J., delivered the opinion of the Court, and after stating the facts, proceeded as follows:

The question now to be decided by the Court is whether the charge and instructions required by the plaintiff's counsel ought to have been given, and whether the one given was correct.

In the construction of the statutory or local laws of a state, it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason, as well as the meaning, of many of the provisions in them, to enable a court to apply, with propriety, the different rules for construing statutes. It will be found, by a recurrence to the history of North Carolina, at the time of passing this act, that she had, but a short time before, shaken off her colonial government, and assumed a sovereign independent one of her own choice; that during the colonial system, by instructions and proclamations of the governor, the citizens were restrained and prohibited from extending their settlements to the westward, so as to encroach on lands set apart for the Indian tribes; that these encroachments had produced hostilities; and that on 20 July, 1777, a treaty of peace had been concluded at Fort Henry, on Holston River, near the Long Island, between commissioners from the State of North Carolina and the chiefs of that part of the Cherokee nation called the Overhill Indians, and that a boundary between the state and the said Indians was

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established. When the Legislature of North Carolina were passing the Act of November, 1777, establishing offices for receiving entries of claims for lands in the several counties within the state, it is improbable that the foregoing circumstances were not contemplated by them, and hence must have arisen the restriction in the act, as to lands "which have accrued, or shall accrue, to this state, by treaty or conquest." If this be not the ground or reason of the provision, it will be difficult to find one on which it can operate. It may be asked where was the land which was to accrue by treaty or conquest if not within the chartered limits of that state? If it was in a foreign country or from a sister state, the restriction was unnecessary

because in either case it was not within the limits of any county within that state, and of course not subject to be entered for. The restriction must apply, then, to lands within the chartered limits of the state, which it contemplated would be acquired, by treaty or conquest, from the Indian tribes, for none other can be imagined. It is not to be presumed that the legislature intended, so shortly after making the treaty, to violate it by permitting entries to be made west of the line fixed by the treaty. From the preamble of the act as well as other parts of it, it is clearly discernible that the legislature intended

"to parcel out their vacant lands to industrious people, for the settlement thereof, and increasing the strength and number of the people of the country, and affording a comfortable and easy subsistence for families."

Would these objects be attained by permitting settlements encroaching

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on the lands lately set apart by treaty for the use of the Indian tribes by provoking hostilities with these tribes, and diminishing the strength of the country by a cruel, unnecessary, and unprofitable warfare with them? Surely not. However broad and extensive the words of the act may be authorizing the entry takers of any county to receive claims for any lands lying in such county under certain restrictions, yet from the whole context of the act, the legislative intention to prohibit and restrict entries from being made on lands reserved for Indian tribes may be discerned. And this construction is fortified and supported by the Act of April, 1778, passed to amend and explain the Act of November, 1777; the 5th section of which expressly forbids the entering or surveying any lands within the Indian hunting grounds, recognizes the western boundary as fixed by the above-mentioned treaty, and declares void all entries and surveys which have been, or shall thereafter be made within the Indian boundary.

It is objected, that the act of April, 1778, so far as it relates to entries made before its passage, is unconstitutional and void.

If the reasoning in the previous part of this opinion be correct, that objection is not well founded. That reasoning is founded upon the act of 1777 and the history and situation of the country at that time. The act of 1778 is referred to as a legislative declaration explaining and amending the act of 1777. It is argued that there is no recital in the act of 1778 declaring that the act of 1777 had been misconstrued

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or mistaken by the citizens of the state, or that entries had been made on lands, contrary to the meaning and intention of that act, and that the 5th section is an exercise of legislative will declaring null and void rights which had been acquired under a previous law. Although the legislature may not have made the recital and declaration in the precise terms mentioned, nor used the most appropriate expressions to communicate their meaning, yet it will be seen by a careful perusal of the act that they profess to explain, as well as to amend, the act of 1777. Upon a full review of all the acts of the Legislature of North Carolina, respecting the manner of appropriating their vacant lands, and construing them *in pari materia,* there is a uniform intention manifested to prohibit and restrict entries from being made on lands included within the Indian boundaries. Therefore this Court unanimously affirms the decision of the circuit court with costs.

Judgment affirmed.