Danforth's Lessee Vs. Thomas

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Court : US Supreme Court

Decided On : 1816

Appeal No. : 14 U.S. 155

Appellant : Danforth's Lessee

Respondent : Thomas

Judgement :

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14 U.S. (1 Wheat.) 155

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF EAST TENNESSEE

SYLLABUS

The acts of the Assembly of North Carolina passed between 1783 and 1789 avoids all entries, surveys, and grants of land set apart for the Cherokee Indians,

and no title can be thereby acquired to such lands.

The boundaries of the reservation have been altered by successive treaties with the Indians, but it seems that the mere extinguishment of their title did not subject the land to appropriation unless expressly authorized by the legislature.

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

This was an action of ejectment brought by the plaintiff in error against the defendant in error. On the trial of the cause in the circuit court, it appeared from evidence that the land in controversy was situate in the tract of country lying south of Holston and French Broad River, and between the Rivers Tennessee and Big Pigeon, the Indian title to which was extinguished by the Treaty of Holston. The plaintiff claimed by virtue of a grant, issued by the State of North Carolina, bearing date 26 December, 1791. The defendant claimed under a grant from the State of Tennessee bearing date 2 January, 1809. The defendant, by his counsel, objected to the grant under which the plaintiff claimed title being admitted in evidence on the ground that it was for land which the laws of North Carolina had prohibited from being entered, surveyed, or granted. The court sustained the objection and prohibited the grant from going in evidence to the jury, whereupon a verdict and judgment was rendered in favor of the defendant. A bill of exceptions was taken to the opinion of the court, and the cause was brought up to this Court by writ of error.

The correctness of the opinion of the circuit court depends on the sound construction of the Act of the General Assembly of the State of North Carolina passed in 1783, c. 2. s. 5 and 6, whereby the lands within certain limits therein designated (including the lands in controversy) are reserved for the Cherokee

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Indians, and the citizens prohibited from entering and surveying lands within those limits. It is contended on the part of the plaintiff that this act cannot be construed,

nor did the legislature mean to give the Indians a right of property in the soil, but merely the use and enjoyment of it. That the succeeding legislatures, by the acts of 1784, 1786, and 1789, have changed this reservation for the use of the Indians, and given unlimited access for the purposes of making entries and surveys "to all lands not before specially located," and to "all vacant lands" within the limits of the state. Consequently locations could be made and grants issued to perfect titles of lands lying within the limits of the Indian reservation.

Whether the legislature had the power or intended to give the Indians a right of property in the soil, or merely the use and enjoyment of it, need not be inquired into nor decided by this Court, for it is perfectly clear that the 5th section of the act of 1783, c. 2., prohibits all persons from making entries or surveys for any lands within the bounds set apart for the Cherokee Indians, and declares all such entries and grants thereupon, if any should be made, utterly void. They had the power, and have declared unequivocally an intention to prohibit entries from being made within those reservations. The several acts of 1784, 1786, and 1789, although they contain general expressions which, if taken singly, might seem to sanction entries and surveys for "all lands not before specially located" or to "all vacant lands," yet, when taken together, these general

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expressions must be controlled by the restrictions and prohibitions as to the reservations for the Indian tribes. The reasoning used in the case of *Preston v. Browder* applies with equal, if not greater, propriety to this case. And although at different periods different sections of these reservations have been subjected to appropriation by entries and surveys, it has been in consequence of the several treaties with the Indians by which the boundaries of the reservations have been altered and the Indian claim extinguished; but it is believed that the mere extinguishment of the Indian title did not subject the land to appropriation until an act of the legislature authorized or permitted it. Whatever doubts this Court might entertain on this subject were it now construing these laws upon the first impression, that doubt would be removed on a view of the case of *Avery v. Strother,* in the Reports in Conference 431, decided by the judges of the Supreme

Court of North Carolina. This is a decision directly in point, made by the supreme court of the state construing the laws brought into the view of this Court, and is decisive of this case. And as this Court has been uniformly disposed to pay great respect to the decisions of the state courts respecting titles to real estate, this decision has its full influence on the present question, and therefore the judgment of the circuit court is unanimously affirmed with costs.

Judgment affirmed.