Patterson Vs. Winn

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Appellant : Patterson

Respondent : Winn

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24 U.S. (11 Wheat.) 380

ON CERTIFICATE OF DIVISION OF OPINION IN THE

CIRCUIT COURT FOR THE DISTRICT OF GEORGIA

SYLLABUS

In general, the validity of a patent for lands can only be impeached for causes anterior to its being issued in a court of equity. But where the grant is absolutely void, as where the state has no title or the officer has no authority to issue the

grant, the validity of the grant may be contested at law.

The laws of Georgia in the year 1787 did not prohibit the issuing of a patent to any one person for more than one thousand acres of land. The proviso in the act of assembly of 17 February 1783, limiting the quantity to that number, is exclusively confined to head rights.

MR. JUSTICE THOMPSON delivered the opinion of the Court.

This case comes up from the circuit court for

the district of Georgia. And the question presented for decision appears by a certificate of division of opinion in that court as to the admissibility of the grant offered in evidence on the part of the plaintiff.

The certificate states that the plaintiff, to maintain his action, offered in evidence a patent purporting to be a grant in due form of law from the State of Georgia to one Basil Jones for seven thousand three hundred acres of land, including the premises in question. And also the warrant of survey upon which the said tract of land was laid off and surveyed and the minutes of the court which granted the warrant. The defendant's counsel objected to the grant's going to the jury, affirming the same to be void in law inasmuch as no grant could issue under the laws of the state for so great a number of acres as are comprised in the said grant. On which question so made the court was divided in opinion.

The broad ground assumed in the objection is that the patent was absolutely void, and not even *prima facie* evidence of title. The question as stated does not distinctly present to the Court the point that was probably intended to be submitted. The objection alleges the patent to be void because, by the laws of Georgia, no grant could issue for so great a number of acres as seven thousand three hundred without stating the limitation as to the number of acres. But from the argument it is understood that the limitation contended for on the part of the defendant

is to one thousand acres, and that all grants for a greater quantity are absolutely void.

How far it is within the province of a court of law to entertain inquiries tending to impeach a patent is a question upon which conflicting opinions have been held, particularly in the different state courts in this country. By some the patent is considered only *prima facie* evidence of title, and open to extrinsic evidence to impeach its validity. By others that the defect must appear upon the face of the patent to authorize a court of law to pronounce it invalid, and that unless the defect does so appear, the patent is only voidable, and recourse must be had to a court of chancery to vacate it. By others it has been considered that the powers of a court of law were not so broad as laid down in the former of these opinions nor so limited as in the latter, but that a court of law may inquire whether the patent was issued without authority or against the prohibition of a statute or whether the state had title to the land granted.

It is unnecessary if not improper at this time to enter into an examination which of these opinions is best founded in principle. For so far as the question applies to the present case, it has been settled by this Court in the case of *Polk's Lessee v. Wendell,* 9 Cranch 87. In that part of the case to which I refer, the exceptions under consideration were for causes not apparent on the face of the patent, and the proposition stated for decision is whether in any and in what cases it is allowable, in an action of ejectment, to impeach

a grant from the state for causes anterior to its being issued. It is said that the laws for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals, and also to protect the state from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are in general directory, and when all the proceedings are completed by a patent issued by the authority of the state, a

compliance with these rules is presupposed. That every prerequisite has been performed is an inference properly deducible and which every man has a right to draw from the existence of the grant itself. It would be extremely unreasonable to avoid a grant in any court for irregularities in the conduct of those who are appointed by the government to supervise the progressive course of a title from its commencement to its consummation in a patent. But in order to guard against the conclusion that this doctrine would lead to, closing the door against all inquiry into any matter whatever beyond the grant for the purpose of avoiding it, the Court adds that the great principles of justice and of law would be violated if there did not exist some tribunal to which an injured party might appeal and in which the means by which an elder title was acquired might be examined if it had been acquired by the violation of principles essential to the validity of a contract, but that a court of equity is the more eligible tribunal in general for these questions,

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and they ought to be excluded from a court of law. But the Court said there are cases in which a grant is absolutely void (or inoperative), as where the state has no title to the thing granted or where the officer had no authority to issue the grant. In such cases, the validity of the grant is necessarily examinable at law.

This doctrine was again recognized and sanctioned by this Court five years afterwards, when the same cause, 18 U. S. 5 Wheat. 293, was a second time under consideration, and it is in coincidence with the rule settled in the supreme court of New York in the case of *Jackson v. Lawton,* 10 Johns. 23. We may therefore assume as the settled doctrine of this Court that if a patent is absolutely void upon its face or the issuing thereof was without authority or was prohibited by statute or the state had no title, it may be impeached collaterally in a court of law in an action of ejectment. But in general other objections and defects complained of must be put in issue in a regular course of pleadings on a direct proceeding to avoid the patent, and we are not aware of any contrary rule prevailing in the state courts of Georgia. But so far as we have any information on the subject, the practice there is in accordance with the rule laid down by this Court.

The objection in this case to the admissibility of the grant in evidence is that it was issued without the authority of law and in violation of certain statutes of the State of Georgia which, it is alleged, prohibit the issuing of a grant to

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any one person for more than one thousand acres of land, and if the statutes referred to will warrant this construction, the objection was well taken and can be sustained in a court of law. And this leads to an examination of those statutes as applicable to the grant in question.

The grant bears date on 24 May, 1787, and is for 7,300 acres of land in the County of Franklin, described by metes and bounds and referring to a plat of the same thereunto annexed. No consideration is expressed in the grant or any designation of the nature of the rights which made up the quantity of land mentioned in the grant, but it is in the common form prescribed by statute. The proceedings of the Court of Franklin County on the application of Basil Jones accompany the grant, by which it is ordered that he have 7,300 acres in lieu of part of old warrants of John Peter Wagnor, bounty reserved. This shows that the aggregate quantity of land mentioned in the grant was made up of sundry old warrants, and affords also an inference of the existence of a practice of consolidating a number of warrants in one grant, and there is nothing in the land laws of Georgia prior to the year 1794 at variance with such a practice. The limitation as to quantity will be found to relate to warrants for head rights, and not to grants, and as warrants were transferable, no objection existed to their being united in one grant.

The land law of Georgia is comprised under several statutes, passed at different periods, varying

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and modifying the system occasionally, as policy required. But all being *in pari materia* are to be looked to as one statute in explaining their meaning and import. Under these laws, there were various ways in which persons became entitled to

rights and could obtain warrants for land, such as head rights, according to the number of a family, bounties to soldiers and to citizens, and likewise for the encouragement of certain manufactures, &c.; And for the purpose of ascertaining and determining whether applicants were entitled to warrants, a land court was instituted in each county to receive applications for lands and grant warrants for surveys to such as should show themselves entitled to land according to the provisions of the land laws. A county surveyor was required to be appointed by each county, who was authorized to lay out and survey to any person who should apply to him the land for which a warrant had been obtained. And he was required to record, in an office to be kept for that purpose, all surveys by him made, so as to enable those who had any objections to make to the passing of the grant to enter a caveat, which was to be tried by a jury of twelve men sworn to try the matter according to law and equity. And under the Act of July 17, 1783, Prince's Dig. 266. sec. 36, this was declared to be final and conclusive. An appeal was afterwards given to the governor and executive council, sec. 56. of the Dig., who were required and empowered to proceed to decide such caveats in manner

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and form as they should think most conducive to justice, and expressly declaring that from their decision there should be no appeal. And this was the existing law at the time the grant in question issued. By a subsequent statute, Dig. sec. 83, the power of hearing and determining such appeals and signing grants was vested in the governor alone.

To permit an inquiry whether a warrant obtained under such guards and checks was authorized by law would be opening the door to endless litigation and against the spirit and policy of the land laws in general as well as the letter of the statute, which provides for caveats and which declares the ultimate decision thereon to be final and conclusive. If the validity of the warrants cannot be called in question, the issuing of the grant follows as matter of course, and cannot be said to be without authority unless the statute prohibits the issuing of a grant for more than one thousand acres of land.

The act relied upon on the part of the defendant as containing such prohibition is that of 17 February, 1783, Dig. sec. 32, and is to be found in the proviso to the first section. The enacting clause relates entirely to head rights, and declares that each master or head of a family shall be allowed, as his own head right, and without any other or further charges than the office and surveying fees, two hundred acres, and shall also be permitted to purchase, at the rates therein specified, a further quantity according to the number of head rights in such family.

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Provided the quantity of land granted and sold to anyone person shall not exceed one thousand acres, and that such person do live on and cultivate a part of the said land twelve months before he shall be entitled to a grant for the same.

The word "granted" is said to be used here in its technical sense, as synonymous with patent, and to imply a general prohibition to issue a grant to anyone person for more than one thousand acres. Admitting this to be the sense in which the term is used, the consequence would not follow that is contended for. The term is here used in the proviso, the office of which is to limit and restrict the operation of the enacting clause. The enacting clause relates entirely to head rights, and is without limitation as to quantity; that depended on the number of the family. The master or head of the family is allowed 200 acres as his own head right on paying office and surveying fees, and is permitted to purchase, at the rate therein mentioned, any further quantity, according to the number of head rights in his family. The proviso, however, limits the quantity to one thousand acres; but the limitation is upon the subject matter of the enacting clause, to-wit, head rights. The enacting clause speaks of two modes of acquiring these head rights. One, a gratuity allowed to the head of the family; the other, a purchase. And the words "granted" and "sold," as used in the proviso, may well be construed in reference to these two modes of acquiring land. And the proviso is equivalent to saying that no one person

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shall be allowed, on his own head right and on the purchase of head rights in his family, more than one thousand acres. But this does not prohibit him from purchasing other warrants and including all in one grant when it is issued.

That the word "granted," as here used, has reference to the warrant or incipient step towards acquiring the title, and not to the consummation of it by grant, is evident both from the subsequent part of the proviso and from the use of the same word as synonymous with warrant in other parts of the land laws. By the proviso, the person to whom land is granted and sold is required to live on and cultivate a part of the said land twelve months before he shall be entitled to a grant for the same. To give to the word "granted" in the former part of the sentence the same meaning as to the word "grant" in the latter part would involve gross inconsistency.

This construction is corroborated by the enacting clause in the third section of the same act, containing substantially a like provision that every person applying by head rights as aforesaid shall, previous to his obtaining a grant for his land or having it in his power to dispose of the same otherwise than by will settle and improve a part of such tract or tracts as he may obtain a warrant and survey of, &c.;

And in a subsequent act, passed the 23 December, 1789, Dig. sec. 85, the very word "granted" is used as the act of the land court, whose authority extended only to the issuing of warrants, and not grants. The enacting clause

gives to three or more justices of the peace, in their respective counties, the same powers that had been exercised by four justices and an assistant justice under a former act, provided that the said three or more justices shall each of them sign all warrants for land by them granted.

Other parts of these land laws might be referred to to show that this word is not always used in a technical sense as synonymous with patent. And that it is not so used in the proviso to the act of 1783 we think is very evident, and throughout all these laws, so far as we have been able to discover, whenever there is a limitation

to one thousand acres, it is applicable to the warrant, and not to the grant.

It is clearly to be inferred from various parts of these land laws that warrants were transferable. Thus, in one of the earliest acts passed on the subject in the year 1777, Dig. 261, it is provided that all persons who have had lands ordered them and have not taken out grants for the same or sold their warrants or rights or are either dead or left the state, such person or persons as have bought such warrants or rights and titles and continued in this state shall have such lands granted them agreeably to such order or warrant so purchased. And the prohibition afterwards in the year 1794, Dig. 280, to survey or renew transferred warrants necessarily implies that previous to that time, such transfers were sanctioned by the land laws, and if so there could be no reason why a number of such

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warrants should not be consolidated and included under one grant although the aggregate quantity might exceed one thousand acres. There might be very good reason for putting this limitation upon warrants for head rights, as the settlement and improvement of the country might be thereby promoted.

That grants for more than one thousand acres were sanctioned is evident from the Act of 23 December, 1789 (exemplification produced), fixing the fees of the officers of the state, by which the governor is allowed six dollars for signing a grant of land exceeding one thousand acres. So also in the Act to revise and amend the above act, passed 18 December, 1792, Dig. 173, the governor is allowed, on all grants above one thousand acres at and after the rate of two dollars for every thousand acres therein contained. Dig. 173.

Upon the whole, therefore, without pursuing this examination further, we are satisfied that in the year 1787, when the grant in question was issued, the land laws of Georgia did not prohibit the issuing of a patent to any one person for more than a thousand acres, and that the grant offered on the trial is not, therefore, void in law, and should have been admitted in evidence.

CERTIFICATE. This case came on, &c.;, on consideration whereof this Court is of opinion and directs it to be certified to the said circuit court that the evidence offered in the court below

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by the plaintiff, and to the competency of which objection was made, and upon which question the opinions of the judges of said court were opposed, was competent evidence on the part of the plaintiff to sustain the issue on his part, &c.;