

Hickie Vs. Starke

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 94

Appellant : Hickie

Respondent : Starke

Judgement :

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SYLLABUS

In the construction of the 25th section of the Judicial act, passed 24 September, 1789, this Court has never required that the treaty or act of Congress under which the party claims who brings the final judgment of a state court into review before this Court, should have been spread upon the record. It has always deemed it essential to the exercise of jurisdiction in such a case that the record should show a complete title under the treaty or act of Congress and that the judgment of the

court is in violation of that treaty or act.

In order to bring himself within the protection of the act of cession by Georgia to the United States for the land, the party must show that he was "actually settled" on the land on 27 October, 1795, the period mentioned in the said act of cession.

It seems that a settlement made on the land by another person who cultivated it for the proprietor would be sufficient to constitute "an actual settlement" within the meaning of the law, though the proprietor should not reside in person on the estate or within the territory.

In the Supreme Court of the County of Adams in the State of Mississippi, the appellees filed a bill in chancery against the appellants which, according to the laws of the state, was transferred to the supreme court, where judgment was given for the complainants.

The purpose of the bill was to obtain a conveyance of a tract of land, containing 2,000 acres, for which Robert Starke, in 1791, under whom the complainants claimed, obtained an order of survey from the Governor General of Louisiana, which order was executed by the deputy surveyor, and of which land he afterwards took possession and cultivated for years. Subsequently, Robert Starke being willing to exchange this body of lands for another, proposed the same to the Governor of Louisiana. The bill alleged that from some personal hostility towards him, an offer of the land so held by him was made to James Mather, the ancestor of the appellants, the defendants in the bill, and a grant of the land was made in 1794 to James Mather by the Governor of Louisiana, who thereupon entered and cultivated part of the tract.

It was admitted that all the forms required by the established laws and customs of Louisiana, while under the Spanish government, by which a full and complete title to land was acquired had not been conformed to by Robert Starke or his heirs, the appellees, and that the title of James Mather was

in all respects full and complete as a legal title under those laws. The appellees, in their bill, claimed to have the land conveyed to them, as the title of the appellants had been acquired by collusion with the Governor of Louisiana, and the Robert Starke had been forcibly and against his will dispossessed of the land. Under the authority of the Supreme Court of Mississippi, a feigned issue was tried to determine

"whether the ancestor of the complainants ever made a voluntary abandonment of his right to the premises in question, free from any undue influence on the part of the Spanish government or its officers."

This issue was found by the verdict of a jury in favor of the complainants, and the same having been certified to the supreme court, a decree was made in favor of the complainants, the appellees. The appellants then filed their petition for a writ of error to the Supreme Court of the United States, suggesting that the title of James Mather arose "under the articles of agreement and cession" between the United States and the State of Georgia, and that by the decree of the supreme court that title has been overruled. The argument before the court was principally confined to two questions upon the determination of which the jurisdiction of the court in the case depended:

1. Whether the construction and effect of the articles of agreement and cession between the United States and the State of Georgia were presented for the consideration of the Supreme Court of Louisiana in the investigation of this case, so that by the decree of the court the title claimed by the appellants under the articles of agreement was brought into question.

2. Whether the appellants' title, being a full and complete Spanish grant, was confirmed by "the articles of agreement and cession" and was in itself a valid and indefeasible grant of the land.

The only facts connected with the discussion of the case before this Court were those which related to the actual possession of the land by James Mather and the period of the same.

They are sufficiently noticed in the decision of the court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is a writ of error to a decree pronounced in the court of the last resort in the State of Mississippi directing the plaintiffs in error to convey to the defendants a certain tract of land in the said proceedings mentioned. The plaintiffs in error allege that their title was secured by the compact entered into between the United States and Georgia for the

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cession of the country in which the land lies, and that this decree is in violation of that compact. The defendants insist that the compact between the United States and Georgia was not called into question, and that the 25th section of the Judicial Act does not give this Court jurisdiction of the case.

In the construction of that section, the Court has never required that the treaty or act of Congress under which the party claims who brings the final judgment of a state court into review before this Court should have been pleaded specially or spread on the record. But it has always been deemed essential to the exercise of jurisdiction in such a case that the record should show a complete title under the treaty or act of Congress and that the judgment of the court is in violation of that treaty or act. The condition in the Cession Act, on which the plaintiffs in error rely, is in these words:

"That all persons who on 27 October, 1795, were actual settlers within the territory thus ceded shall be confirmed in all the grants legally and fully executed prior to that day by the former British government of West Florida or by the government of Spain."

The plaintiffs produce a grant, legally and fully executed, but to bring the case under the treaty they must also prove that the ancestor or person under whom they claim was an actual settler on 27 October, 1795. The answer asserts that the warrant of survey issued on 7 February, 1793, and the survey made on 20 July in the same year, when possession was taken, and that the patent issued on 3 April, 1794. James Williams deposes that about 3 December, 1795, he took possession of the tract of land in dispute as overseer for James Mather, the patentee, and understood from him that he had gone to Natchez sometime before to apply for land in the part of the country where the tract in controversy lies. This is the testimony furnished by the record to prove that James Mather, the grantee, was an actual settler according to the requisition of the Cession Act of Georgia. In [*Henderson v. Poindexter*](#), 12 Wheat. 530, the term "actual settler" seems to have been understood as synonymous with the resident of the country. That case, however, did not require that the precise meaning of the term should be fixed, and the Court is disposed to think that a settlement made on the land by another person who cultivated it for the proprietor would be sufficient though the proprietor should not reside in person on the estate or within the territory. Had the settlement proved by Williams been made at the day required by the Cession Act, it would, we think, have satisfied the requisition of that act and entitled the plaintiffs in error to the benefit of the condition. But it was not made until 3

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December, 1795. We think then that the plaintiffs in error have failed to prove that the person under whom they claim was an actual settler on 27 October, 1795, and that the Court has no jurisdiction of the cause.

The writ of error dismissed, it not appearing that this Court has jurisdiction of the cause.