

Ross Vs. Doe Ex Dem. Barland

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Appeal No. : 26 U.S. 655

Appellant : Ross

Respondent : Doe Ex Dem. Barland

Judgement :

Ross v. Doe ex Dem. Barland - 26 U.S. 655 (1828)

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Ross v. Doe ex Dem. Barland

26 U.S. (1 Pet.) 655

ERROR TO THE SUPREME COURT

OF THE STATE OF MISSISSIPPI

SYLLABUS

Both the plaintiff and defendants claimed title under the provisions of the Act of Congress, passed 3 March, 1803, entitled "An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of

Tennessee," and the decision of the Supreme Court of the State of Mississippi was upon the construction given to that act by the commissioners acting under its authority. This is a case which draws into question the construction of an act of Congress, and the Supreme Court of the United States has jurisdiction on a writ of error by which the decision of the court of the state of Mississippi is brought up for revision under the 25th section of the Judiciary Act of 1789.

Where, by the established practice of courts in particular states, the courts in actions of ejectment look beyond the grant and examine the progressive stages of the title from its incipient state until its consummation, such a practice will form the law of cases decided under the same in these states, and the Supreme Court of the United States regards those rules of decision in cases brought up from such states, provided that in so doing they do not suffer the provisions of any statute of the United States to be violated.

Under the Act of Congress of March 3, 1803, such lands only were authorized to be offered for sale as had not been appropriated by the previous sections of the law and certificates granted by the commissioners in pursuance thereof. A right, therefore, to a particular tract of land derived from a donation certificate given under that law is superior to the title of anyone who purchased the same land at the public sales unless there is some fatal infirmity in the certificate which renders it void.

The act of Congress requires no precise form for the donation certificate. It is sufficient if the proofs be exhibited to the court of commissioners to satisfy them of the facts entitling the party to the certificate. It is sufficient if the consideration, to-wit the occupancy and the quantity granted, appears. Nothing more is necessary to certify to the government the party's right or to enable him, after it is surveyed by the proper officer, to obtain a patent.

The second section of the Act of Congress of March 3, 1803, was intended to confer a bounty on a numerous class of individuals, and in construing the ambiguous words of the section, it is the duty of the court to adopt that construction which will best effect the liberal intentions of the legislature.

The time when the territory over which this law operated was evacuated by the Spanish troops was very important, as the law was intended to provide for those who were actually at that time inhabitants of and cultivated the soil within it; but whether it was in 1797, or 1798 was comparatively unimportant. The decision of the commissioners upon the period when the evacuation took place is sufficient, and the Court is disposed to adopt the construction of the act given by the commissioners west of Pearl River: that the evacuation took place on 30 March, 1798, by which persons coming within the objects of the section were entitled to donation certificates.

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Congress has treated as erroneous the construction given to the law by the commissioners to settle claims to lands east of Pearl River, who had decided that only those who were settled on the lands within the territory in the year, 1797 were entitled to donation certificates, and who had granted to others, preemption certificates.

The commissioners appointed under the act of Congress relative to claims to lands of the United States south of the State of Tennessee were authorized to hear evidence as to the time of the actual evacuation of the territory by the Spanish troops and to decide upon the fact. The law gave them power to hear and decide all matters respecting such claims and to determine thereon according to justice and equity and declared their deliberations shall be final. The Court is bound to presume that every fact necessary to warrant the certificate, in the terms of it, was proved before the commissioners, and that consequently it was shown to them that the final evacuation of the territory by the Spanish troops took place on 30 March, 1798.

This action of ejectment was originally instituted by the lessee of the defendants in error in the Circuit Court of the State of Mississippi, citizens of that state, against Allison Ross, the plaintiff in error, to recover a tract of land lying in that state. The plaintiff in that court obtained a verdict for the land, and on the trial of the cause a

bill of exceptions was taken to the opinion of the circuit court upon certain instructions which were refused to be given when required by the counsel for the defendant below. From the decision of the state circuit court, the defendant in that court appealed to the Supreme Court of the State of Mississippi, and the judgment of the circuit court having been affirmed in that court, he prosecuted a writ of error to this Court.

The bill of exceptions, sent up with the record, sets forth that the counsel for the plaintiff in error moved the circuit court to instruct the jury that, if it should be of opinion that the defendant in the ejectment was in possession of the land in controversy under a patent from the United States to Isaac Ross dated 12 August, 1819, and assigned by him to the said defendant, the plaintiff in the ejectment could not recover. The patent to Isaac Ross was founded upon a certificate of the Register of the land office west of Pearl River, and was for the land in controversy, which had been sold at the sales of the lands of the United States and purchased by Isaac Ross, who afterwards assigned the same to Allison Ross, the defendant below.

The patent was of older date than the patent held by the lessors of the plaintiff below, which patent was issued to Joseph White on a certificate of the Board of Commissioners West of Pearl River, granted in pursuance of an Act of Congress passed 3 March, 1803, entitled "An act regulating

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the grants of land, and providing for the sales of lands of the United States south of the State of Tennessee."

The instructions required claimed that the elder patent of the defendant below should prevail in the action of ejectment in a court of law against the junior patent of the plaintiff although the junior patent emanated from a prior certificate of the commissioners.

The court refused to give the instructions prayed for, but on the contrary instructed them that the junior patent of the plaintiff in the ejectment, emanating upon a

certificate for a donation claim prior in date to the patent under which the defendant claims, would overreach the elder patent of the defendant and in point of law should prevail against it.

The plaintiff in error contended that the court below erred in refusing the instructions prayed for and in the instructions they gave to the jury in favor of the title of the plaintiff in the ejectment.

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MR. JUSTICE TRIMBLE delivered the opinion of the Court.:

This was an action of ejectment, originally instituted in a Circuit Court of the State of Mississippi.

Upon the trial of the cause, in the court of original jurisdiction, the defendant excepted to the opinion of the court in overruling instructions moved on his part to be given to the jury and also to the instructions given by the court at the trial of the cause.

In the bill of exceptions tendered by the plaintiff in error in the court below are inserted the titles of the parties to the land in controversy and the facts, upon which the questions of law arise, which were decided by the court. A verdict and judgment were rendered against the defendant, from which he appealed to the supreme court of the state, being the highest court of law therein, where the judgment was affirmed, and the case is now brought before this Court by writ of error to the supreme court of the state.

The material facts of the case are the following:

The lessors of the plaintiffs in the action of ejectment claimed the land in controversy under and by virtue of a patent from the United States dated 13 October, 1820, which was given in evidence. This patent emanated upon a certificate of the Board of Commissioners West of Pearl River, organized under the provisions of the Act of Congress, of 3 March, 1803, entitled "An act regulating

the grants of land, and providing

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for the disposal of the lands of the United States, south of the State of Tennessee," which certificate was also given in evidence and bears date 13 February, 1807. The important parts of the certificate are in the following words, to-wit:

"Joseph White claims a tract of six hundred and forty acres of land, situated in Claiborne County, on the waters of Bayou Pierre, by virtue of the occupancy of the claimant on the before 30 March, 1798. We certify that the said Joseph White is entitled to a patent therefor from the United States by virtue of the recited act."

The defendant claimed and held possession of the land under and by virtue of a patent from the United States dated 12 August, 1819, for 553 acres of land. This patent is founded upon a purchase at the general sale of the lands of the United States at Washington, Mississippi, under the authority of the before recited act of Congress.

Upon this state of facts, the counsel for the defendant moved the court to instruct the jury

"That in such a case, the older patent of the defendant under which he claimed possession should prevail in the action of ejectment in a court of law against the said junior patent of the plaintiff although the said junior patent of the plaintiff emanated upon a prior certificate of the Board of Commissioners West of Pearl River, but the court refused to give such instructions in point of law to the jury, but on the contrary instructed them that the junior patent of the said plaintiff emanating upon a certificate of a donation claim prior in date to the patent under which the defendant claims, would overreach the patent of the defendant and in point of law should prevail against such prior patent of the defendant."

These opinions having been affirmed upon appeal to the supreme court of the state, the object of this writ of error is to have them reviewed in this Court.

It has been objected that this Court has not jurisdiction of the case. By the second section of the third article of the Constitution it is declared

"That the judicial power shall extend to all cases arising under this Constitution, the laws of the United States and treaties made or to be made under their authority, &c.;"

By the 25th section of the Judiciary Act of 1789, made in pursuance of this provision of the Constitution, it is enacted

"That a final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had where is drawn in question the construction of any statute of the United States and the decision is against the title or right, &c.;, specially set up or claimed by either party &c.;, under such statute, &c.;, may be reexamined and

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reversed or affirmed by the Supreme Court of the United States upon a writ of error."

In this case, the titles of both parties are derived under an act of Congress, the construction of the statute is drawn directly in question, and the decision of the highest court of law of the state is against title and right of the party specially set up in his defense under the statute. This case is not distinguishable from the case of [Matthews v. Zane](#), 4 Cranch 382, in which the jurisdiction of this Court was maintained.

For the plaintiff in error it is argued that the state court erred in deciding that the elder grant should not prevail in the action of ejectment.

It is undoubtedly true that upon common law principles, the legal title should prevail in the action of ejectment upon the same grounds that the legal right prevails in other actions in courts of law. It is so held in those states in which the principles of the common law are carried into full effect, and the course of proceeding in the action of ejectment are according to those principles. In the

states where these principles prevail, it is held that in a trial at law, the courts will not look behind or beyond a grant to the rights upon which it is founded, nor examine the progressive stages of the title antecedent to the grant.

But in other states, the courts of law proceed upon other principles. In the action of ejectment, they look beyond the grant and examine the progressive stages of the title from its incipient state, whether by warrant, survey, entry, or certificate, until its final consummation by grant, and if found regular and according to law in these progressive stages, the grant is held to relate back to the inception of the right, and to have dignity accordingly.

This latter course seems to be the one adopted and pursued by the courts of Mississippi. It is enough for us to say that in so doing, and in applying their peculiar mode of proceeding to titles derived through and under the laws of the United States, they violated no provisions of any statute of the United States.

The important question in the case is this: in applying its own principles and practice in the action of ejectment, as might well be done to this case, has the court misconstrued the act of Congress in deciding that the grant of the plaintiff, emanating upon the donation certificate of the Board of Commissioners West of Pearl River, set forth in the record, would overreach the defendant's grant and should prevail against it in the action of ejectment?

This draws in question the construction of the Act of Congress of 1803, and gives this Court jurisdiction of the case.

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It is well known that prior to the Treaty of San Lorenzo of 27 October, 1795, controversies had long existed between the United States and his Catholic Majesty on the subject of the boundaries which separated the United States and the Spanish provinces of East and West Florida. The second article of that treaty declares

"That the southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the Mississippi River at the northernmost part of the thirty-first degree of latitude north of the equator, which, from thence, shall be drawn due east to the middle of the River Appalachicola,"

&c.; And it is agreed that if there should be any troops, garrisons, or settlements of either party in the territory of the other according to the above mentioned boundaries, they should be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner if it be possible.

It is matter of public history that there were Spanish troops, garrisons, and settlements north of this boundary and within the territory of the United States, which were not withdrawn till long after the time stipulated by the treaty.

By the second section of the before recited act of Congress of 3 March, 1803, it is enacted

"That to every person or to the legal representative or representatives of every person who, either being the head of a family or of twenty-one years of age, did on that day of the year 1797, when the Mississippi Territory was finally evacuated by the Spanish troops, actually inhabit and cultivate a tract of land in the said territory, &c.;, the said tract of land thus inhabited and cultivated, shall be granted, provided, however, that not more than one tract shall be thus granted to any one person, and the same shall not contain more than 640 acres, and provided that this donation shall not be made to any person who claims any other tract of land in the said territory, by virtue of any British or Spanish grant or order of survey."

The sixth section of the act provides for the establishment of two boards of commissioners, one east and the other west of Pearl River in said territory;

"for the purpose of ascertaining the rights of persons claiming the benefit of the articles of agreement and cession between the United States and State of Georgia, or of the three first sections of this act. And each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a

summary manner, all matters respecting such claims; also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity, which determination, so far as relates to any rights

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derived from the articles of agreement aforesaid, or from the three first sections of this act, shall be final."

The eleventh section provides

"That the lands for which certificates of any description whatsoever shall have been granted by the commissioners in pursuance of the provisions of this act shall, as soon as may be, be surveyed. And the said surveyor shall cause all the other lands of the United States in the Mississippi Territory to be surveyed."

And the twelfth section provides that

"All the lands aforesaid not otherwise disposed of or excepted by virtue of the provisions of the preceding sections of this act shall (with certain other reservations and exceptions) be offered for sale."

As such lands only were authorized to be offered for sale, as had not been appropriated by the previous sections of the law, and certificates granted by the commissioners in pursuance thereof; it follows incontestably that the right of the plaintiff in the ejectment, derived from a donation certificate, is superior to that of the defendant derived from a purchase at the sales unless there is some fatal infirmity in the certificate which renders it void. This has not been contested.

But it is objected to this certificate:

1. That it is not a donation certificate.
2. That it is not sufficiently precise, and does not aver all the facts necessary to authorize the commissioners to grant a certificate.

3. The period of occupancy is alleged to be 30 March, 1798.

The answer to the first objection is that the certificate is granted for 640 acres of land, the precise quantity for which a donation certificate was authorized.

This is sufficient evidence of the intention of the Board of commissioners to grant a donation certificate. The period of occupancy, too, fits the case of a donation certificate or none, and, if necessary, fortifies the conclusion of its being granted as a donation certificate.

To the second objection it may be answered that the law requires no precise form in the certificate. It is sufficient if the proofs be exhibited to the board of commissioners to satisfy it of the facts entitling the party to the certificate. The facts need not be spread upon the record. It is sufficient if the consideration, to-wit the occupancy and the quantity granted appear.

Nothing more is necessary to certify to the government of the party's right or to enable him, after it is surveyed by the proper officer, to obtain a patent.

The objection that the occupancy is stated to be on 30 March, 1798, produces more difficulty.

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The language of the second section of the act of Congress authorizing these donation claims is that the persons who *on that day of the year 1797 when the Mississippi Territory was finally evacuated* by the Spanish troops, &c.;

This language is very peculiar, and shows plainly that although Congress at the time of passing the law was certain of the *fact* of evacuation by the Spanish troops, that body was not informed of the precise time when the evacuation took place.

The law was intended to confer a bounty on a numerous class of individuals, and in construing the ambiguous words of the section, it is the duty of the court to

adopt that construction which will best effect the liberal intentions of the legislature.

To interpret this section literally, that land should be granted to those who, on the same day of the year 1797 occupied a tract of land, provided the Spanish troops finally evacuated the territory, and on that very day of that very year 1797 would totally defeat the operation of the law, and the bounty intended by it; if it should have happened, that the final evacuation of the territory by the Spanish troops took place on 1 January, 1798, or on any subsequent day.

If an individual had inhabited and cultivated a tract of land every day in the year 1797, still, according to the letter of this section, he was not entitled to the bounty of the government, because the Spanish troops had not evacuated the territory *any day of that year*, but some day of the next year, and although the party continued to occupy the land until the day of the actual evacuation, still he could not be entitled, according to the letter of the act, because that day was not any day *of the year 1797*.

This could not be the intention of Congress. The country had been settled during the conflict on the subject of boundaries between Spain and the United States by the citizens and subjects of both governments. It was a weak and exposed frontier of the United States. The manifest general intent of the act of Congress is to confer a bounty upon the inhabitants and cultivators of the soil who elected to remain in the country at the time of the actual evacuation by the Spanish troops. In this view of the subject, the time of the actual evacuation was very important, but whether it was on some day in the year 1797 or 1798 was comparatively unimportant.

If the fact be supposed, and it must be supposed for the sake of the argument that the actual evacuation took place on 30 March, 1791, then something must be rejected in the construction and interpretation of the act of Congress to make the provisions of the law effectual. Either the words

"of the year 1797" must be rejected as inconsistent with the main scope and general intent of the law, or the claims to donations of all the inhabitants and cultivators west of Pearl River must be defeated. This would but defeat the manifest general intent of the law.

It was said at the bar that all the donation certificates west of the Pearl River express to be for occupancy on 30 March, 1798, and a certificate from the Commissioners of the General Land Office to that effect was produced. It is not necessary to decide whether we can or cannot notice this certificate as evidence of the fact that the evacuation took place on that day, or as evidence of the construction given by the Board of Commissioners West of Pearl River. It is sufficient if they were authorized to give such construction to the act in the event supposed that the event happened, or in other words that the actual evacuation took place on 30 March, 1798, as supposed in the argument, and that the construction of the 2d section of the act of Congress, which we are disposed to adopt, is the true construction in the estimation of Congress itself, we think, may fairly be inferred from the Act of Congress of 21 April, 1806. The 4th section of that act provides that

"Wherever it shall appear to the satisfaction of the Register and the Receiver of the District East of Pearl River that the settlement and occupancy, by virtue of which a preemption certificate had been granted by the commissioners, had been made and taken place prior to 30 March, 1798, they shall be authorized to grant to the party a donation certificate, in lieu of such preemption."

It appears from this section that the Commissioners East of Pearl River had adopted the construction of the act of 1803, contended for by the plaintiff in error, and that, instead of granting donation certificates to the inhabitants and settlers, down to the period of 30 March, 1798, under the 2d section of the act, they had granted preemption certificates, under the provisions of the 3d section. Congress treats this as a mistaken construction of the law by directing donation certificates to be made out in lieu of the preemption certificates.

The act of 1803 puts the settlers east and west of Pearl River on precisely the same footing, and it is inconceivable that Congress could have any motive for giving those east of Pearl River any preference by the act of 1806, or that the act could have any other object than to continue upon the same footing the settlers east and west of Pearl River.

The certificate granted in the case before us is sufficient evidence that the commissioners west of Pearl River adopted a more liberal construction, such as we think they were

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warranted in adopting and such as, we think, is manifestly sanctioned by Congress in the act of 1806.

It is the opinion of this Court that the commissioners were authorized to hear evidence as to the time of the actual evacuation of the territory by Spanish troops, and to decide upon the fact. The law gave them "power to hear and decide all matters respecting such claims and to determine thereon according to justice and to equity," and declares their determination shall be final.

We are bound to presume that every fact necessary to warrant the certificate, in the terms of it, was proved before the commissioners, and that consequently it was shown to them, and the final evacuation of the territory by the Spanish troops took place on 30 March, 1798.

Upon the whole, it is the unanimous opinion of this Court that the Supreme Court of the State of Mississippi has not misconstrued the act of Congress from which the rights of the parties are derived, and that the judgment of the supreme court be

Affirmed.

This cause came on, &c.;, on consideration whereof it is the opinion of this Court that the Supreme Court of the State of Mississippi has not misconstrued the act of Congress on which the plaintiff below relies, and it is therefore adjudged and ordered by this Court that the judgment of said Supreme Court of the State of

Mississippi be and the same is hereby affirmed with costs.

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