Van Ness Vs. City of Washington

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Appellant : Van Ness

Respondent : City of Washington

Judgement :

Van Ness v. City of Washington - 29 U.S. 232 (1830)
U.S. Supreme Court Van Ness v. City of Washington, 29 U.S. 4 Pet. 232 232 (1830)

Van Ness v. City of Washington

29 U.S. (4 Pet.) 232

APPEAL FROM THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF WASHINGTON

SYLLABUS

In 1822, Congress passed an act authorizing the Corporation of Washington to drain the ground in and near certain public reservations and to improve and

ornament certain parts of the public reservations. The corporation is empowered to make an agreement by which parts of the location of the canal shall be changed for the purpose of draining and drying the low grounds near Pennsylvania Avenue, &c.; To effect these objects, the corporation is authorized to lay off in building lots certain parts of the public reservations No., 10, 11, and 12, and of other squares, and also a part of B Street, as laid out and designated in the original plan of the city, which lots they may sell at auction and apply the proceeds to those objects, and afterwards to enclosing, planting, and improving other reservations, and building bridges, &c.;, the surplus, if any, to be paid into the Treasury of the United States. The act authorizes the heirs, &c.;, of the former proprietors of the land on which the city was laid out, who may consider themselves injured by the purposes of the act, to institute in the circuit court a bill in equity in the nature of a petition of right against the United States, setting forth the grounds of any claim they may consider themselves entitled to make, to be conducted according to the rules of a court of equity, the court to hear and determine upon the claim of the plaintiffs and what portion, if any, of the money arising from the sale of the lots they may be entitled to, with a right of appeal to this Court. The plaintiffs, Van Ness and wife, filed their bill against the United States and the Corporation of Washington, claiming title to the lots which had been thus sold under David Burns, the original proprietor of that part of the city and father of one of the plaintiffs, on the ground that by the agreement between the United States and the original proprietors, upon laying out the city, those reservations and streets were forever to remain for public use, and without the consent of the proprietors could not be otherwise appropriated or sold for private use; that the act of Congress was a violation of the contract; that by such sale and appropriation for private use the right of the United States thereto was determined, or that the original proprietors reacquired a right to have the reservations, &c.;, laid out in building lots for their joint and equal benefit with the United States, or that they were in equity entitled

to the whole or a moiety of the proceeds of the sales of the lots. *Held* that no rights or claims exist in the former proprietors or their heirs, and that the proceedings of the Corporation of Washington under and in conformity with the provisions of the act are valid and effectual for the purposes of the act.

The original bill in this case was filed 16 April, 1823. It set forth that the complainant, Marcia Van Ness, was the only child and heir at law of David Burns, deceased. That Burns was, in his lifetime, and particularly on 6 July, 1790, seized and possessed of a considerable tract of land within the limits of the present City of Washington; that a part of this land constitutes so much of the land mentioned in the second section of an Act of Congress of May 7, 1822, c. 96, as is indicated in a map annexed to the bill of complaint by the words "Reservation No. 10, 11, and 12, on the north side of Pennsylvania Avenue."

That by virtue of the said act of Congress, the Corporation of the City of Washington has proceeded to lay off and divide the said land into lots; that it has sold some, and is about to sell others; that the land thus disposed of is to be held by the purchasers for their own private use and exclusive benefit, and the bill complains of these proceedings as a breach of trust.

It avers that on 6 July, 1790, an act of Congress passed establishing the temporary and permanent seat of government of the United States. By this act the President was authorized to appoint commissioners who were authorized to purchase or accept such quantity of land within the district as the President might deem proper for the use of the United States, and according to such plans as the President should approve. By virtue of this act, various proposals were made concerning cessions of land for the site of the City of Washington, the substance of which proposals was that the President might retain any number of squares he might think proper for the public improvements or other public uses, and that the lots only which should be laid off should be a joint property between the trustees on behalf of the public and each of the three proprietors, and that the same should be equally divided between the public and the individuals, as soon as might be after the city should be laid off.

For the streets the proprietors were to receive no compensation. For the squares and lands in any form which should be taken for public buildings or any kind of

public

improvement or uses, the proprietors, whose lands might be so taken were to receive compensation, &c.;

On 28 June, 1791, David Burns by his deed conveyed to Thomas Beall and John Mackall Gantt, in fee simple, for the purposes and trusts therein mentioned, a considerable quantity of land, part of which constitutes the land described in the Act of May 7, 1822.

The whole of the land thus conveyed to Beall and Gantt was afterwards, 30 November, 1796, conveyed by them to the commissioners appointed under the act aforesaid upon the same trusts and uses as are expressed in the deed of conveyance to them.

The plan of the city as originally projected by L'Enfant, improved and matured by Ellicott, was approved and adopted in 1792 by the President of the United States. According to this plan, the land described is within the operation of the Act of 7 May, 1822, except so much thereof as may have been sold by virtue of an Act of February 24, 1817, entitled "an act authorizing the sale of certain grounds belonging to the United States in the City of Washington." The complainants are ignorant of the extent of these sales, but claim all which may thus have been disposed of.

The map referred to in the bill exhibits the division that was made, under the direction of the corporation, of the land in question into lots, and is the guide by which the sales have been conducted. A part of the land in question was not reserved for public improvements or other public uses, but belonged to a street called North B Street.

The complainants aver that the land in question, if sold to private individuals to be held by them for their individual benefit, will be placed entirely out of the reach of the trusts and purposes which were intended to be created and secured by the

deed and agreement aforesaid. The complainants are advised this cannot be done without their consent, which they are willing to give upon the terms of the original contract. They are willing to occupy the same ground they would have occupied if what is now proposed to be done had been proposed in 1792 -- that is that the land then reserved as public squares and streets, and now designed to be

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divided into private building lots, should be divided between them and the United States or the corporation claiming the title of the United States.

The complainants refer to an Act of May 6, 1796, authorizing a loan for the use of the City of Washington, and to other acts of Congress, as uniformly holding out the ides that the land in question is not subject to congressional control. They refer also to the proceedings of the commissioners in *Davidson's Case,* in January, 1794, a copy of which is annexed, and to the opinion of the Attorney General in that case.

The complainants aver that they have presented their claim to the Corporation of Washington and to the commissioners appointed by the corporation, and urged a postponement of any further sale.

On 19 May, 1826, the complainants filed an amended bill, the substance of which is:

That Marcia Van Ness, the complainant, is the only child and heir at law of David Burns, deceased; that David Burns, in his lifetime, was lawfully seized in fee of the premises in question; that under an Act of Congress of July 16, 1790, and a supplementary Act of March 3, 1791, proposals were made by and on behalf of the President, thereto lawfully authorized, to various persons then the owners of different portions of land lying within the present limits of the City of Washington, relating to the purchasing and accepting from the proprietors, various parts of their lands lying within the limits aforesaid. In consequence of such proposals, an agreement was finally made between the proprietors, among whom was David Burns, and the United States, the terms and nature of which are set forth in an

entry under date of April 1791, in a book, &c.;, as set forth in the original bill. On 29 June, 1791, David Burns, in pursuance of the agreement and arrangement as aforesaid, made and executed his deed of conveyance to Beall and Gantt, as set forth in the original bill. Beall and Gantt conveyed, as recited in the original bill (setting out the trusts). Afterwards, on 13 December, 1791, the President transmitted to Congress a plan of the city which had been adopted as the permanent seat of government; that subsequently

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various alterations were made in the same at different times under the authority and sanction of the President. Many building squares have been introduced in addition to those contained in the plan originally adopted; alterations have been made in the number and directions of the streets, in the dimensions of the building squares and public appropriations, and in all such cases, when such alterations have been made and those pieces of ground which had been at any time appropriated as streets or public reservations, have been subsequently converted, either in whole or in part, into building lots, the variations have been by the mutual consent of the United States and the original proprietors respectively, and the lots in such building squares have been uniformly divided between the United States and such original proprietors.

They insist that such mutual consent and such distribution were not only required by the true meaning and legal and equitable interpretation of the original compact and agreement, but such practice acquiesced in by both parties ought to be deemed and received as the mutual understanding and design of the parties at the time of entering into it.

In pursuance of such original agreement and of the acts of Congress, the President did select and appropriate for streets, squares, parcels and lots, for the use of the United States, all the premises hereinbefore described, lying on the north and south sides of Pennsylvania Avenue as aforesaid, being part and parcel of the premises as hereinbefore mentioned, conveyed and transferred by the said David Burns to Beall and Gantt upon the trusts and confidences mentioned and

declared in the deed of conveyance. That for all said premises neither Burns in his lifetime, nor the complainants since his death, have received any other consideration than such as is set forth in the deed, either from the trustees or from the United States. The said parcels of land continued to be held for the use of the United States as a public street or streets, or public appropriation, according to the plan and selection, until an Act of Congress entitled "An act authorizing the sale of certain grounds belonging to the United States in the City of Washington"

was passed February 24, 1817, which act was procured at the instance and by the consent of the Corporation of the City of Washington. Under this act, the commissioner of the public buildings in the City of Washington was authorized to lay off into building lots and to sell a portion of them, being part of the premises hereinbefore described as lying on the north side of Pennsylvania Avenue.

The residue of said premises continued to be held for the public use as aforesaid until an Act of Congress was passed on 22 May, 1822, also procured at the instance and with the consent of the corporation, entitled "An act to authorize and empower the Corporation of the City of Washington, in the District of Columbia, to drain the low grounds," &c.;

These acts of Congress are charged to be a clear and manifest departure from the terms and spirit of the original agreement and compact between Burns and the United States. The object and effect of them is to divert the premises from the trusts expressed and declared in the deed; that under such deed an interest still remained and continued in David Burns, which on his death descended to and now remains vested in the complainants; that the said acts of Congress were passed without their concurrence or consent, and that the constitutional power of Congress and the rights of complainants will not permit or sanction the sale of the premises to private parties without such assent and concurrence.

The complainants insist, and submit to the court, whether the legal operation and effect of said acts be not to determine the trusts originally created as to said

premises and to revest the same in them, and whether, if they choose to assent to such appropriation of the premises, the same are not thereby immediately subject to the same trusts an in and by the indenture were expressed and declared as to all those portions of the premises thereby conveyed as were not deemed proper and necessary by the President, or whether the complainants are entitled to the whole, or simply to a moiety of the money arising from said sales.

The bill proceeds to set forth, that under the Act of February

24, 1817, the commissioner was authorized to sell any number of the lots therein mentioned, not exceeding one-half, and that by the Act of May 22, 1822, the Corporation of Washington was authorized to sell and dispose of the right of the United States of, in, and to the building lots therein mentioned, and if by virtue of said acts any sales have been or shall be made previous to ascertaining and settling the rights of the complainants, much confusion, perplexity, and trouble may ensue as well to the corporation and the individual purchasers as to the complainants.

Whereas, in and by the said last mentioned act, it was expressly enacted that it shall and may be lawful for the lawful representatives of any former proprietor of land directed to be sold, &c.;, at any time within one year from passing of the same, to institute a bill of equity in the nature of a petition of right against the United States in this Honorable Court, in which they may set forth the ground of their claim to the land in question, the complainants do within the terms of said act present their bill and claim such relief in the premises as may be conformable to the provisions of said acts, or agreeable to equity and good conscience.

And inasmuch as the Corporation of Washington is authorized by said act of Congress to carry the provisions of the same into effect, and deny any right or interest to the premises or any part thereof to be in complainants, but claim a right to sell and dispose of the entire premises, and the exclusive right to receive and appropriate all the proceeds of the sales to their own use and benefit, and give out

and insist that the complainants have no claim in law or equity to the land or proceeds, and have proceeded to carry the act of Congress into operation, they pray, &c.;

To this bill the defendants filed their joint and several demurrer, plea and answer, the substance of which is they claim the benefit of all the prior exceptions and grounds of demurrer and plea heretofore taken to the original bill, and deny the equity of the bill. They specially set forth:

1. That the subject matter of complainant, the title therein

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pretended, and the entire relief prayed are against an act of Congress passed in the due exercise of a legislative discretion and constitutional power, and therefore not cognizable before any municipal court.

2. That the complainants have not shown any title, or any individual and proprietary interest in themselves, but a mere participation of the general interest inherent in them as members of the community at large, in common with all the citizens of the United States in the administration of a public trust by the government.

3. They deny that the complainants have equity, and assert that if they have any title to the land, it may be established at law.

4. That the bill is defective in its frame, scope, and end because it is multifarious, and purports to have joined therein several matters and claims of different natures, and repugnant characters. It is uncertain as to the nature, extent, and degree of the relief claimed and as to the party against whom it is prayed. It prays no process except an injunction against the corporation.

5. It is not in the nature of a petition of right, demanding any portion of the money arising from the sales of the lands and merely setting forth the complainants' title to the land, to lay a foundation for their claim to the money, or to a portion thereof, as authorized by the act of Congress, but it purports to claim against and in

derogation of the authority of said act, and to draw the United States into suit touching this claim. The United States and the corporation are joined in the suit, contrary to the design of the act and without showing or alleging any interest in the corporation.

The defendants, by way of answer, admit that David Burns was seized and did convey as averred in the bill, and that the trustees conveyed to the commissioners as therein set forth; that the whole of the lands thus conveyed, except so much as from time to time has been divided and reconveyed or has been sold or otherwise disposed of, still remains vested in the United States or its officers or agents absolutely and perpetually for the use of the United States. The defendants insist that the legal as well as equitable

estate has become vested in the United States, or at all events that the legal interest has passed to the commissioner of public buildings, in trust for the United States. In either case they insist that the United States has the only beneficial interest and estate and the absolute dominion and disposal of the same, and that Congress may and ought to dispose of the same on the terms and in the manner most advantageous to the general interest. They admit that about 542 acres were reserved for the use of the United States, and not allotted and divided; that these lands thus reserved were purchased at the rate of 25 pounds, or $66.66 per acre, paid out of the public Treasury, which price was more than three-fold the market price or real value, independently of the adventitious and speculative valuation, superinduced by making this the permanent seat of government. The lands thus purchased for the use of the United States, and for which there was no responsibility to the original proprietors beyond the payment of the stipulated price, were distributed throughout the city, and were commonly known and distinguished as reservations, numbered from No. 1 to 17 inclusively. Of these the commissioners accounted with David Burns in his lifetime for about 110 acres, and paid him 2,750, or $7,333.33; but without any specification of the boundaries or lines.

All the lands described in the second section of the act of May 7, 1822, and which the corporation is authorized to lay out and sell, consist of parts of the reservations so purchased as aforesaid, excepting that part over which No. 10 is directed to be extended to Pennsylvania Avenue, which comprises so much of B Street as lies between said avenue and said reservation, and was so taken in order to square out to said avenue the house lots into which the reservation was to be divided.

It is admitted that the part of B Street, any more than the residue of the street, or the other streets, was not, when originally purchased for the use of the United States, set down

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at any price, specifically appropriated to such parts of the property, but was included as an appendage in the purchase of the general mass of property paid for at the rate of 25 pounds per acre, without being taken into the computation of the area to be paid for at that rate.

The defendants deny that there was any agreement, condition, understanding or trust, express or implied, between the United States, or any of its officers, agents or trustees, and the original proprietors or vendors, or that anything was given out or promulgated in the form of proposals or otherwise, either before or after the consummation of the contracts and conveyances by which the lands were sold and conveyed for the use of the United States as aforesaid, importing or implying or in any manner holding out the idea, hope, or expectation that the lands or any part or parcel of the same should be perpetually and inalienably retained as public property or dedicated to any particular object of public improvement, or that the general declaration of use should be limited, and restrained so as to control the discretion of the government or Congress of the United States in the use or application of the property. Except that these defendants have heard and believe that at a very early stage in the adjustment of the plan of the city, the two principal quarters of the city, and the particular appropriations of ground for the sites of the President's house and executive departments and capitol, were designated, and an implied pledge of the public faith was held out, not merely to the original

proprietors, but to the public in general, that those great improvements should be permanently distributed and seated; but as to all the residue of the lands so purchased for the use of the United States, it was to remain at the absolute disposal of Congress.

The defendants have been informed and believe that the intent and object for keeping such extensive reservations of land in the heart of the city unappropriated were to leave the hands of the government unfettered, and its discretion uncontrolled to dispose of such reservations in furtherance of such future and contingent purposes and views of improvement, ornament, or utility, as were not contemplated

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or provided for in the original plan, and to leave the government at full liberty to modify and improve such plan according to such future and contingent views. That the practice of the government, its officers, agents and trustees has always been conformable to this view of the uses and objects to which it was originally destined. If any of the reservations have received names as if appropriated to particular objects, they have been merely popular and arbitrary, and not from any authority or founded on any pledge or trust, public or private, that they should be so appropriated. Whenever the public convenience has been thought to require it, the lands have been applied without regard to such popular and arbitrary designations, or to any such terms or conditions as the complainants pretend. That the specific purposes and objects designated in the act of Congress for the application of the proceeds are of the first importance and highest public utility, in reference to the primary design of laying out and embellishing a splendid, populous, and well ordered capital, which was to be reclaimed from wasted tobacco fields and noxious morasses, and that without the improvements to be accomplished by these means, the city never can fulfill the ends and purposes for which it had been selected as the permanent seat of government.

The corporation, answering for itself, further said that without delay a board of five commissioners was organized for the purpose of carrying into execution the act of

1822 according to certain directions in the act and in the ordinance of the corporation; that the commissioners did proceed to lay off the parcels of ground into squares and building lots, and proceeded to make sale of some of them, when it was stopped by the injunction issued at the prayer of the complainants. When the same was dissolved, it again proceeded, and has disposed of the greater part of the same, and intends with all convenient speed to dispose of the residue. Of all which actings and doings it is prepared to render an account when it shall be so required and directed.

The complainants filed a general replication, and after argument the circuit court dismissed the bill with costs.

The complainants appealed to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from the decree of the Circuit Court of the District of Columbia, sitting at Washington, upon a bill in equity in which the appellants were original complainants.

On 7 May, 1822, Congress passed an act to authorize and empower the Corporation of the City of Washington, in the District of Columbia, to drain the low grounds on and near the public reservations and to improve and ornament certain parts of such reservations. By that act, the corporation was, among other things, to change, by contract with the proprietors of the canal, the location of such parts of the canal passing through the city as lay between Second and Seventh Streets, west, into such course as should most effectually, in their opinion, drain and dry the low ground lying on the borders of Tiber Creek, and to effectuate this object the corporation was further authorized, after having extended the public reservation designated on the plan of the city as number ten so as the whole south side should bind on the line of Pennsylvania Avenue, and after having caused to be divided the said public reservation number ten, and also the public reservations

numbers eleven and twelve into building lots, to sell and dispose of the right of the United States of, in, and to the said lots or any number thereof laid off as aforesaid at public sale, &c.; And the corporation was further authorized to cause to be laid off, in such manner as the President should approve, two squares south of Pennsylvania Avenue, and also to lay off north of Maryland Avenue two uniform and correspondent squares, and the said four squares, when so laid off, to divide into building lots, and to sell and dispose of the

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right of the United States in such lots, &c.; The proceeds of these sales were in the first place to be applied to the purposes above mentioned, and in the next place to enclosing, planting, or otherwise improving certain public reservations, and building certain bridges, &c.;, and the surplus, if any, to go into the national treasury. The sixth section of the act then provides

"That it shall be lawful for the legal representatives of any former proprietor of the land directed to be disposed of by this act, or persons lawfully claiming title under them, and they are hereby permitted and authorized, at any time within one year from the passing of this act, to institute a bill in equity in the nature of a petition of right against the United States in the Circuit Court for the District of Columbia, in which they may set forth the grounds of their claim to the land in question."

The seventh section provides for the service of process upon and the appearance of the Attorney General, &c.; The eighth section provides

"That the said suit shall be conducted according to the rules of a court of equity. And the said court shall have full power and authority to hear and determine upon the claim of the plaintiff or plaintiffs, and what proportion, if any, of the money arising from the sale of the land hereby directed to be sold, the parties may be entitled to."

The ninth and last section of the act provides for an appeal to this Court.

The plaintiffs filed their bill in the present case within the time prescribed by the act, making the United States and the Corporation of the City of Washington parties. They claim title to the lands in controversy, which have been laid off into lots for sale, under David Burns, one of the original proprietors of the city, and of whom the plaintiff Marcia is the only daughter and heir. These lots embrace part of the reservations above referred to, and also a part of the street called B according to the original plan of the city. The ground of the bill is that by the original contract of the government with the proprietors, upon the laying out of the city, these reservations and streets were forever to remain for public use, and were incapable, without the consent of the proprietors, of being otherwise appropriated or

sold for private use; that the act of 1822, authorizing such sale, is a violation of the contract; that by such sale or appropriation for private use, the right of the United States thereto was determined, or that the original proprietors reacquired a right to consider them in the same predicament as if originally laid out for building lots, or that at all events they were entitled in equity to the whole or a moiety of the proceeds of the sale if the act of 1822 were valid for the purposes which it professed to have in view.

Some difficulty has arisen at the argument from the peculiar structure of the bill, it professing in some parts to seek relief under the act of 1822 and in other parts insisting upon a title inconsistent with it and demanding an injunction to prevent all sales of the land by the corporation. The opinion of this Court certainly is that under the act of 1822, the plaintiffs can proceed by a bill in equity in the nature of a petition of right against these the United States only for the money arising from the sales, and cannot claim a decree for the land itself or for any injunction against sales of it.

The view, however, of the case which we are disposed to take renders it unnecessary to consider whether the bill is so framed that with reference to the act of 1822, the court could pass a definitive decree against the United States upon it

from the incongruities alluded to.

As it is manifestly the interest and desire of all the parties to have an opinion upon the merits so as to put an end to the controversy, we shall waive all consideration of minor objections and proceed at once to the consideration of the substantial ground of the claim.

Congress, by an Act passed on 16 July, 1790, provided that a district of territory not exceeding ten miles square, to be located as therein directed, on the River Potomac, at some space between the mouths of the eastern branch and Conogocheague be, and the same was thereby accepted for the permanent seat of the government of the United States. Three commissioners were by the same act to be appointed to survey and by proper metes and bounds to define and limit the district, and they were authorized to purchase or accept such quantity of land on the eastern side

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of the said river within the said district, as the President should deem proper for the use of the United States, and according to such plans as the President should approve, the commissioners were to provide suitable buildings for the accommodation of Congress and of the President, and for the public offices of the government of the United States. A subsequent act, passed on 3 March, 1791, authorized some alterations of the limits of the district. Suitable cessions of the jurisdiction and soil of the territory, subject to the private rights of property of the inhabitants, were made by the States of Maryland and Virginia. * And the former act further provided for the removal of the seat of government to the district on the first Monday of December, 1800. The limits of the district were accordingly ascertained and defined, as made known by the proclamations of the President of 24 January and 30 March, 1791.

As yet no public designation had been made of the site of the federal city, which was contemplated to be laid out within the limits of the district, nor of the places no which the public buildings should be erected, nor indeed had there been any

purchase or donation from any of the proprietors of lands within the district by or to the commissioners for that object. There cannot however be a question that various negotiations had been entered into with the proprietors, and informal proposals made by them with a view to obtain so important and valuable a boon as the location of the city within the boundaries of their estates. And it can admit of as little question that preparatory steps had been taken on the part of the government to procure suitable plans for the laying out of the metropolis.

In this state of things, nineteen of the proprietors of the land constituting the present site of the City of Washington, among whom was David Burns, on 30 March, 1791, entered into an agreement which was presented to the

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commissioners as the basis of the terms on which they were willing to dedicate their lands for the location of the city. The agreement was accepted by the commissioners and recorded in their books. It is in the following terms.

"We, the subscribers, in consideration of the great benefits we expect to derive from having the federal city laid off upon our lands, do hereby agree and bind ourselves, our heirs, executors, and administrators, to convey in trust to the President of the United States or commissioners, or such persons as he shall appoint by good and sufficient deeds, in fee simple, the whole of our respective lands which he may think proper to include within the lines of the federal city, for the purposes and on the conditions following. The President shall have the sole power of directing the federal city to be laid off in what manner he pleases. He may retain any number of squares he may think proper, for public improvements or other public uses, and the lots only which shall be laid off shall be a joint property between the trustees in behalf of the public and each present proprietor. And the same shall be fairly and equally divided between the public and the individuals as soon as may be after the city shall be laid off. For the streets, the proprietors shall receive no compensation, but for the squares or lands, in any form, which shall be taken for public buildings, or any kind of public improvements or uses, the proprietors whose lands are taken shall receive at the rate of 25 per

acre, to be paid by the public."

There are some minor arrangements as to growing timber and graveyards, &c.;, which are not necessary to be mentioned. It is material, however, to observe that no time or mode of payment is prescribed in the agreement of the 25 per acre, and no fund out of which it was to be paid is designated. The agreement was merely preparatory, and to be carried into effect by formal conveyances.

Now it is upon the terms of this agreement that the plaintiffs assert their title to relief in the present case. They contend that though the whole land was to be conveyed, yet the portion of it which should be taken for streets and public reservations, according to the plan approved by the President, was clothed with a perpetual condition or trust that

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they should forever remain streets and public reservations, and never should be liable to be appropriated to any private use or changed from their original public purpose. That upon any such change or appropriation the title reverted to the original proprietors, or at all events, was to be disposed of and divided between them in the manner provided for in respect to the land laid off into lots. They also contend that the land so devoted to streets and public reservations was a mere donation from the proprietors, and not a purchase by the United States, and therefore ought to be governed by the rules applicable to public charities, and the trust strictly construed and enforced.

It is not very material, in our opinion, to decide what was the technical character of the grants made to the government -- whether they are to be deemed mere donations or purchases. The grants were made for the foundation of a federal city, and the public faith was necessarily pledged when the grants were accepted to found such city. The very agreement to found a city was of itself a most valuable consideration for these grants. It changed the nature and value of the property of the proprietors to an almost incalculable extent. The land was no longer to be devoted to mere agricultural purposes, but acquired the extraordinary value of city

lots. In proportion to the success of the city would be the enhancement of this value, and it required scarcely any aid from the imagination to foresee that this act of the government would soon convert the narrow income of farms into solid opulence. The proprietors so considered it. In this very agreement they state the motive of their proceedings in a plain and intelligible manner. It is not a mere gratuitous donation from motives of generosity or public spirit, but in consideration of the great benefits they expect to derive from having the federal city laid off upon their lands. For the streets they were to receive no compensation. Why? Because those streets would be of as much benefit to themselves as lot holders as to the public. They were to receive 25 per acre for the public reservations; "to be paid" (as the agreement states it) "by the public." They understood themselves then to

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receive payment from the public for the reservations. It makes no difference that by the subsequent arrangements they were to receive this payment out of the sales of the lots which they had agreed to convey to the public in consideration of the government's founding the city on their lands. It was still contemplated by them as a compensation; as a valuable consideration, fully adequate to the value of all their grants. It can therefore be treated in no other manner than as a bargain between themselves and the government for what each deemed an adequate consideration. Neither considered it a case where all was benefit on one side and all sacrifice on the other. It was in no just sense a case of charity, and was never so treated in the negotiations of the parties. But as has been already said, it is not in our view material whether it be considered as a donation or a purchase, for in each case it was for the foundation of a city.

And in construing this agreement this fact should never be lost sight of. It is obvious that the proprietors or their heirs could not be presumed for any great length of time to have any interest in the streets or public reservations beyond that of other inhabitants. If the city became populous, the lots would be sold and built upon, and in the lapse of one or two generations, at most, the title of the original proprietors might well be presumed to be extinguished by sales or otherwise, so that the interest of themselves or their heirs in the streets and reservations would

not be distinguishable from that of other citizens. They must also have contemplated that a municipal corporation must soon be created to manage the concerns and police and public interests of the city, and that such a corporation would and ought to possess the ordinary powers for municipal purposes which are usually confided to such corporate bodies. Among these are certainly the authority to widen or alter streets and to manage and in many instances to dispose of public property or vary its appropriation.

They might, and indeed must, also have placed a just confidence in the government that in founding the city, it would do no act which would obstruct its prosperity or interfere with its great fundamental objects or interests. It could

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never be supposed that Congress would seek to destroy what its own legislation had created and fostered into being.

On the other hand it must have been as obvious that as Congress must forever have an interest to protect and aid the city, it would for this very purpose be most impolitic and inconvenient to lay any obstructions to the most free exercise of its power over it. The city was designed to last in perpetuity: *capitoli immobile saxum.* No human foresight could take in the great variety of events which might render great changes in the plan, form, and locations of the city indispensable for the health, the comfort, and the prosperity of the city. Cases might easily be imagined, as in other cities, where the desolations of fire have made alterations in the streets and public squares of a city most important and valuable to the whole community. A prohibition which should forever close up the legislative power of Congress on such a subject under all circumstances ought not lightly to be presumed nor readily admitted. It should be proved by the most direct and authentic documents, before we should admit the belief that the wisdom of the first President of the United States yielded up such a valuable franchise.

If the case had stood solely upon this preparatory agreement as an executory contract, there might have been stronger grounds to impose limitations upon the

grant of the streets and public reservations. The language of the instrument is that the President may retain any number of squares he may think proper for public improvements or other public uses. Yet even then, the appropriation of these squares for public uses would not necessarily carry with it an implied obligation that they should forever remain dedicated to those uses and to none other. If such had been the intention of the parties, we should naturally expect to find there some direct expression of it, some acknowledgement of the obligation, or some condition carrying it to such a political mortmain. If the stipulation was so important and valuable as is now contended for, and constituted an object of permanent solicitude, it would scarcely escape the notice of the proprietors in laying down the fundamental basis of their cessions. If it did then escape them, we

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should have reason to look for its incorporation into the more solemn instruments which were contemplated thereafter to be executed by the parties, and were in fact executed by them in fulfillment of their original agreement. But no such stipulation is there to be found.

On 29 June, 1791, the proprietors severally executed deeds of indenture to consummate the agreement of the preceding March. They are all in the same form and contain the same declarations of trust. That executed by David Burns conveys to Thomas Beall and John M. Gantt (the trustees designated by the President) all the lands of the proprietor within the bounds of the city upon the following trusts, *viz.,*

"That all the said lands, &c.;, as may be thought necessary or proper to be laid out together with other lands within the said limits for a federal city, with such streets, squares, parcels and lots as the President of the United States, for the time being, shall approve, and that the said [the trustees], &c.;, shall convey to the commissioners for the time being appointed by virtue of the act of Congress, entitled, &c.;, and their successors for the use of the United States forever, all the said streets, and such of the said squares, parcels and lots, as the President shall deem proper for the use of the United States, and that as to the residue of the said

lots into which the lands, &c.;, shall be divided, a fair and equal division of them shall be made, and if no other mode of division shall be agreed on by consent of the said [grantor] and the commissioners for the time being, then such residue of the said lots shall be divided, every other lot alternate, to the said [grantor], &c.;, and all the said lots which may in any manner be divided or assigned to the said [grantor] shall thereupon, &c.;, be conveyed by the said [trustees] to the said [grantor], his heirs and assigns; and that the said other lots shall and may be sold at such time, &c.;, as the President of the United States for the time being shall direct, and that the said [trustees] &c.;, will, on the order and direction of the President, convey all the lots so sold, and ordered to be conveyed, to the respective purchasers in fee simple &c.;"

Provision is then made that the 25 per acre

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to be paid by the United States for the squares should be paid out of the proceeds of such sales, and the residue shall be paid to the President as a grant of money to be applied for the purposes and according to the act of Congress.

Provision is also made for other objects not material to be mentioned and for a conveyance of the trust property to such other persons as the President might thereafter direct, in fee, "subject to the trusts then remaining to be executed and to the end that the same may be perfected." In pursuance of this last provision, Beall and Gantt, the trustees, made a conveyance of the premises by an indenture dated the 30 November, 1796, to certain commissioners appointed under the act of Congress, subject to the trusts then remaining to be executed, and, among other things, conveyed to the commissioners all that part of the lands, &c.;, which had been laid off into squares, parcels or lots for buildings, and now remaining so laid off in the City of Washington.

Now it is important to observe that the object of the indenture to Beall and Gantt in 1791 was to carry into full and entire effect the preliminary agreement entered into by the proprietors. There is no pretense to say that that indenture has not fully

carried that agreement into effect. There is no allegation in the bill of any mistake in the draft of the indenture or that the instrument was not precisely what the parties intended it should be. The argument at the bar has not attempted to set up any such mistake as a ground of equity. And indeed, after such a lapse of time and acquiescence in its legal accuracy and sufficiency by all the parties, and after so many acts done under it which have been silently confirmed by the parties, it would be impossible to insist upon any such mistake with a chance of success. We must take the indenture, therefore, as we find it, as a complete execution of the preliminary agreement and as expressing the true intent and definitive objects of the parties. The preliminary agreement then became, upon the execution of the indenture, *functus officio* and was merged in the more formal and solemn stipulations of the latter. It was no longer executory, but executed. The indenture itself contained many executory trusts, and so far as any of them

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yet remains unexecuted, the instrument itself may still be denominated executory. But so far as the trusts have been fulfilled, as by the conveyance of lots to the grantors, or to purchasers, and especially by the conveyance of the streets and squares, &c.;, to the commissioners in 1796, the indenture can no longer be deemed executory. Its functions have been final and complete.

We need not, therefore, inquire into the distinction taken in a court of chancery between executory and executed agreements, or into the extent to which its equitable jurisdiction will be interposed to reform instruments upon grounds of mistake or to grant other relief, because the present bill presents no case falling under either predicament. Here we have a solemn instrument embodying the final intentions and agreements of the parties without any allegation of mistake, and we are to construe that instrument according to the legal import of its terms.

Now upon such legal import there do not seem grounds for any reasonable doubt. The streets and public squares are declared to be conveyed "for the use of the United States forever." These are the very words which by law are required to vest an absolute unconditional fee simple in the United States. They are the

appropriate terms of art, if we may so say, to express an unlimited use in the government. If the government were to purchase a lot of land for any general purpose, they are the very words which the conveyance would adopt in order to grant an unlimited fee to the use of the government. There are no other words or references in the instrument which control in any manner the natural meaning of them. There are no objects avowed on the face of it which imply any limitation. How then can the court defeat the legal meaning and resort to a conjectural intent?

It has been said that by looking at the preliminary agreement, the court will see that terms of a more limited nature are there used. Be it so. But will that justify the court in resorting to it to explain or limit the legal import of words in a solemn instrument, which contains no reference to it? If we could resort to it, the natural conclusion would be, in the

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absence of all contrary proof, that the last instrument embodied the real intent of the parties; that the preliminary agreement either imperfectly expressed their intent, or was designedly modified in the final act. The general rule of law is that all preliminary negotiations and agreements are to be deemed merged in the final, settled instruments executed by the parties, unless a clear mistake be established. In this very case it may be true, for aught that appears, that the President might have insisted upon the introduction into the trust deed of the very words in controversy, "to the use of the United States forever," in order to avoid the ambiguity of the words of the preliminary agreement. He may have required an unlimited conveyance to the United States so that it might be unfettered in any future arrangements for the promotion of the health, the comfort, or the prosperity of the city. But it is sufficient for us that here there is a solemn conveyance which purports to grant an unlimited fee in the streets and squares to the use of the United States, and we know of no authority which would justify us in disregarding the terms or limiting their import where no mistake is set up and none is established. It would indeed be almost incredible that any substantive mistake should have existed and never have been brought to the notice of the trustees or

to that of the commissioners upon their succeeding to the trust or seriously insisted on by any party down to the time of filing the present bill. The present is not a bill to reform a contract or deed, but to assert rights supposed to grow out of the trusts declared in the deed.

This view of the matter renders it unnecessary for the Court to go into an examination of the facts insisted upon in the answer to repel the allegations in the bill or to disprove the equity which it asserts. If the United States possesses, as we think it does, an unqualified fee in the streets and squares, that defeats the title of the plaintiffs and definitively disposes of the merits of the cause.

It is the opinion of the Court, MR. JUSTICE BALDWIN dissenting, that the decree of the circuit court dismissing the bill be

Affirmed with costs.

* *See* Acts of Maryland of 23 December, 1788, 19 December, 1791, 23 December, 1792, and of the 28 December, 1793; Act of Virginia of 3 December, 1789.