

Wallace Vs. Parker

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Court : US Supreme Court

Decided On : 1832

Appeal No. : 31 U.S. 680

Appellant : Wallace

Respondent : Parker

Judgement :

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Wallace v. Parker

31 U.S. (6 Pet.) 680

ERROR TO THE SUPREME

COURT OF OHIO

SYLLABUS

Jurisdiction. This Court has jurisdiction in an appeal from the Supreme Court of the State of Ohio in a case where was drawn in question at the trial the construction of the act by which Virginia ceded the territory she claimed northwest of the River

Ohio to the United States, and of the resolution of Congress accepting the deed of cession and the acts of Congress prolonging the time for completing titles to lands within the Virginia Military Reservation, the decision of the Supreme Court of Ohio, having been against the title set up under the acts of Congress.

Construction of the acts of Congress relative to the Virginia reservation of military lands in Ohio.

Josiah C. Parker, the defendant in error, filed a bill in the Court of Common Pleas of Brown County in the State of Ohio, praying for an injunction, and that Cadwallader Wallace, the defendant in error, should be compelled to release his legal title to one thousand acres of land in the Virginia military district in the State of Ohio, which Josiah Parker, the grandfather of the complainant, had entered on or about 12 January, 1788, on part of a Virginia military warrant, No. 1920, under which entry a survey was made, but which survey, by the omission of the surveyor, was not returned to the proper officer for record. The bill stated that the defendant, Cadwallader Wallace, had caused part of the tract to be located and had obtained a grant for the same, and upon the said grant had prosecuted a writ of ejectment against persons in possession of the land under the complainant.

The defendant held under a patent dated April 13, 1824, issued to him in consideration of military services performed by Thomas Parremore to the United States, a captain, for the war in the Virginia line on continental establishment and in pursuance of an Act of the Congress of the United States of 10 August, 1790, entitled

"an act to enable the officers and soldiers of the Virginia line on continental establishment to obtain title to certain lands lying northwest of the River Ohio, between the Little Miami and Sciota."

The survey on which

the patent was founded was dated 17 December, 1823. In an answer afterwards filed to an amended bill, he says that the complainant has no equitable claim to the land, because the entry made by him is based upon a resolution warrant, which is not protected by the act of Congress, and cannot therefore be a foundation on which to base a valid entry.

The pleadings also exhibit other questions as to the nature and validity of the surveys of the land. As no decision of the court was given upon any of the questions presented by those parts of the proceedings, they are omitted.

The petition of Josiah Parker, the grandfather and deviser of the complainant, in 1783, to the Legislature of Virginia for an allowance of land, and the proceedings thereon, were as follows:

"To the Honorable, the general assembly: "

"The request of Josiah Parker humbly representeth that he was, in October, 1775, appointed by the assembly major of the fifth regiment on continental establishment; that he was, in August, 1776, promoted to the rank of lieutenant-colonel, and the April following had the honor of receiving a full colonel's commission in the same regiment, which he retained until August, 1778, when he resigned it to General Washington on the banks of the North River after the arrival of Comte D'Estaing and the French alliance. That previous to all this, he raised the first company of minutemen on the south side of James River, and was on actual duty at the Great Bridge with his company until his promotion in the continental line. That since his resignation, he has, on every invasion, been employed against the enemy and with active and disagreeable commands, with the rank still of colonel in the militia, which he satisfied himself with, though inferior to the rank he held in the army, as he felt the satisfaction of serving his country; and during all this his services in the militia, he never received a shilling of money of any sort from this state or the continent; notwithstanding, by the act of assembly allowing a bounty of lands to the officers and soldiers, he is precluded from any share, because he did not serve three years in a continued line; that nevertheless he is emboldened to request the assembly will allow him a colonel's allowance of

lands, because they have resolved that Generals Stephens and Lewson should receive

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theirs, and although each of these are general officers of the militia, yet they were only colonels at the same time with your petitioner, who remained longer in the continental army than either of them."

"In the House of Delegates, Tuesday, 18 November, 1783: "

"Mr. Mann Page reported from the Committee of Proposition and Grievances that the committee had, according to order, had under its consideration the petitioner of Josiah Parker, to them referred, and had agreed upon a report, and come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read and agreed to by the house, as followeth:"

" It appears to your committee that in October, 1775, the said Josiah Parker was appointed a major of the fifth regiment on continental establishment, in which rank he acted until August, 1776, when he was appointed lieutenant-colonel, and in April, 1777, he received a full colonel's commission in the same regiment, and acted in that rank until August, 1778, when he resigned. It also appears to your committee, that since that resignation of the said Josiah Parker, he hath, upon every invasion of this state by the enemy, been upon duty with the militia in the rank of colonel, with the command of the whole militia on the south side of James River after the invasion by General Philips, until the arrival of the Count de Grasse. Resolved that the petition of the said Josiah Parker, praying that he may be allowed the bounty in lands by law given to a colonel in the continental line, is reasonable."

"Land Office, Military Warrant, No. 1920: "

"To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia. This shall be your warrant to survey and lay off, in one

or more surveys, for colonel Josiah Parker, his heirs or assigns, the quantity of 6,666 2/3 acres of land, due unto the said Josiah Parker in consideration of his services for three years as a colonel in the Virginia continental line, agreeable to a certificate from the governor and council, received into the land office."

"Given under my hand and seal of the said office this 21 Nov. in the year 1783. JOHN HARVIE, R. L. Office. "

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The complainant also exhibited in evidence a patent for five hundred and ten acres, issued to him by the United States as the devisee of Josiah Parker, which patent, bearing date 1 February, 1827, recited that

"In consideration of military services performed by Josiah Parker for three years a colonel to the United States in the Virginia line on continental establishment, and in pursuance of an Act of Congress of the United States passed on 10 August in the year 1790, entitled"

"An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the River Ohio between the Little Miami and Sciota,"

"and other acts of the said Congress amendatory to the said act, there is granted by the United States unto Josiah C. Parker, devisee of the said Josiah Parker, a certain tract of land containing 510 acres, situate between the Little Miami and Sciota Rivers, northwest of the River Ohio on the waters of Red Oak and Eagle Creeks, branches to the Ohio, being part of a military warrant No. 1920."

The Court of Common Pleas of Brown county, on 26 September, 1826, ordered and decreed that the complainant's injunction for the land aforesaid, and the costs of the suit at law, be rendered perpetual, and that said defendant do, by deed duly executed, within thirty days release to the complainant the land hereinbefore described by metes and bounds, and in case of failure of said defendant to execute such release, that then and in that event this decree shall operate as such

release, and it is further ordered and decreed by the court that the defendant pay the complainant his costs by him about his suit in this behalf expended, also his costs about his defense in the action at law expended, within thirty days, and in case of failure, that said complainant have execution for said costs, and the parties are hence dismissed. And thereupon the defendant, by his counsel, gave notice that he would appeal from the decree aforesaid to the supreme court.

The Supreme Court of Ohio, at November term 1828, affirmed the decree of the court of common pleas, and the defendant prosecuted a writ of error to this 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 by the Supreme Court of the State of Ohio, sitting in and for the County of Brown, in a case in which the defendant in error was plaintiff. The case must therefore be brought within the twenty-fifth section of the Judicial act or this Court cannot take jurisdiction of it.

The plaintiff in error alleges that the construction of an act of Congress was drawn in question on the trial and that the decision was against the title set up under the act, and also that the construction of a state law was drawn in question as being contrary to an act of Congress and the decision was in favor of the party claiming under the state law.

Josiah Parker obtained a land warrant from the land office of Virginia for his services in the Virginia line on continental

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establishment. The defendant in error having located the warrant on lands in the military reserve and received a patent therefor, instituted a suit in chancery against the plaintiff in error, who held the same land under a prior grant, and obtained a decree for a conveyance. This Court cannot examine the general merits of the decree. Our inquiries are in this case limited to the question whether the record

shows that an act of Congress has been misconstrued to the injury of the plaintiff in error or the title of the defendant in error has been sustained by a law of a state which is repugnant to a law of the United States. Both questions depend on the construction of the act by which Virginia ceded the territory she claimed northwest of the River Ohio to the United States, of the resolution accepting the deed of cession, and of the acts of Congress prolonging the time for completing titles to lands within the Virginia Military Reservation.

The deed of cession was executed by the members of Congress then representing the State of Virginia on 1 March, 1784, in virtue of a power conferred on them by the act of cession, which act it recites. One of the conditions on which the cession is made is, 1 Laws U.S. 474,

"That in case the quantity of good lands on the southeast side of the Ohio . . . which have been reserved by law for the Virginia troops or continental establishment, should . . . prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands to be laid off between the Rivers Sciota and Little Miamis on the northwest side of the River Ohio in such proportions as have been engaged to them by the laws of Virginia."

The deed was accepted by Congress according to its terms. The act of cession to which the deed refers was passed on 20 December, 1783.

In his answer to an amended bill filed by the plaintiff in the state court, the defendant says

"That if the complainant's entry does contain that certainty and precision which the law requires in order to constitute a valid entry, yet the complainant has no equitable claim to the lands in question, because, first, said entry is based upon a resolution warrant, which is not protected by any act of Congress, and cannot therefore be a foundation on which to base a valid entry. "

The warrant to which the answer refers is in the usual form, and does not purport to have been issued in virtue of a resolution. But the warrant did in fact issue on a resolution which appears in the proceedings in the cause.

It appears that Colonel Josiah Parker presented a petition to the General Assembly of Virginia in which he stated himself to have served two years and ten months in the Virginia Line on continental establishment, after which he resigned his commission as a colonel in the army. That since his resignation, he had been called into service as colonel, commanding a corps of militia, during every invasion of the state. He prays that the assembly will grant him a colonel's allowance of lands. This petition was referred to a committee, whose report stated the facts and concluded with the following resolution.

"Resolved that the petition of the said Josiah Parker praying that he may be allowed the bounty in lands by law given to a colonel in the continental line is reasonable."

This resolution was approved by the Senate and was passed 20 November, 1783.

In March, 1807, Congress passed an act extending the time for locating Virginia military land warrants, which enacts

"That the officers and soldiers of the Virginia Line on continental establishment, their heirs or assigns entitled to bounty lands within the tract reserved by Virginia between the Little Miami and Sciota Rivers, for satisfying the legal bounties to her officers and soldiers upon continental establishment, shall be allowed a further time,"

&c.; This act was continued by subsequent acts, so as to be in force when the survey was made under which the complainant in the state court obtained his decree. Does the act cover his case?

We think it extends to every case which comes within the reservation made by Virginia in her act of cession. The deficiency of good lands on the southeast of the River Ohio having been admitted by Congress, the inquiry is whether the warrant

granted to Josiah Parker is among those for which the reserve on the northwestern side of that river was made.

The resolution grants the land to Josiah Parker as a colonel in the continental line. At the time it was passed, Virginia possessed the territory in which it was located in

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absolute sovereignty. The deed of cession had not been executed nor had the act been passed by which that deed was authorized. Congress, by accepting the cession, admitted the right to make it, and that right has never since been drawn into question.

The resolution then gave to Josiah Parker all the right it purported to give. What was that? "The bounty in lands by law given to a colonel in the continental line." By this resolution Josiah Parker was placed by the State of Virginia on precisely the same footing with a colonel who claimed under the act which had previously been passed. Had the cession never been made, no distinction could have been taken between them. The officer by whom the warrant was issued perceived no distinction, and the warrant is expressed to be "for his services for three years as a colonel in the Virginia continental line." To discover what services the legislature received as an equivalent for two months of this time, services performed at the head of corps of militia, we must look at the petition and the report of the committee.

But the legislature at that time possessed the same power to bestow its bounty on an officer who had performed the services stated in Colonel Parker's petition, and in the report of the committee, as on one who had completed his three years in the continental line. They possessed the same power to bestow that bounty on an individual in the form of a resolution as on their officers generally in the form of an act. The one conferred the same rights as the other, and was equally obligatory on the state. Had the lands been retained by Virginia, no distinction could have been made between these claims, and it is impossible to perceive any reason why she

should have distinguished between them in the reservation contained in her act of cession. Do the words of the act set up this distinction?

They are

"that in case the quantity of good land on the southeast side of the Ohio, which have been allowed by law for the Virginia troops upon continental establishment, should . . . prove insufficient for their legal bounties, the deficiency should be made up,"

&c.;

It cannot be doubted that Colonel Parker's warrant might have been located on the land "reserved by law on the

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southeast side of the Ohio for the Virginia troops upon continental establishment."

This reservation is made in general terms. It is not connected with the allotment of specific quantities for specific services. Provisions were afterwards made for this subject, and those provisions varied at different times. At one time, service was required during the war; by another act, three years' service entitled the officer to his bounty, and an increased bounty was allowed for those who had served six years and upwards. Officers who resigned after serving three years were entitled to the bounty by an act which was passed so late as the year 1782. Particular resolutions were passed afterwards in favor of officers who were deemed by the legislature to have performed services as meritorious as if they had remained in the regular army for three years. All these warrants were equally entitled to be satisfied out of the land "reserved by law on the southeast side of the Ohio for the Virginia troops on continental establishment." They were equally "legal bounties," equally bounties "which had been engaged to them by the laws of Virginia" before her cession of the territory northwest of the Ohio, for a resolution receiving the assent of both houses is a law as operative as an act of assembly.

If, then, under the laws of Ohio we may consider the petition of Colonel Parker and the report of the committee as part of the record in this cause, the court of Ohio does not appear to us to have misconstrued the act of cession or any act of Congress.

The decree of the Supreme Court of the State of Ohio sitting in and for the county of Brown is affirmed with costs.

This cause came on to be heard on the transcript of the record, from the Supreme Court of the State of Ohio sitting in and for the County of Brown, and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that the judgment and decree of the said supreme court in this cause be and the same is hereby affirmed with costs.

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