Marlatt Vs. Silk

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Appeal No. : 36 U.S. 1

Appellant : Marlatt

Respondent : Silk

Judgement :

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Marlatt v. Silk

36 U.S. (11 Pet.) 1

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Ejectment. A tract of land situated in that part of the State of Pennsylvania which, by the compact with the State of Virginia of 1780, was acknowledged to be within the former state was held under the provisions of an Act of Assembly of Virginia

passed in 1779, by which actual *bona fide* settlers, prior to 1778, were declared to be entitled to the land on which the settlement was made, not exceeding four hundred acres. The settlement was made in 1772. Of this tract, in the year 1786, a survey was made and returned into the Land Office of Pennsylvania, and a patent was granted for the same. The title set up by the defendants in the ejectment was derived from two land warrants from the Land Office of Pennsylvania dated in 1773, under which surveys were made in 1778, and on which patents were issued on 9 March, 1782. The compact confirms private property and rights existing previous to its date, under and founded on and recognized by the laws of either state, falling within the other, preference being given to the elder or prior right subject to the payment of the purchase money required by the laws of the state in which they might be for such lands. *Held* that the title derived under the Virginia law of 1779, and afterwards perfected by the patent from Pennsylvania in 1788, was a valid title, and superior to that asserted under the warrants of 1773, and the patent founded upon them and issued in 1782

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The title derived under the Act of the Legislature of Virginia of 1779 commenced in 1772 when the settlement was made, and therefore stands as a right prior in its commencement to that originating under the warrants of 1773. The question of title between the contending parties is not to be decided by the laws or decisions of either Pennsylvania or Virginia, but by the compact of 1780.

The principles on which the case of *Jackson v. Chew,* 12 Wheat. 163, are decided are not affected by the decisions of the Court in this case. In the case of *Jackson v. Chew,* the Court said that it adopted the state decisions when applicable to the title of lands. That was in a case the decision of which depended on the laws of the state and on their construction by the tribunals of the state. In the case at bar, the question arises under and is to be decided by a compact between two states, when the rule of decision is not to be collected from the decisions of either state, but is one of an international character.

The plaintiff in error, a citizen of the State of Ohio, instituted an action of ejectment against the defendants at October term 1831 to recover a tract of land situated in Allegheny County, Pennsylvania, and the case was tried before the District Court for the Western District of Pennsylvania in October 1835. A verdict and judgment under the charge of the court were rendered in favor of the defendants, and the plaintiff, having taken exceptions to the charge, prosecuted this writ of error.

The case, as stated in the opinion of this Court, was as follows:

Thomas Watson, under whom the plaintiff in error claimed, on 25 April 1780, obtained from certain commissioners of Virginia a certificate entitling him to 400 acres of land by virtue of an Act of Assembly of Virginia passed in May 1779, the fourth section of which, after reciting that great numbers of people had settled in the country upon the western waters, upon waste and unappropriated land, for which they had been hitherto prevented from suing out patents or obtaining legal titles, &c.;, enacted

"That all persons who at any time before the first day of January in the year 1778 have really and *bona fide* settled themselves or their families or at his or her or their charge have settled others upon any waste or unappropriated lands on the said western waters to which no other person hath any legal right or claim shall be allowed, for every family 400 acres of land or such smaller quantity as the party chooses to include in such settlement."

This certificate was granted in right of a

settlement which had been made by Watson in the year 1772. This evidence of right under Virginia was subsequently transferred to the Land Office of Pennsylvania (the land having, under a compact between that state and Virginia, been ascertained to be within the limits of Pennsylvania), and on the first of November 1786, a survey of his claim was made and returned to the land office of that state, and a patent issued thereon by that state in the year 1791, including the settlement made in 1772 and including the land in controversy. The defendants

claimed under Edward Hand, who, by virtue of two land warrants granted by Pennsylvania, one for 300 acres dated 24 November 1773, the other for the same quantity dated 27 November, 1773, caused surveys to be made on both, on 21 January, 1778, and on 9 March 1782 obtained patents on both surveys embracing the land in controversy.

Both Pennsylvania and Virginia having claimed the territory of which the land in controversy was a part as being within their limits, the dispute was finally adjusted by a compact made between them, which was ratified by Virginia on 23 June 1780, with certain conditions annexed, and absolutely by Pennsylvania on 23 September 1780, with an acceptance of the conditions annexed by Virginia. The compact declared

"That the private property and rights of all persons acquired under, founded on, or recognized by the laws of either country previous to the date hereof shall be secured and confirmed to them although they should be found to fall within the other, and that in disputes thereon, preference shall be given to the elder or prior right, whichever of the said states the same shall have been acquired under, such persons paying to the said states in whose boundary the same shall be included the same purchase or consideration money which would have been due from them to the state under which they claimed the right. "

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MR. JUSTICE BARBOUR delivered the opinion of the Court.

This is a writ of error to the District Court of the United States for the Western District of Pennsylvania in an action of ejectment in which the plaintiff in error was plaintiff in the court below and in which judgment was given for the defendant in that court. It comes up upon two bills of exception taken by the plaintiff in error to the opinion of the court at the trial, the one in relation to the admission of certain evidence which he alleges to have been improperly received; the other to the ruling of the court upon several points of law in its charge to the jury. We think it unnecessary to discuss any of these points but one,

which we consider decisive of the case. And that is the relative priority of the respective rights under which the parties claim.

The facts of the case are these:

Thomas Watson, under whom the plaintiff in error claims, on 25 April 1780, obtained from certain commissioners of Virginia a certificate entitling him to 400 acres of land by virtue of an Act of the Assembly of Virginia passed in May 1779, the fourth section of which, after reciting that great numbers of people have settled in the country upon the western water upon waste and unappropriated lands, for which they have been hitherto prevented from suing out patents or obtaining legal titles, &c.;, enacts

"That all persons who, at any time before the first day of January in the year 1778 have really and *bona fide* settled themselves or their families or at his, her, or their charges have settled others upon any waste or unappropriated lands on the said western waters to which no other person has any legal right or claim shall be allowed, for every family so settled, 400 acres of land or such smaller quantity as the party chooses to include in such settlement."

This certificate was granted in right of a settlement which had been made by Watson in the year 1772. His evidence of right under Virginia was subsequently transferred to the land office of Pennsylvania (the land having, under a compact between that state and Virginia, hereafter more particularly noticed, been ascertained to be within the limits of Pennsylvania), and on the first of November 1786, a survey of his claim was made and returned to the land office of the latter state and a patent issued thereon by that state in the year 1791, including his settlement made in 1772 and including the land in controversy.

The defendants claim under Edward Hand, who, by virtue of two land warrants, granted by Pennsylvania, the one for 300 acres, dated 24 November 1773, the other for the same quantity dated 27 November, 1773, caused surveys to be made on both on 21 January, 1778, and on 9 March, 1782, obtained patents on both

surveys embracing the land in controversy.

Both Pennsylvania and Virginia having claimed the territory, of which the land in controversy is a part, as being within their limits, the dispute was finally adjusted by a compact made between them which was ratified by Virginia on 23 June 1780, with certain conditions annexed, and absolutely by Pennsylvania, on 23

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September, 1780, with an acceptance of the conditions annexed by Virginia. That compact, *inter alia,* contains the following stipulation:

"That the private property and rights of all persons acquired under, founded on, or recognized by the laws of either country previous to the date thereof be secured and confirmed to them, although they should be found to fall within the other, and that in disputes thereon preference shall be given to the elder or prior right, whichever of the states the same shall have been acquired under, such persons paying to the states in whose boundary their land shall be included the same purchase or consideration money which would have been due from them to the state under which they claimed the right."

The rights of the parties must be decided by the true construction of this stipulation as applied to the foregoing facts of the case. What is that construction? In the first place, it is declared, that the property and rights of all persons acquired under, founded on, or recognized by the laws of either country *previous to the date of the compact* (that is, the year 1780) shall be secured and confirmed to them. The Act of Virginia of May 1779, before cited, is, in point of chronology, previous to the date of the compact. Is not the settlement of Watson, made in 1772, recognized by the act? It is, in explicit terms, because the act makes an allowance of 400 acres of land to all those who shall have *bona fide* made a settlement on waste and unappropriated land before the first of January, 1778, and it has been seen that Watson's settlement was made in 1772. What was the motive which induced the Legislature of Virginia to make this allowance? We find it declared in the preamble to the fourth section of the Act of May 1779: it was that persons who had made

settlements had been prevented from suing out patents or obtaining legal titles by the King of Great Britain's proclamations or instructions to his governors, or by the then late change of government, and the then present war having delayed until that time the opening of a land office and the establishment of any certain terms for granting lands. And what was the consideration -- we do not mean pecuniary, but valuable -- on which the allowance was founded? The same preamble informs us that it consisted in the justice of making some compensation for the charge and risk which the settlers had incurred in making their settlements. It is apparent, then, that the legislature did not pass the law in

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question as making a donation, but as allowing a reasonable compensation for something of value on the part of settlers -- not of money, indeed, paid into the coffers of the state, but of charge and risk incurred by the settlers. We think, then, that the allowance, thus made is, in the language of the compact, a right recognized by the law of Virginia previous to the date of that compact. Considering it as thus recognized, and consequently, as secured and confirmed, we come now in the order of the argument to the other part of the stipulation aforesaid, which declares that in disputes thereon, preference shall be given to the elder or prior right, whichever of the said states the same shall have been acquired under.

How is this question of priority to be decided? In answering this question, we think that the first thing to be done is to ascertain the character of the rights of the parties as settled by the laws of the states under which they respectively claim as these laws stood *at the date of the compact.* In this aspect of the subject it has been seen that the defendants claim under warrants granted by Pennsylvania in 1773 and surveyed in 1778. But the act of Virginia of 1779, having allowed 400 acres of land to those who had made a settlement before the first of January 1778 and having founded that allowance on the charge and risk which they had incurred, in our judgment the equitable claim or the inchoate right of the parties must consequently be referred for its commencement to the period when the charge and risk were incurred -- that is, in the case at bar, to the year 1772. If, as we think, this principle be correct, this mere comparison of dates would decide the

case. It has, however, been argued that if this case were in a Virginia court, it would be decided in favor of the right under which the defendants claim, because that is by warrant, before the act of 1779, and in support of this, the Court has been referred to the case of *Jones v. Williams,* 1 Wash. 230, in which the Court of Appeals of that state says that before the act of 1779, those lands (that is, lands on which settlements had been made) might have been entered and patented by any person notwithstanding prior settlements by others; that the act of 1779 applies to controversies between mere settlers; that it does not set up prior rights of this sort so as to defeat those legally acquired under warrants. The error of this argument, as we conceive, consists in this, that the doctrine here stated, however true in itself, does not apply to the case at bar. That was laid down in a case between two persons,

both of whom claimed under Virginia, and was therefore governed by the laws of Virginia alone, whereas in this case one of the parties claims under Pennsylvania and the other under Virginia, and the case is to be decided not by the laws of either state by themselves, except that, as before remarked, the character of each right is to be fixed by the laws of the state as at the time of the compact under which the right is claimed, and then the comparison between the two is to be made not under the laws of either state, but under the stipulation in the compact before referred to. Thus, to illustrate, the origin of the plaintiff's claim being, in our opinion, as operated upon by the act of Virginia of 1779, to be referred to the period of Watson's settlement in 1772, and that of the defendants as affected by the laws of Pennsylvania, being of later date, the foundation being thus laid for deciding which is the prior or elder title; we then apply to the case the compact, which declares that the preference shall be given to the prior or elder.

We suppose that it will scarcely be denied that by the act of 1779, Virginia recognized the inception of the title of settlers as being of the date of the settlement, as against herself; if so, can it be imagined that by the compact she intended their title to take its date from a later period? If it should be said that so also Pennsylvania cannot be supposed to have intended to impair the force of the

titles claimed under her, the answer that each state intended that its own laws should settle the character of the right claimed under it, as to the time of its inception and in every other respect, and then that according to the inception thus fixed, the rule of priority should decide, as provided for in the compact.

It was argued that the question had been settled in the Supreme Court of Pennsylvania, and the doctrine stated in 25 U. S. 12 Wheat. 167, was referred to, where it is said that this Court adopts the state decisions because they settle the law applicable to the case, and the reasons assigned for this course apply as well to rules of construction growing out of the common law, as the statute law of the state, when applied to the title of lands. To say nothing of the division of the Court in the case referred to, it is a decisive answer to this argument to say that the principle does not at all apply. It was laid down in reference be cases arising under, and to be decided by, the laws of a state, and then the decisions of that state are looked to to ascertain what that law is, whereas in the case at bar the question arises under and is to be decided by a compact between *two*

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states, where, therefore, the rule of decision is not to be collected from the decisions of either state, but is one, if we may so speak, of an international character. Upon the whole, we are of opinion that the judgment of the court below is erroneous in charging the jury that the title of the defendants was the elder and prior right, and was therefore protected by the compact; on the contrary, we think that of the plaintiff was the elder and prior; the judgment must therefore be

Reversed and a venire facias de novo awarded.

MR. JUSTICE TANEY and MR. JUSTICE Mc LEAN dissented.

MR. JUSTICE Mc LEAN.

THE CHIEF JUSTICE and MR. JUSTICE Mc LEAN think that the condition of the compact

"that the private property and rights of all persons acquired under, founded on, or recognized by, the laws of either country, previous to the date hereof, be secured and confirmed to them although they should be found to fall within the other, and that in disputes thereon, preference shall be given to the elder or prior right, whichever of the said states the same shall be acquired under,"

placed the land in controversy under the common jurisdiction of both states, and that the first appropriation of the land under the authority of either state must be considered under the compact as the prior right.

The Pennsylvania warrant which was located on this land was surveyed on 21 January 1778. At this time, the Virginia claimant, though he lived on the land, had no color of right; he was in fact a trespasser. The Virginia act of 1779 provided

"That all persons who, at any time before 1 January 1778, had *bona fide* settled upon waste or unappropriated lands on the western waters *to which no other person hath any legal right or claim* shall be allowed four hundred acres,"

&c.; Now if the land in controversy was subject to the jurisdiction of both states and might be appropriated by either, was it not appropriated under the Pennsylvania warrant before the Virginia claimant had any right under the act of 1779? This is too clear to be controverted. In the language of the compact, then, had not the Pennsylvania claimant "the prior right?" The act of 1779 does not purport to vest any title in the settler

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anterior to its passage. The settler, to bring himself within the act, must show that he was a *bona fide* settler before 1 January 1778, and this entitled him to 400 acres of land under the act, provided *"no other person had any legal right or claim to it."*

At this time, the land, as has been shown, was appropriated under the Pennsylvania law, and which appropriation, if effect be given to "the prior right," under the compact does constitute within the meaning of the act of 1779, a "right

or claim to the land."

In 1 Wash. 231, the Court of Appeals of Virginia said that the law of 1779 does not "set up rights, so as to defeat those legally acquired under warrants." This land, by the compact, was considered as liable to be appropriated by a Pennsylvania as by a Virginia warrant before the act of 1779, and in ascertaining the priority of right, the time of the appropriation is the fact to be established.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Pennsylvania and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court with directions to award a *venire facias de novo.*