Clark Vs. Smith

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Decided On : 1838

Appeal No. : 38 U.S. 195

Appellant : Clark

Respondent : Smith

Judgement :

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Clark v. Smith

38 U.S. (13 Pet.) 195

ON APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

The colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion by the states of the Union after the Revolution, were made for lands within the Indian hunting grounds. North Carolina

and Virginia, to a great extent, paid their officers and soldiers of the Revolutionary War by such grants, and extinguished the arrears due the army by similar means. It was one of the great resources which sustained the war not only by those states, but by other states. The ultimate fee, encumbered with the right of Indian occupancy, was in the Crown previous to the Revolution, and in the states of the Union afterwards, and subject to grant. This right of occupancy was protected by the political power and respected by the courts until extinguished, when the patentee took the unencumbered fee. So this Court and the state courts have uniformly held.

The State of Kentucky has an undoubted power to regulate and protect individual rights to her soil and to declare what shall form a cloud on titles, and having so declared, the courts of the United States, by removing such cloud, are only applying an old practice to a new equity created by the legislature, having its origin in the peculiar condition of the country. The unappropriated lands of the State of Kentucky have been opened to entry and grant at a very cheap rate, which policy has let in abuses. The clouds upon old titles by the issuance of new patents for the same lands were the consequence, and the citizens of other states are entitled to come into the courts of the United States, to have their rights secured to them by the statute of Kentucky of 1796.

The State of Kentucky may prescribe any policy for the protection of the agriculture of the country that she may deem wise and proper. She has, in effect, declared that junior patents issued for previously granted lands shall be delivered up and cancelled, with the addition that a release of title shall be executed, and it is the duty of the courts to execute the policy.

Where the legislature declares certain instruments illegal and void, there is inherent in the courts of equity a jurisdiction to order them to be delivered up, and thereby give effect to the policy of the legislature.

The state legislatures have certainly no authority to prescribe the forms or modes of proceeding in the courts of the United States, but having created a right and at the same time prescribed the remedy to enforce it, if the remedy prescribed is

substantially consistent with the ordinary modes of proceeding on the chancery side of the federal courts, no reason exists why it should not be pursued in the same form as in the state courts. On the contrary, propriety and convenience suggest that the practice should not materially differ when titles to land are the subjects of investigation.

In the State of Tennessee, the legislature has provided that the courts of equity may divest a title, and vest it in another party to a suit, and that the decree shall operate as a legal conveyance. In Kentucky the legislature has declared that courts may appoint a commissioner to convey, as attorney in fact of litigant parties, and such shall pass the title, in both instances binding infants and *femes coverts* if necessary. The federal courts of the United States, in the instances referred to, have adopted the same practice for many years, without a doubt having been entertained of its propriety. It may be said with truth that it is a mode of conveyance and of passing title which the states have the exclusive right to regulate.

The undoubted truth is that when investigating and decreeing on titles in this country, the court must deal with them in practice as it finds them, and accommodate our modes of proceeding in a considerable degree to the nature of the case, and to the character of the equities involved in the controversy, so as to give effect to state legislation and state policy, not departing, however, from what legitimately belongs to the practice of a court of chancery.

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William Clark, the father of the appellants, filed a bill in the Circuit Court of the District of Kentucky, praying the court to compel the defendant to release his pretended title to certain lands in the State of Kentucky, claimed by under certain patents obtained from the State of Kentucky, more than thirty years after the registration of the survey of the ancestor of the complainants, George Rogers Clark. The possession of the land had continued in the ancestor of the complainant, and in himself, up to the time of the filing of the bill. The conveyance

asked by the bill was sought to be in conformity with the provisions of the act of the assembly of Kentucky giving jurisdiction to courts of equity in such cases.

The circuit court was unanimously of opinion that the complainants had established the legal title to the land mentioned in the bill, under a valid grant from the Commonwealth of Kentucky, to George Rogers Clark, his ancestor, and that he was in possession of the same at the commencement of this suit, and that the defendant had not shown that he had any right or title, either in law or equity, to the land or any part of it, but the judges of the circuit court being divided in opinion on the question of the jurisdiction of the circuit court to compel the defendant to execute the conveyance prayed for in the bill, it was not the opinion of the court (the defendant having set up and exhibited junior patents from the Commonwealth of Kentucky for the land, to himself) that on any other ground apparent in the cause, the circuit court had jurisdiction, on the general principles which determine the equity jurisdiction of the courts of the United States, to grant to the complainants any other relief. The bill of the complainants was dismissed; and they prosecuted this appeal.

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MR. JUSTICE CATRON delivered the opinion of the Court.

By patent of 15 September, 1795, there was granted to George Rogers Clark, by the Commonwealth of Kentucky, 36,962 acres of land, beginning on the Ohio River at the mouth of the Tennessee; running south 16, east 1,280 poles, north 74, west 3,840 poles, north 16, east 1,800 poles, to the bank of the Ohio, with its miles below Fort Massac, thence running up the Ohio, with its several meanders 4,480 poles to the beginning.

The patent is in conformity to a survey of 7 June, 1784, returned to the land office of Virginia, founded on an entry, and an amendment thereof, dated 17 May and 26 of October, 1780, made by virtue of various Treasury warrants. The entry having been for 71,962 acres, with liberty to return one or more surveys.

The identity of the land, as entered, surveyed, and patented, is established beyond doubt, as the survey made by order of the court below, represents it.

William Clark, the complainant, by various mesne conveyances, became the owner in fee of the same, and by his tenant has

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been in possession from 1819 up to the time of filing the bill, the claim of the Chickasaw Indians, having been extinguished to the country where the land lies by the treaty of 19 October, 1818, to which time the right of possession was necessarily suspended.

The first exception taken by the answer is that the patent was made for lands lying within a country claimed by Indians, and therefore void.

To which it may be answered that the colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion by the states of this Union after the Revolution, were made for lands within the Indian hunting grounds. North Carolina and Virginia, to a great extent, paid their officers and soldiers of the Revolutionary War, by such grants, and extinguished the arrears due the army by similar means. It was one of the great resources that sustained the war not only by these states but others. The ultimate fee (encumbered with the Indian right of occupancy) was in the Crown previous to the Revolution, and in the states of the Union afterwards, and subject to grant. This right of occupancy was protected by the political power, and respected by the courts until extinguished, when the patentee took the unencumbered fee. So this Court and the state courts have uniformly and often holden. 10 U. S. 6 Cranch 87; 13 U. S. 9 Cranch 11.

By the act of November, 1781, Virginia opened the whole country south of the Tennessee River for the satisfaction of military claims, and excluded the location of Treasury warrants, and the officers and soldiers, through their superintendents, Thomas Marshall and others, caveated George Rogers Clark's claim, praying no grant might issue to him for the 36,932 acres. The caveat was filed in the Supreme

Court of the District of Kentucky, but because the judges were interested in the event, the suit was transferred, pursuant to an act of assembly, to the Court of Appeals of Virginia, where it was pending from 1786 to 1791, when that court, amongst other things, held

"that the dormant title of the Indian tribes remained to be extinguished by the government, either by purchase or conquest, and when that was done, it enured to the benefit of the citizens who had previously acquired a title from the Crown, and did not authorize a new grant of the lands, as waste and unappropriated."

And the state having succeeded to the royal rights, could appropriate the waste lands within her chartered limits in the same manner.

2. That by the act of 1779, the lands south of Tennessee River were subject to be located by Treasury warrants, and that the act of 1781, for the benefit of the officers and soldiers, could not have a retrospective operation so as to defeat General Clark's prior entry, made according to the existing laws.

The opinion having been returned to the Court of Appeal of Kentucky at the October term thereof, 1793, the caveat was dismissed,

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and in September, 1795, General Clark obtained his patent. Hughes, Kentucky Reports 39.

The validity of the title of the complainant is therefore not now open to controversy on these grounds, and such was the opinion of the circuit court. But that court being divided in opinion on the question of jurisdiction, no decree could be made in conformity to the prayer of the bill, and which was dismissed for this reason.

It seeks to enforce the act of Kentucky of 1796, which provides that

"Any person having both legal title to and possession of land, may institute a suit against any other person setting up a claim thereto, and if the complainant shall be able to establish his title to such land, the defendant shall be decreed to release

his claim thereto, and pay the complainant his costs, unless the defendant shall by answer disclaim all title to such lands, and offer to give such release to the complainant, in which case the complainant shall pay to the defendant his costs, except for special reasons appearing, the court should otherwise decree."

The foregoing extract is the twenty-ninth section of an act professedly regulating proceedings in the court of chancery.

Conflicts of title were unfortunately so numerous that no one knew from whom to buy or take lands with safety; nor could improvements be made without great hazard, by those in possession, who had conflicting claims hanging over them; and which might thus continue for half a century -- the writ of right being limited to fifty years in some cases; that is, where it was brought upon the seizin of an ancestor or predecessor, and to thirty years, if on the demandant's own seizin. Act of January 1796. During all which time, the party in possession had no power to litigate, much less to settle the title at law; for he might be harassed by many actions of ejectment, and his peace and property destroyed, although always successful; by no means an uncommon occurrence. This evil it was the object and policy of the legislature to cure not so much by prescribing a mode of proceeding as by conferring a right on him who had the better title, and the possession, to draw to him the outstanding inferior claims. It is in effect declared that the junior claimant shall be deemed to hold a trustee for him in possession, and be compelled to release his inferior title by a conveyance, so that the junior patent, for instance, could not be perfected by possession, and the lapse of time into the better right by force of the acts of limitation, now reduced in Kentucky in such cases to a seven years' adverse holding. The junior patent, as between the state and the grantee is a valid title, and if in this instance, Smith were to hold adverse possession of anyone of his thirty-two tracts, for seven years, he would have the better legal title, and if the grants of Smith are released to Clark, a holding by him in virtue of the release, would have the same effect.

The legislature having declared that he who has the legal and equitable title and the possession, may treat the adverse claimant as a trustee, and coerce a release to himself of the inferior claim;

of course the statute secures a highly valuable right which it is the duty of the courts to enforce and which can only be enforced in a court of equity.

Kentucky has the undoubted power to regulate and protect individual rights to her soil and to declare what shall form a cloud on titles, and having so declared, the courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the legislature, having its origin in the peculiar condition of the country. The unappropriated lands of that state have been opened to entry and grant at a very cheap rate, as this record shows, which policy has let in the abuse sought to be remedied by the bill. That clouds upon old titles by the issuance of new patents for the same lands would be the consequence was manifest, and that citizens of other states are entitled to come into the courts of the United States to have the rights secured to them by the statute of 1796 enforced we cannot doubt.

But we apprehend jurisdiction may be assumed by the federal equally with the state courts upon another ground. Kentucky may prescribe any policy for the protection of the agriculture of the country that she may deem wise and proper; she has in effect declared that junior patents issued for previously granted lands shall be delivered up and cancelled, with the addition that a release of title shall be executed, and it is the duty of the courts to execute the policy.

Where the legislature declares certain instruments illegal and void, as the British annuity act does or as the gaming acts do, there is inherent in the courts of equity a jurisdiction to order them to be delivered up, and thereby give effect to the policy of the legislature. 10 Ves. 218. 5 Ves. 604. 2 Yerger 524. 1 Maddock's Ch.Pra. 185, and authorities cited.

The state legislatures certainly have no authority to prescribe the forms and modes of proceeding in the courts of the United States, but having created a right and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery

side of the federal courts, no reason exists why it should not be pursued in the same form as it is in the state courts; on the contrary, propriety and convenience suggest that the practice should not materially differ where titles to lands are the subjects of investigation. And such is the constant course of the federal courts. For instance, in Tennessee, the legislature has provided that the courts of equity may divest a title, and vest it in another party to the suit, and that the decree shall operate as a legal conveyance. So in Kentucky, the legislature has declared that the courts may appoint a commissioner to convey as the attorney in fact of a litigant party, and that such deed shall pass the title, in both instances binding infants and *femes covert* if necessary. The federal courts in the states referred to have adopted the same practice for many years without a doubt's having been entertained of its propriety. It may be said

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with truth that this is a mode of conveyance and of passing title which the states have the exclusive right to regulate; still the same statute that conferred the power thus to decree a conveyance prescribed the mode of proceeding, and had the form of the remedy been rejected by the courts of the United States, the right to have such record conveyance would have fallen with it, as they could not be separated.

The undoubted truth is that when investigating and decreeing on titles in this country, we must deal with them in practice as we find them, and accommodate our modes of proceeding in a considerable degree to the nature of the case and the character of the equities involved in the controversy, so as to give effect to state legislation and state policy, not departing however from what legitimately belongs to the practice of a court of chancery.

The complainant's case being one coming clearly within the rules alluded to, we order that the decree of the court below be

Reversed and the cause remanded to be proceeded in according to the rights of the parties.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Kentucky and was argued by counsel. On consideration whereof it is adjudged and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this Court.