Bagnell Vs. Broderick

Bagnell Vs. Broderick

SooperKanoon Citation : sooperkanoon.com/79681

Court : US Supreme Court

Decided On : 1839

Appeal No. : 38 U.S. 436

Appellant : Bagnell

Respondent : Broderick

Judgement :

Bagnell v. Broderick - 38 U.S. 436 (1839)
U.S. Supreme Court Bagnell v. Broderick, 38 U.S. 13 Pet. 436 436 (1839)

Bagnell v. Broderick

38 U.S. (13 Pet.) 436

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

The plaintiff in error had exhibited, in an action instituted against him in the Circuit Court of Missouri, evidence conducing to prove that a patent from the United States, under which the plaintiff in the ejectment, the defendant in error, claimed

the land, had been improperly granted by the government of the United States, and that the title to the land was in him. *Held* that in an action at law, the patent from the United States for part of the public lands is conclusive. If those who claim to hold the land against the patent can show that it issued by mistake, then the equity side of the circuit court is the proper forum, and a bill in chancery is the proper remedy to investigate the equities of the parties.

Congress has the sole power to declare the dignity and effect of titles emanating from the United States, and the whole legislation of the government in reference to the public lands declares the patent to be the superior and conclusive evidence of legal title. Until it issues, the fee is in the government, which by the patent passes to the grantee, and he is entitled to recover the possession in ejectment.

The practice of giving in evidence a special entry in aid of a patent and dating the legal title from the date of the entry is familiar in some of the states, and especially in Tennessee. Yet the entry can only come in aid of the legal title, and is no evidence of such title standing alone when opposed to a patent for the same land.

The presumption is that the judgment of the circuit court is proper, and it lies on the plaintiff in error to show the contrary.

When the title to the public land has passed out of the United States by conflicting patents, there can be no objection to the practice adopted by the courts of a state to give effect to the better right, in any form of remedy the legislature or courts of the state may prescribe.

No doubt is entertained of the power of the states to pass laws authorizing purchasers of lands from the United States to prosecute actions of ejectment upon certificates of purchase, against trespassers on the lands purchased, but it is denied that the states have any power to declare certificates of purchase of equal dignity with a patent. Congress alone can give them such effect.

This was an action of ejectment for a tract of land in the State of Missouri instituted by George W. Broderick against Bagnell, the defendant, the tenant in possession, and in the progress of the cause, Morgan Byrne, the landlord, was made co-

defendant, and he dying, his executors were substituted.

Other actions of ejectment were at the same time instituted by George W. Broderick for parts of the said tract in the possession of McCunie and of Sampson, and the executors of Morgan Byrne became in the same manner co-defendants in the cases. A verdict in conformity to the opinion of the circuit court having been given for the plaintiff in each of the cases on 10 April, 1838, the defendants prosecuted writs of error to the Supreme Court, bills of exceptions having been sealed by the court.

The bills of exceptions show that on the trial of these cases, the plaintiff below read in evidence a copy of the patent from the United States to John Robertson, Jr., dated 17 June, 1820, for the tract of land mentioned in the above statements, which, reciting that

Page 38 U. S. 437

John Robertson, Jr., had deposited in the General Land Office a certificate, numbered 192, of the Recorder of Land Titles at St. Louis, Missouri, whereby it appeared that in pursuance of an Act of Congress passed 17 February, 1815, entitled, "An act for the relief of the inhabitants of the late County of New Madrid, in the Missouri Territory, who suffered by earthquakes," the said John Robertson, Jr. was confirmed in his claim for 640 acres of land, being survey No. 2810, and section 32, township 50 north, and range 15 west of 5th principal meridian, and the United States granted to John Robertson, Jr., in fee, the tract of land described above. Also a deed from John Robertson, Jr., to Augustus H. Evans, dated 11 November, 1830, conveying the same tract of land to the said Evans in fee, expressly stipulating, however, against any warranty. Also a deed from Augustus H. Evans to George W. Broderick, the plaintiff below, now defendant in error, dated 7 June, 1830, conveying the same tract of land to the said Broderick in fee, and proved possession of the premises by the defendants below, at the commencement of the suits respectively, and here closed his testimony.

That the defendants below, now plaintiffs in error, read in evidence a transcript of a notice to the recorder of land title for the United States at St. Louis, taken from the records of the office of the recorder, given by John Robertson, Jr., which states that he claims 750 arpens of land in the Big Prairie on the ground of inhabitation and cultivation prior to and on 20 December, 1803, by and with the consent of the proper Spanish officer.

Also copy of proceedings had before the board of commissioners on land claims, on 11 July, 1811, taken from the minutes of the proceedings of the board for ascertaining and adjusting the titles and claims to lands, which shows that on the claim of John Robertson, Jr., for 750 arpens of land in the Big Prairie, the board granted to John Robertson, Jr., 200 arpens of land. Also a transcript of opinion, and report of the recorder of land titles of the United States at St. Louis, made 1 November, 1815, which, in connection with Act of Congress of 29 April, 1816, entitled, "An act for the confirmation of certain claims of land in the Western District of the State of Louisiana and in the Territory of Missouri" (*see* sec. 2 of this act), shows that the confirmation of 200 arpens, parcel of the claim of John Robertson, Jr., for 750 arpens of land in the Big Prairie, made by the board of commissioners aforesaid, was extended to 640 acres, and this quantity, 640 acres, was accordingly confirmed to him. Also a deed from John Robertson, Jr., to Edward Robertson, Sr. dated 29 May, 1809, conveying the said 750 arpens of land to the said Edward Robertson, Sr., in fee; reciting in same conveyance that 330 arpens of the said 750 arpens had been surveyed, and how, and specifying the manner of laying off the residue, and authorizing the said Edward Robertson to apply for and receive from government or the proper authorities, a patent in his own name for same, and covenanting on behalf of himself and his heirs, to warrant the title

against all persons claiming under, through, or by the vendor. Also a deed from Edward Robertson, Sr., to Morgan Byrne, dated 30 October, 1813, conveying to the said Byrne in fee 300 arpens of land out of a tract of land the head right of John Robertson, Jr., situated and being in the Big Prairie, bounding the part

conveyed, parcel of the 750 arpens above described, and covenanting for himself and his heirs to warrant and defend the title against all claims whatever. Also a deed from Edward Robertson, Sr., to Morgan Byrne, dated 11 September, 1816, conveying to the said Byrne in fee 250 arpens of land, part of the head right of John Robertson, Jr., of 750 arpens, situated in the Big Prairie, and containing a covenant for himself and heirs to warrant the title against all claims whatever. Also a copy of deed from Edward Robertson, Sr., to William Shelby, dated 29 October, 1816, conveying to the said Shelby in fee two hundred arpens of land bounding the same, parcel of the head right of John Robertson, Jr. (and parcel of the 750 arpens above described), and containing a covenant of general warranty. Also a copy of deed from William Shelby to Levi Grimes, dated 2 December, 1816, conveying to the said Grimes in fee the 200 arpens of land next above described and containing a covenant of general warranty.

Also a deed from Levi Grimes to Morgan Byrne, dated 26 February, 1817, conveying to the said Byrne in fee the 200 arpens of land next above described, and containing a special warranty.

The defendants also produced in evidence an extract from registry of relinquishments, in office of recorder of land titles for the United States at St. Louis, of lands materially injured by earthquakes, under the Act of Congress of 17 February, 1815, which shows that the confirmation aforesaid to John Robertson, Jr., for 640 acres, situated in the Big Prairie, was relinquished by Morgan Byrne, as the legal representative of John Robertson, Jr., and on such relinquishment the location certificate No. 448 issued.

Also a copy of certificate of location, dated September, 1818, and numbered 448, issued by Recorder of Land Titles of United States at St. Louis, which certifies that a tract of 640 acres of land situated in the Big Prairie was materially injured by earthquakes, and that in conformity with the provisions of the Act of Congress of 17 February, 1815, the said John Robertson, Jr. (reciting that he appears from the books of his office, recorder of land titles of United States, to be the owner) or his legal representatives was entitled to locate 640 acres of land on any of the public lands, &c.; Also a copy of the location under the foregoing certificate of location,

made 8 October, 1818, which shows that Morgan Byrne, as the legal representative of John Robertson, Jr., entered and located 640 acres of land by virtue of the certificate of location, commonly called a New Madrid certificate, issued by the recorder of land titles of the United States at St. Louis, dated September, 1818, and numbered 448, so as to include section No. 32, township 50 north, range 15 west of

Page 38 U. S. 439

5th principal meridian (the same premises in dispute), and here the defendants below closed their testimony.

The plaintiff below then read in evidence a copy of notice by John Robertson, Jr., of claim for 330 arpens and proceedings on same had before the board of commissioners of land claims on 24 March, 1806, and 15 August, 1811, which show that John Robertson, Jr., filed a notice of claim for 330 arpens, situated in the District of New Madrid, under the second section of the Act of Congress of March, 1805, accompanied by a plat of survey of 330 arpens, made by one Joseph Story at request of John Robertson, Jr. (as the same purports), who, as the survey recites, claimed the same as part of his settlement right, by virtue of the second section of the Act of Congress of March, 1805; that the board of commissioners on 24 March, 1806, grant to claimant 750 arpens, and on 15 August, 1811, reject the claim entirely, saying the claim ought not to be granted. Also a transcript of opinion and report of the Recorder of Land Titles of United States at St. Louis made 1 November, 1815, which, in connection with the Act of Congress of 29 April, 1816, before referred to, shows that the claim of John Robertson for 330 arpens was confirmed to him, and 330 arpens accordingly granted. Also a copy of certificate of location in favor of John Robertson, Jr., or his legal representatives, dated 18 September, 1818, and numbered 447, issued by the Recorder of Land titles of the United States at St. Louis which certifies that a tract of 330 arpens of land situated on Lake St. Marie had been materially injured by earthquakes, and that in conformity with the provisions of the Act of Congress of 17 February, 1815, the said John Robertson, Jr., reciting that he appears from the books of his office, recorder of land titles of the United States, to be the owner,

or his legal representatives, was entitled to locate 330 arpens of land, &c.;

The defendants below then read in evidence an extract from registry of relinquishments in the office of Recorder of Land titles of the United States at St. Louis of lands materially injured by earthquakes under the Act of Congress of 17 February, 1815, which shows that the confirmation aforesaid, of 330 arpens to John Robertson, Jr., was relinquished by James Tanner, as his legal representative, and that on such relinquishment the location certificate, No. 447, issued. Also a certificate of the recorder of land titles aforesaid that from entries made in the books of his office of New Madrid location certificates issued, the certificate of location No. 447 was delivered to one Jacoby, for James Tanner, and certificate of location No. 448, was delivered to Morgan Byrne, and proved that the premises in dispute in each case was of the value of three thousand dollars, which closed and was all the evidence given in the causes.

Upon the case made, the defendants below moved the court to instruct the jury as follows:

"1. That the entry or New Madrid location made by Morgan

Page 38 U. S. 440

Byrne in his own name, as given in evidence in these cases, is proof of legal title to the land and is a sufficient defense against all persons who do not show a better legal title to the same land."

"2. That the patent, a copy of which has been given in evidence by the plaintiff, did not vest in the patentee any better legal right to the land in question than he had before the date thereof as against the defendants claiming the same land adversely by other title."

"3. That after the entry and before the patent, Morgan Byrne had a legal title to the land in question sufficient to enable him to prosecute or defend an action of ejectment therefor, and that the issuing of the patent could not divest that title."

"4. That if the jury believe the patent, a copy of which has been offered in evidence by the plaintiff, issued on the location made by Morgan Byrne, and shown in evidence on the part of the defendants in these cases, the patent is not such title as will avail against the location."

All which instructions the court refused, to which refusal exceptions were taken.

Page 38 U. S. 446

MR. JUSTICE CATRON delivered the opinion of the Court.

This was an action of ejectment by Broderick against Bagnell for a section of land lying in Howard County, Missouri, and Peter and Luke Byrne were admitted to come in and defend under the following circumstances.

Morgan Byrne claimed to be the owner of the land, and he was first admitted a co-defendant with Bagnell.

Page 38 U. S. 447

Byrne died, and Margaret Byrne, his executrix, was admitted as a co-defendant. Then she died, and Peter Byrne and Luke Byrne, executors of the last will of Morgan Byrne, were admitted.

The judgment below is that the plaintiff recover the land and costs against Carey Bagnell and P. and L. Byrne, executors of Morgan Byrne.

It is assigned for error that the judgment for costs against Peter and Luke Byrne should have been *de bonis testatoris,* and not *de bonis propriis.*

The presumption is that the judgment of the circuit court is proper, and it lies on the plaintiffs in error to show the contrary. 26 U. S. 1 Pet. 23. The executors of Morgan Byrne had no interest in the land by virtue of their letters testamentary, but could well have an interest by the will of their testator. On no other ground could they properly have been permitted to come in and defend in the character of executors. On this ground, therefore, we presume they were admitted, and like

other defendants in ejectment, having failed to show the better title, the recovery was proper, and costs necessarily followed the judgment de bonis propriis.

The plaintiff Broderick claimed by virtue of a patent from the United States to John Robertson, Jr., dated June 17, 1820 and deeds in due form from Robertson and others to himself, proved Carey in possession at the commencement of the suit, and here rested his case.

To show that the better title had been in Morgan Byrne, the defendants produced a deed dated 20 May, 1809, from John Robertson, Jr., to Edward Robertson, Sr., for seven hundred and fifty arpens of land lying in Big Prairie township in the District of New Madrid, adjoining the lands of Sheckler and Cox, and which deed authorized Edward Robertson to procure a patent from the government. By different conveyances, Morgan Byrne claimed title to the 750 arpens through and under Edward Robertson.

The land lies in the County of New Madrid in the State of Missouri, and was injured by the earthquakes of December, 1811. To relieve the inhabitants who had suffered by this calamity, Congress passed the act of 17 February, 1815, providing that those whose lands had been materially injured should be authorized to locate the same quantity on any of the public lands in the Missouri Territory, but not exceeding in any case 640 acres, on which being done, the title to the land injured should revert to the United States.

The Recorder of Land Titles for the Territory of Missouri was made the judge, "to ascertain who was entitled to the benefit of the act, and to what extent" on the examination of the evidences of claim, as compensation for which, if well founded, he was directed to issue a certificate to the claimant. This certificate having issued and a notice of location having been filed in the Surveyor General's office, on application of the claimant the surveyor was directed to survey the land selected and to return a plat to the office of the Recorder of Land Titles, together with a notice in writing, designating the tract

located, and the name of the claimant on whose behalf the location and survey had been made; which plat and notice it was the duty of the recorder to record in his office; and he was required to transmit a report of the claim as allowed, together with the location by survey to the Commissioner of the General Land Office and deliver to the claimant a certificate stating the circumstances of the case and that he was entitled to a patent for the tract designated. The notice of location made by the claimant with the Surveyor General is no part of the evidence on which the General Land Office acted, but the patent issued on the plat and certificate of the surveyor, returned to the recorder's office, and which was by him reported to the General Land Office.

The United States never deemed the land appropriated until the survey was returned, for the reason that there were many titles and claims, perfect and incipient, emanating from the provincial governments of France and Spain, and others from the United States, in the land district where the New Madrid claims were subject to be located. So there were lead mines and salt springs excluded from entry. Then again, the notice of entry might be in a form inconsistent with the laws of the United States, in all which cases no survey could be made in conformity to it. If no such objection existed, it was the duty of the surveyor to conform to the election made by the claimant, having the location certificate from the recorder. Still the only evidence of the location recognized by the government as an appropriation was the plat and certificate of the surveyor. Such is the information obtained from the General Land Office. As evidence of the form of location and practice of the office, we have been furnished with a copy of the plat and certificates of survey on which the patent in this record is founded, and which is annexed. As before stated, the patent to John Robertson, Jr., is deemed to have been issued regularly, and we must presume that all the usual incipient steps had been taken before the title was perfected. 18 U. S. 5 Wheat. 293; 20 U. S. 7 Wheat. 157; 31 U. S. 6 Pet. 724, 31 U. S. 727 -728; 31 U. S. 342 . And of course that the certificate of survey returned by the recorder was in the name of John Robertson, Jr. The patent merged the location certificate on which the survey was founded, so that no second survey could be made by virtue of the certificate. Thus fortified stands the title of the plaintiff below.

The defendant there relied upon a notice of entry filed with the Surveyor General in these words:

"Morgan Byrne, as the legal representative of John Robertson, Jr., enters six hundred and forty acres of land by virtue of a New Madrid certificate issued by the Recorder of Land Titles for the Territory of Missouri and dated St. Louis, September, 1818, and numbered 448, in the following manner, to-wit, to include section No. 32, in township No. 50, north of the base line, range No. 15, west of the fifth principal meridian."

"St. Louis, Oct. 8, 1818 MORGAN BYRNE"

Page 38 U. S. 449

Which is founded on the following certificate of location:

" *No. 448"*

" *St. Louis, Office of the Recorder of Land Titles* "

"September, 1818"

"I certify that a tract of six hundred and forty acres of land, situate, Big Prairie, in the County of New Madrid, which appears from the books of this office to be owned by John Robertson, Jr., has been materially injured by earthquakes, and that in conformity with the provisions of the act of Congress, of 17 February, 1815, the said John Robertson, Jr., or his legal representatives, is entitled to locate six hundred and forty acres of land, on any of the public lands of the Territory of Missouri, the sale of which is authorized by law. *Vide* Com'rs Cer'e, No. 1126, ext'd."

"FREDERICK BATES"

This is obviously the foundation of the survey and patent to John Robertson, Jr., a fact admitted, but it is insisted that Byrne had the better title to the recorder's

certificate; that it issued to him in fact as the "legal representative of John Robertson, Jr.," and that the notice of entry filed with the Surveyor General vested in Byrne a title of a character on which he could have maintained an ejectment against Broderick, and that consequently his devisees could successfully defend themselves. That they could if the entry be the better title must be admitted.

There is evidence in this record tending to show that Morgan Byrne made the relinquishment of the New Madrid claim, but the same evidence (being extracts from the records of the recorder's office) shows that the location certificate was granted to John Robertson, Jr. They are as follows:

image:a

"A list of relinquishments of lands materially injured by earthquakes, in the late County of New Madrid (present) State of Missouri, under the act of Congress of 17 February 1815."

image:b

This evidence, taken in connection with the deeds to Edward Robertson and those from him and others to Byrne, it is insisted, establishes

Page 38 U. S. 450

the better equity to have been in the latter, and that this equity can be made available for the defendants in the circuit court by force of the act of the Legislature of Missouri which provides that an action of enactment may be maintained on "a New Madrid location."

Our opinion is first, that the location referred to in the act is the plat and certificate of survey returned to the Recorder of Land Titles, because, by the laws of the United States, this is deemed the first appropriation of the land, and the Legislature of Missouri had no power, had it made the attempt, to declare the notice of location filed with the Surveyor General an appropriation contrary to the laws of the United States. The survey having been made and certified to the recorder in the name of John Robertson, Jr., Byrne had no title that would sustain

an ejectment in any case, and of course those claiming under him cannot successfully defend themselves on the evidence they adduced.

But secondly, suppose the plat and certificate of location had been made and returned to the recorder in the name of Morgan Byrne and that it had been set up as the better title in opposition to the patent adduced on behalf of the plaintiff in ejectment, still we are of opinion the patent would have been the better legal title. We are bound to presume for the purposes of this action that all previous steps had been taken by John Robertson, Jr., to entitle himself to the patent, and that he had the superior right to obtain it, notwithstanding the claim set up by Byrne, and having obtained the patent, Robertson had the best title (to-wit, the fee) known to a court of law.

Congress has the sole power to declare the dignity and effect of titles emanating from the United States, and the whole legislation of the federal government in reference to the public lands declares the patent the superior and conclusive evidence of legal title; until its issuance, the fee is in the government, which, by the patent, passes to the grantee, and he is entitled to recover the possession in ejectment.

If Byrne's devisees can show him to have been the true owner of the 750 arpens of land, relinquished because injured by earthquakes, and that the patent issued to John Robertson, Jr., by mistake; then the equity side of the circuit court is the proper forum, and a bill the proper remedy to investigate the equities of the parties. But whether any equity existed in virtue of the act of 1815, and if so whether it was adjudged between the parties by the Recorder of Land Titles, are questions on which we have formed no opinion, and wish to be understood as not intimating any.

We have been referred to the case of *Ross v. Barland,* 1 Pet. 662, as an adjudication involving the principles in this case; we do not think so. In that, there were conflicting patents, the younger being founded on an appropriation of the specific land by an entry in the land office of earlier date than the senior patent. The Court held that the entry and junior patent could be given in evidence in

connection as one title, so as to overreach the elder patent. The practice of giving in evidence a special entry in aid of a patent and dating the legal title from the date of the entry is familiar in some of the states and especially in Tennessee; yet the entry can only come in aid of a legal title, and is no evidence of such title standing alone, when opposed to a patent for the same land. Where the title has passed out of the United States by conflicting patents, as it had in the case in 6 Peters, there can be no objection to the practice adopted by the courts of Mississippi to give effect to the better right in any form of remedy the legislature or courts of the state may prescribe.

Nor do we doubt the power of the states to pass laws authorizing purchasers of lands from the United States to prosecute actions of ejectment, upon certificates of purchase, against trespassers on the lands purchased, but we deny that the states have any power to declare certificates of purchase of equal dignity with a patent. Congress alone can give them such effect.

For the several reasons stated, we have no doubt the judgment of the circuit court was correct, and order it to be

Affirmed.

In the cases of *Sampson against Broderick* and *McCunie against the Same,* the judgments are also

Affirmed.

MR. JUSTICE Mc LEAN dissented.

Being opposed to the decision of the Court in this case, I will state as shortly as I can the grounds of my dissent. I am induced to do this from the peculiar circumstances of the case.

To sustain his action of ejectment, the plaintiff, in the circuit court, gave in evidence a patent to John Robertson, Jr., which states

"that he had deposited in the General Land Office a certificate numbered one hundred and ninety-two, of the Recorder of Land Titles at St. Louis, Missouri, whereby it appears that in pursuance of an Act of Congress passed 17 February, 1815, entitled 'an act for the relief of the inhabitants of the late County of New Madrid, in the Missouri Territory, who suffered by earthquakes, the said John Robertson, Jr., is confirmed in his claim for six hundred and forty acres of land, being survey No. 2,810, and section thirty-two, of township fifty, north, in range fifteen, west of the fifth principal meridian line,'"

&c.; The patent bears date 17 June, 1820. On 16 November, 1830, the patentee conveyed the land to Augustus H. Evans. And on 7 June, 1831, Evans conveyed to Broderick, the lessor of the plaintiff.

The defendants first gave in evidence a confirmation of a Spanish claim for settlement and cultivation to John Robertson, Jr., for six hundred and forty acres of land in the Big Prairie, near New Madrid. The entire interest in this right was conveyed by John Robertson, Jr., to Edward Robertson, Sr., 29 May, 1829.

On 30 October, 1813, Edward Robertson, Sr., conveyed three hundred arpens of this tract of land to Morgan Byrne. And

11 September, 1816, he conveyed to Byrne two hundred and fifty arpens more of the same tract. On 29 October, 1816, Robertson conveyed to William Shelby two hundred and fifty arpens of the same tract. And on 2 December, 1816, Shelby conveyed to Levi Grimes, and on 26 February, 1817, Grimes conveyed to Morgan Byrne.

By these conveyances Byrne became vested with the entire original right of John Robertson, Jr., to the tract of land, as above stated.

Under the Act of Congress of 17 February, 1815, any person owning land within the County of New Madrid in the Missouri Territory which had been injured by earthquakes had the right to relinquish the same to the United States and receive

a certificate therefor specifying the quantity of acres, not to exceed six hundred and forty, which he was authorized to locate on any land of the United States, and on such location's being made, the land relinquished became absolutely vested in the United States.

Under this law, Byrne relinquished to the United States the six hundred and forty acres in the Big Prairie as the legal representative of John Robertson, Jr., who was the claimant of record originally. The following is a copy of the certificate of location issued on this relinquishment:

"No. 448. St. Louis, Office of the Recorder of Land Titles"

"September, 1818"

"I certify that a tract of six hundred and forty acres of land situate, Big Prairie, in the County of New Madrid, which appears from the books of this office to be owned by John Robertson, Jr., has been materially injured by earthquakes, and that in conformity with the provisions of the Act of Congress of 17 February, 1815, the said John Robertson, Jr., or his legal representatives, is entitled to locate six hundred and forty acres of land on any of the public lands of the Territory of Missouri, the sale of which is authorized by law."

"[Signed] FREDERICK BATES"

And on 8 October, 1818, Byrne made the following location:

"Morgan Byrne, as the legal representative of John Robertson, Jr., enters six hundred and forty acres of land by virtue of a New Madrid certificate issued by the Recorder of Land Titles for the Territory of Missouri and dated St. Louis, September, 1818, and numbered 448, in the following manner, to-wit: to include section No. thirty-two, in township No. fifty, north of the base line, range No. fifteen west of the fifth principal meridian."

And here the evidence of the defendants closed.

On this state of facts, the defendant's counsel moved the court to instruct the jury that the entry or New Madrid location, made by Morgan Byrne in his own name, is proof of a legal title to the land,

Page 38 U. S. 453

and is a sufficient defense against all persons who do not show a better legal title to the same land. That if the jury believe the patent, a copy of which has been given in evidence by plaintiff, issued on the location made by Morgan Byrne, the patent is not such title as will avail against the location.

The revised code of Missouri of 1825, which was in force when this action was commenced, provides that a New Madrid location shall be a title on which to sustain an action of ejectment against any person not having a better title.

The defendant's show by deeds of conveyance from John Robertson, Jr., that Morgan Byrne had a full and clear title to the 640 acres of land near New Madrid; that he relinquished said land, under the Act of Congress of 1815, to the United States, and located the section of land now in controversy. He, being the owner of the land as the legal representative of John Robertson, Jr., was the only person who could relinquish it to the United States. By virtue of this relinquishment and in consideration of its having been made, he received the certificate which authorized him to locate the same number of acres of any part of the public land which had been offered for sale.

It appears that under the law of 1815, the New Madrid claimant had to show a confirmation of the land claimed by him on the public records in the name of the first claimant, and to show a derivative title to himself, before he was permitted to relinquish it to the government. And in the present instance, John Robertson, Jr., being the original confirmee of the title, the record was produced establishing the fact, and Byrne then proved by an exhibition of his deeds that Robertson had parted with all his right in the premises and that he was his legal representative. It was in this capacity that the relinquishment was made and the certificate of location was issued. And he made the location of the land in controversy in the

same character.

In this view of the case, there can be no doubt that Byrne or his assignee has the title to the land. And that there is possession under this title is shown by the fact that the action of ejectment was commenced by the lessor of the plaintiff to obtain the possession.

It appears that the patent was issued to John Robertson, Jr., improperly, as in 1809 he conveyed all his interest in the land relinquished. Before the emanation of the patent, he had not a shadow of title, either equitable or legal, to the land in dispute. And the patent must have been fraudulently obtained by him on the presentation of the certificate of location made by Byrne. The evidence on this point is too clear to be controverted. It is established by deeds executed in the most solemn form and by records which contain the highest verity. The inference of the fraud is as irresistible as are the facts from which it is inferred.

The proof of Byrne's title is irrefragable, and it is equally clear

that Robertson had no title to the land, until he fraudulently obtained the patent. Having no shadow of right, he could obtain the patent in his own name by no other than fraudulent means. And no court which could feel itself authorized to look behind the patent could hesitate to pronounce the title of Byrne valid against the patentee, who has sought to cover his fraud by this legal instrument.

And the question here arises whether, under the Missouri statute, the circuit court ought not to have instructed the jury that under the deeds and records given in evidence, Byrne's was the better title. I cannot doubt that this instruction should have been given.

The statute makes the location a legal title for the purposes of the action of ejectment. And if it be a good title on which to bring an ejectment, it must be equally effectual in the defense of such an action. This title, the statute declares, shall prevail against any person who has not the better title.

And what kind of a title is this better title? Surely it is a title that under the facts and circumstances of the case ought to prevail against that to which it is opposed.

It is urged that this better title must mean a better title than others of the same class, but that it can never be considered a better title against a patent. And why may it not be considered a better title against the patent?

The title set up in the defense derives its validity from laws of the United States as entirely as the patent. The question then is, which is the better title of the two, both originating from the same sovereignty? The statute of Missouri does nothing more than declare that a court of law may do in an action of ejectment what no one doubts would be competent for a court of chancery to do.

And may not the legislature do this? It does not originate a title, under any pretense of state sovereignty, which is to operate against a patent from the United States, but it gives to a court of law powers in the action of ejectment which in some other states are exercised only by a court of chancery. This has always been the rule in Pennsylvania and in other states which have no court of chancery.

Technically a location is an inchoate legal title. But out of this class of titles a new rule of equity grew up by the practice of the courts of Kentucky. And this rule is not in conformity with the long established principles of a court of equity.

As between conflicting entries, the doctrine of notice is utterly discarded. The entry must be a legal one by embracing all the substantial requisites of the law or a subsequent entry may be made on the same land though the locator have full knowledge of the first entry.

This forms an anomaly in the history of equity jurisdiction. It authorizes a court of equity to give effect to that which is in itself strictly a legal right.

Principles growing out of this peculiar system have been acted

on from necessity, by the courts of the United States; but they have not been regarded as appropriate to an equitable jurisdiction in other cases.

Had the courts of Kentucky acted upon entries as legal titles, whether under their own rules, or by virtue of statutory provisions, the courts of the United States would have adopted the same mode of proceeding. In the State of Tennessee, a junior patent under the first entry will overreach an elder patent under a junior conflicting entry. This, in Kentucky, would be the exercise of an equitable jurisdiction. In Missouri, under the statute, it would be examinable at law.

It is said the patent merges the location. This under the Kentucky system is true, but where the patent has been issued through a mistake or fraud to an individual who was not entitled to it, a court of equity will control the right of the patentee by compelling him to convey to the person who has the better right.

And why may not a court of law protect this better right? The right may be investigated as fully, and, considering the nature of the rights under the Missouri statute, as safely in a court of law as in a court of chancery. But this, with the court, is not a question of policy. It is a rule of evidence and of property adopted by the State of Missouri, and our whole course of adjudications requires us to regard it. There is therefore no more violation of principle in examining the title of Byrne at law than in equity. The result is substantially the same in both modes, as the title of Byrne must be protected from the fraud by which it has been attempted to be overreached and subverted.

Judging from the evidence of this case, I have never seen a grosser act of fraud than the obtainment of this patent by Robertson eleven years after he had conveyed every vestige of right in the land which was relinquished as the consideration to the United States for the location in controversy.

It was stated in the argument that Byrne made the location but took no step subsequently to perfect the title. That Robertson had the survey executed and returned. This is an argument against the record. By the certificate which authorized the location, it was required to be located on land "the sale of which is

authorized by law." And no land is authorized by law to be sold except such as has been surveyed by the officers of the United States. The location in question was made on a section designated by its number, township, and range, and which, of course, had been surveyed.

As Robertson's name was inserted in the location agreeably to the forms used, he being the original claimant on record of the New Madrid tract relinquished, he was enabled to practice an imposition and fraud on the Commissioner of the General Land Office and obtain the patent.

It is a well settled principle that fraud may be investigated as well at law as in chancery, and I am strongly inclined to think if

Page 38 U. S. 456

this fraud had been brought before the court and jury independent of the statute of Missouri, they must have determined that it vitiated the patent.

Can anyone look at these two titles, that of Byrne having been obtained by a fair purchase, relinquishment, and location and that of Robertson by fraudulently obtaining the patent, and hesitate in deciding which is the better title? And it appears to me that the statute of Missouri, in providing that such a location shall be a title on which an action of ejectment may be sustained, covers the whole case and enables the court and jury to determine which is the better title.

In the case of *Sims' Lessee v. Irvine,* 3 Dall. 457, this Court said

"In Pennsylvania, where the consideration has been paid, a survey, though unaccompanied by a patent gives a legal right of entry, which is sufficient in ejectment."

Why they have been adjudged to give such right, whether from a defect of chancery powers or for other reasons of policy or justice, is not now material. The right once having become an established legal right, and having incorporated itself as such with property and tenures, it remains a legal right notwithstanding any new distribution of judicial powers, and must be regarded by the common law courts of

the United States in Pennsylvania as a rule of decision.

And in the case of *Ross v. Doe on the Demise of Barland,* 1 Pet. 664, this Court said "for the plaintiff, it is argued that the state court erred in deciding that the elder grant should not prevail in the action of ejectment."

The question in this case was between a claimant under a patent of the United States and one who claimed the same land under a donation certificate given by commissioners. The question was identically the same in principle as in the case under consideration.

And this Court decided

"Where by the established practice of courts in particular states, the courts in actions of ejectment look beyond the grant and examine the progressive stages of the title from its incipient state until its consummation, such a practice will form the law of cases decided under the same in these states, and the Supreme Court of the United States regards those rules of decision in cases brought up from such states, provided that in so doing they do not suffer the provisions of any statute of the United States to be violated. Under the Act of Congress of March 3, 1803, such lands only were authorized to be offered for sale as had not been appropriated by the previous sections of the law, and certificates granted by the commissioners in pursuance thereof. A right, therefore, to a particular tract of land derived from a donation certificate given under that law is superior to the title of anyone who purchased the same land at the public sales."

This was the rule in ejectment cases in the State of Mississippi, from whence this cause was brought.

This decision was given in 1828; the one cited from Dallas was

Page 38 U. S. 457

made in 1799; and the rule laid down in these cases has not been questioned by any other adjudication of this Court. Other decisions might be referred to of the same import, but it is deemed to be unnecessary.

I will, however, notice a case decided at the present term which in my judgment in principle has a strong application to the question under consideration. By a statute of Kentucky it is provided that

"Any person having both the legal title 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 to pay the complainant his costs,"

&c.; Now here is a statute which creates an equity or rule of proceeding in a court of chancery which, in the case of *Clark v. Smith,* has been very properly recognized as a rule of proceeding in this Court.

Now the statute of Missouri created a legal right or rule of proceeding in the action of ejectment. And if the Kentucky statute can give the rule of proceeding to this Court in chancery, why may not the Missouri statute do the same thing at law?

In the State of Illinois, by statute, a certificate of the register of the land office of the United States of an entry of land is made a good title on which to sustain an action of ejectment, and the supreme court of that state has long since settled the rule that such a title may be held good against a patent wrongfully or fraudulently obtained. In the State of Alabama, there is a similar law, and it has received by the supreme court of that state the same construction.

The idea that if a state can pass a law authorizing an action of ejectment on a certificate of the register, and that if this certificate, under any circumstances should be held the better title against a patent wrongfully issued would endanger the public lands, is so novel and so unfounded that I must notice it. Had not such an argument been advanced, I should have supposed that two things so wholly disconnected as this premise and conclusion could never be associated in the mind of anyone.

How are the public lands endangered by the establishment of this rule?

The certificate, as well as the patent, emanate from the federal government. Now if the patent, through mistake or fraud, has been issued wrongfully, no one doubts that a court of chancery may protect the right in such a case of the certificate holder. The State of Illinois says this may be done at law, and this is the whole matter. If there be danger to the public lands in this, it is not only a modern discovery, but to guard effectually against the danger, the states must abolish their courts of chancery or restrict them under all circumstances from questioning the right of the patentee. If the state courts cannot try these cases between their own citizens and under their own laws, where are they to be tried? All who claim under a patent are entitled to the same rights as the patentee.

Page 38 U. S. 458

MR. JUSTICE Mc KINLEY concurred in opinion with MR. JUSTICE Mc LEAN.

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 Missouri and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby affirmed with costs.

NOTE

"No. 192. Office of the Recorder of Land Titles"

"St. Louis, March 9, 1820"

"I certify, that in pursuance of the Act of Congress passed 17 February, 1815, a location certificate, No. 448, issued from this office in favor of John Roberson, Jr., or his legal representatives, for six hundred and forty acres of land; that a location has been made, as appears by the plat of survey herewith, and that the said John Robertson, Jr., or his legal representatives, is entitled to a patent for the said tract, containing, according to said location, six hundred and forty acres of land, being section No. 32, in township No. 50, north of base line -- range No. 15 west of 5th principal meridian. No. of survey, 2,810."

"FREDERICK BATES"

"Township No. 50, North of the Base line, Range No. 15, West fifth principal meridian."

image:c

"Surveyors' Office, St. Louis"

"January 15, 1820"

"I certify that section No. 32, in township No. 50, north of the base line, range No. 15, west of the 5th principal meridian, was located on 8 October, 1818, for John Roberson, Jr., or his legal representatives, by virtue of No. 448, dated September, 1818, issued by the Recorder of Land Titles for the Missouri Territory, to said John Robertson, Jr., or his legal representatives, for six hundred and forty acres of land, in conformity with the provisions of the Act of Congress of 17 February, 1815, for the relief of sufferers by earthquakes in the late County of New Madrid."

"WM. RECTOR"

"To Frederick Bates, Esq., Recorder of Land Titles for the Missouri Territory."