

United States Vs. Gratiot

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Court : US Supreme Court

Decided On : 1840

Appeal No. : 39 U.S. 526

Appellant : United States

Respondent : Gratiot

Judgement :

United States v. Gratiot - 39 U.S. 526 (1840)

U.S. Supreme Court United States v. Gratiot, 39 U.S. 14 Pet. 526 526 (1840)

United States v. Gratiot

39 U.S. (14 Pet.) 526

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF ILLINOIS

SYLLABUS

The United States instituted an action on a bond given by the defendants, conditioned that certain of the obligors who had taken from the agent of the United States, under the authority of the President of the United States, a license for

smelting lead ore, bearing date September 1, 1834, should fully execute and comply with the terms and conditions of a license for purchasing and smelting lead ore at the United States' lead mines on the Upper Mississippi River in the State of Illinois for the period of one year. The defendants demurred to the declaration, and the question was presented to the circuit court of Illinois whether the President of the United States had power, under the Act of Congress of 3 March, 1807, to make a contract for purchasing and smelting lead ore at the lead mines of the United States on the Upper Mississippi. This question was certified from the circuit to the Supreme Court of the United States. *Held* that the President of the United States has power, under the Act of Congress of 3 March, 1807, to make the contract on which this suit was instituted.

The power over the public lands is vested in Congress by the Constitution without limitation, and has been considered the foundation on which the territorial governments rest.

The cases of, [McCulloch v. State of Maryland](#), 4 Wheat. 422, and [American Insurance Company v. Canter](#), 1 Pet. 542, cited.

The words "dispose of" the public lands, used in the Constitution of the United States, cannot, under the decisions of the Supreme Court, receive any other construction than that Congress has the power, in its discretion, to authorize the leasing of the lead mines on the public lands in the territories of the United States. There can be no apprehensions of any encroachments upon state rights by the creation of a numerous tenantry within the borders of the states from the adoption of such measures.

The authority given to the President of the United States to lease the lead mines is limited to a term not exceeding five years. This limitation, however, is not to be construed as a prohibition to renew the leases from time to time if he thinks proper so to do. The authority is limited to a short period, so as not to interfere with the power of Congress to make other dispositions of the mines should they think the same necessary.

The legal understanding of a lease for years, is a contract for the possession and profits of land for a determinate period, with the recompense of rent. It is not necessary that the rent should be in money. If reserved in kind, it is rent in contemplation of law.

The law of 1807, authorizing the leasing of the lead mines, was passed before Illinois was organized as a state. She cannot now complain of any disposition or regulation of the lead mines previously made by Congress. She surely cannot claim a right to the public lands within her limits.

On the first day of September, 1834, the defendants entered into the following bond to the United States, having executed the same under their respective hands and seals:

"Know all men by these presents, that we, J. P. B. Gratiot, Robert Burton, D. B. Moorehouse and Charles S. Hempstead, are holden, and stand firmly bound unto the United States of America or their certain attorney in the penal sum of ten thousand dollars, current money of the United States, well and truly to be paid unto their Treasury, for which payment, well and truly to be made, we, the said J. P. B. Gratiot, Robert Burton, D. B. Moorehouse, and Charles

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S. Hempstead do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly, severally, and firmly, by these presents. Signed with our hands, and sealed with our seals, this first day of September in the year of our Lord one thousand eight hundred and thirty-four."

"The condition of the above obligation is such that whereas the said J. P. B. Gratiot and Robert Burton have obtained from the agent of the United States a license, bearing date the first day of September, 1834, containing stipulations therein more particularly described, to smelt lead ore. Now if the said J. P. B. Gratiot and Robert Burton shall faithfully and fully execute and comply with the terms and conditions set forth in said license, then and in that case this obligation to be void and of no effect, otherwise to remain in full force and virtue."

At the same time, a paper called a "License for Smelting," which was executed by Thomas C. Legate, major of the United States army, superintendent of the lead mines, J. P. B. Gratiot, and Robert Burton, under their hands and seals, was delivered to J. P. B. Gratiot and Robert Burton by Major Legate.

"This indenture, made and entered into this first day of September, 1834, between Major T. C. Legate, superintending the United States lead mines, acting under the direction of the Secretary of War, of the first part, and J. P. B. Gratiot and Robert Burton, of the second part, witnesseth: "

"That the said party of the second part is hereby permitted, by and with the approbation of the President of the United States, to purchase and smelt lead ore at the United States' lead mines, on the Upper Mississippi for the period of one year from and after the date hereof upon the following conditions, *viz.:* "

"1. All purchases or other acquisitions of ore, ashes, zinc, or lead to be from persons authorized to work the mines either as lessees, smelters, or diggers, and from no others, and no ore to be purchased from the leased premises of any person without his permission."

"2. To commence smelting as soon as one hundred thousand pounds of ore are obtained, and to continue it so long as any is on hand; to weigh a charge of ore for the log furnace, and the lead produced from it, when required to do it by the said first party or his assistant."

"3. To keep a book containing an accurate account of all ore, ashes, or zinc, purchased or otherwise acquired, and of all lead manufactured, which book shall at all times be open to inspection of the said first party or his assistant; and to furnish a transcript or return at the end of every month, agreeably to a form furnished by the said first party, which book and returns to be verified on oath if required."

"4. The said second party hereby agrees to pay the first party, for the use of the United States, six pounds of every hundred pounds of all the lead smelted by him under this indenture, to be

paid monthly in clear, pure lead at the wareroom on Fever River or at such other place near the mines as the said first party shall direct and free of expense to the United States. And the said second party is not to sell or remove from the places of smelting, in any manner whatever, any lead until the rent be paid as aforesaid. This condition is subject to the revocation of the government upon giving three months' previous notice, at which time it will be optional with the licentiate to accept or refuse the new terms. Upon his refusal to accept, then this license shall cease and determine."

"5. The second party is allowed to have as much fuel as will suffice without waste for the purpose of this indenture, and to cultivate as much land as will suffice to furnish his teams, &c.;, with provender."

"6. It is understood and agreed between the aforesaid parties that the said second party shall not employ in any manner any smelter, lessee, or miner who has forfeited his license, lease or permit to mine, nor any other person who is at the mines without the authority of the said first party, and the said second party agrees not to employ or harbor the laborers or workmen of another smelter. Sixty days are allowed after the expiration of this license to close all business under it, but it is understood that no purchase or hauling of ore is to take place after the license is expired. The bond given for the faithful performance of the contract is to be in full force and virtue until a written settlement is made."

"It is distinctly understood by the said parties that upon proof's being afforded to the first party that either of the foregoing stipulations have been violated or not complied with, he may declare this indenture null and void and reenter and take possession of all the premises as if no such agreement existed."

In the Circuit Court of the United States for the District of Illinois, the United States instituted an action of debt to December term, 1836, against the defendants on this bond. The declaration sets forth the bond and condition and recites the license or contract therein mentioned, and avers that the lessees had, by virtue of the

lease, smelted twenty-four hundred thousand pounds of lead, but had failed to execute the conditions stipulated on their part by altogether refusing to pay to the superintendent, for the use of the United States, the six pounds for every hundred pounds so smelted.

The defendants demurred to the declaration after oyer of the bond and license for smelting, and on the argument of the demurrer the following question arose upon which the judges of the circuit court were divided in opinion and directed it to be certified to this Court: "Whether the President had power, under the Act of 3 March, 1807, 2 Story's Laws, 1065, 1068, to make the contract set forth in the declaration."

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This is an action of debt founded on a bond given by the defendants to the United States in the penalty of ten thousand dollars, bearing date 1 September, 1834, with a

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condition thereunder written for the performance of certain covenants or stipulations contained in an indenture referred to, and bearing even date with the bond, and called a license for smelting lead. The declaration sets out the condition of the bond, with the parts of the indenture referred to upon which breaches are alleged, and then assigns the breaches.

The defendants crave oyer of the bond, and the instrument or indenture referred to in the condition, and they are read to him as follows:

"Know all men by these presents that we, J. P. B. Gratiot, Robert Burton, D. B. Moorehouse, and Charles S. Hempstead, are holden and stand firmly bound unto the United States of America or their certain attorney in the penal sum of ten thousand dollars current money of the said United States well and truly to be paid

into their Treasury, for which payment well and truly to be made we, the said J. P. B. Gratiot, Robert Burton, D. B. Moorehouse, and Charles S. Hempstead, do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly, severally, and firmly, by these presents. Signed with our hands, and sealed with our seals, this first day of September, in the year of our Lord one thousand eight hundred and thirty-four."

"The condition of the above obligation is such that whereas the said J. P. B. Gratiot and Robert Burton have obtained from the agent of the United States a license, bearing date the first day of September, 1834, containing stipulations therein more particularly described, to smelt lead ore: Now if the said J. P. B. Gratiot and Robert Burton shall faithfully and fully execute and comply with the terms and conditions set forth in said license, then, and in that case, this obligation to be void and of no effect, otherwise to remain in full force and virtue."

"J. P. B. GRATIOT [SEAL]"

"ROBERT BURTON [SEAL]"

"CHS. S. HEMPSTEAD [SEAL]"

"J. B. MOOREHOUSE [SEAL]"

"Witnesses present:"

"GEO. GOLDTHROP"

"PETER AYDELOTT"

"ABRAHAM BLAYLEN"

" *License for Smelting* "

"This indenture made and entered into this first day of September, 1834, between Major T. C. Legate, superintending the United States' lead mines, acting under the direction of the Secretary of War, of the first part, and J. P. B. Gratiot and Robert Burton, of the second part, witnesseth: "

"That the said party of the second part is hereby permitted, by and with the approbation of the President of the United States, to

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purchase and smelt lead ore at the United States' lead mines, on the Upper Mississippi for the period of one year from and after the date hereof upon the following condition, *viz.*: "

"1. All purchases or other acquisitions of ore, ashes, zinc, or lead, to be from persons authorized to work the mines either as lessees, smelters, or diggers, and from no others, and no ore to be purchased from the leased premises of any person without his permission."

"2. To commence smelting as soon as one hundred thousand pounds of ore are obtained, and to continue it so long as any is on hand; to weigh a charge of ore for the log furnace, and the lead produced from it, when required to do it by the said first party or his assistant."

"3. To keep a book containing an accurate account of all ore, ashes, or zinc, purchased or otherwise acquired, and of all lead manufactured, which book shall at all times be open to inspection of the said first party or his assistant, and to furnish a transcript or return at the end of every month agreeably to a form furnished by the said first party, which book and returns to be verified on oath if required."

"4. The said second party hereby agrees to pay the first party, for the use of the United States, six pounds of every hundred pounds of all the lead smelted by him, under this indenture, to be paid monthly in clear, pure lead, at the ware room on Fever River or at such other place near the mines as the said first party shall direct, and free of expense to the United States. And the said second party is not to sell or remove from the place of smelting in any manner whatever any lead until the rent be paid as aforesaid. This condition is subject to the revocation of the government, upon giving three months' previous notice, at which time it will be optional with the licentiate to accept or refuse the new terms. Upon his refusal to

accept, then this license shall cease and determine."

"5. The second party is allowed to have as much fuel as will suffice without waste for the purpose of this indenture, and to cultivate as much land as will suffice to furnish his teams, &c.;, with provender."

"6. It is understood and agreed between the aforesaid parties that the said second party shall not employ in any manner any smelter, lessee, or miner who has forfeited his license, lease, or permit to mine, nor any other person who is at the mines without the authority of the said first party, and the said second party agrees not to employ or harbor the laborers or workmen of another smelter. Sixty days are allowed after the expiration of this license to close all business under it, but it is understood that no purchase or hauling of ore is to take place after the license is expired. The bond given for the faithful performance of the contract is to be in full force and virtue until a written settlement is made."

"It is distinctly understood by the said parties that upon proof's being afforded to the first party that either of the foregoing stipulations has been violated or not complied with, he may declare this

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indenture null and void, and reenter and take possession of all the premises as if no such agreement existed."

"THO. C. LEGATE [SEAL]"

" *Major U.S. Army, sup. L. Mines* "

"J. P. B. GRATIOT [SEAL]"

"ROBERT BURTON [SEAL]"

"Witnesses present:"

"GEO. GOLDTHORP"

"PETER AYDELOTT"

"ABRAHAM BLAYLEN"

Which being read and heard, the defendants interposed a general demurrer to the declaration. and upon the argument of the demurrer, the opinions of the judges were opposed upon the following point.

"Whether the President of the United States had power under the Act of Congress of 3 March, 1807, to make the contract set forth in the declaration,"

which point has been duly certified to this Court. The act of Congress referred to is entitled, "an act making provision for the disposal of the public lands situate between the United States military tract, and the Connecticut reserve, and for other purposes."

This act establishes a land office and makes provisions for the disposal of the lands of the United States referred to in the title of the act, and among other things, the fifth section declares as follows:

"That the several lead mines in the Indiana Territory, together with as many sections contiguous to each as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States. And any grant which may hereafter be made for a tract of land containing a lead mine which had been discovered previous to the purchase of such tract from the United States shall be considered fraudulent and null, and the President of the United States shall be and is hereby authorized to lease any lead mine which has been or may hereafter be discovered in the Indiana Territory for a term not exceeding five years."

That the mines now in question lie within the territory referred to in the act of Congress, and are the property of the United States is not denied. And the Constitution of the United States (article four, section three) provides,

"That Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property, belonging to the United

States."

The term "territory," as here used, is merely descriptive of one kind of property, and is equivalent to the word "lands." And Congress has the same power over it as over any other property belonging to the United States, and this power is vested in Congress without limitation, and has been considered the foundation upon which the territorial governments rest. In the case of [McCulloch v. State of Maryland](#), 4 Wheat. 422, the Chief Justice, in giving the opinion of the Court, speaking of this article and the powers of Congress growing out of it, applies it to territorial

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governments, and says all admit their constitutionality.

And again, in the case of [American Insurance Company v. Canter](#), 1 Pet. 542, in speaking of the cession of Florida under the treaty with Spain, he says that Florida, until she shall become a state, continues to be a territory of the United States government by that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. If such are the powers of Congress over the lands belonging to the United States, the words "dispose of" cannot receive the construction contended for at the bar -- that they vest in Congress the power only to sell and not to lease such lands. The disposal must be left to the discretion of Congress. And there can be no apprehensions of any encroachments upon state rights by the creation of a numerous tenantry within their borders, as has been so strenuously urged in the argument. The law of 1807, authorizing the leasing of the lead mines, was passed before Illinois was organized as a state, and she cannot now complain of any disposition or regulation of the lead mines previously made by Congress. She surely cannot claim a right to the public lands within her limits.

It has been the policy of the government at all times in disposing of the public lands to reserve the mines for the use of the United States. And their real value cannot be ascertained without causing them to be explored and worked under

proper regulations. The authority given to the President to lease the lead mines is limited to a term not exceeding five years; this limitation, however, is not to be construed as a prohibition to renew the leases from time to time if he shall think proper so to do. The authority is limited to a short period so as not to interfere with the power of Congress to make other disposition of the mines should it think proper so to do. Does, then, the contract upon which the present action is founded fall within the authority given to the President to lease the lead mines? Or in other words, is this contract a lease within the meaning of the law? In construing this contract, the bond and what is called "the license for smelting" are to be taken as parts of the same instrument, and purport to have been made by the defendants, with T. C. Legate, superintending the United States' lead mines, acting under the direction of the Secretary of War, who must be presumed to be acting under the authority of the President, especially as the permission given by the contract in terms is said to be by and with the approbation of the President of the United States. This contract purports to be a license for smelting lead ore, and it is objected that this is not a lease within the meaning of the act of Congress. But this objection is not well founded. It is a contract for one year, and of course within the time limited by the law, which gives to the President authority to lease for five years. Is it, then, a lease? The legal understanding of a lease for years is a contract for the possession and profits of land for a determinate period, with the recompense of rent. The contract in question is strictly within this definition. The

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business of smelting is a part of the operation of mining, although it may be a distinct branch from that of digging the ore; but the law ought not to be so construed as to require the whole operation to be embraced in the same contract. They are different operations, requiring different qualifications and distinct regulations. This contract is for the possession of land. The work is to be performed at the United States' lead mines, and must of course be performed within the limits prescribed by law to be attached to such mines. And there is an express permission to use as much fuel as is necessary to carry on the smelting business and to cultivate as much land as will suffice to furnish teams, &c.;, with

provender, and there is an express reservation of the rent of six pounds of every hundred pounds of lead smelted, with special and particular stipulation for securing the same. It is not necessary that the rent should be in money. If received in kind, it is rent in contemplation of law.

We are accordingly of opinion that the question certified in the record, must be answered in the affirmative.

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 Illinois, and on the point and question on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion agreeably to the act of Congress in such case made and provided and was argued by counsel. On consideration whereof it is the opinion of this Court that "the President had power, under the Act of 3 March, 1807, to make the contract set forth in the declaration." Whereupon, it is ordered and adjudged by this Court that it be so certified to the said circuit court accordingly.

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