Stoddard Vs. Chambers

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Appeal No. : 43 U.S. 284

Appellant : Stoddard

Respondent : Chambers

Judgement :

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Stoddard v. Chambers

43 U.S. (2 How.) 284

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

A deed of land in Missouri, in 1804, attested by two witnesses, purporting to have been executed in the presence of a syndic, presented to the commissioners of united states in 1811 and again brought forward as the foundation of a claim

before the commissioners in 1835, must be considered as evidence for a jury.

If it was not objected to in the court below, it cannot be in this Court.

A confirmation under the act of 1836 to the original claimant and his legal representatives enured, by way of estoppel, to his assignee.

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To bring a case within the second section of the act of 1836, so as to avoid a confirmation, the opposing location must be shown to have been made "under a law of the United States."

The holder of a New Madrid certificate had a right to locate it only on "public lands which had been authorized to be sold." If it was located on lands which were reserved from sale at the time of issuing the patent, the patent is void.

There was no reservation from sale of the land claimed under a French or Spanish title between 26 May, 1829, and 9 July, 1832. A location under a New Madrid certificate, upon any land claimed under a French or Spanish title not otherwise reserved, made in this interval, would have been good.

If two patents be issued by the United States for the same land, and the first in date be obtained fraudulently or against law, it does not carry the legal title.

A patent is a mere ministerial act, and if it be issued for lands reserved from sale by law, it is void.

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This was an ejectment brought by the plaintiffs in error (who were also plaintiffs in the court below) against the defendant. The title of the plaintiffs was derived through their ancestor, Amos Stoddard, from an old Spanish concession, granted in 1800, and that of the defendant, to forty-seven acres and twenty-one hundreths of an acre, from what is called a New Madrid patent, issued to one Peltier under

the Act of Congress passed on 17 February, 1815, ch. 198. The defendant also claimed one acre and sixty-three hundreths under a certificate granted, under the same act, to one Coontz, for which a patent had not issued. Beyond these forty-eight acres and eighty-four hundreths of an acre, the defendant set up no claim.

The historical order of the facts in the case is this:

On 21 January, 1800, Mordecai Bell a resident of Louisiana, presented a petition to Don Carlos Dehault Delassuse, Lieutenant Governor and Commandant-in-Chief of Upper Louisiana, praying for a concession of 350 arpens of land.

On 29 January, 1800, Delassuse made the concession and instructed the surveyor, Soulard, to put the petitioner in possession of the land conceded.

On 29 May, 1804, Bell conveyed the concession and order of survey to James Mackay. The original deed was in French, and purported to be executed before Richard Caulk, syndic of the District of St. Andrew. The names of two attesting witnesses are also subscribed.

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On 2 March, 1805, Congress passed an act "for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana," the general purport of which was to recognize all existing grants. It further provided for the appointment of three persons, who should examine, and decide on, all claims submitted to them, and report the result to the Secretary of the Treasury, who was directed to communicate it to Congress.

On 26 September, 1805, James Mackay conveyed the grant and order of survey to Amos Stoddard, who was at that time civil commandant, under the government of the United States at St. Louis. It may here be remarked that evidence was given on the trial below that as early as 1817, Stoddard was in possession under this deed, and that the facts of his death before the suit and of the plaintiffs being his heirs at law were also given in evidence.

In January, 1806, Soulard, the Surveyor General of the Territory of Louisiana, but not so under the authority of Congress, made a plat and certificate of the survey of the above land.

On 3 March, 1807, Congress passed another act relating to land titles in Missouri, explanatory and corrective of the act of 1805. It also extended the time limited for filing the claims to 1 July, 1808.

On 29 June, 1808, all the papers relating to the claim were presented to the recorder of the district, *viz.:* 1. The concession. 2. Deed to Mackay. 3. Deed the Stoddard. 4. Certificate of survey in favor of Stoddard.

On 15 February, 1811, Congress passed an Act by which the President was authorized (section 10), "whenever he shall think proper, to direct so much of the public lands lying in the Territory of Louisiana as shall have been surveyed in conformity with the eighth section of this act, to be offered for sale,"

and further

"That all such lands, with the exception of the section number sixteen, which shall be reserved for the support of schools within the same; with the exception also of a tract reserved for the support of a seminary of learning, as provided for by the eighth section of this act, and with the exception also of the salt springs and lead mines, and lands contiguous thereto, which, by the direction of the President of the United States, may be reserved for the future disposal of the said states, shall be offered for sale to the highest bidder, under the direction of the register of the land office and the receiver of public moneys, and of the principal deputy surveyor, and on such day or

days as shall, by public proclamation of the President of the United States, be designated, for that purpose."

"Provided, however, that, till after the decision of Congress thereon, no tract shall be offered for sale, the claim to which has been in due time, and according to law,

presented to the recorder of land titles in the district of Louisiana, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana."

On 3 March, 1811, Congress passed another act, in which the same reservation is made as is above stated.

On 10 October, 1811, the board of commissioners rejected the claim.

On 17 February, 1815, Congress passed an act declaring that any person or persons owning lands in the County of New Madrid, in the Missouri Territory, with the extent the said county had on the tenth day of November, 1812, and whose lands had been materially injured by earthquakes, should be and they were thereby authorized to locate the like quantity of land on any of the public lands of said territory authorized to be sold.

On 28 November, 1815, Frederick Bates, recorder &c.;, issued a certificate that a lot of one arpent, in the Village of Little Prairie, in the County of New Madrid, owned by Eustache Peltier or his legal representatives, was materially injured by earthquakes, and that said Eustache Peltier, or his legal representatives, was entitled to locate any quantity of land not exceeding 160 acres on any of the public lands in the Territory of Missouri the sale of which was authorized by law.

On 24 October, 1816, an entry was made of land in conformity with the above certificate. This entry covered forty-seven acres and twenty-one hundreths of the concession to Bell, and the defendant claimed under it.

In 1817, 1818, and 1819, the township in which the land in controversy lies, was surveyed under the authority of the United States, and not offered at public sale by the authority of the President until 1823.

In March, 1818, the certificate which had been issued in favor of Peltier was surveyed by Brown, the deputy surveyor, and the location made. It may here be remarked that evidence was given upon the trial, showing the possession of Peltier's location to have been in him and his assignees from 1819 down to the

occupancy of the defendant, accompanied by deeds.

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On 29 May, 1818, Martin Coontz made an entry under a New Madrid certificate, which was surveyed in July, 1818. This survey clashed with Bell's concession, and included one acre and sixty-three hundredths, which the defendant, Chambers, claimed under Coontz's title. Coontz did not obtain a patent for it.

On 26 May, 1824, Congress passed another act,

"enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."

It allowed any persons claiming lands under old grants or surveys, under certain circumstances, to present a petition to the district court of the State of Missouri, which court was authorized to give a decree in the matter, reviewable, if need be, by the Supreme Court of the United States. The 5th section provided that a claim not before the district court in two years, or not prosecuted to final judgment in three years, should be forever barred both at law and in equity, and the seventh section directed that where a claim, tried under the provisions of the act, should be finally decided against the claimant, or barred by virtue of any of the provisions of the act, the land specified in such claim, should, forthwith, be held and taken as a part of the public lands of the United States, subject to the same disposition as any other public land in the same district.

On 26 May, 1826, an act was passed continuing the above act in force for two years.

On 24 May, 1828, another act was passed, by which the act of 1824 was continued in force for the purpose of filing petitions, until 26 May, 1829, and for the purpose of adjudicating upon the claims until 26 May, 1830.

On 9 July, 1832, Congress passed an "act for the final adjustment of private land claims in Missouri," which authorized commissioners to examine all the

unconfirmed claims to land in that state which had been filed prior to 10 March, 1804. The commissioners were directed to class them, and at the commencement of each session of Congress, during said term of examination, lay before the commissioner of the general land office a report of the claims so classed. The first class was to include the claims which ought, in their opinion, to be confirmed according to the laws and usages of the Spanish government; the second, those which ought not to be confirmed. The third section provided that the lands included in the first class should continue to be reserved from sale, as heretofore, until the decision of Congress should be made against

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them; and those in the second class should be subject to sale as other public lands.

On 2 March, 1833, Congress passed another act, directing the commissioners to embrace every claim to a donation of land held in virtue of settlement and cultivation.

On 16 July, 1832, a patent was issued to Peltier for the land described in his survey.

On 8 June, 1835, the commissioners decided that 350 arpens of land ought to be confirmed to Mordecai Bell, or his legal representatives, according to the survey.

On 4 July, 1836, Congress passed an act confirming claims to land in the State of Missouri, by which it was declared that the decisions in favor of land claimants, made by the above commissioners were confirmed, saving and reserving, however, to all adverse claimants, the right to assert the validity of their claims in a court or courts of justice, and the 2d section declared that if it should be found that any tract or tracts thus confirmed or any part thereof had been previously located by any other person or persons under any law of the United States, or had been surveyed or sold by the United States, the present act should confer no title to such lands in opposition to the rights acquired by such location or purchase.

The cause came on for trial at April term, 1842, in the circuit court. After the evidence was closed the counsel for the defendant prayed the court to instruct the jury

1. That the plaintiffs are not entitled to recover in this action any land included in the patent issued to Eustache Peltier or his legal representatives.

2. That the plaintiffs are not entitled to recover in this action any land which the jury may find, from the evidence, to be embraced in the location made in favor of Martin Coontz, or his legal representatives.

Both of which instructions the court gave. Whereupon the counsel for the plaintiff excepted.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The plaintiffs brought an action of ejectment for 350 arpens of land situated near St. Louis. Their title was founded on a concession by Delassus, Lieutenant Governor, to Mordecai Bell, 29 January, 1800. Bell conveyed the same to James Mackay, 29 May, 1804, and on 26 September, 1805, he conveyed to Amos Stoddard. A plat and certificate of the survey were certified and recorded by Antoine Soulard, as surveyor general, 29 January, 1806.

The above papers were presented to the recorder of the district of St. Louis, 29 June, 1808. And the claim was duly filed with the board of commissioners for their action thereon, who, on 10 October, 1811, rejected it. But afterwards, 8 June, 1835, the board decided that 350 arpens of land ought to be confirmed to the said Mordecai Bell or his legal representatives, according to the survey. And on 4 July, 1836, an act of Congress was passed, confirming the decision of the commissioners. The land was surveyed as confirmed. The plaintiffs proved the death of Amos Stoddard, before the suit was commenced, and that they are his heirs-at-law. The defendant was proved to be in possession of forty-eight acres and eighty-four hundredths of the land in controversy, one acre and sixty-three

hundredths of which were in the

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location and survey of Martin Coontz, and the residue within the patent of Peltier.

The title of the defendant was founded on an entry made by Peltier of 160 acres of land, by virtue of a New Madrid certificate, on 24 October, 1816. A survey of the entry was made in March, 1818, and a patent to Peltier was issued 16 July, 1832. Possession has been held under this title since 1819. The title was conveyed to the defendant.

On 29 May, 1818, an entry was made, which authorized the survey of Coontz, but no patent has been issued on it.

The township in which the above tract is situated was surveyed in 1817, 1818, and 1819, and was examined in 1822. Since 1804, a certain mound on the land has been called Stoddard's mound. In 1823, the proclamation of the President, published at St. Louis, directed the lands in the above township to be offered at public sale.

On the above evidence the court instructed the jury

1. That the plaintiffs were not entitled to recover the land embraced in Peltier's patent.

2. That they were not entitled to recover the land embraced in Coontz's survey.

The decision of this controversy mainly depends on the construction of certain acts of Congress. By the Act of 2 March, 1805, all persons residing in the Territory of Orleans, who had claims to land under the French or Spanish government, were required to file their claims for record with the register of the land office or recorder of land titles, and provision was made for confirming them.

The time limited in the above act was extended by the Act of 3 March, 1807, as regards the filing of claims with the register or recorder, until 1 July, 1808. By the

Act of 15 February, 1811, the President was authorized to have the lands which had been surveyed in Louisiana offered for sale,

"provided, however, that till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time, and according to law, presented to the recorder of land titles in the district of Louisiana, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming land in the Territory of Louisiana."

The same reservation was repeated in the Act of 3 March, 1811.

The Act of 26 May, 1824, authorized claimants

"under French and Spanish grants, concessions, warrants, or orders of surveys

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in Missouri, issued before 10 March, 1804, to file their petition in the District Court of the United States for the confirmation of their claims. And every claimant was declared by the same act to be barred, who did not file his petition in two years."

By the Act of the 24 of May, 1828, the time for filing petitions was extended to 26 May, 1829. On 9 July, 1832, an act was passed, "for the final adjustment of land titles in Missouri," which provided that the recorder of land titles, with two commissioners to be appointed, should examine all the unconfirmed claims to land in Missouri, which had heretofore been filed in the office of the said recorder, according to law, prior to 10 March, 1804. And they were required to class the claims so as to

"state in the first class what claims, in their opinion, would in fact have been confirmed, according to the laws, usages, and customs of the Spanish government and the practice of the Spanish authorities under them. And secondly, what claims in their opinion are destitute of merit, law, or equity."

And by the third section it was provided,

"That from and after the final report of the recorder and commissioners, the lands contained in the second class shall be subject to sale as other public lands, and the lands contained in the first class shall continue to be reserved from sale as heretofore, until the decision of Congress shall be against the claims of any of them, and the lands so decided against shall be in like manner subject to sale as other public lands."

These are the facts and statutory provisions which are material in the case. The defendant, under the entry and survey of Peltier, holds the elder legal title to the land in controversy, except the one acre and sixty-three hundredths, which is covered by the entry and survey of Coontz. Until the confirmation of the plaintiff's title by the act of 1836, the legal title to the land claimed was not vested in the plaintiffs.

Objections are made to the intermediate conveyances under which the plaintiffs claim. And first it is insisted that the deed from Bell to Mackay was not proved. It is stated on the record, that there was no proof that R. Caulk, the syndic, before whom the deed was signed and acknowledged, had authority to act as such.

The deed was executed in 1804. It was attested by two witnesses, and purports to have been acknowledged in the presence of a syndic. There was no exception to the admission of this deed in evidence, and consequently the objections now made to its execution

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are not before the Court. But if the execution of the instrument were now open to objections, they could not be sustained. Forty years have elapsed since this deed purports to have been executed. From that time to this, a claim under it seems to have been asserted. It was presented to the commissioners in 1811, having been filed with the recorder of land titles, in 1808. And again, it was brought before the commissioners in 1835, it having remained on file until that time. Under these circumstances, the regular proof of the instrument might well be dispensed with. Possession, under this deed, was held by Stoddard for a time, and became so

notorious that a certain elevation on the land was called Stoddard's mound.

Independently of the lapse of time, the unsettled state of the country at the time this instrument was signed, the transfers of the country from one sovereignty to another, the rude and defective organization of the government -- the civil and military functions being blended, are facts which no court can disregard in acting upon transfers of property between individuals. If some degree of regularity and form were observed in regard to public grants, technical and legal forms cannot be required in the transmission of claims to land, among a people, the great mass of whom were ignorant of the forms of titles, and indeed of almost everything which pertained to civil government.

A syndic was not in that country an appointed officer, as he is in a regulated government; but the duties devolved upon the commandants of military ports, as occasion might require. There is nothing on the face of this deed to excite suspicion. It was attested by two witnesses, and contains the signature and certificate of the syndic. The genuineness of these attestations was not objected to on the admission of the deed as evidence, or on a motion to overrule it. The deed must therefore be considered as evidence to the jury, without exception. And, under all the circumstances, we think, that full effect should have been given to it, as a muniment of title. The deed from Mackay to Stoddard, the ancestor of the plaintiffs, is not objected to. Bell made the conveyance to Mackay, not having the legal title, but when, under the act of 1836, the report of the commissioners was confirmed to Bell and his legal representatives, the legal title vested in him and enured, by way of estoppel, to his grantee, and those who claim by deed under him. A confirmation, by act of Congress, vests in the confirmee the right of the United States, and a patent, if issued, could only be evidence

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of this. On a title by estoppel, an action of ejectment may be maintained.

If the claim of the defendant had not been interposed, no one could doubt the validity of the plaintiffs' title. It has the highest sanction of the government, an act

of legislation. But the 2d section of the act of 1836, which gave this sanction, provided,

"That if it should be found that any tract confirmed, or any part thereof, had been previously located by any other person or persons, under any law of the United States, or had been surveyed or sold by the United States, that act should confer no title to such lands, in opposition to the rights acquired by such location or purchase."

This provision, it is insisted, covers the case, and defeats the title of the plaintiffs. But it must be observed that a location, to come within the section, must have been made "under a law of the United States." Now an act under a law, means in conformity with it, and unless the location of the defendant shall have been made agreeably to law, or the patent were so issued, the reservation does not affect the title of the plaintiffs.

The holder of a New Madrid certificate had a right to locate it only on "public lands which had been authorized to be sold." Peltier's location was made in 1816, and his survey in 1818. The location of Coontz was made in 1818, and his survey in 1818. At these dates there can be no question that all lands claimed under a French or Spanish title, which claim had been filed with the recorder of land titles -- as the plaintiffs' claim had been -- were reserved from sale by the acts of Congress above stated. This reservation was continued up to 26 May, 1829, when it ceased, until it was revived by the act of 9 July, 1832, and was continued until the final confirmation of the plaintiffs' title by the act of 1836. The defendant's patent was issued 16 July, 1832. So that it appears that when the defendant's claim was entered, surveyed, and patented, the land covered by it, so far as the location interferes with the plaintiffs' survey, was not "a part of the public land authorized to be sold."

On the above facts, the important question arises whether the defendant's title is not void. That this is a question as well examinable at law as in chancery, will not be controverted. That the elder legal title must prevail in the action of ejectment, is undoubted. But the inquiry here is whether the defendant has any title as against

the plaintiffs. And there seems to be no difficulty in answering

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the question that he has not. His location was made on lands not liable to be thus appropriated, but expressly reserved, and this was the case when his patent was issued. Had the entry been made or the patent issued after the 26 of May, 1829, when the reservation ceased, and before it was revived by the act of 1832, the title of the defendant could not be contested. But at no other interval of time, from the location of Bell, until its confirmation in 1836, was the land claimed by him liable to be appropriated in satisfaction of a New Madrid certificate.

No title can be held valid which has been acquired against law, and such is the character of the defendant's title so far as it trenches on the plaintiff's. It has been argued that the first patent appropriates the land, and extinguishes all prior claims of inferior dignity. But this view is not sustainable. The issuing of a patent is a ministerial act, which must be performed according to law. A patent is utterly void and inoperative, which is issued for land that had been previously patented to another individual. The fee having been vested in the patentee by the first patent, the record could convey no right. It is true a patent possesses the highest verity. It cannot be contradicted or explained by parol, but if it has been fraudulently obtained or issued against law it is void. It would be a most dangerous principle to hold, that a patent should carry the legal title, though obtained fraudulently or against law. Fraud vitiates all transactions. It makes void a judgment, which is a much more solemn act than the issuing of a patent. The patent of the defendant having been for land reserved from such appropriation, is void, and also the survey of Coontz, so far as either conflicts with the plaintiffs' title. For the foregoing reasons, we think the instructions of the court to the jury were erroneous, and consequently the judgment must be

Reversed at the defendant's cost and a venire de novo is awarded.

ORDER

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 now here ordered and adjudged by this Court, that the judgment 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, with directions to award a *venire facias de novo.*