Neilson Vs. Lagow

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Court : US Supreme Court

Decided On : 1849

Appeal No. : 48 U.S. 772

Appellant : Neilson

Respondent : Lagow

Judgement :

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Neilson v. Lagow

48 U.S. (7 How.) 772

ERROR TO THE SUPREME

COURT OF INDIANA

SYLLABUS

Where, upon the trial of a case in a state court, a party claims the land in dispute under an authority which he alleges has been exercised by the Secretary of the Treasury in behalf of the United States, and the decision was against the validity of

the authority, the party is entitled to have his case brought to this Court under the twenty-fifth section of the Judiciary Act.

As a motion was made to dismiss it for want of jurisdiction, and the merits of the case were not discussed, a brief statement of the facts will be sufficient.

It was an action of disseizin, similar to an ejectment, brought by Lagow in the Circuit Court for the County of Knox and State of Indiana against Neilson, Billis, and Thomas, to recover possession of a piece of property known by the name of the Steam Mill Tract, lying in the Town of Vincennes. Billis and Thomas disclaimed all interest, and the suit was carried on by Neilson alone. On 19 September, 1821, Lagow and others conveyed the property to the President, Directors, and Company of the Bank of Vincennes, their successors and assigns, forever for the consideration of $98,000.

On 1 July, 1822, the bank conveyed this property to Badollet, Harrison, and Buntin, and their successors in trust for the use of the Secretary of the Treasury of the United States in extinguishment of the debt due by the bank to the United States. The trustees were to sell whenever requested by the Secretary of the Treasury, and continue to pay until the United States were paid the sum of $120,308, with interest. The Secretary of the Treasury was vested with power to fill up vacancies in the trust.

In July, 1822, there came on for trial in the court at Vincennes a *quo warranto,* which had been issued by the State of Indiana against the bank. The jury found a verdict of guilty, and the court decreed that all the franchises and property of the bank should be seized for the use of the state. The

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sheriff returned that he had seized the franchises, but being unable to find any effects of any nature soever of the bank, he was unable to obey the command of the writ in respect to them. The writ was issued on 6 July, and the return made on 19 August, 1822.

In November, 1823, a judgment for $123.80 was obtained in the court at Vincennes against Lagow and the other partners of the steam mill company and execution issued thereon. The property in question was levied upon, sold at auction, and purchased by Lagow, to whom a deed was executed by the sheriff on 26 December, 1823.

In 1826, another sale of the property took place, by authority of the Supreme Court of Indiana. Badollet, Harrison, and Buntin, the trustees, had filed a bill and obtained a decree against Lagow and his partners in the state court, which was carried up to the supreme court. That court ordered the steam mill tract, with all the buildings, engines, and appurtenances, to be sold, and appointed three commissioners to make the sale. It was accordingly made, ratified by the court, and a deed executed by two of the commissioners on 20 June, 1827. The purchasers were Badollet, Harrison, and Buntin, the trustees, who took the deed to themselves, their heirs and assigns, without noticing the trust. The amount of the purchase money was one thousand dollars. Evidence was given upon the trial that no money was paid excepting the costs and counsel fee, which payment was made from the funds of the United States, by order of the Secretary of the Treasury.

On 28 June, 1827, a deed was executed by Lagow and his partners by which they renounced all claim upon each other arising from transactions of the steam mill company, and conveyed the whole property, debts &c.;, to Lagow, he undertaking to pay all debts due to other persons than the partners.

Evidence was given upon the trial, that Hall Neilson had had possession of that property since 1832, claiming to hold it under Badollet, Harrison, and Buntin, who were all dead, however, prior to the commencement of the suit.

When the testimony was closed, the court, at the instance of the plaintiff, Lagow, gave the following instructions to the jury.

1. That on the proof of possession as owners by the steam mill company in 1820, and of the conveyance by the company to Lagow, of June, 1827, Lagow, the

plaintiff, is entitled to recover, unless the defendant has shown a better title.

2. That the seventh section of the Act of Congress of 1 May, 1820, forbids "the purchase of any land on account of the United States" unless authorized by act of Congress.

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3. That the term "purchase of land" in law, and in the act of Congress, means any and every mode of acquiring an interest in real estate other than by inheritance.

4. That if the government is prohibited from purchasing land directly in its own name, it is also prohibited from purchasing indirectly in the name of an agent or trustee.

5. That if there is any act of Congress or law authorizing the conveyance from the bank to the trustees, it is incumbent on the defendant to show it, and from the fact that the defendant does not set up any such act or law the jury may infer there is none.

6. That all acts, deeds, and agreements contrary to the plain language or even to the policy of an act of Congress, are void.

7. That if the deed of trust from the bank is contrary to the letter or to the spirit and meaning or to the policy of the act of 1 May, 1820, it is void, and the interest which the bank then had in the land remained in the bank.

14. That it is incumbent on the defendant to show the conveyance made by the trustees, if any such they did make.

20. That to defeat the plaintiff's title, founded on prior possession, as owner, it is necessary that the title set up by defendant should be shown to be a subsisting title and superior to Lagow's title. To which instructions the defendant at the time excepted.

The court then, at the instance of the defendant, gave the following instructions to the jury, to-wit, that if they believe from the evidence that defendant and those under whom he claims had been in peaceable adverse possession more than twenty years at the time this suit was commenced, the claim of the plaintiff is barred by the statute of limitations, and they must find for the defendant, to which instruction the plaintiff at the time excepted.

The defendant then asked the court to give to the jury the following instructions, to-wit:

2d. That the plaintiff in this case, in order to recover, must establish a good title in himself, and that he cannot recover if the defendant has shown the real title to the land to be in another person; that it is sufficient if the defendant has made it appear to the jury that a legal and possessory title does not subsist in the plaintiff.

3d. That it was competent for the Bank of Vincennes to make a deed to trustees for the benefit of the United States, and such a deed is valid and lawful for the purpose for which it was made; but the court refused to give the same to the jury; to which refusal of the court the defendant at the time excepted.

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Under these instructions and refusals the jury found a verdict for the plaintiff, Lagow. A motion was made for a new trial, which was overruled, and the case carried up to the Supreme Court of Indiana, where the judgment of the court below was affirmed. A writ of error, issued in the manner already stated, brought it up to this Court.

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

It appears that at the trial in the state court, the plaintiff in error claimed the land in dispute under an authority which he alleged had been exercised by the Secretary of the Treasury in behalf of the United States; and the decision was against the validity of the authority thus alleged to have been exercised. Whether the title of the plaintiff in error can be maintained under it or not will be the subject of inquiry

when the case is heard on its merits. That question is not now before the Court, and the only point to be determined at this time is whether we have jurisdiction to try and decide it. We think it is evidently one of the cases prescribed for in the twenty-fifth section of the act of 1789, and the motion to dismiss is therefore

Overruled.

ORDER

On consideration of the motion made in this cause on a prior day of the present term, to-wit, on Friday, the 2d instant, to dismiss the writ of error, and of the arguments of counsel thereupon had, as well against as in support of the motion, it is now here ordered by the Court that the said motion be and the same is hereby overruled.