

Mills Vs. Stoddard

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Appellant : Mills

Respondent : Stoddard

Judgement :

Mills v. Stoddard - 49 U.S. 345 (1850)

U.S. Supreme Court Mills v. Stoddard, 49 U.S. 8 How. 345 345 (1850)

Mills v. Stoddard

49 U.S. (8 How.) 345

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

The decision of this Court in the case of [*Stoddard v. Chambers*](#), 2 How. 285, reexamined and confirmed.

The original petition to the Spanish Governor of Louisiana, upon which the concession was made, stated that he "came over to this side of the M. R. S. with the consent of your predecessors." These letters stand for *Majeste Rive Sud*, and refer to the Mississippi River.

The survey of the concession in 1806 fixed its locality. It is true that the survey was a private one, but it was adopted by the commissioners, who had authority to direct such surveys as they deemed necessary.

The holder of a New Madrid certificate had a right to locate it only on public lands the sale of which was authorized by law. But lands claimed under a Spanish concession, where the claim had been filed according to the acts of Congress, were reserved from sale when the entry under the New Madrid certificate was made, *viz.*, in 1816. Consequently, the entry was void.

The patent for the land covered by the New Madrid certificate was not issued until after Congress had renewed this reservation, *viz.*, in 1832.

Therefore neither the entry nor patent can give a good title.

Had the patent been issued before Congress passed the act of 1832, the result would have been different.

Page 49 U. S. 346

This was an ejectment brought in the circuit court by the defendants in error, as heirs of Amos Stoddard, to recover 350 arpens of land which is thus described in the declaration:

"Being the same tract originally granted by the Spanish government, in the Province of Upper Louisiana, to Mordecai Bell, by concession bearing date 29 January, 1800, and being the same tract located and surveyed by the proper officer on or about the first day of January, 1806, and which concession and survey have been duly confirmed by the Congress of the United States to the said Mordecai Bell or to his legal representatives according to the said survey, and

which tract is the same contained in the survey No. 3026, made by the authority of the United States under and by virtue of the confirmation aforesaid, and is bounded on the east by the forty-arpent field lot, on the south by a tract called the Mill tract, and on the north and west by lands described as public lands on the survey made as aforesaid on 1 January, 1806."

The title of the heirs of Stoddard was particularly set forth in the report of the case of [Stoddard v. Chambers](#), 2 How. 284, and it need not be repeated. Mills claimed under the same title as Chambers, both deriving their titles from two New Madrid certificates issued to Peltier and Coontz. It was admitted that at the commencement of the suit the defendant, Mills, was in possession of a portion of the tract comprehended in the survey of Mackay made in January, 1806, for Amos Stoddard, being forty acres conveyed to said defendant on 14 March, 1836, by Hamilton R. Gamble and wife.

It was also admitted that the property sued for was worth more than ten thousand dollars, that the plaintiffs claimed in this action four undivided fifths of the land described in the declaration, that the other undivided fifth had been conveyed to Hamilton R. Gamble in fee, and that the whole of the land sued for was embraced in the patent to Peltier.

Some testimony was given on the part of the defendant with a view of impeaching the title of the plaintiffs which was not produced in the trial of the cause of *Stoddard v. Chambers*, and which evidence it is proper to insert here.

Pascal L. Cerre, a witness for defendant, testified that he came to St. Louis very young from Canada in the year 1777, returned to Canada, and came back to St. Louis in 1779, and remained there till 1781; that he then went to Canada, and stayed there till 1787, when he came to St. Louis, where he remained till 1791, when he again visited Canada and stayed

Page 49 U. S. 347

there till 1794, when he came to St. Louis, where he has remained ever since; that he was well acquainted with Mordecai Bell and his family, his father, mother,

brothers &c.;, and knew him when he first came to the Spanish country; that said Mordecai Bell resided at Wild Horse Creek, a few miles south of the post of St. Andre, where James Mackay was commandant in Spanish times; it was about two or two and a half miles south of that post where Mordecai Bell lived, and was about forty miles west southwest of St. Louis; that Mordecai Bell never resided at any time nearer St. Louis than that place, nor did any other of the Bells; that Mordecai Bell lived at that place several years and then went away; that said Bell was principally employed in hunting, drinking, and playing cards; he led a vagabond sort of a life; that he, Cerre, lived all the time at St. Louis, while Mordecai Bell was at Wild Horse Creek; that he, witness, knew the land occupied by Stokes; and that there was no improvement or cultivation there under Spanish government, nor, until Stokes cultivated it, was there any cultivation; said witness examined said original petition of Mordecai Bell, given in evidence by plaintiffs, and stated that he knew the handwriting of James Mackay well, and that it was, with the signature, except the mark, all in Mackay's handwriting; that he did not know why Stoddard's Mound was so called, but supposes it was because he purchased the land on which it was, and did not know when it was first so called, whether at Stoddard's death; he thinks it was before his death.

The defendant then offered in evidence the deposition of Mordecai Bell, which was objected to by the plaintiffs' counsel, 1st because of irrelevancy, 2d, if not irrelevant, that it went to impeach a title conveyed by the witness, which objection was overruled and the deposition read, which is as follows:

"Deposition of Mordecai Bell, produced, sworn, and examined at the house of said Bell at Moreau Township in the County of Morgan and State of Missouri, before me, John Chism, judge of the County Court for the County of Morgan aforesaid, in a certain cause now pending in the Circuit Court of the United States for the District of Missouri between Simeon Stoddard, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell and Lucy Bunnell, Jonas Foster and Lavinia Foster, Lucy Hoxie, Daniel Morgan, and Arva Morgan, plaintiffs, and Adam L. Mills, defendant, on the part of the defendant."

"Mordecai Bell, of lawful age, being produced, sworn, and

examined on the part of the defendant, deposeeth and saith that he resides in Moreau Township in the County of Morgan and State of Missouri; that he was first married on 8 March in the year 1802, and that parts of the three winters preceding his marriage he was hunting in the upper part of this state; that neither in the year 1800 nor any year after did he petition the Spanish Governor Delassus for any grant of land. That a few years after he was married, Santiago Mackay repeatedly asked deponent to petition the Spanish government for a grant of land; that some two or three years after deponent was married, Mackay told him that he, deponent, had a head right, and that he, Mackay, wished to change a tract of land for his head right, which he, deponent, did; that he never petitioned the Spanish governor for any grant of land in or in the neighborhood of the Town of St. Louis, nor was there any granted him to the best of his knowledge; that he resided in the Counties of St. Louis and Franklin till the year 1819."

"MORDECAI [his B mark] BELL"

Adolph Renard, for defendant, testified that he is a Frenchman, and the French language is his mother tongue; that he has been in the recorder of land titles' office since April, 1837, and more or less in habit of handling papers there, making copies and translations, and that the translation of the said original petition of Mordecai Bell -- which translation is given in evidence by defendant -- is a correct and faithful translation; that the letters "M. R. S." in said petition he considers as put for "Majeste Rive Sud;" that he, witness, knows nothing of the Spanish laws; that Julius De Mun was a good translator, and understood both French and English. He further stated that he never saw a concession where a commandant of a post recommended a grant of land lying close to St. Louis, the residence of the lieutenant governor.

William Milburne, for defendant, testified that he had been in the surveyor's office from 1816 to 1841, a part of the time as clerk, and the latter part of the time as surveyor general. He examined the said petition of Mordecai Bell, as translated by Renard, and the concession, and stated that he, as surveyor, should survey said

concession on the south bank of the Missouri River, if not otherwise directed; that the post of St. Andre was in what is called Bonhomme Bottom, some thirty miles from St. Louis; that St. Andre was close on the river, and its site has been partially or wholly washed away by the river.

Page 49 U. S. 349

The plaintiffs, by way of rebutting testimony, gave in evidence the following letter of the Secretary of the Treasury of the United States, produced by Thomas Watson, register of the land office at St. Louis, from the files of his office, dated 10 June, 1818.

" *Treasury Department, 10 June, 1818* "

"SIR -- You are requested to instruct the recorder of land titles in the Missouri Territory to furnish to the receiver and register of the land district of St. Louis a descriptive list of the land claims which have been presented and registered under the different acts of Congress for confirming the rights of individuals to lands which have not been confirmed and that are situate within the said land district, with as little delay as practicable; also a list of the same kind to the receiver and register of the district of Howard County, of all the land claims within said district which in like manner have not been confirmed. For this service he will be entitled to a reasonable compensation."

"You are also requested [to] direct the register and receiver of those districts, respectively, to withhold from sale all such lands, until otherwise directed."

"It may be proper, however, to advise those officers that this act is not to be considered as in any manner countenancing the idea that such claims are considered equitable, or that their being withheld from sale at this time ought to excite an expectation that they will ultimately receive the sanction of Congress. They are withheld from sale because the land claims have been, during the latter end of the late session of Congress, referred to the Secretary of the Treasury with directions to report to the next session. The receiver and register should be

instructed to make the subject of these observations known for the purpose of preventing speculation on those land claims."

"I have the honor to be your most obedient servant."

"[Signed] WM. H. CRAWFORD"

"JOSIAH MEIGS, ESQ., C.G.L.O. "

The plaintiffs likewise read in evidence the proclamation of the President of the United States, dated June, 1823, and published in the summer and fall of 1823, for the sale of the public lands, on the third Monday of November in that year at St. Louis, which were situate in the township and range in which the land sued for in this action is situate.

The evidence being finished, the counsel for the defendant prayed the court to give the jury the following instructions:

"1. That the survey in 1806, made by Mackay, which has been given in evidence, was made without authority of law,

Page 49 U. S. 350

and is not evidence of the proper location of the order of survey made by the lieutenant governor."

"2. That if the jury find from the evidence, that the order of survey made by the lieutenant governor in favor of Mordecai Bell would not embrace any part of the land in dispute, if surveyed according to its terms, then the land in dispute was never reserved from sale, and the patent to Eustache Peltier, or his legal representatives, passed the title to the land described in such patent."

"3. The reservation by the Act of Congress of 1811, in favor of those claiming under Mordecai Bell, if any such reservation existed, was of the land granted to said Bell, and not of the land surveyed by Mackay."

"4. If the jury find, from the evidence, that the land sued for in this action is not a part of the tract of land conveyed by Mordecai Bell to James Mackay, in the deed of said Bell given in evidence, they will find for the defendant."

"5. Unless the jury find from the evidence, that Mordecai Bell, or some person claiming under him, filed with the recorder of land titles a notice in writing stating the nature and extent of his claim, and that such notice embraced the land now in dispute, and was filed with the recorder on the first day of July, 1808, or prior thereto, then the land in dispute was not reserved from sale, and the patent to Eustache Peltier, or his legal representatives, conveyed the title to the land described in such patent."

"6. That the instructions of the Secretary of the Treasury, read in evidence in this case, and the list of the recorder of land titles of the unconfirmed lands, do not affect any reservation of said land in dispute from sale against the title under the Peltier claim, as distinct from the reservation, if any there be, by act of Congress of March, 1811."

"7. That there can be no recovery in this action unless for land which was granted to Mordecai Bell."

"8. If the jury find, from the evidence, that the New Madrid certificate, so called, in favor of Peltier, was located, embracing the land in controversy in this suit, and that in the year eighteen hundred and twenty-seven a patent certificate was issued by the recorder of land titles on such location, they will find for the defendant."

"9. That no title to the land in question passed by the deed given in evidence of Mordecai Bell to James Mackay."

Which instructions, except the sixth, the court refused to give, and each of them; to which refusal the defendant, by his counsel, excepted. The court, then, of its own motion, gave the following instruction:

The court rejected the instructions presented on the part of the defendant, numbered from one to nine, except the sixth, which was given, and instructed the jury, that the land included in the survey given in evidence, made for Amos Stoddard, on 21 January, 1806, by James Mackay, No. 42, was reserved from location and sale at the time Peltier's location was made, and also at the time his patent issued, and therefore both the location and patent are invalid, as against the title of Amos Stoddard, or those claiming through him, to the extent that the two claims cover the same land. And that the land included in Mackay's survey aforesaid is the land confirmed to Amos Stoddard, or to his heirs, by the Act of Congress of July 4, 1836, and that the confirmation operated as a grant to said Stoddard, or, if he was dead, to his heirs, such being the legal effect of the acts of Congress, records, and title deeds given in evidence, nor does the evidence of the witnesses introduced in any wise impair the effect of the acts of Congress and title papers.

To the giving of which last-mentioned instruction the defendant, by his counsel, excepted. The defendant then asked the following instructions:

"10. That there is no evidence before the jury that Mordecai Bell, or any person claiming under him, filed with the recorder of land titles such notice of claim according to law as was required in order that the land in question should be considered as reserved from sale."

"11. That the plaintiffs are not entitled to recover in this action for any land embraced within the patent to Eustache Peltier, or his legal representatives, which has been given in evidence."

"12. That there is no sufficient evidence that notice of the claim of Stoddard, under Mordecai Bell, was filed with the recorder of land titles on or before the 1st day of July, 1808, according to law."

"13. If the jury find, from the evidence, that two of the plaintiffs, Anthony Stoddard and William Stoddard, conveyed their interest in the land in question to Henry G. Cotton since this action was brought, then the plaintiffs in this action are not

entitled to recover anything but damages down to the time of such conveyance, and the plaintiffs cannot recover damages for any time prior to 4 July, 1836; and the jury are instructed to find specially the fact of such conveyance by said Anthony and William Stoddard, and its date."

Which the court refused to give, to which refusal the defendant, by his counsel, excepted. The defendant then asked the following instruction, which the court gave, *viz.*:

Page 49 U. S. 352

"14. That the plaintiffs cannot recover damages for possession of the premises for any time prior to 4 July, 1836."

"And the said defendant prays the court to sign and seal this his bill of exceptions, which is done accordingly."

"J. CATRON [SEAL]"

"R. W. WELLS [SEAL]"

Under these instructions the jury found the following verdict:

"We, the jury in the above-entitled cause, find the defendant guilty of the trespass and ejectment alleged in the declaration in the above-entitled cause as to four-fifths, less one-sixth and one-twelfth, of the following described piece of land, parcel of the land in said declaration described, to-wit, a certain tract or parcel of land situate, lying, and being in the County of St. Louis, and bounded as follows, beginning at the southeast corner of the location, under a New Madrid certificate issued to Eustache Peltier or his legal representatives, where the said corner is fixed upon the line of a tract, formerly the Mill tract of Auguste Chouteau, deceased; thence, with the southern line of said location, as the same runs westwardly, seven chains; thence north fourteen degrees forty-five minutes east, to the Methodist burying ground; thence, with the south line of the Methodist and Catholic burying grounds, nine chains and sixty links, to the line of the common

field lots, and thence, with the line of the common field lots (having in it an angle), to the place of beginning, being forty acres of land, and is bounded on the south by the land formerly of Auguste Chouteau, called the Mill tract; west by the land of John F. Darby; north by the Methodist and Catholic graveyards; east by the common field lots of St. Louis. And we further find, that the damages suffered by said plaintiffs, by reason of said trespass and ejectment, to have been twelve hundred dollars. And we further find that the monthly value of said four fifths, less one sixth and one twelfth, of said described premises, is thirty-one dollars and twenty-five cents."

Upon the above bill of exceptions, the case came up to this Court.

Page 49 U. S. 361

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

The plaintiffs brought an action of ejectment in the circuit court to recover three hundred and fifty arpens of land in the neighborhood of St. Louis which they claim under a concession made by the Spanish government in 1800 to Mordecai Bell. Bell conveyed his right to James Mackay on 20 May, 1804, and on 20 September, 1805, Mackay conveyed the same to Amos Stoddard, the ancestor of the plaintiffs. A plat and certificate of the survey were certified and recorded by Antoine Soulard, as Surveyor-General, t20 January, 1806.

On 29 June, 1808, the above papers were filed with the recorder of land titles for the District of St. Louis. The claim was duly presented to the board of commissioners under the acts of Congress and rejected on 10 October, 1811, but afterwards, on 8 June, 1835, a new board decided that three hundred and fifty arpens of land "ought to be confirmed to the said Mordecai Bell, or his legal representatives, according to the survey on record." On 4 July, 1836, an act of Congress was passed confirming the decision of the commissioners. The land was surveyed as confirmed. The

Page 49 U. S. 362

defendant admitted that he was in possession of forty acres of the land claimed at the commencement of the suit.

The title of the defendant was founded on an entry made by Peltier of one hundred and sixty 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 on 16 July, 1832. Possession has been held of the forty acres claimed by the defendant, and by those under whom he claims, since 1819. This title was conveyed to the defendant.

The township in which this land is situated was surveyed by the United States in 1817, 1818, and 1819, and was examined in 1822. In 1823, the proclamation of the President, published at St. Louis, directed the lands in the above township to be offered at public sale.

This title, with but little variation of facts, was asserted by the plaintiffs and duly considered by this Court in the case of [Stoddard's Heirs v. Chambers](#), 2 How. 284. And the Court held the title to be valid against that which is now set up by the defendant. In the case of [Barry v. Gamble](#), 3 How. 53, that decision was sanctioned. But the counsel for the defendant, having brought the same title before us in this case, have requested a reexamination of the points ruled in the case of Chambers. We will briefly refer to the points now made and to the new facts proved, on which this application is founded.

The court instructed the jury

"That the land included in the survey given in evidence, made for Amos Stoddard on 21 January, 1806, by James Mackay, No. 42, was reserved from location and sale at the time Peltier's location was made, and also at the time his patent issued, and therefore both the location and patent are invalid as against the title of Amos Stoddard or those claiming through him to the extent that the two claims cover the same land. And that the land included in Mackay's survey aforesaid is the land confirmed to Amos Stoddard, or to his heirs, by the Act of Congress of July 4, 1836,"

&c.;

It is objected that the concession granted to Mordecai Bell should have been located at St. Andre, and not in the vicinity of St. Louis. In his petition to the lieutenant governor of Upper Louisiana he states,

"With the consent of your predecessor, he came over to this side [of the Mississippi], where he has selected a piece of land in his Majesty's domain, on the south side of the Missouri. This being considered, he supplicates you to have the goodness to grant him, at the same place, for the support of his family, three hundred and fifty arpens

Page 49 U. S. 363

of land in superficie."

This bears date 21 January, 1800, and on the 29th of the same month the lieutenant governor responds --

"In consequence of the information of the commandant of St. Andre, Don Santiago Mackay, I do grant to the petitioner the tract of land of three hundred and fifty arpens in superficie,"

&c., "in the place indicated."

St. Andre, the place of Bell's residence, is situated on the south side of the Missouri River, about thirty miles from St. Louis. Pascal L. Cerre, a witness, states that Bell resided in the neighborhood of St. Andre several years, and was engaged in hunting, drinking, and playing cards, and led a sort of vagabond life; that his petition, except the mark of the signature of Bell, was in the handwriting of Mackay. And Bell, being sworn as a witness, says he never applied for a concession, nor was there, to his knowledge, any grant made to him. That Mackay told him he had a head right which he, Mackay, wished to obtain, and which the witness exchanged with him for a tract of land near St. Andre.

Instead of the word "(Mississippi)," included in brackets in the petition of Bell, it seems the letters "M. R. S." were used, which one of the witnesses considers "as put for Majeste Rive Sud," and Milburn, a surveyor, says that he should have surveyed the concession on the south bank of the Missouri River if not otherwise directed. In opposition to this view, the words of the petitioner are relied on, "that with the consent of your predecessor, he came over to this side of the M. R. S.," which could only have meant the Mississippi River, that river being the eastern limit of Louisiana, which extended far north of the Missouri. That to cross the Missouri River, the "leave of his predecessor" could not have been asked, as it was unnecessary.

Whatever doubts this evidence may have created as to the location of Bell's concession, had it been laid before the commissioners who acted upon the claim, it is now too late to affect the title under it. In regard to the statement of Bell, his conveyance of the land in controversy to Mackay shows at least the inaccuracy of his memory. But the survey of the concession in 1806, as now claimed, which survey was recorded and expressly confirmed by the commissioners on 8 June, 1835, is a sufficient answer to the above objection. The survey was a private one, and consequently was of no authority except to designate the locality and extent of the claim until sanctioned by the commissioners. By the act of 21 April, 1806, they were authorized to direct such surveys as they may think necessary for the purpose of deciding on claims presented for their decision, and under this power they had a

Page 49 U. S. 364

right to adopt private surveys of claims, if accurately executed. This was in pursuance of the instructions of the Secretary of the Treasury.

The great question in the case is whether the land in controversy was subject to be appropriated by a New Madrid warrant on 20 October, 1826, when Peltier made his location.

Under various acts of Congress up to 26 May, 1829, Spanish or French titles which had been duly filed by the recorder of land titles were reserved from sale. Those acts are referred to in the case of *Stoddard v. Chambers*. At that period, all claims which had not received the sanction of the government were barred. 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 founded upon any French or Spanish grant &c.;, issued 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, should 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 after the report, the lands in the first class shall continue to be reserved from sale as heretofore until the decision of Congress shall be made against them, but the second class was declared to be subject to sale as other public lands.

This act reserved from sale, necessarily, all claims which had been duly filed, until the final report of the commissioners, and those which were embraced in the first class until Congress should reject them. In the case of *Stoddard v. Chambers*, the Court said, in reference to Peltier's location --

"It was made on land not liable to be thus appropriated, but which was expressly reserved, and this was the case when the patent was issued. Had the entry been made or the patent been issued after 26 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 warrant."

The defendants' counsel suppose that if the location of the New Madrid claim was void, the patent, though issued within

Page 49 U. S. 365

the time above stated, could have conveyed no title. The New Madrid location was void because it interfered with the Spanish title. When that title was barred by the lapse of time, the government, by issuing of a patent, would have sanctioned the New Madrid claim, and no one could have contested it, as between the government and the claimant no controversy could exist. By the patent he only acquired what his certificate entitled him to. And the right thus made complete could not have been affected by any subsequent act of Congress. The government might have withheld the patent on the ground that the New Madrid certificate had been improperly located; but that not being done, the patent gave an indisputable title.

It is insisted that the New Madrid location, if made on lands reserved from sale by reason of the Spanish claim, became valid so soon as the bar was complete against that claim. But this consequence would not seem to follow. If, during the bar, no act was done by the government to confirm the New Madrid claim, nor by the claimant to perfect his title, a removal of the bar would not prejudice any newly acquired right. And this only could prevent the renewal of the reservation by Congress. By such a renewal, a preference was given to the Spanish claim, which was an exercise of legislative discretion. Congress might have excepted from this reservation lands covered by New Madrid locations; but this not having been done, the Spanish claim is revived and placed on the same footing as before the bar.

It is insisted that as Bell's concession was surveyed without authority, it was no notice to Peltier, though recorded. The act of 1806, as before remarked, authorized the commissioners to direct such surveys as they may think necessary to be executed for the purpose of deciding on claims presented for their decision, but where a private survey had been made, they had the power to adopt it, as was done in this case. And such survey, being placed upon record by the recorder, seems to have been a reasonable notice within the acts of Congress.

But it is contended that the proviso in the act of 1836 which confirmed the Spanish and French claims reported by the commissioners embraces Peltier's New Madrid location. The words of the proviso are

"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 on such lands, in opposition to the rights acquired by such location or purchase. "

Page 49 U. S. 366

In the case of *Stoddard v. Chambers*, this Court held, that "a location under the law of the United States" must be "in conformity with it." But this, it is insisted, is not the true construction of the proviso. That "under the law" does not mean, "in pursuance of it," or "in conformity with it," but an act assumed to be done under it.

The word "under" has a great variety of meanings. But the sense in which it was used in the proviso is "subject to the law." We are under the laws of the United States -- that is, we are subject to those laws. We live under a certain jurisdiction -- that is, we are subject to it. The proviso declares that the act shall not confer a title, "in opposition to the rights acquired under the laws of the United States." This would seem to be conclusive, as no right can be acquired under a law which is not in pursuance of it. If the New Madrid location was made in violation of the law, it is not perceived how any right could be acquired under it.

The judgment of the circuit court is

Affirmed.

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 affirmed with costs.

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