

Thredgill Vs. Pintard

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 53 U.S. 24

Appellant : Thredgill

Respondent : Pintard

Judgement :

Thredgill v. Pintard - 53 U.S. 24 (1851)

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Thredgill v. Pintard

53 U.S. (12 How.) 24

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF ARKANSAS

SYLLABUS

Where a settler upon the public lands had a preemption right to them and sold them to a person who again sold them to a third party, the original vendor has a lien upon the land for the balance of the purchase money still due, and can

enforce it by a bill in chancery notwithstanding the vendee has taken out a patent in his own name under a subsequent preemption law.

On 12 April, 1814, Congress passed an Act, 3 Stat. 122, § 5, giving a right of preemption to settlers upon certain portions of the public lands, under certain conditions, one of which was that the Indian title should have been extinguished.

A person by the name of Jane Matthers, claimed a right of preemption, under this act, to the southeast quarter of section one, township eighteen south, range one west, containing 168 96/100 acres, lying south of the Arkansas River.

On 24 August, 1818, the Indian title to this country became extinguished by the ratification of a treaty concluded with the Quapaw Indians.

Jane Matthers assigned her preemption right to Thomas T. Tunstall, but at what time the record did not show.

In 1833, an agreement was made for the sale of this land, between Tunstall and J. M. Pintard, which was not formally concluded until the ensuing year, but Pintard, with his family, moved upon the land in the autumn of 1833, and had several slaves engaged in clearing the land, making fences &c.;

On 1 April, 1834, Tunstall executed a deed for the land to Pintard for the consideration of one thousand five hundred dollars cash, and covenanted to convey the legal title as soon as a patent should issue for it.

On 19 June, 1834, Congress passed an Act, 4 Stat. 678, declaring "That every settler or occupant of the public lands prior to the passage of this act who is now in possession and cultivated any part thereof in the year 1833" was entitled to a preemption.

On 24 July, 1834, a preemption right and certificate of purchase was granted and issued to Tunstall for the quarter section which he claimed under Jane Matthers under the preemption act of 1814 by the land officers at Little Rock.

On 23 March, 1835, Pintard sold the quarter section which he had purchased from Tunstall, together with part of an adjacent quarter section, which he had acquired in another way,

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making two hundred acres in all, to William Rhodes, for the price of forty dollars per acre, binding himself to convey the same by a general warranty deed as soon as the patents could be procured. Rhodes executed two promissory notes for \$4,000 each, the first due and payable on 1 March, 1836, and the second due on 1 March, 1837. Pintard then delivered possession of the land and improvements to Rhodes.

On 13 March, 1837, Rhodes sold the land which he had obtained from Pintard, together with some other land to Archibald Goodloe, the appellant in the present case, for sixty-five dollars per acre, being estimated to contain four hundred and fifty acres when accurately surveyed. Five thousand seven hundred dollars was to be paid in hand, and the balance was to be paid in sixty days, except the amount yet remaining unpaid by Rhodes for the purchase of said land, which was to be paid as soon as the title with general warranty should be regularly made to said Goodloe.

On 24 February, 1838, the Commissioner of the Land Office annulled the entry by Tunstall as assignee of Jane Matthers "inasmuch as the tract entered was not the property of the United States at the passage of the act under which the claim was made," *viz.*, the Act of 12 April, 1814. He therefore cancelled the certificate and directed the register and receiver at Little Rock to refund the money to whoever might be entitled to receive the same.

On 28 March, 1838, Goodloe paid to Pintard the sum of \$600, which was credited on the back of the note, which had become due on 1 March, 1836, given by Rhodes to Pintard.

On 22 June, 1838, Congress passed another preemption law, 5 Stat. 251, by which every settler of the public lands being the head of a family or over twenty-

five years of age should be entitled to a preemption.

On 15 February, 1839, Goodloe proved his preemption right under the above law entirely for his own benefit.

On 31 May, 1839, Goodloe paid to Pintard the sum of \$1,363.82, which was credited upon the same note given by Rhodes, upon which the preceding payment was credited.

On 9 April, 1840, Goodloe obtained his preemption right, and on 3 March, 1841, a patent was issued to him by the United States.

On 3 March, 1843, Congress passed an Act, 5 Stat. 603, extending to the settlers on the lands south of the Arkansas the same privileges which were granted by the act of 1814.

In March, 1842, Pintard, a resident of the State of Mississippi,

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filed his bill in the Circuit Court of the United States for the District of Arkansas against Goodloe and Tunstall, praying for a decree against Goodloe for the remainder of the purchase money due to him upon the purchase of the tracts of land and claiming a lien thereon to have them subjected to sale for the payment of said money. It is not necessary to notice any other of the proceedings in the case than Goodloe's answer, which was filed in December, 1842. In it he resisted the claim against him principally on the ground that Pintard never had any good and valuable claim or title to the land, either in law or equity, and therefore Pintard was not entitled to demand and receive the consideration agreed to be paid. Goodloe claimed that he himself held the legal title derived directly from the United States.

In April, 1845, the cause came on for hearing upon bill, exhibits, answers, issues, and evidence, and was argued, and in April, 1847, a decree was passed that Goodloe should pay to Pintard the sum of ten thousand five hundred and fifty-two dollars, together with ten percent interest from the rendition of the decree till paid, that the two pieces of land mentioned in the proceedings should be charged with

the payment, and that in default of payment by 1 November ensuing, the land should be sold, &c.;

From this decree Goodloe appealed to this Court.

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

Under the Act of 12 April, 1814, Jane Mathers claimed a right of preemption, by virtue of occupancy and cultivation, to the southeast quarter of section one, township eighteen south, range one west, containing one hundred and sixty-eight acres and ninety-six hundredths, lying south of the Arkansas River. She assigned her right to Thomas T. Tunstall, who entered and paid for the land at the Land Office at Little Rock 24 July, 1834, and obtained a patent certificate. On 24 February, 1838, this purchase was annulled by the Commissioner of

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the Land Office on the ground that the Indian title to the land had not been extinguished when the settlement was made. The Indian title was relinquished to the United States by the Quapaw Treaty, 24 August, 1818.

This tract was purchased of Tunstall by Pintard in the spring of 1833, who took immediate possession and made improvements on it. In the autumn of the same year, he removed his family to the land, constructed cabins, stables, and other fixtures, and in the spring of 1834 he cultivated seventy-five or eighty acres in corn and cotton.

On 23 March, 1835, Pintard sold the above quarter section and a part of the southwest quarter of section six, so as to make a tract of two hundred acres, at forty dollars per acre, to William Rhodes, who gave two notes of four thousand dollars each, payable in one and two years, with interest at ten percent per annum. The two hundred acres were sold by Rhodes to Goodloe on 3 March, 1837, for sixty-five dollars per acre. As a part of the consideration for this purchase,

Goodloe agreed to pay Pintard the amount of his claim as soon as a regular title for the premises should be obtained.

Goodloe, on 15 February, 1839, proved a preemption in his own name under the Act of June 22, 1838, to the quarter section, and paying the purchase money into the Land Office, he obtained a patent in his own name. Prior to this, on his contract with Rhodes, he paid to Pintard nineteen hundred sixty-three dollars and eighty-two cents. But having obtained the title to the land in his own name, he refused to make any further payments to Pintard on the ground that his claim was void. To enforce the payment of the sum due him on the sale to Rhodes, Pintard filed the bill now before us, with a prayer that the land might be sold, or so much of it as should be necessary to discharge the balance due to him.

It must be conceded that the first settler upon this land, the Indian title to it not having been extinguished, could claim under the act of 1814 no preemptive right. No laws giving to settlers a right of preemption can be so construed as to embrace Indian lands. Such lands have always been protected from settlement and survey by penal enactments. But it appears that the Indian claim to this land was relinquished to the United States by treaty in 1818, after which it was embraced by all general acts giving to settlers a right of preemption.

By the Act of 26 May, 1824, preemption rights were given north of the Arkansas River to all who were entitled to such rights under the act of 1814, and by the third section of the act of 1 March, 1843, every settler on the public lands south of the Arkansas River was entitled to the same benefits

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under the provisions of the act of 1814, as though he had resided north of said river. By these acts, a right of preemption was given in virtue of the first settlement upon the land.

But there was another and prior act which gave to the occupant of this tract a right of preemption. By the Act of 19 June, 1834, every settler upon the public lands prior to the passage of that act who was in possession of a quarter section and

cultivated a part of it in 1833 was entitled to a preemption. In 1833, Pintard was in possession of the quarter section and cultivated a part of it, and he continued to occupy and improve it until the spring of 1835, when he sold his right to Rhodes.

By his purchase, Goodloe entered into the possession of a valuable property, and if he desired to rescind the contract, it was incumbent on him to relinquish the possession of the quarter section and claim the cancelment of the contract. He cannot avail himself of the benefit of the contract and resist a performance of it on his part.

But Pintard, when he sold to Rhodes, was entitled to the preemption of the quarter section. His claim was not only a valid one, but it was sold on reasonable terms, as Rhodes in two years sold the same to Goodloe at an advance of twenty-five dollars per acre. The attempt under such circumstances of Goodloe to avoid the payment of the consideration by procuring the title in his own name is fraudulent. A title thus procured would have enured to the benefit of the vendor even if the preemptive right had not been vested in him.

A doubt is suggested in the argument whether Goodloe, having purchased from Rhodes, can be made responsible to Pintard. In his contract of purchase, as a part of the consideration Goodloe bound himself to pay the amount due to Pintard from Rhodes on the previous purchase. It has been held that under such circumstances an action at law may be maintained in the name of the person to whom payment is to be made. But this is a case in chancery, and no one has doubted that in equity such a contract may be enforced.

Has Pintard a lien upon the land for the balance of the purchase money? We think he has. Goodloe not only had notice of this claim, but he bound himself to pay it.

It is alleged that there is a mistake in the computation of the amount due as decreed in the circuit court. If there be an error in the calculation, it is in favor of Goodloe, and of which he has no right to complain.

In its decree the circuit court gave the defendant a credit for the money paid to Pintard, and also a loan to him of two hundred dollars and a liberal allowance for

the expense of procuring the title. A proper deduction was also made for the deficiency in the number of acres sold.

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There appears to be no error in the decree; it is therefore

Affirmed with costs.

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 Arkansas, and was argued by counsel. On consideration whereof it is now here ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

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