

**Campbell Vs. Doe**

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**Court :** US Supreme Court

**Decided On :** 1851

**Appeal No. :** 54 U.S. 244

**Appellant :** Campbell

**Respondent :** Doe

**Judgement :**

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**Campbell v. Doe**

**54 U.S. (13 How.) 244**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF OHIO*

## **SYLLABUS**

On 20 May, 1826, Congress passed an Act, 4 Stat. 179, giving school lands to such townships, in the various land districts of the United States, as had not been before provided for, which were to be selected for such townships by the Secretary

of the Treasury, out of any unappropriated public lands within the land district where the township was situated for which the selection was made.

The Secretary of the Treasury, through the Land Office, directed the Registers to make selections and return lists thereof, to be submitted to him for his approbation.

Under this direction, the land in question was selected and reserved from sale.

Afterwards, the Register withdrew the selection by authority of the Commissioner of the Land Office, and permitted a person to enter and take it up, this person knowing the circumstances under which it had been reserved from sale.

Finally, the Secretary of the Treasury selected the land in question, under the authority given to him by the act of 1826.

This selection was good, and conferred a title, overruling the intermediate entry.

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The facts are all stated in the opinion of the Court.

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

This action of ejectment is here on a writ of error to the Supreme Court of Ohio, under the 25th section of the Judiciary Act. The plaintiffs in error claim title to a quarter section of land under an entry made with the Register of the Land Office; the defendants claim the same as reserved for school purposes. As both parties claim under an act of Congress, either, is entitled to a writ of error to have the judgment against the right asserted, revised in this Court.

By the Act of 20 May, 1826, Congress gave school lands to such townships and fractional townships in the land districts of the United States as had not been

provided for, to be selected within such townships by the Secretary of the Treasury, out of any unappropriated public lands within the land district in which the township was situated. Under that act, fractional township No. 1, range No. 19, of the Chillicothe Land District of Ohio, was entitled to 160 acres of land.

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On the 24th of the same month the Treasury Department issued a circular, through the General Land Office, to the Registers of the different land districts directing them to make selections of the lands granted and return a list to the General Land Office for the approbation of the Secretary of the Treasury.

The Register of the Chillicothe Land District caused to be selected the southeast quarter of section No. 15, township 2, range 18, the land now in controversy. A return of this selection was made to the General Land Office 23 October, 1828. This return contained other tracts not made as required by the law, and consequently the list was returned to the Register for correction. The errors being corrected the list was again returned to the General Land Office. But afterwards, in 1832, a circular from the Land Office was directed to the Register, accompanied by a printed form and directions so that the returns of lands selected should be uniform. The tracts selected were required to be noted and reserved from sale. Where good land could not be procured in the township, the selection was authorized to be made in the nearest adjacent township which contained good land. The land above selected is not in township No. 1, range No. 19, nor in the next adjacent township, but in the nearest adjacent township in which good land could be procured.

In pursuance of the above instruction, the Register withheld the land from sale. On 7 March, 1833, he informed the commissioner that "some of the selections which he had reported were half quarter sections," and that others did not lie "either in the township or in the nearest adjacent township where good land exists," "which are not in accordance with the general rules laid down in the commissioner's last circular;" and he says, "I have withheld from sale all the lands selected which were

embraced in my two reports," and he inquires whether the fact of his having reported them takes them out of the general rule prescribed for his government, and whether he should consider all the selections heretofore made, and have them made in exact conformity to the instructions.

In answer to the above, the Commissioner says,

"On the subject of the school lands, selected by you in 1831, I have to state that, as there has been no action of the department on these selections, you are at liberty to withdraw them and select other lands in their stead, in conformity to my circular of 30 August, 1832."

Under this letter, it seems, the Register permitted Hamilton to enter the land in controversy, but no other school land was selected in lieu of it. On this entry's being made the school trustees

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of the township appealed to the Secretary of the Treasury against the sale of the land, and claimed the original selection. And the same being laid before the Secretary, he sanctioned and confirmed the original selection. This was done 9 January, 1834.

The decision of this case must depend upon the validity of Hamilton's entry. He had full notice that the quarter section had been selected for school purposes, and was reserved from sale. This information was given him by the Register on his first application to enter it. He then endeavored to purchase it from the trustees. The selection of that tract was made at first, as the law required, though other tracts on the same list had not been so selected.

The entry by Hamilton may have been permitted by the Register, through inadvertence or mistake. This supposition is at least as probable, and indeed more so, than that he withdrew the selection and failed in his duty to select another tract in place of it. But in whatever light this may be viewed, we are clear that the Secretary of the Treasury had the power, under the act of Congress, to make the

selection, and his decision, declaring the entry of Hamilton invalid was, under the circumstances, conclusive. This tract, selected by the Secretary under the act of 1826,

"is held by the same tenure, as provided in the second section of that act, and upon the same terms for the support of schools, in such township, as section number sixteen is held."

By the Act of 3 March, 1803, it is declared that lands appropriated for schools, shall be vested in the legislature of the state in trust &c.;, and in the same act section number sixteen in each township was designated for school purposes. If, therefore the quarter section in dispute was legally selected for school purposes, the legal title became vested in the Legislature of Ohio.

The general duties of the commissioner of the General Land Office are required to be performed "under the direction of the head of the Treasury Department." And where a duty is especially enjoined on the Secretary of the Treasury, although he may perform it through the commissioner of the General Land Office, who may well be presumed to act under his authority where the contrary does not appear; yet where the Secretary has interposed and decided the matter, as in the case under consideration, his decision must be considered as the only one under the law. So far, then, as the sanction of the Secretary was given to the appropriation of the land in dispute, to school purposes, it must be considered as a valid appropriation.

This view imposes no hardship on Hamilton, as he had notice of the tract selected, and his repeated attempts to purchase the

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same land cannot be favorably considered by the court. Under the circumstances, no right became vested in him by reason of his entry of the land, which could be regarded or enforced by a court of equity. The judgment of the state court is, therefore

*Affirmed.*

## **ORDER**

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Ohio, and was argued by counsel. On consideration whereof it is now here ordered, and adjudged by this Court that the judgment of the said supreme court in this cause be and the same is hereby affirmed with costs.

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