

**Foley Vs. Harrison**

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**Court :** US Supreme Court

**Decided On :** 1853

**Appeal No. :** 56 U.S. 433

**Appellant :** Foley

**Respondent :** Harrison

**Judgement :**

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**Foley v. Harrison**

**56 U.S. (15 How.) 433**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF LOUISIANA*

## **SYLLABUS**

In 1841, Congress passed an Act, 5 Stat. 455, declaring that there shall be granted to each state &c.;, Louisiana being one, five hundred thousand acres of land.

This act did not convey the fee to any lands whatever, but left the land system of the United States in full operation as to regulation of titles so as to prevent conflicting entries.

Hence, where a plaintiff claimed under a patent from the State of Louisiana, and entries only in the United States office, and the defendant claimed under patents from the United States, the title of the latter is the better in a petitory action.

The defendant has also the superior equity, because his entries were prior in time to those of the plaintiff, and the decision of a board, consisting of the Secretary of the Treasury, the Attorney General, and the Commissioner of the Land Office, to whom the matter had been referred by an act of Congress was in favor of the defendant.

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This was a petitory action commenced by Foley in the Fifth District Court of New Orleans, claiming lots No. 1 and 2 of section No. 3, the west half of section No. 10, and the northwest quarter of section No. 15, in township eleven, range thirteen east, containing in all 855 acres and nine hundredths.

By the Act of 4 September, 1841, section 8, 5 Stat. 455, Congress granted to several of the states, of which Louisiana was one, five hundred thousand acres of land each for purposes of internal improvement,

"the selections in all of said states to be made within their limits respectively in such a manner as the legislatures thereof shall direct, and located in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres in any one location on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States, in said states respectively, shall have been surveyed according to existing laws."

In 1844, the Legislature of Louisiana, in pursuance of the power with which it was invested by the above-cited act of Congress of directing the manner in which the selections of land thus granted should be made, passed an act establishing an office for the sale of the unlocated lands granted to the state, with a register, and the state treasurer as the receiver thereof. Session acts of 1844, p. 61.

By the 7th section of that act, it was made the duty of the register and treasurer

"to issue warrants for the lands donated by Congress and not as yet located, provided they shall not be issued for less than eighty nor more than six hundred and forty acres, which warrants shall be sold in the same manner as the lands located, provided they shall not be sold for less than three dollars per acre, and it shall be the duty of the governor to issue patents for all the lands that have been sold, and for the lands located by warrants, when contemplated to be sold by that act, whenever he shall be satisfied that the same have been properly located."

Under the provisions of the above-recited act of Congress granting the land, and the above provisions of the state legislature directing the manner in which the selections should be made, Foley purchased two warrants from the state officers, and on the 7th January, 1846, located them in the Land Office of the United States at New Orleans, upon the lands now in controversy.

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The defendants claimed title under five patents, issued from the General Land Office on the 1st September, 1847. These patents purported to be issued under an Act of Congress of August 3, 1846, and were founded on certain floats, which were claimed under the second section of the preemption act of 1830, 4 Stat. 421, which was revived for two years by the Act of 19th June, 1834, 4 Stat. 678

In order to show more clearly the respective titles of the plaintiff and defendants, the reporter has arranged them in chronological order.

image:a

image:b

The district court decided that Foley should recover the lot No. 1, of section 3, township eleven, range 13 east, containing 211 99/100 acres, and that the plea of prescription pleaded by defendant be sustained as to lot No. 2, of section 3, township eleven, range 13 east, and the west half of section 10 of the same township and range.

The Supreme Court of Louisiana reversed this decree and ordered judgment for the defendant for the land in controversy.

Foley sued out a writ of error under the 25th section of the Judiciary Act, and brought the case up to this Court.

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

A petitory action by petition was commenced in the Fifth District Court of New Orleans on the 5th of February, 1847, by the plaintiff in error claiming a tract of land of which the defendant had possession. The plaintiff claims under two patents from the State of Louisiana issued under the law of that state of the 25th of March, 1844, and alleges title in the state under the Act of Congress of 4 September, 1841.

On the day the action was commenced, the defendant filed his answer claiming the same land under a purchase made by Robert Bell and Thomas Barrett from the United States, the 16th of May, 1836, and by mesne conveyances transmitted to

the defendant. He pleads a prescription of a peaceable possession of more than ten years -- that large and valuable improvements have been made on the premises &c.;

On the trial in the District Court of New Orleans, the plaintiff gave in evidence patents from the State of Louisiana for eight hundred any fifty-five acres and nine hundredths of an acre, the land in controversy, by virtue of the Act of Congress of 4 September, 1841. The certificates of entries of the land were also in evidence.

The defendant produced in evidence five patents from the United States, dated 1st of September, 1847, and a sale of the premises by Thomas Barrett to Robert Bell by authentic act on 17th May, 1836, and a series of mesne conveyances, terminating in a sale and conveyance by the widow R. Bell, to the defendant, on the 9th of May, 1844.

A jury not being demanded under the Louisiana law, the court gave judgment that the plaintiff recover of the defendant lot No. 1 of section 3, township 11, range 13 east, containing 211 acres. The plea of prescription was sustained as to the residue of the tract. From this judgment the defendant appealed to the supreme court of the state.

The supreme court reversed the judgment of the district court and entered judgment in favor of the defendant for the land in controversy.

The plaintiff, on the ground that he claimed title under an act of Congress, and relied on the construction of another act, to nullify the title of defendant, and as the decision of the supreme court was against the right asserted by him, procured the allowance of a writ of error under the 25th section of the Judiciary Act.

The 8th section of the act of 4 September, 1841, declares,

"that there shall be granted to each state specified in the first section of the act, of which Louisiana is one, five hundred thousand acres of land for purposes of internal improvement,"

provided such state had not received land for that purpose. And it is provided that

"the selections in all of the said states, shall be made within their limits respectively, in such manner as the legislature shall direct; located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in anyone location, on any public land except such as is or may be reserved from sale &c.;"

no locations to be made until the land shall be surveyed by the United States.

In 1844 the Legislature of Louisiana passed an act, establishing an office for the sale of the unlocated lands granted to the state, with a Register and state Treasurer as receiver.

The 7th section of the act makes it the duty of the register

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and treasurer, to issue warrants for the lands donated by Congress and not as yet located, provided they shall not be issued for less than eighty nor more than six hundred and forty acres, which warrants shall be sold in the same manner as the lands located, provided they shall not be sold for less than three dollars per acre; and it shall be the duty of the governor to issue patents for all the lands that have been sold, and for the lands located by warrants, when contemplated to be sold by that act, whenever he shall be satisfied that the same must have been properly located.

Under the act of Congress and the state law, the plaintiff purchased, it is alleged, two warrants from the state officers, and on the 7th of January, 1848, entered them in the Land Office of the United States at New Orleans upon the lands in controversy. And it is contended that these locations, independently of the patent issued by the state, being made on public land not reserved from sale by any law of Congress or proclamation of the President, which had been surveyed, and were entered in parcels conformably to the act of Congress, gave the plaintiff a right to the lands in controversy under the act of 1841, unless the defendant had, at that time, an equitable or legal title to them.

The act of 1841 authorized the state to enter the lands, where surveys had been executed and the lands were open to entry, under the acts of Congress. The State of Louisiana acted within its powers in issuing warrants, and establishing land offices as a means of disposing of the lands. But it had not the power to convey the fee, as it had not been parted with by the general government. The words of the act of 1841 are "that there shall be granted to each state," not that there is hereby granted. The words import that a grant shall be made in future. [Lessieur v. Price](#), 12 Pet. 75.

It could not have been the intention of the government to relinquish the exercise of power over the public lands that might be located by the state. The same system was to be observed in the entry of lands by the state as by individuals, except the payment of the money, and this was necessary to give effect to the act and to prevent conflicting entries.

The defendant claims under five patents from the United States dated 1 September, 1847, which was some months after this suit was commenced. These patents were issued under the act of 3 August, 1846. That act provides,

"That the Commissioner of the General Land Office be, and he is hereby authorized and empowered, to determine, upon principles of equity and justice, as recognized in courts of equity, and in accordance with general equitable rules and regulations, to

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be settled by the Secretary of the Treasury, the Attorney General, and commissioner conjointly, consistently with such principles, all cases of suspended entries, now existing in said land offices, and to adjudge in what cases patents shall issue upon the same."

This power is limited to two years, and the exercise of it shall only operate to divest the title of the United States, but shall not prejudice conflicting claimants.

By the above act the commissioner was required to arrange his decisions in two classes, and the 4th section requires patents to be issued in cases in the first class.

On the 9th of July 1847, the commissioner reported to the Secretary of the Treasury

"ten entries by preemption, made at the Land Office of New Orleans, which were heretofore suspended, at the General Land Office. He says they have been adjudicated by me and placed in the first class, under the Act of the 3d August, 1846. It is stated that the first seven of the ten cases reported are entries by floats, arising from settlements within the Houmas claim, and would have been embraced with similar cases in abstract No. 13, but that the land in whole or in part, has been selected by the state under the act of 4th of September, 1841, since the floats were decided to be illegal under the act of 1834."

This report is agreed to by the acting Secretary of the Treasury and the Attorney General.

As this decision was made by a special tribunal, with full powers to examine and decide, and as there is no provision for an appeal to any other jurisdiction, the decision is final within the law.

Under the preemption act of 1830, revived and continued for two years by the act of 1834, preemption rights were granted to settlers on the public lands not exceeding to each settler one hundred and sixty acres. And where two settlers are found on the same quarter section, each being entitled to a preemption for one hundred and sixty acres, the quarter which they occupied was divided between them, and each received a certificate for eighty acres in addition, giving a preemption right elsewhere on the public lands, which certificates were called floats. A number of these certificates were purchased by Thomas Barrett and Robert Bell, and by virtue of which they located the land in dispute. The settlements on which these certificates were issued were made on the Houmas claim, and as doubts existed whether the land embraced by this claim would be

properly called public lands under the preemption laws, the entries were suspended. And these were the entries included in the above report of the Commissioner of the General Land Office and sanctioned by the Secretary of the Treasury and the Attorney General.

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The patents issued by the state to the plaintiff were dated 20 April, 1846. And it seems that on the 9th of the preceding month, the Commissioner of the General Land Office wrote to the Register and Recorder of New Orleans:

"As Congress has taken the subject of the floating preemption entries arising from preemption settlements within the limits of the Houmas private claim into consideration, and is about to confirm them in the hands of *bona fide* assignees, I deem it proper, in order to prevent future inconvenience, to direct that all the land embraced by such entries, except as to those where the purchase money has been refunded and the claim abandoned, be hereby considered as excused from disposition in any way, either by state selection or otherwise. The state selections already made will be suspended to await the action of Congress."

"If the contemplated law confirms all entries in the hands of *bona fide* assignees, it will, in all probability, defeat all locations made by state selections. In the meantime, it is necessary that all appropriations of the lands covered by such entries be suspended."

It is true that on 24 December, 1845, the commissioner wrote to the same land office

"that, after the cancellation of preemption claims, if the land is not otherwise interfered with or reserved, it is considered as public land liable to be located by the state."

And it seems that the tracts for which the plaintiff obtained patents, were designated in the letter of the commissioner as coming within the category.

This decision or opinion of the commissioner did not affect the rights of the defendant, as appears from subsequent proceedings of the same office. As soon as the defendant was apprised of the above letter, he filed a caveat in the State Land Office, and on the 9th of March, 1846, the Commissioner, in his letter, as above stated, suspended the plaintiff's entries. And on the 25th of June, 1847, the Secretary of the Treasury, on a representation made by the Commissioner of the Land Office, "approved the locations made under the floating claims, held by the actual settlers who had improved the land, in preference to state locations." And this decision was sustained in the proceeding under the act of 3 August, 1846, by the report of the commissioner, sanctioned by the Secretary of the Treasury and the Attorney General, as above stated.

The Houmas claim, as filed before the commissioners on Land Titles, extended from the Mississippi River to the Amite, embracing a large extent of country. It was confirmed by the commissioners, and also by an act of Congress passed in 1814. This confirmation, however, was construed to be limited, and

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not extending to the boundaries claimed. The survey authorized by the Treasury Department extended only one and a half leagues back from the river; and the register and receiver were instructed to treat the residue of the claim as public lands. This induced a great many persons to settle on the claim up to the year 1836. In that year, by order of the Land Office, the register and receiver were directed to withhold from sale the lands within the claim. This suspension was continued, and the patent certificates which had been issued to purchasers were declared to have been issued without authority.

Afterwards, in 1844, this claim, to its whole extent, was recognized as valid by the Secretary of the Treasury; in consequence of which, entries made within the grant were cancelled, and the purchase money returned. This action of the Land Office has been referred to, for the purpose of understanding the nature of the preemption rights acquired by settlers upon the Houmas claim, and the floats which were issued, as above explained, under the law. These floats were issued

under the authority of the government, and, when presented by *bona fide* purchasers, could not be disregarded. This was the origin of the right set up by the defendant. It has been sanctioned by the Land Office, by the Secretary of the Treasury, and the Attorney General, under the act of 1846, and a patent has been granted. Under the claim of the defendant, possession of the land has been held many years, and the improvements on it have made it of great value.

The plaintiff's title originated by his obtaining a float, as it was called, from the State Land Office, at three dollars an acre, in virtue of which he located the land in controversy, on 7th January, 1846, with the Register of the Land Office of the United States. The plaintiff, through John Laidlaw, made an application to have the land specified in the float or warrant, but the Register of the state declined to specify any lands in the warrant. He refused for some time to issue a patent on the location, as he had "misgivings" as to whether it would be right for him to do so; but eventually he issued it on the order of the governor, to test the validity of the title.

As the patent from the state did not convey the legal title to the plaintiff, he must rely only on his entry, and that, in a petitory action, cannot stand against the patent of the defendant. But, if the case were before us on the equities of the parties, the result would be the same. The entries of the land claimed by the defendant were prior in time to those of the plaintiff, and of paramount equity. The entries of both claims were suspended by the order of the government, and the decision of the secretary, and especially the decision of the commissioner, the Secretary of the Treasury, and the Attorney General, under the act of 1846, was final, and related back to the original entries of the land. The circumstances under which the plaintiff located his warrants on a very valuable sugar plantation, of which the defendant had long been in possession, do not strongly recommend his equity. We affirm the judgment of the Supreme Court of Louisiana, with costs.

## **ORDER**

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Louisiana, 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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