Burgess Vs. Gray

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Appeal No. : 57 U.S. 48

Appellant : Burgess

Respondent : Gray

Judgement :

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57 U.S. (16 How.) 48

ERROR TO THE SUPREME COURT

OF THE STATE OF MISSOURI

SYLLABUS

No equitable and inchoate title to land in Missouri, arising under the treaty with France, can be tried in the state court.

The Act of Congress passed on the 2d of March, 1807, 2 Stat. 440, did not *proprio vigore* vest the legal title in any claimants, for it required the favorable decision of the commissioner and then a patent before the title was complete.

The Act of 12 April, 1814, 3 Stat. 121, confirmed those claims only which had been rejected by the recorder upon the ground that the land was not inhabited by the claimant on the 20th of December, 1803.

Where it did not appear by the report of the recorder that a claim was rejected upon this specific ground, this act did not confirm it.

The question whether or not the recorder committed an error in point of fact was not open in the state court of Missouri upon a trial of the legal title.

The mere possession of the public land, without title, for any time, however long, will not enable a party to maintain a suit against anyone who enters upon it, and more especially against a person who derives his title from the United States.

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

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

This was a suit brought by petition in the circuit court of Jefferson County, in the State of Missouri, by the plaintiff in error, against the defendants.

"The petition sets forth in substance that John Jarrott, alias Gerrard, in 1780, with the consent and permission of the officers of the Spanish government, settled upon a tract of land in what is now Jefferson County, in the State of Missouri, and that he continued to inhabit and cultivate it until about 1796, when he was driven off by the Indians. His son Joseph succeeded him in the possession of the land, and continued to reside upon and cultivate it until he sold it to Kendall, in the year 1812. Kendall filed a notice of the claim with the United States Recorder of Land Titles, who rejected it. The right of Kendall passed by descent to his heirs at law,

who sold to the plaintiff, as appears by conveyances filed with the petition. It appears, moreover, that the plaintiff has always been in possession since the purchase of Kendall's heirs. A plat of the claim was laid down on the maps of the public lands, in the Registrar's office, representing it as being reserved to satisfy the claim of John Jarrott's legal representatives. After the claim had been examined and rejected by the Recorder of Land Titles, no farther action appears to have been taken on the claim."

"In the years 1847-1848 and 1849, different portions of the same tract of land were entered at the Registrar's office by different individuals under preemptions allowed to them, the entries being made at different times, each person purchasing in his own right and in his own individual name, separate and distinct from the others. The several persons making these separate and different entries are made the defendants to this suit."

"The defendants demurred to the petition and assigned as causes of demurrer first that the plaintiff showed no right in his petition to maintain the action; second, that separate and distinct causes of action against different persons were joined in the petition."

"The Circuit Court of Jefferson County sustained the demurrers, and the plaintiff appealed to the Supreme Court of Missouri. The supreme court affirmed the decision of the circuit court, and the plaintiff has brought his case before this Court by writ of error to reverse the decision of the Supreme Court of Missouri. "

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In proceeding to deliver the opinion of the Court, it is proper to observe that by the laws of Missouri, the distinction between suits at law and in equity has been abolished. The party proceeds by petition, stating fully the facts on which he relies if he seeks to recover possession of land to which he claims a perfect legal title, and he proceeds in the same manner if he desires to obtain an injunction to quiet him in his possession or to compel and adverse party to deliver up to be cancelled evidences of title, improperly and illegally obtained, and he may, it seems, assert

both legal and equitable rights in the same proceeding and obtain the appropriate judgment.

This has been done by the plaintiff in error in the present case. His suit is brought according to the prayer of his petition to recover possession of land to which he claims title, and upon which, as he alleges, the defendants have unlawfully entered, and also to compel them to abandon as he terms it their illegal claim.

The demurrer admits the truth of the facts stated in the petition. And, consequently, if these facts show that he had any legal or equitable right to the land in question under the treaty with France, or an act of Congress, which the state court was authorized and bound to protect and enforce, he is entitled to maintain this writ of error, and the judgment of the state court must be reversed.

Now as regards any equitable and inchoate title which the petitioner may possess under the treaty with France, it is quite clear that the state court had no jurisdiction over it. For it has been repeatedly held by this Court that, under that treaty, no inchoate and imperfect title derived from the French or Spanish authorities can be maintained in a court of justice, unless jurisdiction to try and decide it has first been conferred by act of Congress. Certainly no such jurisdiction has been given to any state court. And the Supreme Court of Missouri were right in sustaining the demurrer, as to this part of the petition, even if it had been of opinion, that the permit to settle on the land, and the long possession of it under the Spanish government, gave him an equitable right, by the laws of Spain, to demand a perfect and legal title. The court had no jurisdiction upon the question. And the judgment of the state court cannot be reversed unless the plaintiff can show that he had a complete and perfect title derived from the Spanish or French authorities, or a legal or equitable title under the laws of the United States.

The petitioner does not claim a perfect grant from the French or Spanish government; nor a patent from the proper officers of the United States. But he insists that the Act of Congress of March 3, 1807, 2 Stat. 440, vested in him a complete legal title, and needed no patent to confirm it.

Undoubtedly Congress may, if it thinks proper, grant a title in that form, and it has repeatedly done so. And we proceed to examine whether the title claimed by the plaintiff was confirmed to him by the act referred to.

The plaintiff relies on the second section as a confirmation of his claim. But it evidently will not bear that construction when taken in connection with the whole act. For the fourth section directed commissioners to be appointed, who were authorized to decide upon all claims to land under French or Spanish titles in the Territories of Louisiana or Orleans, and by the sixth section, whenever the final decision of the commissioner was in favor of the claimant, he was entitled to a patent for the land, to be issued in the manner provided for in that section. The eighth section required the commissioners to report to the Secretary of the Treasury their opinion upon all claims not finally confirmed by them, the claims to be classified in the manner therein prescribed. And it was made the duty of the Secretary to lay this report before Congress for their final determination.

This act of Congress did not, *proprio vigore,* vest the legal title in any of the claimants. For even when the decision of the commissioners was final in their favor, yet a patent was still necessary to convey the title. The report was made conclusive evidence of the equitable right, and nothing more. And when the final decision was against the validity of the claim, he was directed to report his opinion upon its merits, and Congress reserved to itself the ultimate determination.

The powers and duties of the commissioner were subsequently transferred to the Recorder of Land Titles. And this claim was presented to him in 1812, with the evidence upon which the claimant relied to support it. It is a claim under a settlement right derived from the Spanish authorities, and which the claimant insisted was within the provisions, and entitled to confirmation under the second section of the act of 1807.

The recorder reported against it. His report states that there was "possession, inhabitation, and cultivation in 1781, and eight following years, and again two or

three years." He assigns no particular reason for rejecting the claim, but simply enters in his report "not granted." And in this form, it was laid before Congress, together with the other claims not finally decided by the recorder in favor of the claimants. It does not, therefore, appear from the report whether it was rejected because, in the judgment of the recorder, the possession of ten consecutive years was not sufficiently proved or because no evidence was offered, and none appears to have been offered, to prove that the party under whose title the claim was made was a resident of the territory on the 20th of December, 1803.

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On behalf of the petitioner, it is contended, that the decision of the recorder was erroneous and founded upon a mistake as to a matter of fact, and that it appears by the evidence returned with the report to the Secretary of the Treasury that the possession spoken of was proved to have been for more than ten consecutive years before the 20th of December, 1803 -- and not broken, as stated in the report.

This may be true. The recorder may have fallen into error. But it does not follow that plaintiff was entitled on that account to maintain his petition in the Missouri court. That court had no power to correct the errors of the recorder if he made any, nor to revise his decision, nor to confirm a title which he had rejected. That power, by the act of 1807, was expressly reserved to Congress itself, and has not been committed even to the judicial tribunals of the general government. The decision of the recorder against him is final unless reversed by act of Congress, and the petitioner can make no title under the United States by virtue of the provisions in that act.

It is, however, insisted that if it was not confirmed by the act of 1807, it was made valid by the act of 1814. And this confirmation is claimed under the first section, which confirms all claims where it appears by the report of the recorder that it was rejected merely because the land was not inhabited by the claimant on the 20th of December, 1803.

But it is very clear that this act does not embrace it. The report of the recorder does not place its rejection merely on that ground. On the contrary, it would seem to place it upon the want of proof of continued residence upon the land for ten consecutive years, and upon none other.

It may indeed have happened that the son of John Jarrett was in possession, and actually inhabited the land on the day mentioned in the law, and that from ignorance of its provisions, or from other cause, he omitted to produce proof of it to the recorder, and that the claim was in fact rejected on that account. But that question was not open to inquiry in the Missouri court. The act of Congress does not confirm all claims where this fact existed and could be proved, but those only in which it appeared on the face of the report that the want of this proof was the sole cause of its rejection. This must appear on the written report of the recorder to bring it within the provisions of this act, and cannot be supplied by other evidence. And as it does not so appear in the present case, the act of 1814 does not embrace it nor confirm it.

Neither can the petition be maintained upon the long and continued possession held by the petitioner and those under whom he claims.

The legal title to this land, under the treaty with France, was

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in the United States. The defendants are in possession, claiming title from the United States, and with evidences of title derived from the proper officers of the government. It is not necessary to inquire whether the title claimed by them is valid or not. The petitioner, as appears by the case he presents in his petition, has no title of any description derived from the constituted authorities of the United States, or which any court of justice can take cognizance. And the mere possession of public land, without title, will not enable the party to maintain a suit against anyone who enters on it, and more especially he cannot maintain it against persons holding possession under title derived from the proper officers of the government. He must first show a right in himself before he can call into question the validity of

theirs.

Whatever equity, therefore, the plaintiff may be suppose to have, it is for the consideration and decision of Congress, and not for the courts. If he has suffered injury from the mistake or omission of the public officer, or from his own ignorance of the law, the power to repair it rests with the political department of the government, and not the judicial. It is expressly reserved to the former by the act of Congress.

We see no error in the judgment of the Supreme Court of Missouri, and it must be affirmed with costs.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of the State 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 supreme court in this cause be, and the same is, hereby affirmed with costs.