

Gamache Vs. Piquognot

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 451

Appellant : Gamache

Respondent : Piquognot

Judgement :

Gamache v. Piquognot - 57 U.S. 451 (1853)

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Gamache v. Piquognot

57 U.S. (16 How.) 451

ERROR TO THE SUPREME

COURT OF MISSOURI

SYLLABUS

In 1812, Congress passed an act (2 Stat. 748) entitled "An act making further provision for settling the claims to land in the Territory of Missouri." It confirmed the titles to town or village lots, outlots &c.;, in several towns and villages, and

amongst them the Town of Carondelet, where they had been inhabited, cultivated, or possessed, prior to the twentieth day of December, 1803.

In 1824, Congress passed another act, 4 Stat. 65, supplementary to the above, the first section of which made it the duty of the individual owners or claimants whose lots were confirmed by the act of 1812 to proceed within 18 months to designate their lots by proving cultivation, boundaries &c.;, before the recorder of land titles. The third section made it the duty of this officer to issue a certificate of confirmation for each claim confirmed and furnish the Surveyor General with a list of the lots so confirmed.

This list was furnished in 1827.

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Afterwards, in 1839, another recorder gave a certificate of confirmation, an extract from the registry showing that this second recorder entered the certificate in 1839, and an extract from the additional list of claims, which addition was that of a single claim, being the same as above.

These three papers were not admissible as evidence in an ejectment brought by the owners of this claim. The time had elapsed within which the recorder could confirm a claim.

This was an action in the nature of an ejectment brought by the plaintiffs in error, for the recovery of a tract of land described in the declaration as survey No. 120 of the outlots and common field lots of the Village of Carondelet.

The substance of the two acts of Congress of 1812 and 1824 is given in the caption of this report, and need not be repeated.

Upon the trial, the plaintiff offered the three following pieces of evidence, all of which were rejected by the court. There was much other evidence offered both by the plaintiffs and defendants, but as the opinion of this Court turned chiefly upon the propriety of this rejection, the other pieces of evidence, and instructions of the

court founded thereon, will be omitted. It will be perceived that each one of the three purports to derive its efficacy from the certificate of Mr. Conway, in 1839.

The plaintiffs then offered in evidence the following certificate of confirmation of the recorder of land titles of Missouri, as follows, to-wit: endorsed on the outside "Jno. Bte. Gamache, sen., 6 by 40 arpens, field of Carondelet. Fees \$1, paid." John Baptiste De Gamache, sen., or his legal representatives, claims an outlot, adjoining the village of Carondelet, containing six arpens in front by forty in depth, bounded, northerly, by the common fields; eastwardly, by the Mississippi River (leaving a tow between it and the river); south, by an outlot claimed by the legal representatives of Gabriel Constant (lalmond), sen., an[d] west by the land formerly the property of Antoine Riehl.

"John Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about sixty-six years of age, and that he was born in Kaskaskia, and A.D. seventeen hundred and eighty-eight he removed from Ste. Genevieve to Carondelet, where he has resided ever since; that A.D. seventeen hundred and ninety-seven or ninety-eight he was employed by John Baptiste Gamache, sen., to fence in a field which said Gamache had been clearing, and working for about two years within this field lot, and he, this respondent, says, he did fence in about three arpens of this land, and did build a cabin on the same at this time; and this deponent further says that Gamache did cultivate this same field for five or six years until his death,

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and this deponent further says he always understood this land was owned by said John Baptiste Gamache."

his

"JOHN BAPTISTE MAURICE X CHATILLON"

mark

"Sworn to before me, July 6, 1825"

"THEODORE HUNT, *Recorder L.T.* "

"Translated to witness. J. V. GARNIER"

"RECORDER'S OFFICE"

"ST. LOUIS, Missouri, 22d January, 1839"

"I certify the foregoing within to be truly copied from book No. 2, page 46, of the minutes of the proceedings of the Recorder of Land Titles in the State of Missouri under the Act of Congress of 26 May, 1824, entitled 'An act supplementary of an act passed on the 13th day of June, 1812,' entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri,' all of record in this office, and confirmed by the act of 13 June, 1812, above cited."

"F. R. CONWAY"

" *U.S. Recorder of Land Titles in the State of Missouri* "

"TO DANIEL DUNKLIN, Esq.,"

"U.S. Surveyor of Public Lands, St. Louis, Mo."

Together with a certified extract from the registry of certificates from the office of the recorder of land titles as follows, to-wit:

Registry of Certificates of confirmation on town lots, outlots, and common field lots, issued by the Recorder of Land Titles

=====

In whose name

issued Date Situation Remarks Quantity

The following claim
was omitted by Mr.
Hunt, late recorder, in
furnishing the list of
claims proven up before
him, to-wit:

John Baptiste de 6th July, Carondelet Bounded north by
Gamache 1825 fields the common fields,
eastwardly by the
Mississippi (leaving
a tow [path] between
it and the river,)
south by an outlot
claimed by the legal
representatives of
Gabriel Constant,
(Ialmond,) sen.,
and westwardly by
the land formerly
the property of

Antoine Rheil

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The above claim entered by me in the book, 12th March, 1839, having this day furnished the Surveyor General with a description thereof.

F. R. CONWAY, *Recorder*

RECORDER'S OFFICE

ST. LOUIS, January 23d, 1851

The above is correctly copied from the registry on file in this office.

ADOLPH RENARD

U.S. Recorder of Land Titles in the State of Missouri

And also a certified extract from the list of claims proved before the recorder of land titles, under the Act of 26 of May, 1824, in which is contained the Gamache claim to which particular reference was made at this stage of the case, transmitted by the recorder of land titles to the Surveyor General of the United States in Illinois and Missouri, certified from the office of the Surveyor General as follows, to-wit:

"(This was a list of cases transmitted by Mr. Hunt to the Surveyor General, as a supplemental report. The cases bear various dates, the last being 12th April, 1830. They were 16 in number. Then came the following, transmitted by Mr. Conway, accompanied by a certificate by him, dated 12 March, 1839, stating that it had been omitted to be furnished by his predecessor, Mr. Hunt.)"

" No. 17 -- Not in list "

"John Baptiste de Gamache, senior, or his legal representatives, claim an outlot adjoining the Village of Carondelet, containing six arpens in front by forty in depth, bounded northerly by the common, eastwardly by the Mississippi, leaving a tow between it and the river, south by an outlot claimed by the legal representatives of Gabriel Constant, Lalamand senior, and west by the land formerly the property of Antoine Rheil."

"John Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about sixty-six years of age, and that he was born in Kaskaskia, and A.D. 1788, he removed from St. Genevieve to Carondelet, where he has resided ever since; that A.D. seventeen hundred ninety-seven or ninety-eight he was employed by John Baptiste Gamache, senior, to fence in a field -- which said Gamache had been clearing and working in for about two years within this field lot -- and he, this deponent, says he did fence about three arpens of this land, and build a cabin on the same, at this time. And this deponent further says that Gamache did cultivate this same field for five or six years until his death. And this deponent

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further says he always understood this land was owned by said John Baptiste Gamache."

"his"

"[Signed] JOHN BAPTISTE MAURICE X CHATILLON"

"mark"

"Sworn to before me, July 6, 1825."

"[Signed] THEODORE HUNT, *Rec'r L.T.* "

"Translated to witness by J. V. Garnier."

The plaintiff also offered in evidence a certified extract from Hunt's minutes containing the entry of Gamache's claim, with a description of the lot, and also the evidence therein recorded, but the court refused to receive it; and also testimony to prove the inhabitation and cultivation of the lot prior to December, 1803, and until his death in 1805. There was also much other evidence which need not be stated in this report.

The defendants offered evidence

1. To show a title under the act of Congress, of 1812, as commons of Carondelet.
2. An adverse possession for twenty years.
3. Rebutting evidence.

After the evidence was closed, various instructions were asked for both by the counsel for plaintiff and defendant, some of each of which were given and some refused by the court, as the verdict was for the defendants, and the case was brought up by the plaintiffs, only those instructions and refusals to which they excepted will be here stated.

Instructions for plaintiffs refused.

"3. The jury are instructed that, as against such a claim and cultivation, or possession, as that mentioned in said second instructions, no adverse user as commons as a ground of title, under the Act of Congress of 13th June, 1812, can prevail unless such user existed in fact by an actual occupation and use as commons of the same ground, visible and continued, notorious, hostile, and exclusive, [and then] only to the extent that such actual occupation and use as commons existed in fact, and to the exclusion of such claim and cultivation, or possession, by Gamache, of the same land as an outlot, or cultivated field lot, of the village, prior to the 20th day of December, 1803; provided the jury also believe, from the evidence, that the tract of land in the declaration described was claimed and inhabited, cultivated or possessed, by John B. Gamache, senior, prior to the 20th day of December, 1803, as an outlot or cultivated field lot of said village, with

such a cultivation or possession as that mentioned in the said second instructions for the plaintiffs."

"4. If the jury believe from the evidence that the claim of the Village of Carondelet to commons, prior to the 20th day of December,

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1803, was bounded north in part [by] the cultivated lands of the village, and that, prior to said date, the lot of land in said declaration described as having been claimed by Gamache was one of the cultivated lands of the village, then there is no conflict of title in this case, and the defendants have shown no title to the land in controversy."

"5. The jury are instructed that on the evidence given in this case, the statute of limitations is no bar to this action unless they shall believe, from the evidence, that the town of Carondelet, or those holding under said town, have had an adverse possession in fact of the land in controversy in this case by an actual occupation on the ground, visible and continued, notorious, hostile, and exclusive, for at least twenty years next preceding the commencement of this suit."

"7. The jury are instructed that the survey No. 120, and the plats and field notes thereof given in evidence by the plaintiffs, are evidence of the true location, extent, and boundary of the outlot of the Village of Carondelet, claimed under John B. Gamache, senior, by his legal representatives."

"8. The certified extract from the minutes of Recorder Hunt, taken under the Act of Congress of 26 May, 1824, [is] evidence that the tract of land therein mentioned and described was claimed and inhabited, cultivated or possessed, by John B. Gamache, senior, prior to the 20th day of December, 1803, and evidence that the same was confirmed to John B. Gamache, senior, or his legal representatives, by the Act of Congress of 13 June, 1812."

"9. The certified extract from [the] registry of certificates from the recorder's office, offered in evidence [by the plaintiffs, is evidence] that the outlot therein mentioned

was confirmed to John B. Gamache, senior, or his legal representatives, by the act of 13th June, 1812."

"10. The certified extract from the list of claims transmitted by the recorder of land titles to the Surveyor General, and certified from the office of the Surveyor General, relating to the claims of the legal representatives of John B. Gamache, senior, is evidence of said claim and the extent and boundary thereof, and that the same was confirmed by the Act of Congress of 13 June, 1812."

"11. The certificate of confirmation of the recorder of land titles in Missouri, given in evidence by the plaintiffs, shows a *prima facie* title from the United States in the legal representatives of John B. Gamache, senior, to the land therein described,"

To which decision of the court, refusing said instructions, the plaintiffs by their counsel excepted.

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The defendants then asked the following instructions, which were given by the court, as follows, to-wit:

Instructions given to defendants.

"5. If the jury find that the land spoken of by the witnesses as actually cultivated and possessed by Gamache did not embrace the land now in dispute, they ought to find for the defendants."

"17. The survey No. 120, read by the plaintiffs, is no evidence of title, nor of the extent and boundaries of Gamache's claim."

"18. The testimony taken before Hunt, and read in evidence by the plaintiff, is not to be regarded by the jury in the present case, the defendant insisting that the claim had been abandoned."

To the giving of which instructions the [plaintiffs] by their counsel excepted.

The verdict being for the defendants, the case was carried by the plaintiffs to the Supreme Court of Missouri, where the judgment of the court below was affirmed. It was then brought to this Court by the plaintiffs by a writ of error issued under the twenty-fifth section of the Judiciary act.

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MR. JUSTICE CATRON delivered the opinion of the Court.

This case was brought here by writ of error to the Supreme Court of Missouri, and presents questions alleged to be cognizable in this Court under the 25th section of the Judiciary act. The plaintiffs claimed a tract of land of six arpents in front, and forty back, lying adjoining to the Village of Carondelet, in Missouri. It was claimed as "an outlot" which had been confirmed by the Act of Congress of June 13, 1812, to John B. Gamache, the ancestor of the plaintiffs.

In support of this position there was offered in evidence certain documents issued from the office of the recorder of land titles. The first was a paper claimed to be a certificate of confirmation issued by Conway, the recorder of land titles, dated 22d January, 1839, under the Act of Congress of 26 May, 1824. The second was an extract from the registry kept by the recorder of certificates, issued by him under the act of 1824, by which it appears that Conway entered the certificate of Gamache's representatives on that register on the 12th March, 1839, and furnished on that day to the Surveyor General a description of the land. The third was an extract from the additional list of claims furnished by the recorder to the Surveyor General on the 12th March, 1839, which addition was of the Gamache claim alone. There were other documents showing that Hunt, who was the recorder of land titles, who acted under the act of 1824 in taking proof of claims, and who filed with the surveyor the list of claims proved before him, had filed one or two supplemental or explanatory lists after the first.

The court below rejected the evidence offered.

A survey of the claim of Gamache was made by a deputy surveyor under instructions from the Surveyor General, and the survey being returned to the office by the deputy and a plat made, the word "approved" was written upon it and signed by the then Surveyor General, but it never was recorded. It appeared in evidence that the practice of the surveyor's office,

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when a deputy surveyor made return of a survey which he had been instructed to make, was to have the survey examined to see the manner in which the deputy had followed the instructions given, and if he had followed them, his work was approved and the approval evidenced by such writing as had been made in this case, which was intended to authorize the payment of the deputy for his work; and that subsequently the survey was more carefully examined, and if found to be a proper survey in all respects it was recorded in the books of the office, which was the evidence that it was finally adopted and approved, and that by the practice of the office certified copies of surveys were not given out until they were thus finally approved and recorded. Conway, who had been Surveyor General as well as recorder, testified that he would regard the survey of the Gamache claim as an approved survey, and would record it as such if he were in the office.

It appeared in evidence that the present Surveyor General refused to record it as an approved survey or to certify it to the recorder as a survey of land for which a certificate of confirmation is to issue, and that in that refusal he is sustained by the department at Washington.

After the evidence was closed, the court, by an instruction, declared that the survey was not evidence of title, nor of the boundaries and extent of Gamache's claim.

A certified copy of the affidavits made before recorder Hunt when he was taking proof under the act of 1824 was in evidence, but an instruction given to the jury substantially excluded them from consideration.

On this state of facts the Supreme Court of Missouri held, among other things, as follows:

"In the present case we have a recorder of land titles, fourteen years from the passage of this act, attempting to give the evidence of title by issuing a certificate of confirmation and certifying the claim to the Surveyor General as one confirmed by the act of 1812. If the government of the United States has confirmed the title set up by the plaintiffs by that act of Congress, then the party, as has been held in this Court, does not lose his land by the failure to procure the evidence provided for by the act of 1824, and under these decisions the plaintiffs in this case, after the evidence was rejected, which they claimed was rightly issued under the last-mentioned act, proceeded to prove the cultivation and possession of their ancestor, Gamache, and claimed that the title was confirmed by the act of 1812."

"If the evidence of title, purporting to be issued under the act of 1824, appeared undisputed by the United States, and acknowledged and treated by the government as effectual, then it may

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be that a person who was a mere stranger to the title would not be allowed to dispute the correctness of the conduct of the officers in their attempt to carry out the law. But when we find that the government itself, in its own officers, arrests the progress of the title, and the whole reliance of the party in this case is upon the acts of the recorder, the correctness of which is denied by the government, we will examine his acts and give them effect only so far as they conform to the law."

"That the recorder, under the act of 1824, was required to act in a *quasi*-judicial character is perfectly manifest, although there was no mode provided by the law for the expression of an opinion against the sufficiency of the evidence given before him. If a claim was, in his judgment, confirmed by the act of 1812, he issued to the party a certificate of confirmation, and included the lot in the descriptive list which he was required to furnish the Surveyor General. If there was a failure to prove the inhabitation, cultivation, or possession to his satisfaction, he

simply omitted to include the claim in his list, and he issued no certificate."

"The acts required to be done when a claim was confirmed were to be done immediately after the expiration of the time limited for taking the proof, and when we see from the evidence offered by the plaintiff that the recorder filed his list of confirmations with the surveyor in October, 1827, near twelve years before Conway, his successor, returned the present claim to that office, we cannot avoid the conclusion that this latter act was not within the scope allowed for such proceeding by the act of Congress. It is not necessary to maintain that if Hunt, the recorder who took the proof, had died before he acted upon the claims, his successor could not act upon them; but when he did act, and made out and furnished to the surveyor the list required by law, the conclusion is one which the law draws, that claims not within that list are claims not proved to his satisfaction."

The claim of Gamache was anxiously prosecuted before the Department of Public Lands at Washington during the pendency of this suit, and was there decided by the commissioner in conformity to the decision of the Supreme Court of Missouri, and which decision was confirmed by the Secretary of the Interior in September last. The reasons for this decision are here given in the language of the commissioner in reply to the plaintiffs' counsel, prosecuting the claim.

"The Surveyor General at St. Louis having declined to approve the survey as made by Brown for Gamache and to certify the same to the recorder -- You apply to this office to give orders to Surveyor General Clark requiring him to return the

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survey of the tract of six by forty arpens in the name of John B. Gamache, sr., or his legal representatives, to the recorder of land titles, and that the recorder be directed to issue to 'you' a certificate of confirmation in the usual form, that 'you' may have the evidence of your title in the usual form for the purpose of prosecuting your rights in the courts having competent jurisdiction."

"In behalf of the representatives of Gamache, it is maintained that they are confirmed by the Act of 13 June, 1812."

"The first section of the Supplemental Act of 26 May, 1824, made it the duty of the individual owners or claimants whose lots were confirmed by the act of 1812 on the ground of inhabitation, cultivation, or possession prior to the 20th of December, 1803, 'to proceed within eighteen months after the passage of the act of 1824,' to designate their said lots by proving before the recorder of land titles for said state and territory the fact of such inhabitation, cultivation, or possession, and the boundaries and extent of each claim, so as to enable the Surveyor General to distinguish the private from the vacant lots appertaining to the said towns and villages."

"The third section of the said act of 1824 made it the duty of the recorder to issue a certificate of confirmation for each claim confirmed, but further declares as follows:

"

" And so soon as the said term shall have expired, he shall furnish the Surveyor General with a list of the lost so proved to have been inhabited, cultivated, or possessed, to serve as his guide in distinguishing them from the vacant lots to be set apart as above described, and shall transmit a copy of such list to the Commissioner of the General Land Office."

"A report or list, purporting to contain all the claims proved up under the said act of 1824 was accordingly returned to this office in 1827, but that list does not embrace this particular claim of Gamache for 6 x 40 arpens within the limits of the Carondelet Commons."

We have no power to look behind that list in order to determine what has or has not been confirmed any more than we could look behind the face of a report of a board of commissioners or of the recorder, which had been confirmed by a law of Congress, and take cognizance of a case not embraced by such report, even if satisfied that it had been omitted by the reporting officer through inadvertence. This is a well settled principle. See instructions to register and receiver, 13th April, 1835. 2d part Birchard's Comp. printed laws, instructions and opinions, page 757 &c.;

"As the 3d section of the Act of 26 May, 1824, then expressly declares that the list to be furnished by the recorder

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'shall serve as a guide' to the Surveyor General in the execution of the duties devolved on him by the act, and as it is not shown that the claim in question is embraced by that list, neither that officer, nor this office, has the power to treat the claim in question as confirmed and entitled to an approved survey, and, consequently, in my opinion, the commissioner has not the legal ability to comply with your application in the premises."

With the correctness of these decisions of the Supreme Court of Missouri and the Department of Public Lands we entirely concur. Nor will we add any views of our own in support of the state decision, for the reason that the questions here presented are peculiarly local, being limited to the City of St. Louis and a few villages in the State of Missouri, the public at large having no concern with any question presented in this cause. And after due consideration we here take occasion to say that although it is in the power of this Court, and made its duty, to review all cases coming here from state courts of last resort in which was drawn in question and construed prejudicial to a party's claim, the Constitution, or a law of the United States, or an authority exercised under them, still, in this peculiarly local class of cases asserting titles to town and village lots, confirmed by the act of 1812, we feel exceedingly indisposed to disturb the state decisions. So far the ability and soundness they manifest have commanded our entire concurrence and respect, and are likely to do so in future. It is proper further to remark that the jury was instructed, at the request of the plaintiffs, that inhabitation and cultivation of a part of the lot, claiming the whole, would be good for the whole within the meaning of the act of 1812.

The jury was also instructed, at the defendant's request,

"that if the land spoken of by the witnesses as actually cultivated and possessed by Gamache, did not embrace the land now in dispute, they ought to find for the

defendants."

In regard to these instructions the state court held that:

"The first instruction given for the defendant, if it stood alone, would be so entirely erroneous as to require a reversal of the judgment. That the jury should be required to find for the defendant, if the cultivation by the elder Gamache was not a cultivation of the precise piece of ground in controversy, would have been so gross a mistake that neither the court nor the counsel asking the instruction could be supposed to have fallen into it. Accordingly, when we examine the second instruction given for the plaintiff, we find the court telling the jury that the cultivation of a part of a tract, under claim of the whole, was, under the act of 1812, a cultivation of the whole tract,

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and in looking into the case, we see that the controversy was whether this cultivation of Gamache was not on an entirely different tract from that now claimed to include the premises in dispute. We are satisfied that the jury must have understood the question to be whether the cultivation of Gamache, spoken of by the witnesses, was at any place upon the tract to which his heirs now claim title or at some place upon an entirely different tract. In this view of the question submitted to the jury, there would be no propriety in reversing the judgment for the instruction given for the defendant."

The instructions asked by the plaintiffs, which were refused by the court, all refer to the proceedings in the recorder's office, the effect of which has been considered. On the whole, it is ordered that the judgment be

Affirmed.

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.

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