Jones Vs. Mcmasters

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Appellant : Jones

Respondent : Mcmasters

Judgement :

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Jones v. McMasters

61 U.S. (20 How.) 8

ERROR TO THE DISTRICT OF COURT OF THE

UNITED STATES FOR THE DISTRICT OF TEXAS

SYLLABUS

Where a person was born at Goliad, then in the State of Coahuila and Texas, being a part of the Republic of Mexico, which place was also the domicil of her father and mother until their deaths, and was removed at the age of four years,

before the declaration of Texan independence, to Matamoras, in Mexico, this person is an alien, and can sue in the courts of the United States.

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Her allegiance remained unchanged unless by her election, which it was incumbent on the opposite party to show.

According to general principles, mere alienage did not forfeit a title to land in Texas, and although the Constitution of Texas provided that no alien should hold land in Texas except by title emanating directly from the government of that Republic, yet it was afterwards declared that the legislature should, by law, provide a method for determining what lands may have been forfeited or escheated.

In the absence of such a legislative provision, a title emanating from the government of Mexico, anterior to Texan independence, is not forfeited.

In a court of law, where a grant from the government is in regular form, it is not proper to inquire into the voidability of the grant from equitable considerations.

The case is stated in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This is a writ of error to the District Court of the United States, possessing circuit court powers, held in and for the District of Texas.

This suit was brought in the court below by Catherine McMasters, to recover the possession of a tract of land lying in the

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County of Goliad, in the forks of the San Antonio River and the Cabaza Creek, containing four leagues of land. Four of the defendants put in a plea of not guilty.

At a subsequent day, John R. Tally was allowed to come in and defend as landlord of Lott, one of the defendants. Whereupon, he put in a plea to the jurisdiction of the court, upon the ground the plaintiff was a citizen of the State of Texas. The plea states that she was born at Goliad, then in the State of Coahuila and Texas, when it was a part of the Republic of Mexico; that the domicil of her father and mother were at this place at the time of her birth, and continued there till their deaths. That the plaintiff was removed from the Territory of Texas to Matamoras, west of the Rio Grande, in Mexico, when she was about four years of age, during the revolutionary movements in Texas, and before the declaration of independence, which was on the 2d March, 1836. That she was removed in the family of M. Sabriego, in which she had lived in Texas, and with whom she has continued to reside since in Mexico. There was a demurrer to this plea, which was allowed, and the defendant required to answer over. The defendant then put in a plea of not guilty, and also a special plea in bar of alienage, and limitation of nine years before suit brought, founded upon a statute of the State of Texas.

There was a demurrer to this plea, but undisposed of for aught that appears on the record, when the parties went down to the trial of the issues of fact.

On the trial, the plaintiff proved a title in due form, under date of the 16th July, 1833, to the land in controversy, in her grandmother, Maria de Jesus Ybarba Trejo, followed by the official survey and judicial possession; also, that her grandmother died in possession of the premises, leaving the plaintiff's mother, her only child, at the death of her mother and father. Her grandmother and mother died about the year 1834. Her father was killed in the same year.

The defendants claimed under patents from the State of Texas, one dated 15 September, 1849, for three hundred and twenty acres; the other, the 20th of February, 1847, for like number; which covered the possessions on the tract in dispute of two of the defendants.

When the evidence closed, the counsel for the defendants prayed the court to charge the jury, that if the plaintiff, as a Mexican citizen, had continued to reside out of Texas from a period before the declaration of Texan independence, the

action could not be sustained; which was refused, and a charge given, that her right remained as it was before the revolution, both according to general principles and by force of the Treaty of

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Guadalupe Hidalgo, and that if she had a right of property, that gave her the right to sue here.

The counsel also prayed the court to charge, that if the jury should believe, from the evidence, that the survey and grant under which the plaintiff claims title extends so as to include a large area out of the limits prescribed by law, as dated in the decree No. 190, of the laws of Coahuila and Texas, and that the error did not arise from mistake of quantity, but from intention to depart from the legal mode of survey, then the jury might consider the grant void as to such area as might be out of the limits prescribed by law, and also that the grant itself would be void in such cases for want of legal survey. Which prayer was refused.

The counsel also requested the court to charge, that if the jury should believe, from the evidence, that the survey and grant under which the plaintiff claimed extended so as to include a large area as aforesaid, and that the grant and survey were so made by fraudulent procurement on the part of the grantee, by an agent in that behalf, then the jury might consider the grant as entirely void.

The court so instructed the jury, but with the addition that unless the alcalde commissioner was informed, at the time he gave possession and issued the title, of the fact that the survey had been extended so as to include a large area &c.;, the grant would not be void, that the fraudulent procurement of the survey alone would not vitiate the grant.

The counsel also requested the court to charge, that the grant under which the plaintiff claimed is one of the class that might be forfeited for nonperformance of conditions. That ordinarily a law of the legislature, and judicial action under it, would be necessary to avoid such a grant. Yet that claimant might act so as to supersede the necessity of such a judicial determination, and if conduct of plaintiff

amounted to an admission of the forfeiture, she could not afterwards set up the right, especially against a person who had, in the meantime, acquired a grant from the state, and that it was a question for the jury to determine, whether the conduct of the plaintiff amounted to an admission of forfeiture.

The court gave the instruction, with the addition that it was a question as to the actual intention of the plaintiff, and the jury should be satisfied, considering the infancy and all other circumstances, that such was in fact her intention, or they should find for the plaintiff.

The jury found a verdict for the plaintiff.

As the practice in the court below permits pleas of whatever nature or description to be put in as a defense to the suit at

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the same time, and without regard to the order of pleas, as known to the system of the common law, it will be necessary in the first place to examine the question raised on the demurrer to the plea to the jurisdiction. It is insisted that the plaintiff is a citizen of the State of Texas, according to the facts as stated in the plea and admitted by the demurrer, and if so, as she is not a citizen and resident of a different state, but a resident of Texas, the suit cannot be maintained within the 11th section of the Judiciary Act. We think the objection not well founded.

The plaintiff was born under the dominion of the Mexican Republic, and has lived under it ever since her birth, and beyond all question, therefore, is a citizen of that government, owing it allegiance, which has never been interrupted or changed. There has been no act of hers, or of anyone competent to represent her, or to determine her election, indicating an intention to throw off this allegiance, and to attach herself to the new sovereignty of Texas. Having been born and having always lived under the old government, the burden rested upon the defendants, who claimed that she was a citizen of the new one, to establish the fact of the change of her allegiance. 6 U. S. 2 Cranch 280; 8 U. S. 4 Cranch 209; 1 U. S. 1 Dall. 53; 20 Johns. 313; 28 U. S. 3 Pet. 99, 28 U. S. 122 -123; 2 Kent C. 40-41.

The facts set up in the plea prove the contrary. According to these, the plaintiff was nineteen years old when this suit was commenced, and between twenty-two and twenty-three years when the plea was put in to the jurisdiction. If she was competent to make an election while a minor, but after she had arrived at mature years, as to the government to which she would owe allegiance, the presumption, upon the facts, is that she has made it in favor of the one under which she has lived since her birth. If she was incompetent to make it during her minority, then the allegiance due at her birth continued, and existed at the time of the commencement of the suit.

We do not enter upon the question of the domicil of a minor discussed on the argument nor express any opinion upon it, as the question here is one of national character, and does not stand upon the mere doctrines of municipal law, but upon the more general principles of the law of nations. 28 U. S. 3 Pet. 242; 2 J.Cas. 29

Assuming that the plaintiff is an alien, and not a citizen of Texas, the next question is whether or not she is under any disability that would prevent her from the assertion of her title to the premises in question -- in other words, whether her absence and alienage worked a forfeiture of the estate. The general principle is undisputed, that the division of an empire works no forfeiture of a right of property previously acquired. *Kelly v. Hamson,*

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2 J.Cas. 29; 32 U. S. 7 Pet. 87. And consequently the plaintiff's right still exists in full effect unless the new sovereignty created, within which the lands are situate, have taken some step to abrogate it. The title remains after the revolution, and erection of the new government, the same as before. The 10th section of the Constitution of the Republic of Texas, adopted the 17th March, 1836, provided that "no alien shall hold land in Texas, except by title emanating directly from the government of this Republic."

By the 20th section of the 7th article of the present Constitution of the state, it is provided

"that the rights of property and of action which have been acquired under the Constitution and laws of the Republic of Texas shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void, by the Constitution and laws of the Republic of Texas, be reinvested or reinstated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution."

And by the 4th section of the 13th article, it is provided

"that all fines, penalties, forfeitures, and escheats, which have accrued to the Republic of Texas under the Constitution and laws, shall accrue to the State of Texas, and the legislature shall, by law, provide a method for determining what lands may have been forfeited or escheated."

It is understood that the Legislature of Texas has not yet passed any law providing for the steps to be taken to give effect to escheats for alienage, or otherwise -- at least, no such law has been referred to, or relied on, in the argument, and the course of decision in the courts of Texas appears to be that until some act of the legislature is passed on the subject, effect cannot be given to the plea of alienage, or, at least, that some proceeding must be had, on the part of the government, divesting the estate for this cause, before effect can be given to it. 15 Tex. 495.

The defense of alienage, therefore, was properly overruled by the court below.

The counsel for the defendants insist that the estate of the plaintiff became forfeited under the Mexican laws, by her removal from the State of Coahuila and Texas to Matamoras, while under the Mexican government, and a permanent residence taken up there.

But the removal that worked a forfeiture under Mexican colonization laws, and divestiture of the title without judicial inquiry, was a removal out of the Republic of Mexico, and settlement in a foreign country. The principle has no application in this case. 59 U. S. 18 How. 235, *McKenny v. Sarvego.*

The remaining questions in the case relate to those arising upon the survey and location of the premises in question. This survey and location were made by the government surveyor, under the direction of the alcalde and land commissioner of the municipality, who was deputed by the governor to cause the land to be surveyed, and to convey the title in due form. The counsel for the defendants claimed the right to inquire into the regularity of this survey and location, and also into the *bona fides* of the transaction.

It must be remembered that this is a suit at law to recover the possession of the land in dispute, and that, although it may be the course of practice in the courts of the State of Texas, in a suit of this description, to blend in the proceeding the principles of law and equity, in the federal courts sitting in the state, the two systems must be kept distinct and separate. This principle is fundamental in these courts, and cannot be departed from. The court, therefore, in a suit at law, should exclude the hearing and determination of all questions that belong appropriately and exclusively to the jurisdiction of a court of equity. In a case calling for the interposition of this Court, and turning upon equitable considerations, relief should be sought by bill in equity. Many of the cases at law coming up from the district court of this state are greatly complicated and embarrassed, from the want of the observance of this distinction in the proceedings before it. In respect to the survey and location in the case before us, we perceive no ground that could warrant the court in going behind them in a suit at law. They were made by the government that granted the title, and there is no ground, or even pretense, for saying that they were made without authority, and hence altogether void. If voidable, for irregularity or other cause, the question was not one for a court of law in an action to recover possession, but for a court of equity to reform any error or mistake. 34 U. S. 9 Pet. 632; 38 U. S. 13 Pet. 368-369; 16 U. S. 3 Wheat. 212, 16 U. S. 221 ; 48 U. S. 7 How. 844. We think a satisfactory answer might be given to the several objections taken to the survey and location, but we prefer to place it upon the ground above stated.

The judgment of the court below affirmed.