

Fisher Vs. Haldeman

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Decided On : 1857

Appeal No. : 61 U.S. 186

Appellant : Fisher

Respondent : Haldeman

Judgement :

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Fisher v. Haldeman

61 U.S. (20 How.) 186

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

By the laws of Pennsylvania before the Revolution, a preemption right to islands in the Susquehanna River could not be obtained by settlement.

The courts of that state have so decided, and this Court adopts their decision.

The bill was filed by Fisher, a citizen of the State of Delaware, against the appellees, claiming to be the equitable owner of an island in the Susquehanna River and alleging that the appellees had become possessed of the legal title by a series of frauds. The bill was quite voluminous, occupying upwards of seventy pages of the printed record, and then there was an amended bill of thirteen pages more. The substance of it, as well as the other branches of the case, are stated in the opinion of the Court. In September, 1856, the circuit court dismissed the bill, and the complainant appealed to this Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The appellant filed his bill in the Circuit Court of the United States for the Eastern District of Pennsylvania, claiming to be the equitable owner of an island in the Susquehanna River containing about seven hundred acres, and praying that the respondents may be decreed to surrender to him the possession of the same, to deliver up their deeds and muniments of title and account for the rents, issues, and profits.

In order to ascertain the questions involved in the case it will not be necessary to give an abstract of the bill or specify the allegations of the answer. A brief statement of some of the admitted facts and charges of the bill will suffice.

It commences the history of the case with the first charter to and immigration of William Penn, the proprietor of Pennsylvania. But we do not think it necessary to go farther back

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than the year 1760. In that year, the proprietors, claiming that the islands in the Susquehanna and other navigable streams were their private property, had them surveyed and returned as such.

About the year 1798, the persons under whom complainant claims were found by the agent of the proprietors in possession of the island, and claiming a right, from their long occupancy, to a preemption right as settlers. They had occupied parts of the island as far back as 1749 or 1750, some ten years before the proprietors had surveyed it, and though not in possession at that time, had afterwards returned. They were told by the agent for the Penns that they had no title, and if they wanted a legal title, they must purchase from the Penns, and that islands never had been subject to be taken up by settlement, as the other proprietary lands. These occupants refused or neglected or were unable to purchase, and about the year 1800, Thomas Duncan purchased from the agents of the Penns. Finding these occupants on the land, he told them they had no title; that islands had never been open to preemption by settlement, and that he was the purchaser from the Penns of the legal title. He demanded the possession of them, offering to pay them the value of their improvements, and for a release of their claim. They accordingly released their claim, gave up their possession, and received a consideration in money from Mr. Duncan of about twenty shillings an acre. Mr. Duncan then took possession, and he and those claiming under him have had possession from that day to this, over fifty years.

In Pennsylvania, occupants or settlers on land are never considered as holding adversely to the proprietors, or to the state, their successor. Where the land was subject to preemption in favor of settlers, those who had obtained an equity by virtue of such a settlement or improvement had a good title as against subsequent purchasers. But until they paid the purchase money, and obtained their patent or deed from the proprietor, no length of possession authorized a presumption of the payment thereof or of a grant as against the proprietors or state.

In order, therefore, to evade the effect of the release by the occupants, and the surrender of their possession to Mr. Duncan, who held the admitted legal bill, the bill charges:

1. That Edmund Physic and John R. Coats, the agents of the Penns, combined and conspired with Thomas Duncan to defraud the settlers of their title to this island.

2. That this fraud consisted in the assertion that

"islands had never been subject to be appropriated as other proprietary

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lands, by settlement or location, but were treated as the private property of the Penns, and, as such, sold by special contract only."

3. That the persons in possession, believing such to be the law, surrendered their possession and released their claim, whatever it might be, to Thomas Duncan for the consideration of twenty shillings an acre, which was much less than the full value of the land.

4. That this representation with regard to the custom or traditional law of the province of Pennsylvania was not true, and that Mr. Duncan must have known it to be so, and therefore made a false representation of the law to the settlers.

5. That the falsehood of this representation was not discovered till 1822.

6. That suits were then instituted, in which the judgments were against the title of plaintiff, in consequence of erroneous or unjust decisions of the courts.

Without noticing the objections to this bill on account of staleness, and the defense that Haldeman is a purchaser for valuable consideration without notice, it is plain that the whole foundation and superstructure of the case rests on this assumption, to-wit: "That in 1749, by the law of the land, a preemption right to islands in the Susquehanna River could be obtained by settlement." If this be not so, the plaintiff's case falls to the ground, and the numerous other objections to this bill need not be noticed.

Now this is a question of fact, depending on the history and traditions of the Province of Pennsylvania, of which the decisions of her own courts are the best evidence, and conclusive on this Court. The order of survey of 1760, by which the islands of the Susquehanna, and this among others, were appropriated to the private use of the proprietors, together with the manors reserved, is itself *prima*

facie evidence that the proprietors never considered these islands as open to settlement as other lands. And this inference is fully confirmed by the instructions given by William Penn, before he left England, to the three commissioners for the settling of the colony, in which he said: "Let no islands be disposed of to anybody, but let things remain as they were in that respect till I come." Hazard's An. 530.

The State of Pennsylvania, by what was called the "divesting act," assumed, for a certain consideration, all the proprietary rights of the Penns over the colony, as distinguished from their private rights of property, and pursued the same policy which had been adopted by them as to islands in navigable rivers. The Act of 18 April, 1785, orders islands in the new purchase

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to be sold for the best prices that can be gotten for the same and declares "all occupancy and every survey, claim, or pretense for holding the same islands by any other title, shall be utterly void."

The statute thus recognized and continued the rule as it was found to have existed under the proprietary government.

By the common law, fresh water rivers do not come within the category of navigable rivers, and the riparian owners had a right to all the islands in the river, "*ad medium filum aquae*." But such has never been the law in Pennsylvania. In the case of *Carson v. Blazer*, 2 Binney 473, this peculiarity of the traditional law of Pennsylvania, differing from the common law of England, was first recognized by judicial authority. The late Chief Justice Tilghman, speaking of the proprietary, says:

"No doubt he retained the entire right to the river, and *of everything in the river*, in order that he might make such use of it as would be most conducive to the public benefit."

And again, in *Shrunk v. Schuylkill Nav. Co.*, 14 S. & R. 79, he remarks: "These islands have never been open to applicants under the common terms of office,

either under the proprietary or state government," and refers with approbation to the case of *Hunter v. Howard*, 10 S. & R. 243, which decides that,

"From the first settlement of the country, islands in the great rivers of Pennsylvania, under the provisional government, were never subjects of appropriation, either by office right or settlement."

This doctrine has continued to be recognized as settled law in Pennsylvania for half a century. See *Fisher v. Carter*, 1 Wallace 69; *Johns v. Davidson*, 4 Harris 516. It is treated as such in the learned work of Judge Sergeant on the Land laws of Pennsylvania, 193. Nor can any case be found in the reports or traditions of the bar, which varies or contradicts this uniform course of decision. It is through these sources alone that this Court must seek for a solution of the question, and finding the law so established by the tribunals of the state, we are bound to acquiesce in and follow their decisions.

The decree of the circuit court is therefore affirmed, with costs.