

Roberts Vs. Cooper

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Court : US Supreme Court

Decided On : 1857

Appeal No. : 61 U.S. 467

Appellant : Roberts

Respondent : Cooper

Judgement :

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Roberts v. Cooper

61 U.S. (20 How.) 467

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MICHIGAN

SYLLABUS

This Court again decides that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate.

The deposition of an officer of the General Land Office as to the opinions and practice prevailing in that office cannot be read to the jury as proof of the law, although it might have influence with the court in explaining the law to the jury.

The ancient English doctrines respecting maintenance or champerty have not found favor in the United States, and in Michigan where the land lies which is involved in the present controversy, its application to sales by one out of possession has been annulled.

Although in that state an agreement to carry on a suit upon condition of receiving a share of the proceeds might be void, yet the rule would not apply to a transfer of the legal estate to one in trust for himself and the other stockholders in a corporation.

This was the same case which was before this Court at December term, 1855, and is reported in [59 U. S. 18](#) How. 173.

A *venire de novo* having been ordered, the case came up again for trial, on the circuit in June, 1856. The result was a verdict and judgment in favor of Cooper, the lessor of the plaintiff in the original action.

The bill of exceptions stated that an agreed state of facts, dated Washington City, April 17, 1854, signed by S. F. Vinton for plaintiff and Truman Smith for defendant, with all the papers therein referred to and thereto annexed, was read in evidence to the jury, a true copy of which statement, with the papers thereto annexed, is hereto appended.

And there was also put in evidence and read to the jury a statement and stipulation dated June 24, 1856, and signed by S. F. Vinton for the plaintiff, and T. Romeyn for the defendant, together with the papers therein referred to and attached

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thereto, a true copy of which statement, with a copy of all the papers thereto annexed, is hereto appended. The plaintiff objected to the reading of the

deposition of John Wilson, and the court excluded the same from the jury, to which ruling the defendant excepted.

The defendant then produced and offered to prove a deed of release from Alfred Williams and wife to the Minnesota Mining Company, dated June 20, 1856, covering the lands in controversy, and further offered to prove in connection therewith that at the time when the said Cooper obtained the deed of the premises in controversy from Alfred Williams, the Minnesota Mining Company was in actual and open possession of the same, claiming title under their patent from the United States, and that the said Cooper knew of such claim and occupancy before and at the time of his purchase and of said conveyance; that he obtained said title from Alfred Williams, he being the naked trustee of John Bacon, and that all the negotiations for the said purchase, and the purchase itself, were had between said Cooper and Bacon, the said Williams acting under the directions and for the benefit of said Bacon, and having or claiming no personal interest in said lands; that said purchase and conveyance were made for the following purpose -- namely that said Cooper should hold the same in trust for a corporation known as the National Mining Company, all of whose stock was held by said John Bacon, and by the conditions of said sale, the said Cooper was to receive and did receive with said conveyance six-tenths of the stock aforesaid, and the said Bacon was to retain and did retain four-tenths of said stock. That the said Cooper purchased said stock and took said conveyance with a full knowledge of the claims and occupancy of the Minnesota Mining Company, and with the intention of prosecuting the title purchased by him, by legal proceedings in this Court against the Minnesota Mining Company for the benefit of the National Mining Company, and that before said conveyance was delivered to him by said Williams, the said Cooper, in conjunction with the said Bacon, applied to counsel in the City of Detroit to employ such counsel in the litigation aforesaid, which was to be had with the Minnesota Mining Company -- to which evidence the plaintiff objected, and the court excluded the same -- to which the defendant excepted.

The bill of exceptions then stated sundry prayers offered by the defendant upon points which were covered by the decision of this Court in 18 How. and which it is

not thought necessary to insert.

The defendant further requested the court to charge the jury that if, when said Williams conveyed to said Cooper the premises

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in question, the said Minnesota Mining Company was in actual and open possession of said lands, claiming title thereto under their patent, the said conveyance was void in law against the said company and all claiming under them, which instructions the court refused to give, and to this ruling the defendant excepted.

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MR. JUSTICE GRIER delivered the opinion of the Court.

Cooper, the plaintiff below, brought this action of ejectment to recover a part of section No. 16, in township 50 north, range 39 west, lying within the mineral district south of Lake Superior in the State of Michigan. He claimed under the State of Michigan, and the defendant for the Minnesota Mining Company under a right of preemption from the United States. The case was tried in the circuit court and a verdict and judgment rendered for the defendants. On a writ of error to this Court, the judgment of the court below was reversed and the record remitted for further proceedings in pursuance of the judgment of this Court. The report of the case in [59 U. S. 18](#) How.

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173, exhibits a full statement of the facts and of the questions of law arising thereon as decided by the Court, which it is unnecessary to recapitulate. On the last trial, the circuit court was requested to give instructions to the jury contrary to the principles established by this Court on the first trial, and nearly all the exceptions now urged against the charge are founded on such refusal. But we cannot be compelled on a second writ of error in the same case to review our own

decision on the first. It has been settled by the decisions of this Court that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the Court on the first writ of error can be reheard or examined upon the second. To allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute on the first, would lead to endless litigation. In chancery, a bill of review is sometimes allowed on petition to the court, but there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions or speculate of chances from changes in its members. See *Sizer v. Many*, 16 How. 98; *Corning v. Troy Iron Company*, 15 How. 466; *Himely v. Rose*, 5 Cranch 313; *Canter v. Ocean Insurance Company*, 1 Pet. 511; *The Santa Maria*, 10 Wheat. 431; *Martin v. Hunter*, 1 Wheat. 333, and *Sibbald v. United States*, 12 Pet. 488.

We can now notice, therefore, only such errors as are alleged to have occurred in the decisions of questions which were peculiar to the second trial.

I. The first of these is an exception to the refusal of the court to permit the deposition of John Wilson to be read to the jury. This exception, though not waived, has not been much pressed and cannot be supported. The deposition refers to no facts relevant to the issue. It tended to show that some of the officers of the land office and the Attorney General had expressed opinions on the questions of law arising in this case different from those expressed in the opinion of this Court. The practice of the land office and the opinions of the Attorney General may form very persuasive arguments to the court, but cannot be read as evidence to the jury of what the law is or ought to be. It is the province of the court to instruct the jury as to the principles of law affecting the case, and counsel cannot appeal to a jury to decide legal questions by reading cases to them or giving in evidence the opinions of public officers.

II. The only other exception to be noticed is founded on an offer of testimony overruled by the court, and an instruction refused involving the same question. The evidence offered and overruled is as follows:

"The defendant then produced, and offered to prove, a deed of release from Alfred Williams and wife to the Minnesota Mining Company, dated June 20, 1856, covering the lands in controversy, and further offered to prove in connection therewith that at the time when the said Cooper obtained the deed of the premises in controversy from Alfred Williams, the Minnesota Mining Company was in actual and open possession of the same, claiming title under their patent from the United States, and that the said Cooper knew of such claim and occupancy before and at the time of his purchase and of said conveyance; that he obtained said title from Alfred Williams, he being the naked trustee of John Bacon, and that all the negotiations for the said purchase, and the purchase itself, were had between said Cooper and Bacon, the said Williams acting under the directions and for the benefit of said Bacon, and having or claiming no personal interest in said lands; that said purchase and conveyance were made for the following purpose, namely that said Cooper should hold the same in trust for a corporation known as the National Mining Company, all of whose stock was held by said John Bacon, and by the conditions of said sale, the said Cooper was to receive and did receive with said conveyance six-tenths of the stock aforesaid, and the said Bacon was to retain and did retain four-tenths of said stock. That the said Cooper purchased said stock and took said conveyance with a full knowledge of the claims and occupancy of the Minnesota Mining Company and with the intention of prosecuting the title purchased by him by legal proceedings in this Court against the Minnesota Mining Company for the benefit of the National Mining Company, and that before said conveyance was delivered to him by said Williams, the said Cooper, in conjunction with the said Bacon, applied to counsel in the City of Detroit to employ such counsel in the litigation aforesaid, which was to be had with the Minnesota Mining Company."

The deed to the Minnesota Mining Company was for portions of the land not demanded in this suit, and by itself was not relevant. The purpose and object for

which this testimony was offered is not stated, but it could have no relevancy unless to show the title to the plaintiff below to be void because purchased and obtained with full knowledge of an adverse possession and support the following instruction, which was refused by the court:

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"The defendant further requested the court to charge the jury that if, when said Williams conveyed to said Cooper the premises in question, the said Minnesota Mining Company was in actual and open possession of said lands, claiming title thereto under their patent, the said conveyance was void in law against the said company and all claiming under them, which instructions the court refused to give, and to this ruling the defendant excepted."

As the court had excluded the testimony offered to support this point of defense, the defendant could not expect that it would be submitted to the jury without evidence. We have therefore to inquire whether the testimony offered and overruled by the court ought to have been received to establish the defense of maintenance or champerty.

In this country, where lands are an article of commerce, passing from one to another with such rapidity, the ancient doctrine of maintenance, which makes void a conveyance for lands held adversely, is in many states entirely rejected. In some it has been treated as obsolete by the courts; in others it has been abolished by statute, while with some it appears to have found more favor.

The ancient policy which prohibited the sale of pretended titles and held the conveyance to a third person of lands held adversely at the time to be an act of maintenance was founded upon a state of society which does not exist in this country. The repeated statutes which were passed in the reigns of Edw. I and Edw. III against champerty and maintenance arose from the embarrassments which attended the administration of justice in those turbulent times from the dangerous influence and oppression of men in power. See 4 Kent Com. 477

The earlier decisions of the courts of Michigan seem to have adopted this antiquated doctrine as a part of the common law in that state. But so far as concerns its application to sales by one out of possession, the legislature have annulled it. The Revised Code of 1846, page 262, enacts that

"No grant or conveyance of lands or interest therein shall be void for the reason that at the time of the execution thereof, such lands shall be in the actual possession of another claiming adversely."

From this enactment it is plain that the possession of the Minnesota Mining Company under claim of title, and Cooper's knowledge of it when he purchased, cannot affect the validity of the deed of Williams to him. Although the testimony which is the subject of this exception was evidently offered with a view only to raise the question as above stated, the counsel for the plaintiff in error have endeavored to maintain in this Court that the court below erred in rejecting it, because

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if received it would have shown the contract between Cooper and Bacon, and the deed from Wilson, to be void for champerty. This offense seems to have been originated by the statutes passed in the time of Edw. I and Edw. III. See 15 Viner's Abr. 149, tit. Maintenance. It is defined Hawkins' Pl. 84 as the "unlawful maintenance of a suit in consideration of an agreement to have a part of the thing in dispute or some profit out of it," and by Chitty as "a bargain to divide the land (*campum partire*) or thing in dispute on condition of his carrying it on at his own expense." In some states these statutes are held to be obsolete. But it seems that the case of *Backus v. Byron*, 4 Mich. 535, has declared that they still retain their force in Michigan. That was an action by an attorney against his client on a contract by which the attorney agreed to carry on a suit for a share of the land in case of success, and in case of failure to have nothing.

But in this case there was no offer to prove that Cooper had agreed to carry on the suit in consideration of receiving a share of the land in case of success; on the

contrary, the offer was to show that he "purchased stock" in a mining corporation, that the legal title to the land was conveyed to him in trust for himself and the other stockholders, and as a consequence of the legal title being vested in him the suit was necessarily brought in his name. It needs no argument to show that such a transaction has none of the characteristics of champerty, and that the court below was right in rejecting testimony which would not, if admitted, tend to show a valid defense, and was therefore wholly irrelevant.

The judgment of the circuit court is therefore affirmed with costs.

MR. JUSTICE DANIEL:

Whilst I concur entirely in the conclusion just declared by the Court that the case now decided is in its features essentially the same with that of *Cooper v. Roberts*, formerly before us and reported in [59 U. S. 18](#) How. 173, I am unwilling to place my own opinion upon the fact of the identity of the two cases, irrespective of the reasons or principles on which the former of those cases was determined. That case was elaborately discussed by counsel, was, as the opinion of the Court evinces, deliberately considered, the theory and objects of the system adopted by the government for the distribution of public lands carefully examined, correctly expounded, and properly sustained by the decision. In the reasoning of the Court, the cherished objects aimed to be secured by that theory, *viz.*, the advancement of "religion, morality, and knowledge,"

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as indispensable for the existence of good government and for the happiness of mankind, the obligation for the maintenance of schools and the means of education as necessary for the ends proposed, as declared in the third article of the Ordinance of 1787, are prominently and correctly set forth as guides in the interpretation and application of the policy and system of the government in disposing of the public domain. It seems scarcely to admit of rational doubt that it was in pursuance of this policy, and as deemed best calculated for its successful accomplishment, that in the surveys made or to be made of the public lands, the

sixteenth section of every township, being central, and therefore more than any other section could be, connected with the several interests of the township, was appropriated for the use of schools. Admitting these to be the policy and theory of the government, designed as it has been declared to lay the foundation of social and political good, it would seem to follow that nothing short of the highest and most overpowering public considerations, or an absolute inability or want of power, should be permitted to defeat or in any degree to control them. Surely speculations for private emolument, and still less such as might be attempted through the exercise of irregular or doubtful authority, should not be permitted to affect them.

The power vested in the President to reserve from sale such portions of land as he should deem necessary for public uses, may be classed as one of those paramount considerations, constituting a public or national necessity, reaching even to the defense of the country by fortifications or arsenals. In the same category may be placed the sanctimony of the rights of property and possession existing and vested in territories anterior to their acquisition by the United States; rights guaranteed by treaty stipulations. In the same light may be viewed the withholding temporarily from sale lands in which were minerals and salt springs. All these restrictions or reservations are exceptions merely, and should be carried no farther than their terms expressly or necessarily require. They can with no propriety be regarded as forming in themselves a system; much less as overturning a system designed to be as far as practicable general and uniform, and proclaimed from its origin to be founded in wisdom and in a solemn sense of public good, and as such to be fostered and sustained. Every new state has come and will come into the Union relying on the faith of this pledge, and even upon the concession of a power in the government to violate that pledge, such a violation could be referred to no principle of justice, and should therefore never be imputed but upon proofs the most positive and unequivocal.

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The sixteenth section of each township could not, it is true, be specifically designated and possessed anterior to a survey of the public lands; but the right to that section and its appropriation existed in contract or pledge by virtue of the

ordinance and the laws of the United States, and the right of possession and enjoyment was matured by the execution of the surveys. It cannot be supposed that this right, so important, was destroyed or impaired by an agreement for temporary occupancy, made without reference to any survey or division of the lands, made, too, without legitimate authority; nor can such right be affected by any ordinary allowance of preemption, because the pledge of the government is preexisting, is express, and therefore paramount.

The State of Michigan was admitted into the Union under the pledge given her by the general land system of the United States; her right to the sixteenth section of each township was under that pledge fully recognized. It could not, therefore, consistently with good faith, be displaced by an arrangement irregular in its origin and temporary in its character, in its tendencies and operation conflicting with a preceding, general, and beneficial system of policy. No effectual adversary rights could grow out of such an arrangement. Upon the views herein expressed, I am in favor of an affirmance of the judgment in this cause not merely on the ground that this cause is essentially the same with that already decided between these parties, as reported in [59 U. S. 18](#) How. 173, but also because the opinion of this Court upon the law and the facts of the last-mentioned cause commands my entire approbation.