Marks Vs. Dickson

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Appeal No. : 61 U.S. 501

Appellant : Marks

Respondent : Dickson

Judgement :

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61 U.S. (20 How.) 501

ERROR TO THE SUPREME

COURT OF LOUISIANA

SYLLABUS

In May, 1830, Congress passed an Act, 4 Stat. 420, which gave the right of preemption to settlers on the public lands, but made null and void all assignments and transfers of the right of preemption prior to the issuance of patents. This act

was to remain in force for one year.

In January, 1832, another Act was passed, 4 Stat. 496, supplementary to the former, allowing certificates of purchase to be transferred, and patents to be issued in the name of the assignee.

In June, 1834, another Act was passed, 4 Stat. 678, reviving the act of 1830.

The true construction of this act of 1834 is not that it restored the prohibitory clause of 1830, but that it revived the supplement, together with the original act, and that consequently an assignment was good and legal before a patent was issued.

But it was necessary to enter the land at the land office, before the right of assignment accrued; and, therefore, assignments made before such entry were assignments of floats, and void.

A power, however, although executed before the location, was sufficient to justify an assignment made after the location, there being a tacit affirmance of the power, when it might have been set aside.

The facts are stated in the opinion of the court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

This cause is brought here by a writ of error to the Supreme Court of Louisiana, which, by its judgment, construed the acts of Congress of 1830, 1832, and 1834, securing preemption rights to actual settlers on the public lands.

The facts giving rise to the questions decided are these:

John Butler and Elkin T. Jones resided on the same quarter section of land, lying in the Parish of Claiborne, Louisiana, and having duly proved their residence on the land as required by the acts of Congress, were allowed to purchase jointly at

the proper land office the quarter section on which they resided.

Being entitled to additional land, Jones and Butler obtained a certificate, known as a float, authorizing them to enter a quarter section. Butler sold his float to Murrill in 1837; Murrill sold to Wood in 1838, and Wood sold to Dickson in 1839. The land was located in August, 1840, in Butler's name, by Bullard, who held a power from Butler to locate and sell it.

And in November, 1840, Butler, by his attorney in fact, Bullard, conveyed to William Dickson. In April, 1843, a joint patent issued in favor of Butler and Jones for the quarter section. In 1851, Butler again sold his undivided moiety of the land to James Marks, and conveyed to him in due form. The Supreme Court of Louisiana held that the assignment made in August, 1840, to William Dickson was lawfully made, and that Marks had no equity to sustain his petition, in which he demanded partition and possession. His petition was dismissed in the state courts.

If the assignment of the entry to Dickson was valid, then the judgment below must be affirmed; on the other hand, if the assignment made by Bullard, as Butler's attorney in fact, was made in violation of the acts of Congress, then it cannot be set up as a defense against the deed made to Marks in 1851. This is the only question that can be revised here on this writ of error to the proceeding in the Supreme Court of Louisiana. Its decision depends on the true meaning of the acts of Congress referred to.

The act of 1830 sec. 3 provides that all assignments and

transfers of the right of preemption given by that act, prior to issuing of the patent, shall be null and void.

In 1832 a supplementary act was passed which recites the act of 1830 and declares that all persons who have purchased under the act may assign and transfer their certificates of purchase, or final receipts, anything in the act of 1830 to the contrary notwithstanding.

The Act of June 19, 1834, revived the act of 1830, and continued it in force for two years without referring to the act of 1832. If this act was made part of that of 1830, then the revival of the latter carried with it no incapacity in the preemptor to assign his certificate of purchase.

A difficulty arose in the General Land Office as to the effect of the revival of the act of 1830 by the act of 1834, and whether the act of 1830, as revived, included the provision of the act of 1832. The commissioner referred the matter to the Secretary of the Treasury for his decision, and this officer presented the question to the Attorney General for his official opinion, who decided that the acts of 1830 and 1832 stood together as one provision; and being revived by the act of 1834, the intention of Congress was to confer on the purchaser the power to sell before the patent issued.

This opinion was given in March, 1835, and has been followed at the General Land Office ever since, and as Butler's claim originated under the act of 1834, it was governed at the land office by that decision.

We think the construction then given was, in effect, the true one. Before the prohibition was made by the act of 1830, the purchaser, when he had obtained his final certificate, acquired with it a right to sell the land he had purchased in all cases, nor has that right ever been questioned by Congress, where entries had been made in the ordinary operations of the land office; so that the act of 1832 repealed the prohibition imposed on those having a preemption and placed those who purchased under it on the footing of other purchasers.

The act of 1832 provided that patents might issue to assignees, but this provision does not affect the present case, as the transfer of the entry was valid, and bound Butler from its date, and vested his equitable title in Dickson and his heirs, which was not defeated by the patent. Such would have been the rights of the parties, had the prohibitory clause not been passed, and so their rights stood after its repeal.

The object of the legislature is manifest. It was intended to prevent speculation by dealings for rights of preference before the public lands were in the market. The speculator acquired power over choice spots, by procuring occupants

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to seat themselves on them, and who abandoned them as soon as the land was entered under their preemption rights, and the speculation accomplished. Nothing could be more easily done than this, if contracts of this description could be enforced. The act of 1830, however, proved to be of little avail; and then came the act of 1838, 5 Stat. 251, which compelled the preemptor to swear that he had not made an agreement by which the title might inure to the benefit of anyone except himself, or that he would transfer it to another at any subsequent time. This was preliminary to the allowing of his entry, and discloses the policy of Congress, but it has no application in this cause, as this claim was founded on the act of 1834.

The contract preceding the entry made by Butler with Murrill was merely void, and so were the agreements of Wood and Dickson for the float before its location. But after the land was entered by Butler, he had power to affirm his contract of sale at his option by conveying the land, and which sale bound Butler, and concludes Marks.

We order that the judgment of the Supreme Court of Louisiana be affirmed with costs.