

French Vs. Spencer

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Court : US Supreme Court

Decided On : 1858

Appeal No. : 62 U.S. 228

Appellant : French

Respondent : Spencer

Judgement :

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French v. Spencer

62 U.S. (21 How.) 228

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF INDIANA

SYLLABUS

By an Act of Congress passed in 1816, 3 Stat. 256, a bounty in land was given to those American citizens who were living in Canada at the time when war was declared against Great Britain in 1812 and who returned to the service of their

country.

This act was not like other bounty land acts, by which the government undertook to locate the bounty land. Under the act first mentioned, the warrants were delivered to the owners to be located by them, and were therefore assignable after an entry was made in the Land Office.

The deed of conveyance in question was sufficient to pass the interest of the grantor.

A patent issued to the original beneficiary who had previously sold his right enured to the benefit of the purchaser, and related back to the date of the entry, and the heir of the grantor in such a deed is estopped from setting up a legal title under the patent.

This was an ejectment brought by French and wife to recover an undivided half of three hundred and twenty acres of land in the County of Vigo in Indiana.

Upon the trial, the evidence offered by the plaintiff was as follows:

1. Evidence that one Silas Fosgit, who had been a Canadian volunteer in the Army of the United States in the last war with Great Britain, had died between the 28th of June, 1816, and the 29th day of June, 1823, and that his only heirs at law were Minerva French, wife of said William C. French, residing in the State of Michigan, and one Aruna Fosgit.

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2. A copy of a patent, dated on the 26th of October, 1816, to Silas Fosgit, for two quarter sections of land in the District of Vincennes.

The evidence offered by the defendants was as follows:

1. The original patent above mentioned, which had been deposited by one Abraham Markle with George Horner in 1817, who delivered the same to the defendants in 1854.

2. Evidence that they were the only children and heirs at law of one William H. Spencer, Sr., who died in 1852, and also that the warrant was located upon the lands in dispute, by Abraham Markle, on the 3d of June, 1816.

3. The deed or assignment from Fosgit to Spencer, duly proved. As the court considered this assignment sufficient to convey the land, it may be as well to insert it, *viz.:*

"Whereas I, the undersigned, Silas Fosgit, late a private in the Corps of Canadian volunteers, commanded by Lieutenant Colonel Joseph Wilcox, deceased, lately in the service of the United States of America, according to the provisions of an Act of Congress of the United States of America passed March 5, 1816, entitled 'An act granting bounties in lands and extra pay to certain Canadian volunteers,' having applied for, have obtained a warrant, issued by the Secretary of the Department of War, for the location of three hundred and twenty acres of land within the Indiana Territory, agreeably to the directions of said act:"

"Now know all men by these presents that I, the said Silas Fosgit, for and in consideration of the sum of five hundred dollars to me in hand paid by William H. Spencer, Esquire, of Genesee, in the County of Ontario and State of New York, the receipt whereof I do hereby confess and acknowledge, have assigned and set over, and by these presents do grant, bargain, sell, transfer, assign, and set over, to said William H. Spencer, his heirs and assigns forever the said three hundred and twenty acres of land, to have and to hold the same in as full and ample manner as I, the said Silas Fosgit, my heirs or assigns, might or could enjoy the same by virtue of the said warrant or otherwise. And I do, for myself, my heirs and assigns,

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hereby authorize and empower the said William H. Spencer, his heirs and assigns, to make location of the said lands under and by virtue of the said warrant and agreeably to the directions of the said act, and upon location thereof being made as aforesaid, to demand and receive a patent or deed of and for the said lands, in

his own name, and for his sole use, benefit, and behoof, to the which end and intent I, the said Silas Fosgit, have and do make, ordain, constitute, and appoint the said William H. Spencer, his heirs and assigns, my true and lawful attorney and attorneys, irrevocable, to ask, require, demand, and receive the said deed or patent of and for the said land, and also to make location thereof, and one or more attorney or attorneys under him to constitute, and whatsoever the said William H. Spencer or his attorney or attorneys shall lawfully do in the premises, I, the said Silas, do hereby allow and confirm."

"In testimony whereof, I have hereunto set my hand and seal this 28th day of June, 1816."

"SILAS FOSGIT [SEAL]"

"In presence of:"

"GEORGE HORNER"

The counsel for the plaintiff objected to the reading of this deed in evidence, for the following reasons, *viz.*,

1. Because said writing is upon its face void, as being in violation of the acts of Congress touching the subject of bounties in lands for military services, and against the public policy of the United States on that subject.
2. Because said writing, on a fair legal construction of its terms, conveys no legal title and indeed no title at all of any kind to the lands in question.
3. Because said writing is irrelevant and incompetent as evidence in this cause.

But the court allowed it to be read and instructed the jury that if furnished a conclusive defense to the action. Whereupon the plaintiff objected, and brought the case up to this Court.

MR. JUSTICE CATRON delivered the opinion of the Court.

Silas Fosgit obtained a warrant for three hundred and twenty acres of land as a Canadian volunteer in the war of 1812 with Great Britain. This warrant he caused to be located in the Indiana Territory, June 3, 1816, on the land in dispute. On the twenty-eighth day of that month, he conveyed the land to William H. Spencer, who died in possession of the same; it descended to his children and heirs, who continued in possession, and are sued in this action by one of the two heirs of Fosgit, who died about 1823. A patent was issued by the United States to Fosgit, dated in October, 1816. The deed from Fosgit to Spencer was offered in evidence in the circuit court on behalf of the defendants, and was objected to:

1st. Because it is void on its face, being in violation of the acts of Congress touching the subject of bounty land for military services, and against the policy of the United States on that subject.

2d. Because said writing, on a fair legal construction of its terms, conveys no legal title and indeed no title at all, of any kind to the lands in question; and

3d. Because said writing is irrelevant and incompetent as evidence in this cause.

The court overruled the objections and permitted the defendants to give the writing in evidence, and instructed the jury that it was a complete defense to the action; to all of which the plaintiff excepted.

1. Was the writing void because it was in violation of acts of Congress touching the sale of bounty lands before the patent had issued? This depends on a due construction of the act of 1816. It gave to each colonel nine hundred and sixty acres; to each major eight hundred acres; to each captain six hundred and forty acres; to each subaltern officer four hundred acres;

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to each noncommissioned officer, musician, and private, three hundred and twenty acres; and to the medical and other staff in proportion to their pay, compared with that of commissioned officers. Warrants were ordered to be issued by the

Secretary at War, subject to be located by the owner, in quarter sections, on lands within the Indiana Territory, surveyed by the United States at the time of the location. And three months additional pay was awarded to this description of troops.

By the Acts of 1811, ch. 10, 1812, ch. 14, sec. 12, and that of May 6, 1812, ch. 77, sec. 2, it was provided that each private and noncommissioned officer who enlisted in the regular service for five years and was honorably discharged and obtained a certificate from his commanding officer of his faithful service should be entitled to a bounty of one hundred and sixty acres of land, and that the heirs of those who died in service should be entitled to the same, to each of whom by name a warrant was to issue. The Act of May 6, 1812, provided for surveying, designating, and granting these bounty lands, the fourth section of which declares that no claim for military land bounties shall be assignable or transferable until after the patent has been granted, and that all sales, mortgages, or contracts, made prior to the issuing of the patent shall be void, nor shall the lands be subject to execution sale till after the patent issues.

It is insisted that this provision accompanies and is part of the act of 1816, and several opinions of Mr. Attorney General Wirt are relied on to sustain the position that the acts granting bounty lands are *in pari materia*, and must be construed alike. He gave an opinion in 1819, 2 L.L., and Opinion 6, that a land warrant issued to a Canadian volunteer was not assignable on its face, or in its nature, and consequently that the patent must issue in the name of the soldier. But he did not decide, nor was he called on to do so, that after the warrant had been located and merged in the entry, the equitable title and right of possession to the land could not be transferred by contract.

The act of 1816 involves considerations different from the previous provisions for the protection of the enlisted common soldier. A class of active, efficient, American citizens who

had emigrated to Canada were compelled to leave there on the war of 1812's breaking out; they returned to their own country and went into its service, and when the war was ended, both officers and soldiers were compensated in lands and money for this extraordinary service. The act of Congress ordered the warrants to be delivered to the respective owners, to be located by them, whereas the common soldier, provided for in the acts of 1811 and 1812, did not receive his warrant, but the government bound itself to locate the land at its own expense. Congress may have thought it not at all necessary to guard the Canadian volunteers against being overreached by speculators and deprived of their bounty lands. This, however, is mere conjecture. The Act of March 5, 1816, has no reference to, or necessary connection with, any other bounty land act; it is plain on its face, and single in its purpose. And then what is the rule? One that cannot be departed from without assuming on part of the judicial tribunals legislative power. It is that where the legislature makes a plain provision without making any exception, the courts can make none. [*Mclver v. Reagain*](#), 2 Wheat. 25; *Patton v. McClure*, Martin & Yerger's Ten.R. 345, and cases cited; *Cocke & Jack v. McGinnis*, *ib.*, 365; *Smith v. Troup*, 20 Johns. 33. We are therefore of the opinion that Fosgit could sell and convey the land to Spencer after the entry was made.

2. The next ground of objection to the deed is that it conveys no title when fairly construed. It has a double aspect, obviously, for the reason that the parties to it did not know at the time it was executed whether or not the land had been located by Fosgit's agent. The issuing of the warrant is recited in the deed, and the quantity of land it calls for, and then the grantor says:

"For the consideration of five hundred dollars, I have assigned and set over, and by these presents do grant, bargain, sell, transfer, assign, and set over, to said William H. Spencer, his heirs and assigns, forever, the said three hundred and twenty acres of land, to have and to hold the same in as full and ample a manner as I, the said Silas Fosgit, my heirs or assigns, might or could enjoy the same, by virtue of the said land warrant or otherwise. "

Then follows an irrevocable power from Fosgit to Spencer, his heirs or assigns, to locate the warrant, obtain a patent &c.;

The warrant having been located on land already surveyed, it could easily be identified. The description is to the same effect as if the deed had said "I convey the land covered by my warrant of three hundred and twenty acres."

We are therefore of the opinion that the deed was a valid conveyance of Fosgit's interest in the land sued for at the time the deed was executed.

The third exception to the deed is covered by the foregoing answers.

3. The charge of the court to the jury held as a matter of law that the deed was a complete defense to the action and that the patent issued to Fosgit related back to the location of the warrant, and constituted part of Spencer's title.

This consideration involves a question of great practical importance to states and territories where entries exist on which patents have not issued, as sales of such titles are usual and numerous. The incipient state of such titles has not presented any material inconvenience, as it is usually provided by state laws that suits in ejectment may be prosecuted or defended by virtue of the title.

In Indiana it is provided by statute that "every certificate of purchase at a land office of the United States shall be evidence of legal title to the land therein described." That is to say, for the purposes of alienation and transfer and for the purposes of litigating rights of property and possession, a certificate of purchase shall be treated as a legal title, and to this effect it is competent evidence in an action of ejectment. *Smith v. Mosier*, 5 Black. 51.

After the patent issued, this title was exclusively subject to state regulations, insofar as remedies were provided for its enforcement or protection; and therefore no objection can be made to any state law that does not impugn the title acquired from the United States.

Whether the patent related back in support of Spencer's deed is not a new question in this Court. It arose in the case of [Landes v. Brant](#), 10 How. 372,

where it was held that a

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patent issued in 1845 "to Claymorgan and his heirs," by which the heirs took the legal title, related back and inured to the protection of a title founded on a sheriff's sale of Claymorgan's equitable interest, made in 1808. There, as here, the contest was between the grantee's heirs and the purchaser of the incipient title, the court holding that when the patent issued, it related to the inception of title, and must be taken, as between the parties to the suit, to bear date with the commencement of title.

It is also the settled doctrine of this Court that an entry in a United States land office on which a patent issues, no matter how long after the entry is made, shall relate to the entry and take date with it. [Ross v. Barland](#), 1 Pet. 655. The fiction of relation is that an intermediate *bona fide* alienee of the incipient interest may claim that the patent inures to his benefit by an *ex post facto* operation, and receive the same protection at law that a court of equity could afford him.

4. We hold that on another ground, the instruction was clearly proper.

Here, the after-acquired naked fee is set up to defeat Fosgit's deed, made forty years ago in good faith for a full consideration and to oust the possession of Spencer's heirs holding under that deed. The rule has always been that where there was a warranty or covenants for title that would cause circuitry of action if the vendee was evicted by the vendor, then the deed worked an estoppel. But the rule has been carried further, and is now established, that where the grantor sets forth on the face of his conveyance, by averment or recital, that he is seized of a particular estate in the premises, and which estate the deed purports to convey, the grantor and all persons in privity with him shall be estopped from ever afterwards denying that he was seized and possessed at the time he made the conveyance. The estoppel works upon the estate and binds an after-acquired title, as between parties and privies. [Van Rensselaer v. Kearney](#), 11 How. 325; [Landes v. Brant](#), 10 How. 374.

It follows that the heir of Fosgit is estopped by her father's deed from disturbing the title or possession of Spencer's heirs.

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It is ordered that the judgment of the circuit court be affirmed.

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