Hale Vs. Gaines

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Court : US Supreme Court

Decided On : 1859

Appeal No. : 63 U.S. 144

Appellant : Hale

Respondent : Gaines

Judgement :

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Hale v. Gaines

63 U.S. (22 How.) 144

ERROR TO THE SUPREME COURT

OF THE STATE OF ARKANSAS

SYLLABUS

In an action of ejectment for the Hot Springs in Arkansas, wherein one party claimed title through a preemption claim which they were allowed to enter by the register and receiver, and the other party through a New Madrid certificate, the title

of the United States not being drawn into question, the former party had the better title.

There was no regular survey and location of the New Madrid certificate until 1838, a prior application for a public survey in 1818 and certificate of a private survey in 1820 being irregular.

The act of Congress of April, 1822, required these locations to be made within one year from the date of its passage. Consequently, the right to locate the New Madrid certificate expired in April, 1823.

Nor does the act of 1843 support the survey of 1838, because it is not included within the provisions of the act.

Whether or not the title acquired under the preemption is valid is a question not now before this Court, because the case is brought up from the Supreme Court of Arkansas under the twenty-fifth section of the Judiciary Act, and the decision of that court was in favor of the validity of the action of the register and receiver, and moreover the opposing party cannot set up an outstanding title in the United States. In order to bring himself within the rule of that section, he must have a personal interest in the subject in litigation.

The claim set up under a prior preemption was of no value, the land having been reserved from sale when an offer to locate the preemption right was made.

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This was an action of ejectment brought by William H. Gaines and the other defendants in error against John C. Hale to recover the southwest quarter of section thirty-three, in township two south, of range nineteen west, containing one hundred and sixty acres. This claim was under the Preemption Act of Congress of the 29th of May, 1830, 4 Stat. 420, and the supplementary act of the 14th July, 1832, 4 Stat. 603

The defendant below Hale claimed to hold by virtue of the fifth section of the Preemption Act of the 12th April, 1814, 3 Stat. 122, together with the Act of 1 March, 1843, 5 Stat. 603.

The jurisdiction of this Court was therefore clear.

The action was brought in the Hot Springs Circuit Court (state court), which, after a trial, gave the following judgment:

"It is therefore considered by the court that said plaintiffs. William H. Gaines and Maria Gaines his wife, Albert Belding, Henry Belding, and George Belding, do have and recover of and from the said defendant, John C. Hale, as well the possession of the tract or parcel of land described in their declaration in this behalf, as all that part of a certain tract or parcel of land designated on the public surveys as the southwest quarter of section thirty-three, in township two south, of range nineteen west, which lies between a dividing line sometimes called Mitchell's line, heretofore established by one Milus H. Wood and said Hale, between their respective possession on said quarter section and the northern or upper line of a place in Hot Springs Valley, commonly called Texas, and which part of said quarter section of land includes and embraces all the buildings, houses, outhouses, bath houses, lots, enclosures, and gardens, connected with or pertaining to the tavern stand, sometimes and generally known as Hale's tavern stand, immediately below and south of the premises used and occupied by Warren & Stidham as a tavern stand during

the summer of the year 1851, and the said sum of five hundred dollars for their damages sustained in this behalf, and so as aforesaid assessed by the jury, as also all their costs in this behalf expended to be taxed &c.; And it is ordered by the court, that said plaintiffs do have execution hereof, by writ of possession for said land and premises, with command by levy and collect the damages and cost aforesaid, as is by law in such cases provided."

In the course of this trial, sundry bills of exceptions were taken which, for the purpose of this report, it is not necessary to state particularly. Under them, the case was carried to the Supreme Court of Arkansas, which affirmed the judgment of the court below except as to a question of damages, which need not be further mentioned.

The case was brought up to this Court by a writ of error issued under the twenty-fifth section of the Judiciary Act.

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MR. JUSTICE CATRON delivered the opinion of the Court.

A contest for the ownership of the Hot Springs, in Arkansas, has been pending for some years before the General Land

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Office and in the courts of that state. One party derive their title through a preemption claim as an occupant under the acts of Congress of 1830 and 1832, and the other by the location of a New Madrid warrant on the same land.

In December, 1851, the heirs of Belding were allowed to enter the quarter section, including the springs. This entry was held to be valid by the state courts, and to clothe them with a sufficient legal title to sustain an action of ejectment according to the laws of Arkansas. They held the decision of the register and receiver in favor of the occupant claimants to be conclusive evidence of title as against all persons who could not show a better opposing claim.

As between the titles of the United States and Belding's heirs, the state courts did not decide, but only that the outstanding title in the United States could not be relied on by the defendant in this action; nor is the validity of the entry of Belding's heirs drawn in question in this Court.

The defendant relied on a survey made in June, 1838, founded on a New Madrid certificate for 200 arpens.

To support this survey, an application was produced, dated 27th January, 1819, signed by S. Hammond and Elias Rector, addressed to William Rector, surveyor of the public lands &c.;, asking to have surveyed and to be allowed to enter the recorder's certificate for 200 arpens, granted by him to Francis Langlois, or his legal representatives, and dated the 26th November, 1818, No. 467. The survey to be made in a square tract, the lines to correspond to the cardinal points, and to include the Hot Springs in the center. In 1818, the spring was in the Indian country, to which, of course, no public surveys extended. And as the act of 1815, providing for the New Madrid sufferers, only allowed them to enter their warrants on lands "the sale of which was authorized by law," the unsurveyed lands could not be legally appropriated, and of necessity the Surveyor General disregarded the application to have a survey made for Langlois. And thus the claim stood from 1818 to 1838.

The defendant offered in evidence the certificate of a private survey of the claim of Langlois, made by James S. Conway,

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D.S., dated July 16th, 1820, which includes the spring. This paper the court also rejected.

Until the survey on Langlois' claim was presented to the recorder of land titles at St. Louis, and recognized by him as proper and valid, it could have no force, as this was the only mode of location contemplated by the act of 1815. So it has been uniformly held. *Bagnell v. Broderick,* 13 Pet. 436; *Lessure v. Price,* 12 How. 9.

The Act of April 26th, 1822, validated locations of New Madrid certificates then existing and which had been made in advance of the public surveys, but the second section of the act declared that future locations should conform to the public surveys, and that all such warrants should be located within one year after the passage of that act.

As the public surveys then existing in Missouri and Arkansas Territory were open to satisfy these claims, there was no difficulty in complying with the act of 1822.

Reliance is placed on the act of Congress of March, 1843, to maintain the survey of 1838, of the New Madrid certificate. That act provides that locations before that time made on New Madrid warrants, on the south side of Arkansas River, if made in pursuance of the act of 1815 in other respects, shall be perfected into grants in like manner as if the Indian title to the lands on the south side of the river had been completely extinguished at the time of the passage of said act of 1815. The act of 1843 does not apply to the survey and location of Langlois made in 1838, for several reasons:

1. The sale of the land thus surveyed was not authorized by law; the Act of April 20, 1832, having reserved from location or sale the Hot Springs, and four sections of land including them as their center.

2. The attempted location was void because barred by the Act of 26 April, 1822, which act was not repealed or modified by the act of 1843. This act referred to locations made on the south of the River Arkansas, of lands regularly surveyed and subject to sale, and which locations had been made on or before the 26th April, 1823, when the bar was interposed.

We are of the opinion that the New Madrid survey of 1838

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was altogether invalid, and properly rejected by the state courts.

It has been earnestly pressed on our consideration that the entry of Belding's heirs is also void because the land it covers was not subject to entry by an occupant claimant, or anyone else, after the Act of April 20, 1832, had reserved it from sale.

Admitting it to be true that the act of April, 1832, was passed when no individual claimant had a vested right to enter the land in dispute, still the 25th section of the Judiciary Act only gives jurisdiction to this Court in cases where the decision of the state court draws in question the validity of an authority exercised under the United

States and the decision is against its validity. Here, however, the decision was in favor of the defendant's entry, and sustained the authority exercised by the department of public lands, in allowing Belding's heirs to purchase. Moreover, the plaintiff in error is not in a condition to draw in question the validity of Belding's entry. He relies on an outstanding title in the United States to defeat the action. Being a trespasser, without title in himself, he cannot be heard to set up such title. "To give jurisdiction to this Court, the party must claim for himself, and not for a third person, in whose title he has no interest." *Henderson v. Tennessee,* 10 How. 323. The plaintiff in error must claim for himself some title, right, privilege, or exemption, under an act of Congress &c.;, and the decision must be against his claim, to give this Court jurisdiction. Setting up a title in the United States by way of defense is not claiming a personal interest affecting the subject in litigation. This is the established construction of the 25th section of the Judiciary Act. *Montgomery v. Hernandis,* 12 Wheat. 132.

If it was allowed to rely on the United States' title in this instance, the right might be decided against the government, where it was no party, and had not been heard.

A claim is set up in defense that John Percifull was entitled to a preference of entry under the act of 1814, which act, it is insisted, was revived by that of 1843, section 3. Suppose

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that Percifull's right to appropriate the land in dispute was undoubted and that the register and receiver had allowed the heirs of Belding to enter wrongfully, still the courts of Arkansas, in this action of ejectment, had no right to interfere and set up Percifull's rejected claim.

But this is of little consequence, as when the act of April, 1832, was passed reserving the Hot Springs from sale, Percifull had no vested interest in the land that a court of justice could recognize. Then the United States government was the legal owner, and had the power to reserve it from sale, so that the offer to purchase in 1851, under the assumed preference to entry claimed for Percifull,

was inadmissible. Had the entry been allowed in face of the act of Congress, such proceeding would have been merely void.

These being the only questions within our jurisdiction worthy of consideration in the causes Nos. 15, 16, 17, 18, and 19, it is ordered that the respective judgments rendered there in by the supreme court of Arkansas be

Affirmed.