Maxwell Vs. Moore

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Decided On : 1859

Appeal No. : 63 U.S. 185

Appellant : Maxwell

Respondent : Moore

Judgement :

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Maxwell v. Moore

63 U.S. (22 How.) 185

ERROR TO THE SUPREME COURT

OF THE STATE OF ARKANSAS

SYLLABUS

An Act of Congress passed in 1812, 2 Stat. 729, gave a bounty of 160 acres of land to every regular soldier of the army, and made void all sales or agreements by the grantee before the patent issued.

Another Act, passed in 1826, 4 Stat. 190, permitted the soldier, under "certain circumstances," to surrender his patent, and select other land. This act did not contain the avoiding clause contained in the first act.

These acts have no necessary connection in this particular, and an agreement to convey, made after the first patent was surrendered, and before the second was issued, held to be valid and binding.

Maxwell and Watkins brought an ejectment against Moore and others to recover the northeast quarter of section ten, in township seven north, range seven west, containing 160 acres of land, in the County of White, and State of Arkansas. The plaintiffs claimed under the heirs of one McVey upon the ground that, under the two acts of Congress of 1812 and 1826, McVey could not alienate his land or covenant to convey it away

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before the issuance of a patent. There were other points involved in the trial in the state courts, as will be seen by a reference to 18 Ark. 475. But the above was the only point before this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

This cause is brought before us by writ of error to the Supreme Court of Arkansas, and presents a single question for our consideration.

Allen McVey served as a regular soldier in the War of 1812, and was entitled to a tract of 160 acres of land as a bounty for his services. The land was located and granted in what is now the State of Arkansas. By the Act of May 6, 1812, which granted the bounty lands, all sales or agreements made by a grantee of these lands before the patent issued were declared to be void.

Many tracts of the lands granted turned out to be unfit for cultivation, so that the soldier took no benefit, and as compensation, the Act of May 22, 1826, declares that the soldier, or his heirs, to whom bounty land has been patented in the Territory of Arkansas, and which is unfit for cultivation, and who has removed or shall remove to Arkansas with a view to actual settlement on the land, may relinquish it to the United States and enter a like quantity elsewhere in the district, which may be patented to him. This act was continued in force by that of May 27, 1840.

McVey surrendered his first patent according to the act of 1826, and in 1842 another issued in his name for the land in dispute.

In 1834, McVey gave William Pelham a bond to convey to him the land that might be entered on his certificate of surrender, known as a float, and a power of attorney to locate the same, and obtain the patent. McVey died in 1836. In 1842, Pelham entered the land in controversy in McVey's name.

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A special act of the Legislature of the State of Arkansas was passed, authorizing McVey's administrator to convey the land to Pelham, which was done.

Afterwards, the plaintiffs in error obtained a conveyance from the heirs of McVey, on which their action of ejectment is founded. As the title vested in Allen McVey's heirs by the patent of 1842, they could well convey the land unless the administrator's deed stood in the way. *Galloway v. Findley,* 13 Pet. 264. That the special act of assembly authorized the administrator to make a valid deed, and divest the title of the heirs was decided in this case by the Supreme Court of Arkansas, and which decision on the effect of the state law is conclusive on this Court. We exercise jurisdiction to revise errors committed by state courts, where the plaintiff in error claims title by force of an act of Congress and the title has been rejected on the ground that the act did not support it. And this raises the question whether the act of 1826, allowing the soldier to exchange his land, carried with it the prohibition against alienation contained in the act of 1812.

The court below held that it did not, and that Allen McVey did lawfully bind himself to Pelham for title.

It is insisted that the acts of 1812 and 1826 are on the same subject, must stand together as one provision, and the last act carry with it the prohibition found in the first. We are of the opinion that the acts have no necessary connection; that there was no good reason why the soldier who removed to Arkansas, and inspected his tract of land, then patented, and alienable, should not contract to convey the tract he might get in exchange. We can only here say, as we did in the case of *French v. Spencer,* 21 How. 238, that the act of 1826 is plain on its face and single in its purpose, and that in such cases the rule is that where the legislature makes a plain provision without making any exception, the courts of justice can make none, as it would be legislating to do so.

There being no other question presented by the record within the jurisdiction conferred on this Court by the 25th section of the Judiciary Act, we order that judgment of the Supreme Court of Arkansas be

Affirmed.