

**Lytle Vs. Arkansas**

**Lytle Vs. Arkansas**

**SooperKanoon Citation :** [sooperkanoon.com/80866](http://sooperkanoon.com/80866)

**Court :** US Supreme Court

**Decided On :** 1859

**Appeal No. :** 63 U.S. 193

**Appellant :** Lytle

**Respondent :** Arkansas

**Judgement :**

Lytle v. Arkansas - 63 U.S. 193 (1859)

U.S. Supreme Court Lytle v. Arkansas, 63 U.S. 22 How. 193 193 (1859)

**Lytle v. Arkansas**

**63 U.S. (22 How.) 193**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF ARKANSAS*

## **SYLLABUS**

Where the decision of a state court was against the validity of an entry of land which had been allowed by the proper officers of the United States, this Court has jurisdiction, under the 25th section of the Judiciary Act, to revise that judgment,

whether the invalidity was decreed upon a question of fact or of law.

The adjudication of the register and receiver is subject to revision in the courts of justice on proof showing that the entry was obtained by fraud and the imposition of false testimony on those officers, as to settlement and cultivation. This Court has so decided heretofore.

Over the questions raised in the court below of the effect of a *bona fide* purchase and of the statute of limitations this Court has no jurisdiction.

But the evidence shows that the entry was obtained by false affidavits as to residence and cultivation. The judgment of the Supreme Court of Arkansas is therefore affirmed.

This case was brought up from the Supreme Court of the State of Arkansas by a writ of error issued under the 25th section of the Judiciary Act. It was a chancery case, but correctly brought up by writ of error. See preceding case of [Verden v. Coleman](#).

It was before this Court at a preceding term, and is reported in [50 U. S. 9](#) How. 314. It will be perceived by referring to that case that this Court decided that the preemption act of 1830 conferred certain rights upon settlers upon public lands upon proof of settlement or improvement being made to the satisfaction

Page 63 U. S. 194

of the register and receiver, agreeably to the rules prescribed by the Commissioner of the General Land Office. And their decision must be considered final unless impeached on the ground of fraud or unfairness. [50 U. S. 9](#) How. 333. The principal point now decided was that the entry then recognized was obtained by false affidavits as to residence and cultivation.

Page 63 U. S. 202

MR. JUSTICE CATRON delivered the opinion of the Court.

The first question presented on the record is whether this Court has jurisdiction to examine and revise the decision of the Supreme Court of Arkansas by writ of error under the 25th section of the Judiciary Act. The question arises on the following facts:

Nathan Cloyes, ancestor of the principal complainants, entered as an occupant, at a land office in Arkansas, a fractional quarter section of land, in 1834, under the preemption acts of 1830 and 1832. The fraction adjoined the Village of Little Rock on its eastern side, and was for twenty-nine acres. The same land had been patented in 1833 by the United States to John Pope, Governor of the Territory of Arkansas, to be appropriated to the erection of public buildings for said territory. The heirs of Cloyes claimed to have an earlier equity, by force of their preemption right, than that of the Governor of Arkansas.

They filed their bill in equity in the proper state court to enforce this equity. That bill contained appropriate allegations to exhibit an equitable title in the plaintiffs, and the opposing right of the patentee, and thus to enable the courts to compare them. Some of the defendants demurred to the bill; others answered, denying the facts of the settlement and cultivation and pleading the *bona fides* of their purchase and the statute of limitations.

The courts of Arkansas dismissed the bill on the demurrer, which judgment was reversed in this Court, and the cause remanded for further proceedings. [Lytle v. Arkansas](#), 9 How. 314. It was prepared for hearing a second time, and the courts of Arkansas have again dismissed the bill, and the cause is a second time before us.

The cause was fully heard on its merits below, and the claim of Cloyes rejected on the ground that he obtained his entry by fraud in fact and fraud in law, and the question is can we take jurisdiction and reform this general decree? It

Page 63 U. S. 203

*rejected the title* of Cloyes, and in our opinion it is not material whether the invalidity of the title was decreed in the Supreme Court of Arkansas upon a

question of fact or of law. The fact that the title was rejected in that court authorizes this Court to reexamine the decree. [39 U. S. 14](#) Pet. 360.

The decision in the Supreme Court of Arkansas drew in question an authority exercised under the United States, to-wit, that of admitting Cloyes to make his entry, and the decision was against its validity, and overthrew his title, and is therefore subject to be reexamined and reversed or affirmed in this Court on all the pleadings and proofs which immediately respect the question of the proper exercise of authority by the officers administering the sale of the public lands on the part of the United States.

In the case of [Martin v. Hunter's Lessee](#), 1 Wheat. 352, the foregoing construction of the 25th section of the Judiciary Act of 1789 was recognized, and has been followed since, in the cases of *Choteau v. Eckhart*, 2 How. 372, [Cunningham v. Ashley](#), 14 How. 377, [Garland v. Wynn](#), 20 How. 6, and other cases.

Another preliminary question is presented on this record, namely whether the *adjudication* of the register and receiver, which authorized Cloyes' heirs to enter the land, is subject to revision in the courts of justice on proof showing that the entry was obtained by fraud and the imposition of false testimony on those officers as to settlement and cultivation. We deem this question too well settled in the affirmative for discussion. It was so treated in the case of [Cunningham v. Ashley](#), 14 How. 377; again in [Bernard v. Ashley](#), 18 How. 43; and conclusively in the case of [Garland v. Wynn](#), 20 How. 8

The next question is how far we can reexamine the proceedings in the state courts.

In their answers, the respondents rely on the act of limitations of the State of Arkansas for protection. As this is a defense having no connection with the title of Cloyes, this Court cannot revise the decree below in this respect under the 25th section of the Judiciary Act.

Many of the defendants also relied in their answers on the fact that they were *bona fide* purchasers of the lots of land they are sued for, and therefore no decree can be made here to oust them of their possessions. The state courts found that a number of the respondents were purchasers without notice of Cloyes' claim, and entitled to protection as *bona fide* purchasers, according to the rules acted on by courts of equity. With this portion of the decree we have no power to interfere, as the defense set up is within the restriction found in the concluding part of the 25th section, which declares

"That no other error shall be assigned or regarded by this Court as a ground of reversal than such as immediately respects the before-mentioned questions of validity or construction of the Constitution, treaties, statutes, commissions, or authorities, in dispute."

Mr. Justice Story comments on the foregoing restraining clause in the case of [\*Martin v. Hunter's Lessee\*](#), 1 Wheat. 358, which construction we need not repeat.

Whether Cloyes imposed on the register and receiver by false affidavits, when he made proof of cultivation in 1829, and residence on the land in dispute on the 29th of May, 1830, is the remaining question to be examined. He made oath 23d April, 1831, that he did live on said tract of land in the year 1829 and had done so since the year 1826. Being interrogated by the register, he stated:

"I had a vegetable garden, perhaps to the extent of an acre, and raised vegetables of different kinds, and corn for roasting ears, and I lived in a comfortable dwelling, east of the Quapaw line on the before-mentioned fraction."

Being asked did you continue to reside, and cultivate your garden aforesaid on the before-named fraction until the 29th of May, 1830? he answers: "I did; and have continued to do so until this time."

John Saylor deposed on behalf of Cloyes in effect to the same facts, but in general terms. Nathan W. Maynor and Elliott Bursey swore that the affidavit of Saylor was true. On the truth or falsehood of these depositions the cause depends.

In opposition to these affidavits, it is proved beyond dispute that Cloyes and his family resided at a house for a part of the

Page 63 U. S. 205

year 1828 occupied afterwards by Doctor Liser. In the latter part of 1828, they removed from that place to some log cabins situate on the lots afterwards occupied by John Hutt, and where the Governor of Arkansas resided in 1851, when the witnesses deposed. Both places were west of the Quapaw line -- the cabins standing probably one hundred yards west of the line, and which line was the western boundary of the fractional quarter section in dispute. Cloyes resided at these cabins when he swore at Batesville, before the register, and continued to reside there till the time of his death, which occurred shortly after his return from Batesville, say in May or June, 1831, and his widow and children continued to reside at the same cabins for several years after his death.

Cloyes was by trade a tinner, and in December, 1826, rented of William Russell a small house, constructed of slabs set upright, in which he carried on his business of a tin plate worker. He covenanted to keep and retain possession for Russell of this shop against all persons, and not to leave the house unoccupied, and to pay Russell two dollars per month rent, and surrender the house to Russell or his authorized agent at any time required by the lessor.

Under this lease, Cloyes occupied the house until the 19th day of June, 1828, when he took a lease from Chester Ashley for the same, and also for a garden. He covenanted to pay Ashley one dollar per month rent; to put and keep the building in repair; to keep and retain possession of the same, until delivered back to said Ashley by mutual consent, either party having a right to terminate the lease on one month's notice. The house and garden were rented by the month.

Under this lease, Cloyes occupied the house as a tin shop to the time of his death. Both the leases state that the shop was east of the Quapaw line, and on the public lands.

This slab tenement was built by Moses Austin about 1820. On leaving Little Rock, he sold it to Doctor Mathew Cunningham; it passed through several hands till it was finally owned by Col. Ashley. Buildings and cultivated portions of the public lands were protected by the local laws of the Arkansas Territory; either ejectment or trespass could have

Page 63 U. S. 206

been maintained by Ashley against Cloyes to recover the premises, nor could an objection be raised by anyone except the United States to these transfers of possession -- neither could Cloyes be heard to disavow his landlord's title. He held possession for Ashley, and was subject to be turned out on a month's notice to quit.

Cunningham and other witnesses depose that the shop rented to Cloyes stood west of the Quapaw line. It however appears from actual survey that it was on the section line, which ran through the house, taking its southeast corner on the east side but leaving the greater part of the shop west of the line.

Another pertinent circumstance is that when Cloyes heard the preemption law of 1830 was about to pass or had passed -- it is uncertain which from the evidence -- he removed his wife and children, with some articles of necessary furniture, to the tinner's shop from his residence at the Hutt place and kept his family at the shop for a few months, and then they returned to their established home. This contrivance was probably resorted to at the instance of Benjamin Desha, who had agreed with Cloyes to pay into the land office the purchase money and all incidental expenses to obtain a title from the government for an interest of one-half of the land. These evasions were mere attempts to defraud the law and to furnish some foundation for the necessary affidavits to support his preemption claim at the land office.

On this aspect of the case, the question arises whether Cloyes' possession as lessee and tenant of Ashley, occupying a shop as a mechanic, the corner of which accidentally obtruded over the section line, upon the public land, and who was

subject to removal by his landlord each month, was "a settlement" on the public lands within the true intent and meaning of the act of May, 1830?

That Cloyes never contemplated seeking a home on the public lands as a cultivator of the soil is manifest from the proof; he worked at his trade, when he worked at all, say the witnesses, and followed no other avocation. Our opinion is that the affidavits on which the occupant entry was founded

Page 63 U. S. 207

were untrue in fact and a fraud on the register and receiver, and that Cloyes had no *bona fide* possession as tenant of the tinner's shop within the true meaning of the act of 1830.

We are also of opinion that the affidavits are disproved as respects the fact of cultivation in 1829. There was no garden cultivated in that year adjoining or near to the shop. To say the least, it is quite doubtful whether there was such cultivation east of the Quapaw line; and the state courts, having found that there was none, it is our duty to abide by their finding, unless we could ascertain, from the proof, that they were mistaken, which we cannot do; our impressions being to the contrary.

The question of cultivation in May, 1830, depended on parol evidence of witnesses. The judges below knew them; they decided on the spot, with all the localities before them, and as the evidence is contradictory, it would be contrary to precedent for this Court to overrule the finding of a mere fact by the courts below.

On the several grounds stated, we order that the decree of the Supreme Court of Arkansas be affirmed, with costs.

MR. JUSTICE Mc LEAN and MR. JUSTICE CLIFFORD dissented.

MR. JUSTICE Mc LEAN:

I dissent from the opinion of the Court, as now expressed, and shall refer to the former opinion, to show the nature of the case:

"After the refusal of the receiver to receive payment for the land claimed, an act was passed, 14 July, 1832, continuing the Act of the 29th May, 1830, and which specially provided that those who had not been enabled to enter the land, the preemption right of which they claimed, within the time limited, in consequence of the public surveys not having been made and returned, should have the right to enter such lands, on the same conditions in every respect as prescribed in said act, within one year after the surveys shall be made and returned.

Page 63 U. S. 208

And this act was in full force before Governor Pope selected said lands. That the public surveys of the above fractional sections were made and perfected on or about the 1st of December, 1833, and returned to the land office the beginning of the year 1834. On the 5th of March, 1834, the complainant paid into the land office the sum of \$135.76 1/4, in full for the above-named quarter section."

That a certificate was granted for the same,

"on which the receiver endorsed, that the northwest fractional quarter section two was a part of the location made by Governor Pope in selecting 1,000 acres, adjoining the town of Little Rock, granted by Congress to raise a fund for building a courthouse and jail for the territory; and that the endorsement was made by direction of the Commissioner of the General Land Office. . . . That the register of the land office would not permit the said fractional quarter sections to be entered."

It appeared that

"he patentees in both of said patents, at the time of their application to enter the lands, had both constructive and actual notice of the right of Cloyes and that the present owners of any part of these lands had also notice of the right of the complainants."

In his dissenting opinion, Judge Catron says:

"The proof of occupancy and cultivation was made in April, 1831, under the act of 1830, pursuant to an instruction from the Commissioner of the General Land

Office having reference to that act. The act itself, the instruction under its authority, and the proofs taken according to the instruction, expired and came to an end on the 29th May, 1831. After that time, the matter stood as if neither had ever existed; nor had Cloyes more claim to enter from May 29, 1831, to July, 1832, than any other villager in Little Rock."

Now although it may be true that until the act of 1832 had passed, the act of 1830 having expired, the preemptive right of Cloyes could not be perfected, yet the policy of the law was, where vested rights had accrued, which, by reason of delays in the completion of surveys, could not be carried out, the government gave relief by extending the law. And the inchoate right was secured by the policy of the government. It

Page 63 U. S. 209

is therefore not strictly accurate to say the party entering a preemption has no right. He has a right, recognized by the government, by which he is enabled to perfect his right, and under such circumstances, no new entry could interfere with a prior one, though imperfect.

This Court says, the proof of the preemption right of Cloyes being entirely satisfactory to the land officers under the act of 1830, there was no necessity of opening and receiving additional proof under any of the subsequent laws. The act of 1830 having expired, all rights under it were saved by the subsequent acts. No steps which had been taken were required again to be taken.

Did the location of Governor Pope under the act of Congress affect the claim of Cloyes? On the 15th of June, 1832, one thousand acres of land were granted, adjoining the town of Little Rock, to the Territory of Arkansas, to be located by the governor. This selection was not made until the 30th of January, 1833. Before the grant was made by Congress of this tract, the right of Cloyes to a preemption had not only accrued, under the provisions of the act of 1830, but he had proved his right under the law to the satisfaction of the register and receiver of the land office. He had, in fact, done everything he could do to perfect this right. No fault or

negligence can be charged to him.

"By the grant to Arkansas, Congress could not have intended to impair vested rights. The grants of the thousand acres and of the other tracts must be so construed as not to interfere with the preemption of Cloyes."

From the citations above made in the original opinion in this case, the following facts and principles of law are too clear to admit of doubt by anyone:

1. That Cloyes' preemption to fractional quarter section No. 2 was clearly established by the judgment of the land officers and of this Court.
2. That the location of Governor Pope, being subsequent to the right of Cloyes, could not affect, under the circumstances, that right, and that the conveyance was subject to it. This appears by the certificate of the land office, by the uniform

Page 63 U. S. 210

action of the government in all such cases, and the good faith which has characterized the action of government, in protecting preemption rights, by giving time to protect such right, where the government officers had failed in doing their duty. And in addition to these considerations, in the solemn declaration of this Court, "that Congress could not have intended to impair vested rights." And the Court says "the grants of the thousand acres and of the other tracts must be so construed as not to interfere with the preemption of Cloyes."

This Court says

"The supreme court of the state, in sustaining the demurrers and dismissing the bill, decided against the preemption right claimed by the representatives of Cloyes, and as we consider *that* a valid right as to the fractional quarter on which his improvement was made, the judgment of the state court was reversed."

"Now the defendants demurred to the original bill, which they had a right to do, and rest the case on the demurrer's appearing on the face of the bill. But this Court held Cloyes' right valid, and consequently reversed, on this head, the judgment of

the state court. And the cause is transmitted to the state court for further proceeding before it, or as it shall direct on the defense set up in the answers of the defendants, *that they are bona fide purchasers of the whole or parts of the fractional section in controversy, without notice*, and that that court give leave to amend the pleadings on both sides, if requested, that the merits may be fully presented and proved, as equity shall require."

Now it is perfectly clear that nothing was transmitted under the direction of this Court to the state court except the latter part of the sentence beginning "*and the cause is transmitted to that court*," &c.; And that part relates wholly to the inquiry whether the defendants were *bona fide* purchasers of the whole or parts of the fractional section in controversy. And for this purpose leave was given to amend the pleadings. If there is anything in this bill which afforded any pretense to the state court to open the pleadings and examine any matters in the bill except those specified in its close, it has escaped my notice.

Page 63 U. S. 211

It is said in the bill,

"The register and receiver were constituted by the act a tribunal to determine the right of those who claimed preemptions under it. From their decision no appeal was given. If, therefore, they acted within their powers, as sanctioned by the commissioner and within the law, the decision cannot be impeached on the ground of fraud or unfairness; it must be considered final."

The court here was speaking of its own powers of jurisdiction and investigation, and not the powers of any other tribunal. It was supposed that no superior court would willingly permit its judicial powers to be subverted, new parties made, new subjects introduced, and the whole proceedings reversed at the will of an inferior jurisdiction, without the exercise of a controlling power.

This state record of Arkansas seems to have been a prolific source of controversy, as its proportions have grown to about a thousand pages, not including briefs and

statements of facts. It certainly must require some skill in legislation to draw into the state court so large an amount of business under the laws of Congress. And it may become a matter of public concern when such a mass of judicial action is not only thrown into the state court, but new rules and principles of action are liable to be sanctioned, in disregard of the laws of the United States.

Without any authority, it does appear that the judgment of the Supreme Court has been reversed by the Arkansas court, its proceedings modified in disregard of its own judgments and opinions clearly expressed, and new rules of proceedings instituted and carried out, and this under an authority given to the Arkansas court to ascertain whether certain purchases had been made *bona fide*.

Cloyes, in his lifetime, by his own affidavit and the affidavits of others, made proof of his settlement on and improvement of the above fractional quarter according to the provisions of the act, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by the Commissioner of the General Land Office; on the 20th May, 1831, Hartwell Boswell the register, and John Redman, the

Page 63 U. S. 212

receiver, decided that the said Cloyes was entitled to the preemption right claimed.

"On the same day, he applied to the register to enter the northwest fractional quarter of section two, containing thirty acres and eighty-eight hundredths of an acre."

But the register very properly decided that Cloyes could only be permitted to enter the fraction on which his improvement was made.

The Commissioner of the General Land Office and the register and receiver declare they were satisfied with the proof made in the case, but the Supreme Court of Arkansas decided against the preemption right claimed by the representatives of Cloyes, and the Supreme Court of the United States said, "as we consider *that* a valid right as to the fractional quarter on which the

improvement was made, the judgment of the state court is reversed."

How does this case now stand? It stands reversed upon our own records by the Supreme Court of Arkansas, and by no other power. A majority of this bench entered the judgment, as it now stands, in 1849. But through the reforming process of a record of a thousand pages, not including notes and statements of facts, it has become a formidable pile -- enough to fill with despair the first claimant of the preemption right.

It is true the cause was sent down for a special purpose, every word of which I now copy:

"And the cause is transmitted to that court the Supreme Court of Arkansas for further proceedings before it, or as it shall direct, on the defense set up in the answers of the defendants, that they are *bona fide* purchasers of the whole or parts of the fractional sections in controversy, *without notice*, and that that court give leave to amend the pleadings on both sides, if requested, *that the merits of the case* may be fully presented and proved, as equity shall require."

Several of the defendants alleged they were *bona fide* purchasers of a part or the whole of the fraction without notice, and the object in sending the case down was to enable persons to show they were purchasers of this character. This did not necessarily involve fraud. And this embraces the whole subject of inquiry.

Page 63 U. S. 213

It would have been inconsistent for this Court to say we consider the preemption claim by the representatives of Cloyes as a valid right as to the fractional quarter on which his improvement was made, and on that ground to reverse the judgment of the state court and at the same time send the case down, open to the charge of fraud and every conceivable enormity. The object was to know who were purchasers without notice. That this was the intention of the supreme court is palpable from the language of the entry.

The majority of the Supreme Court had full confidence in the validity of Cloyes' claim, and consequently they reversed the judgment of the state court, leaving the question open, whether the defendants were purchasers without notice. It may be that this entry would have protected all the purchasers.

From the nature of preemption rights, it is presumed a person desirous of such a right is the first applicant. And the proof of such a right, if sustained by the register and receiver and the Commissioner of the Land Office, the proof required, is deemed satisfactory. It is only where a fortunate selection appears to be made by the prospect of a city, or some great local advantage is anticipated that a contest arises as to such a claim.

The officers of the land department, whose peculiar duty it was to protect the public rights, seemed to have discharged their duty to the satisfaction of the government. This was also entirely satisfactory to a majority of the judges of this Court, with the single exception that from the answers it was probable that there may have been purchasers of this right without notice. And from the evidence introduced it would seem to have been considered that anyone who at any time desired to purchase considered himself as having a right to complain, although he had no means to make the purchase or had no desire to make it.

If I mistake not, evidence was heard from witnesses from twenty to twenty-five years after the preemption right was sanctioned by the government. Such a course tends greatly to embarrass land titles under the general land law. Everyone knows that a man who endeavors to obtain a preemption

Page 63 U. S. 214

must, in the nature of things, be a man of limited means and incapable of maintaining an expensive suit at law, and it has always appeared to me the true policy to limit those questions to the land department of the government. At all events, that they should be limited to the federal tribunals, where, it may be presumed, the land department will have an uniform administration.

As this case now stands, I think the judgment of the Arkansas Supreme Court must be reversed on two grounds:

1. Because it has reversed the judgment of this Court, entered by a majority of the members at December term, 1849, in these words:

"The supreme court of the state, in sustaining the demurrers and dismissing the bill, decided against the preemption claimed by the representatives of Cloyes, and as we consider *that* a valid right as to the fractional quarter on which his improvement was made, the judgment of the state court is reversed."

This is the judgment of this Court as it now stands upon our docket. And

2. The judgment of the state court must be reversed because it wholly disregarded the directions of this Court in trying the issues transmitted to it.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**