

**United States Vs. Stone**

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**Court :** US Supreme Court

**Decided On :** 1864

**Appeal No. :** 69 U.S. 525

**Appellant :** United States

**Respondent :** Stone

**Judgement :**

United States v. Stone - 69 U.S. 525 (1864)

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**United States v. Stone**

**69 U.S. (2 Wall.) 525**

*APPEAL FROM THE*

*FEDERAL COURT OF KANSAS*

## **SYLLABUS**

1. The United States may properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued by itself, ignorantly or in mistake, for lands reserved from sale by law, and a grant of which by patent

was therefore void.

2. The southern boundary of Camp Leavenworth is the line as established by the surveyor, McCoy, A.D. 1830, for such extent as it was adopted by the subsequent surveys of Captains Johnson and Hunt, A.D. 1839, 1854, and by the government of the United States. The Secretary of the Interior, in 1861, transcended his authority when he ordered surveys to be made north of it.

3. The treaty of 30 May, 1860, between the United States and the Delaware Indians conferred a right to locate grants only on that portion of the Delawares' lands reserved for their "permanent home" by the treaty of 6 May, 1854, and did not authorize their location on that portion of those lands which, by that treaty, were to be sold for their uses.

The United States, by treaty with the Delaware Indians in 1818, agreed to provide for them a country to reside in, and in 1829, by supplementary treaty, agreed that the country in the fork of the Kansas and Missouri Rivers, extending "up the Missouri TO Camp Leavenworth," should be conveyed and secured to them as their said home.

A Senate resolution of 29 May, 1830, ratifying this treaty, provided that the President should employ a surveyor to run the lines, to establish certain and notorious landmarks, and to distinguish the boundaries of the granted country, *in the presence of an agent of the Delawares*, and to report to the President his proceedings, with a map, and

Page 69 U. S. 526

that, when the President was satisfied that the proceedings had been concurred in and approved by the agent of the Delawares, *he should also approve of the same by his signature and seal of office, and cause a copy to be filed among the archives of the government.*

In 1827 -- more than two years prior to this supplemental treaty -- Colonel Leavenworth, by orders of the government, had selected a site for a "permanent

cantonment" on the same bank of the Missouri, which site has always since been in the occupancy of the United States as a military post, and is the "Camp Leavenworth" referred to in the supplemental treaty above mentioned. The precise limits or extent of this cantonment, as originally fixed, if any were fixed, did not appear. The region at that time was wild, and the cantonment was one for shelter rather than for defense.

Pursuant to the Senate resolution, one McCoy, a surveyor, made a survey in the summer of 1830, and made a report also of it, with a plat, in compliance with his instructions. His plat was now produced. In his report, McCoy says:

"In the treaty no provision was made for a military reserve at Cantonment Leavenworth. It has been thought desirable that a tract of six miles on the Missouri River, and four miles back, should be secured for this object. Accordingly the survey about the garrison has been made with a view to such a reservation, as will be seen by reference to the plat. *In this arrangement the Delaware chief, to whom the whole was fully explained on the ground, has cordially acquiesced.* "

No copy, however, of this report, with any map approved by the agent of the Delawares or with the signature and seal of the President as provided for in the Senate resolutions, was found in the War Office. It did not appear that search was made in the State Department. There was, however, a copy without the President's signature or seal of office found in the War Office and filed among its documents, directed to the Secretary of War.

The next survey of the military tract about Fort Leavenworth was made by Captain A. R. Johnson in 1839 under orders, and a map of the survey filed in the War Department.

Page 69 U. S. 527

By this map, the *southern* boundary of the military tract appears as originally fixed by McCoy in 1830, but the western boundary was somewhat changed by taking a natural boundary, instead of a geographical line run by McCoy.

In 1854, the Secretary of War ordered a survey to be made and a reservation laid off for military purposes at the fort, which survey was made by Captain Hunt, and being approved by the Secretary of War, the land therein set off was directed by the President to be reserved for military purposes. This survey also followed the southern boundary line run by McCoy in 1830, but Captain Hunt thought it proper to limit this line so as to exclude a part of the land embraced in the original reservation of 1830 and in the survey by Captain Johnson. In his report, Captain Hunt, after stating that the line is run with McCoy's southern boundary, says:

"But as the reserve, as formerly laid out, was much larger than I conceived necessary under my instructions, I only went out two and three quarter miles on this line, and thence along the top of 'The Bluffs' as near as I could, to make a good boundary to the Missouri River."

This final survey made a camp of about three miles square -- the usual size of our camps.

By Treaty of the 6th of May, 1854, the Delaware Indians ceded to the United States all the land in the forks already mentioned, with the exception of a certain part reserved in the treaty -- no part of which reserved portion was north of McCoy's line as limited by Captain Hunt. This reserved part was to be still their "permanent home." The treaty provided that the United States would have the ceded country surveyed and offered for sale, and pay the Indians the moneys received therefrom. It provided also that when the Delawares desired it, the President might cause the country reserved for their "permanent home" to be surveyed in the same manner as the ceded country was to be surveyed, and might assign such uniform portions to each person or family as should be designated by the principal men of the tribe.

Page 69 U. S. 528

In making the surveys under this Treaty of May 6, 1854, the lands between the western line of McCoy's survey of 1830 and the western line of Hunt's survey of 1854 were surveyed, and were afterwards sold, by order of the President, for the

benefit of the Delawares. But in those surveys, the western line of Hunt and the southern line of both McCoy and Hunt, as far west as Hunt ran, were accepted as the true lines of the military reservation, and no surveys under the treaty were made therein.

By the next treaty with the Delawares (made May 30, 1860), it was agreed that, in consideration of long and faithful services, certain of their chiefs should "have allotted to each a tract of land," to be selected by themselves, and should receive "a patent in fee therefor from the President of the United States."

The Commissioner of Indian Affairs, in the year 1861, informed the Commissioner of the General Land Office that the Secretary of the Interior had decided that the land lying between the fort and the southern line of McCoy's survey belonged to the Delawares, and had ordered the same to be surveyed. And the chiefs, or one Stone, rather, to whom they had assigned their "floats," having made selections in this strip, and everything having gone through the usual forms, patents passed the great seals, and having been signed by the President, were delivered to the chiefs, or to their agent, and subsequently to Stone, who now held, by deed from them, the estates granted.

The patents all recited the promises of the treaty of 1860 to grant land to the chiefs, and went on to grant the particular tract, "in conformity with the provisions, as above recited, of the aforesaid treaty." In 1862, the Secretary of the Interior decided that the patents had been issued without legal authority, and *he* declared them void and revoked. However, to proceed rightly, the United States filed a bill in the Federal Court of Kansas, against the Indian chiefs and Stone, to have them judicially decreed null, and the instruments themselves delivered up for cancellation. The court gave the decree asked for. Appeal here.

Page 69 U. S. 535

MR. JUSTICE GRIER delivered the opinion of the Court.

A patent is the highest evidence of title, and is conclusive as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. In England this was originally done by *scire facias*, but a bill in chancery is found a more convenient remedy.

Nor is fraud in the patentee the only ground upon which a bill will be sustained. Patents are sometimes issued unadvisedly or by mistake, where the officer has no authority in law to grant them or where another party has a higher equity and should have received the patent. In such cases, courts of law will pronounce them void. The patent is but evidence of a grant, and the officer who issues it acts ministerially, and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But one officer of the land office is not competent to cancel or annul the act of his predecessor. That is a judicial act, and requires the judgment of a court.

It is contended here by the counsel of the United States that the land for which a patent was granted to the appellant was reserved from sale for the use of the government,

Page 69 U. S. 536

and consequently that the patent is void. And although no fraud is charged in the bill, we have no doubt that such a proceeding in chancery is the proper remedy and that if the allegations of the bill are supported, that the decree of the court below canceling the patent should be affirmed.

The grant to the Delaware Indians in 1829 calls for Camp Leavenworth as a boundary; consequently, the camp and its appurtenances were not included in the grant. What lands properly belonged to this military post, and the proper curtilage necessary for the use and enjoyment of it not being fixed with precision in the general description of the land granted, could be ascertained only by a survey on the ground.

The resolution of the Senate of May 29, 1830, provides that the President should employ a surveyor

"to run the lines, and to establish certain and notorious landmarks accurately and permanently, to distinguish the boundaries of the country granted, in the presence of an agent to be designated by the Delaware nation, the surveyor to make report with a map or draft of the said granted country,"

&c.; The Secretary of War, by the authority of the President, referred the execution of this duty to a surveyor (McCoy), instructing him "to be governed in every particular by the treaty and the resolution of the Senate."

No copy of this report, with the map approved by the agent of the Delawares and with the signature and seal of the President, as provided for in the Senate resolution, is found in the War Office, and it does not appear that search was made in the State Department. There is, however, a copy found in the War Office, directed to the Secretary of War, and filed among its documents.

This survey was made in the presence of the agent of the Delawares. It marked the usual quantity of about three miles square, as appurtenant to the post and necessary for its use and subsistence, making the lines thereof the boundary of the grant to the Delawares, with the concurrence and consent of the agent of the nation. It was made in the year 1830, and since that time both parties have held possession

Page 69 U. S. 537

and claimed up to the lines then established by the survey. In the case of private persons, a boundary surveyed by the parties and acquiesced in for more than thirty years could not be made the subject of dispute by reference to courses and distances called for in the patents under which the parties claimed or on some newly discovered construction of their title deeds. We see no reason why the same principle should not apply in the present case notwithstanding the absence or loss of the document required by the resolution of the Senate.

The authority of the President, acting through the Secretary of War and his officers, to have posts and forts established, with a proper quantity of ground appropriated for the use of each reserved from sale, is fully discussed and decided

in *Wilcox v. Jackson*.

In 1854, a survey was made under orders of the Secretary of War, "including the buildings and improvements, and so much land as may be necessary for military purposes, at Fort Leavenworth." This survey adopted the southern boundary as run by McCoy, and commenced at the same point. It did not include all the land reserved by that survey, but the land now claimed is embraced within its limits. This survey was approved by the President, and the land contained in it formally reserved for military purposes. The survey made of the Delaware lands, under the treaty of 1854, adopted the McCoy line.

The Secretary of the Interior, in 1861, transcended his authority when he attempted to overrule the acts of his predecessors and ordered surveys to be made north of that line to include the land now in question.

We are of opinion, therefore,

1st. That the land claimed by appellant never was within the tract allotted to the Delaware Indians in 1829 and surveyed in 1830.

2d. That it is within the limits of a reservation legally made by the President for military purposes.

Consequently, the patents issued to the appellant were without authority and void.

Page 69 U. S. 538

The question on the construction of the treaty of 1860 as to whether the grants to the chiefs and interpreter were to be located within that portion of these lands which was reserved for their "permanent home," or in that portion which was to be sold for their use, would be also fatal to the claim of appellant. But the decision of the other points in the case make this one only hypothetical, and, as it is a question not likely to ever arise again, we think it unnecessary to vindicate our opinion by arguments.

*Decree affirmed.*

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