

Witherspoon Vs. Duncan

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Appeal No. : 71 U.S. 210

Appellant : Witherspoon

Respondent : Duncan

Judgement :

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Witherspoon v. Duncan

71 U.S. (4 Wall.) 210

ERROR TO THE SUPREME COURT

OF THE STATE OF ARKANSAS

1. The different states, as a general rule, have the right of determining the manner of levying and collecting taxes on private property within their limits, and can declare that a tract of land shall be chargeable with taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate the sale for taxes.

2. Lands originally public cease to be public after they have been entered at the land office, and a certificate of entry has been obtained.
3. Lands so entered are liable to taxation, and if the taxes remain unpaid, they may be sold like other lands, even though no patent may as yet have issued.
4. The right to tax attaches as well to donation entries as to cash entries, the particular land in either case, when the entry is made and certificate given, being segregated from the mass of public lands, and becoming private property.

The State of Arkansas, on her admission into the Union, made a compact with the general government not to tax the public lands within the state nor interfere with their primary disposal by the United States or with the regulations

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adopted by Congress for securing the title in them to purchasers. It was claimed that this compact had been broken by the decision of the Supreme Court of Arkansas in this case.

The facts on which the claim was based were these:

On the 23d day of May, 1828, a portion of the public domain within the limits of the Territory of Arkansas was by treaty ceded to the Cherokee Indians, west of the Mississippi River, and suitable provision made for the removal of the settlers from it. As an indemnity for the loss of improvements and the trouble and expense of removing, each settler who did remove was entitled by an act of Congress to enter, at the proper land office in Arkansas, two quarter sections of the public lands of the territory the sale of which was authorized by law.

The children of Timothy Harrell (one of the settlers on these ceded lands) furnished the requisite proof to the register and receiver of the land office, at Little Rock, of the settlement, removal, and subsequent death of their father, and were, on the 22d day of May, 1830, allowed to enter the lands in controversy. The proper certificate of this donation entry, as it is called, was transmitted, as is usual in land entries, to the General Land Office at Washington; but, for some unexplained

reason, a patent was not issued for the lands embraced in it until the 5th day of February, 1846. By mistake, owing doubtless to the neglect of the land officers at Little Rock to make the proper cancellation on their books and to the multiplication of land districts, these same lands were entered at the land office at Washington (within which district they were then included), on the 8th day of June, 1836, by G. W. Denton, who received the usual certificate of purchase. This entry was cancelled by the Commissioner of the General Land Office, on the issue of the patent to the heirs of Harrell, and in February, 1849, the purchase money refunded to Denton.

In 1842, these lands were listed for taxation by the authorities of Arkansas in the name of Denton, and sold (because the taxes were unpaid) to Duncan and Flanigan, the defendants

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in error, who received a deed for them after the time for redemption had expired, and, by means of a proceeding peculiar to Arkansas, had their title confirmed by the decree of the proper court of record. Hardy, deraining title through the heirs of Harrell, filed a bill in equity in the Circuit Court of Clark County, where the lands were situated, to annul the tax title thus acquired and to quiet his own title. The circuit court, at the hearing of the case, dismissed the bill, and on appeal the supreme court of the state affirmed the decree.

This writ of error was brought to review that decision.

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MR. JUSTICE DAVIS, after stating the case, delivered the opinion of the Court.

It is not the province of this Court to interfere with the policy of the revenue laws of the states, nor with the interpretation given to them by their courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with the taxes no matter who is the owner or in whose name it is assessed and advertised, and that an erroneous

assessment does not vitiate a sale for taxes.

Of course, the property must, under the compact, be taxable, but if it is, the mode of enforcing payment of taxes is wholly within legislative control. If, therefore, the lands in dispute could be taxed, the decision of the supreme court of the state is conclusive that the assessment, sale, and confirmation were regular, and divested the title derived through the heirs of Harrell. The taxability of the lands is then the only question which we are authorized to consider and determine.

The plaintiffs in error insist that the state had no power to impose a tax on them until the donation entry was actually confirmed and the patent had emanated. It is conceded that the power had been exercised, from an early period in

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the history of the state, to levy and collect a tax upon lands as soon as entered, and not to wait for the emanation of the patent -- a practice that has obtained in nearly all the Western states, whose admission was under a compact similar to that with Arkansas.

Arkansas covenanted to abstain from taxation of the public lands within her limits and to refrain from legislation that should impede the federal Government in disposing of them, or interfere with the regulations of Congress for the security of titles. It is clear that the government has not been hindered in selling them, nor Congress obstructed in securing titles; but it is claimed the contract has been violated, because these lands, when taxed, were owned by the United States. In no just sense can lands be said to be public lands after they have been entered at the land office and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the government has no power to revoke the entry and withhold the patent. A second sale, if the first was authorized by law, confers no right on the buyer, and is a void act.

According to the well known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting the facts, by

means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be a part of the public domain. The government agrees to make proper conveyance as soon as it can, and in the meantime holds the naked legal fee in trust for the purchaser, who has the equitable title. As the patent emanates directly from the President, it necessarily happens that years elapse before, in the regular course of business in the General Land Office, it can issue, and if the right to tax was in abeyance during this time it would work a great hardship to the state, for the purchaser, as soon as he gets his certificate of entry, is protected in his proprietary interest, can take possession, and make valuable and lasting improvements, which it

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would be difficult to separate from the freehold for the purpose of taxation. If it was the purpose of the acts of Congress, by which the new states were admitted into the Union, to prohibit taxation until the patent was granted, the national authority would never have suffered, without questioning it, the universal exercise of the power to tax on the basis of the original entry.

This question was fully considered by this Court in *Carroll v. Safford*, [*](#) and the views we have presented only reaffirm the doctrines of that case.

But it is insisted that there is a difference between a cash and a donation entry -- that the one may be complete when the money is paid, but the other is not perfected until it is confirmed by the General Land Office and the patent issued,

That Congress has the entire control of the public lands, can dispose of them for money, or donate them to individuals or classes of persons, cannot be questioned. If the law on the subject is complied with, and the entry conforms to it, it is difficult to see why the right to tax does not attach as well to the donation as to the cash entry. In either case when the entry is made and certificate given the particular land is segregated from the mass of public lands becomes private property. In the one case the entry is complete when the money is paid; in the other when the

required proofs are furnished. In neither can the patent be withheld if the original entry was lawful.

The power to tax exists as soon as the ownership is changed, and this is effected when the entry is made on the terms and in the modes allowed by law. If this were not so, those who, through the bounty of Congress, get a title to the soil, without money, would enjoy higher privileges and be placed on a better footing than the great body of persons who, by the invitation of the government, purchase lands with money. Such a discrimination could never have been contemplated by Congress.

These principles are well illustrated in the case at bar.

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The heirs of Harrell, by means of the Cherokee treaty, had a claim to two quarter sections of land in Arkansas. If they furnished proof to the register and receiver of the proper land office of the settlement and removal of their father, and it was accepted and the claim allowed, then they had an equal right to purchase the lands in question with this claim as with money. The claim was allowed, the selections made, and a certificate of entry given, and it was their duty to see that the taxes were paid. It is true, that the entry might be set aside at Washington, but this condition attaches to all entries of the public lands.

They took upon themselves the risk of confirmation, and periled their title when they suffered the lands to be sold for nonpayment of taxes. It does not appear from the record why the patent was so long delayed, but the claim was finally approved on the original proofs, and the patent, when issued, related back to the original entry. The lands were, therefore, under the laws of the state, properly chargeable with taxes from the date of the first entry in 1830.

The judgment of the Supreme Court of Arkansas is

Affirmed.

* [44 U. S. 3](#) How. 441, 450 [argument of counsel -- omitted].

