

Branson Vs. Wirth

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Court : US Supreme Court

Decided On : 1872

Appeal No. : 84 U.S. 32

Appellant : Branson

Respondent : Wirth

Judgement :

Branson v. Wirth - 84 U.S. 32 (1872)

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Branson v. Wirth

84 U.S. (17 Wall.) 32

IN ERROR TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF ILLINOIS

SYLLABUS

The government, as appeared by the *exemplification* of the record of a patent, had granted, January 10, 1818, to A. the northeast quarter of a certain tract of land, in pursuance confessedly of a warrant and location upon *that* quarter; the

exemplification of the record of the patent, however, showing that eight years after the date of the patent, a "memorandum" had been made [by whom did not appear] on this record, that the patent itself was issued for the *south* east quarter. The government had confessedly issued a patent to Z. for this *south* east quarter on the 7th of January, 1818 -- that is to say, three days before the date of the patent to A. -- for whatever corner the patent to A. really was. In 1819, A. conveyed to B. the *south* east corner, describing it as the quarter which had been granted by patent to him, January 10, 1818. In 1824, B. conveyed to C., describing the land as the *south* east corner. In 1825, C. conveyed to D., and in 1829 D. conveyed to E., the deeds of both these last describing the land as the *south* east corner, but the latter deed not being put on record. In 1837, a private act of Congress was passed authorizing the legal representative or assignee of A. to register with the register of the proper land office any unappropriated quarter section, &c.;, "in lieu of the quarter section patented to the said A. on the 10th of January, 1818, which had been previously patented to Z.," and in pursuance of this act, E. did, in 1838, enter another lot.

In 1843, on an assumption that the government had conveyed away its title to it, the *north* east quarter was sold under the laws of Illinois for state taxes and bought by O. And in 1868, on an assumption that the title was still in the government, the same quarter was patented by the United States to P.

On a suit by P. against O., *held*:

1st. On a supposition that the patent was given for the northeast quarter, that there was no estoppel shown either by the deeds from A. to E., both inclusive, or by the act of Congress (it being a private act), or by E.'s selection of a new lot which prevented the defendants from showing the truth of the case, to-wit, that the patent was for the *north* east quarter.

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2d. That the "memorandum" on the record being no part of the record, and but the memorandum of a third person, could not be received in evidence to contradict the

record.

3d. That accordingly it was error to have instructed the jury that the defendants had not shown outstanding title in the northeast quarter (the lot sued for), either in A. or in anyone under him, and that the plaintiff was entitled to recover.

Wirth brought ejectment against Branson and another for the recovery of the northeast quarter of section 18, in a certain township in Fulton County, Illinois. On the trial he made title under a patent from the United States to one Leonard for the lot in question, dated 20 February, 1868.

The defendants claimed title under a sale of the lot for taxes in 1843 under the laws of Illinois in consequence of the nonpayment of the taxes laid in 1839. But as public lands cannot be taxed, it was necessary for the defendants to show that the government title was extinguished prior to 1839. To do this, they gave in evidence, from the records of the General Land Office, an exemplified copy of a military land warrant for 160 acres of land issued to Giles Egerton, in December, 1817, a location thereof in his favor upon the lot in question on the 10th of January, 1818, and a patent to Egerton for the same lot dated on the same day. But on the margin of the exemplified copy of the patent was a memorandum, copied as follows, viz.:

[[Footnote 1](#)]

" *ENDORSED*"

"This patent was issued for the S.E. quarter instead of the N.E. quarter, as recorded; sent certificate of that fact to *E. B. Clemson* at Lebanon, Illinois. See his letter of 19 May, 1826."

The defendants did not offer this memorandum in evidence, and objected to its being read, but, at the instance of the plaintiff, it was allowed to be read to the jury.

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The defendants then gave in evidence a deed dated July 29th, 1819, from Giles Egerton to one Thomas Hart for "the *south* east quarter of section 18," &c.;

closing the description as follows:

"Which quarter section was granted to the said Giles in consideration of his military services, as will appear by a patent obtained from the general government, dated the 10th day of January, 1818."

[The defendants contended that the word " *south east*" in this deed was written by mistake, and should have been " *north east*."] They further adduced (and in support of this view) an exemplified copy of a patent from the United States to one James Durney (another soldier), dated January 7, 1818 (that is to say, three days before the alleged grant to Egerton), for this *south east* quarter of section 18.

The plaintiff in rebuttal gave in evidence deeds for the *south east* quarter section as follows: from Thomas Hart to Samuel Hunt, dated 12 May, 1824; from Hunt to E. B. Clemson, dated 7 April, 1825; and from Clemson to John Shaw, dated 20 October, 1829; the two former being regularly recorded; the last not recorded. The plaintiff then gave in evidence an act of Congress, approved March 3, 1827, entitled "An act for the relief of the legal representatives of Giles Egerton," by which it was enacted that the legal representative or assignee of Giles Egerton be

"authorized to enter with the register of the proper land office, any unappropriated quarter section of land in the tract reserved &c.;, *in lieu of the quarter patented to the said Giles on the 10th day of January, 1818, which had been previously patented to James Durney*, and upon such entry a patent shall issue to such representative or assignee for the quarter section so selected."

The plaintiff then proved that John Shaw entered another lot in April, 1838, in pursuance of this act. To all this evidence offered by the plaintiff in rebuttal the defendants objected.

It thus appeared from the records of the land office (barring the memorandum in the margin of the patent), that the

north east quarter of section 18, which was the lot in question, had been regularly entered under a valid land warrant and regularly patented, but it also appeared that the patentee, either by mistake of the scrivener or from some other cause, had conveyed to a third person the *south* east quarter of the same section as the lot so patented, and that the subsequent conveyances copied this description. Also that one of the subsequent grantees, several years afterwards, finding the *south* east quarter embraced in a prior patent, got leave from Congress to enter another lot in the place of it, and did so.

This was all the evidence in the cause. The patent itself was not produced, nor did it appear what had become of it.

The court instructed the jury that the defendants had not shown outstanding title to the lot in question, either in Giles Egerton or in anyone claiming under him, and that the plaintiff was entitled to recover. To this charge the defendants excepted.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

The court below instructed the jury that the defendants had not shown outstanding title to the lot in question either in Giles Egerton or in anyone claiming under him, and that the plaintiff was entitled to recover. To this charge the defendants excepted.

The court did not state the ground on which the charge to the jury was based -- whether on the ground that the original patent of Giles Egerton was in fact given for the southeast quarter section, and not for the northeast quarter or on the ground that Egerton and those in privity with him were estopped on that point.

We will first consider the ground of estoppel, on the supposition that the patent was or may have been in fact given for the lot in question, but that the supposed estoppel prevented Egerton and those in privity with him from alleging

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that fact. What, then, was this estoppel? Who was bound by it, and who can set it up?

The supposed estoppel is founded on the deed given by Egerton to Hart in July, 1819, for a lot described as the southeast quarter of section 18, and as granted to Egerton by his patent of January 10, 1818.

Now if the patent thus referred to was in fact for the northeast quarter, there was a mere mistake in the deed which might have been rectified in equity, or perhaps by a reference to the patent itself. But standing as it did, without being reformed, what at most was the estoppel which it created, and who could have taken advantage of it at that time? First, Egerton was technically estopped at law to deny that his patent covered the southeast quarter, which the deed in terms conveyed; secondly, this estoppel related only to the southeast quarter; thirdly, it existed only as between Egerton on the one side and Hart of the other, and their respective privies. Thus far, it did not bind the government, nor could the government take advantage of it, being a stranger to the estoppel. It did not impair the title of the government or of its patentee to the southeast quarter, assumed to be conveyed; nor did it reinvest the government with the title to the northeast quarter. If the original patent was in fact for the northeast quarter, the government could not have reclaimed that quarter against its own patent, whatever deed Egerton may have given to a third party for a different lot. And Egerton's heirs, or his grantees of the northeast quarter, would have stood in his place. And the defendants in this case, coming into possession of that quarter under a tax sale, are to be regarded in the same light (at least that is the plaintiff's claim) as Egerton himself would be if he were in possession of it.

Such was the position of the parties at the giving of the deed to Hart in 1819. Has anything since occurred to change that position and to divest the title of the lot in question out of Egerton or his legal assigns by estoppel? We think not.

The assumed title to the southeast quarter conveyed to

Hart passed from hand to hand by several mesne conveyances until, in 1827, the then grantee procured the act of Congress, authorizing him to enter another lot in lieu of the southeast quarter, which the act supposes to have been patented to Egerton, but previously patented to James Durney. It is contended that this act and the subsequent entry of another lot in pursuance of it, operated to estop Egerton and his grantees from claiming the northeast quarter.

But the legal estoppel which affected Egerton and his grantees, was not changed by that act. And in speaking of the grantees of Egerton, we must distinguish between those claiming under the deed to Hart, which assumed to convey the *southeast* quarter, and those claiming (as the defendants do) as grantees of the *northeast* quarter. The former class are those who are entitled to claim the benefit of the estoppel; the latter we are supposing to be bound by the estoppel. The act of Congress was procured in 1827 by the grantee under the deed to Hart, eight years after the date of that deed, and it recites that the patent was for the southeast quarter. Now it is well settled that recitals in a private act bind none but those who apply for it. [[Footnote 2](#)] The act in question was made for the benefit of the grantee under Hart's deed. He claimed the southeast quarter, but found that it had been patented to Durney, and he applied for leave to enter another lot. How can his act change or enlarge the estoppel by which Egerton and his grantees of the lot in question were bound before? A person entitled to the benefit of an estoppel may transfer it by transferring the estate, but he cannot change it or enlarge it. Every grantee of the southeast quarter, through Hart, to the end of time may estop Egerton and his assigns from denying that his patent was for the southeast quarter. But the government is not a grantee of that quarter under or through Hart. The government is still, in law, a stranger to the estoppel.

It is supposed that Egerton and his assigns are estopped by the fact that the government was induced to give to Egerton's

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grantee another lot in consequence of the declaration contained in his deed to Hart. This may be ground for an equitable estoppel, not a legal one, and therefore

not available in an action of ejectment where the title is in issue. If one person is induced to do an act prejudicial to himself in consequence of the acts or declarations of another on which he had a right to rely, equity will enjoin the latter from asserting his legal rights against the tenor of such acts or declarations. But then the person charged has an opportunity of explaining, and equity will decree according to the justice of the entire case. [[Footnote 3](#)] Had the government, after granting another lot to Egerton's grantee, in pursuance of the Act of Congress, filed a bill against Egerton to prevent him from asserting title to the lot in question, perhaps it would have been a good defense for him to have shown that the discrepancy in his deed was a mere mistake, and that the agents of the government had no right to rely on it, because their own records would have shown that the patent was in fact given for the northeast quarter. But however this may be, the only estoppel arising out of the transaction referred to, which the government could set up, was an equitable and not a legal one.

Even if it were otherwise and if the government could in any aspect of the case claim the benefit of the legal estoppel, it would be prevented from doing so by its own patent granted to Egerton. That would present the case of estoppel against estoppel, which Lord Coke says setteth the matter at large. [[Footnote 4](#)] No one can set up an estoppel against his own grant. Whoever else, therefore, might set up the estoppel against Egerton's title to the lot in question, the government could not do so. Its own patent would stand in the way. And whatever the government could not do, its subsequent grantees could not do.

It is suggested that Egerton's grantee, who procured the Act of Congress and a patent for another lot, represented Egerton, and by his acts bound Egerton in the same manner

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as himself. But this may well be questioned. He could bind himself by his own acts, but he could only bind Egerton to the extent of Egerton's deed, and the effect of that has been fully considered. Egerton never asked the government for another patent, nor did he authorize his grantee to do so. The transaction which took place

between that grantee and the government was, as to Egerton and his grantees of the lot in question, *res inter alios acta*.

The conclusion to which we have come on this part of the case is, that there was no estoppel shown by the evidence which would prevent the defendants from showing the truth of the case, as to which quarter section was actually granted to Giles Egerton by his patent of January 10, 1818.

This is therefore the next question to be considered. Had the patent itself been exhibited on the trial, it would have ended all controversy on the subject. But it was not exhibited, and it did not appear what had become of it. An exemplified copy, however, of the record of it, as it remains in the archives of the General Land Office, was produced. This showed that the patent was for the northeast quarter of section 18, being the lot in controversy. It was also shown from the same records that this lot had been duly entered in favor of Egerton, under his military land warrant, on the day of the date of the patent. It was further shown that the southeast quarter of section 18 had three days before been patented to another person, Durney. This cumulative evidence seems irrefragable to the effect that the patent was in fact given for the lot in controversy.

Against this evidence we have only, first, the description in the deed from Egerton to Hart, where the word "southeast" is used instead of "northeast;" secondly the memorandum in the margin of the record; and thirdly the recital in the act of Congress. As to the first, it is a kind of variance which so frequently occurs by mistake of the scrivener (as every surveyor and land lawyer knows), that it is scarcely worthy of a moment's consideration when opposed to the record of the patent. As to the second -- the memorandum made in the margin of the record -- it is not known when it

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was made, except that it must have been after the 19th of May, 1826, the date of the letter referred to in the memorandum itself, which was eight years after the date of the patent; nor is it known who made it, nor on what evidence it was made.

Such a memorandum, being no part of the record itself, cannot be received to contradict the record. It would be a very dangerous precedent to allow it to have that effect. It is not the record of any act of the department, nor of any document entitled to registry in its archives. It is nothing but a memorandum of a third person, and hearsay evidence at best.

As to the recital of the statute, whilst the recitals of public acts are regarded as evidence of the facts recited, it is otherwise, as we have seen, in reference to private acts. They are not evidence except against the parties who procure them. [[Footnote 5](#)] The statute in question is a mere private act, and cannot be received as evidence except as against the person who procured it, who was not Egerton, but his remote assignee under the Hart deed. It can only be used as evidence against the person on whom it acts as an estoppel.

We conclude, therefore, that the charge of the court below was erroneous, and that the judgment must be

Reversed with directions to award a venire de novo.

[[Footnote 1](#)]

The word "endorsed," in said memorandum, was in red ink. The rest of the memorandum in black ink.

[[Footnote 2](#)]

Elmondorff v. Carmichael, 3 Littell 472, 480; 2 Cowen & Hill's Notes 251.

[[Footnote 3](#)]

2 Smith's Leading Cases 702, 748, ed. 1866.

[[Footnote 4](#)]

Coke Littleton, 352 *b* ; 2 Smith's Leading Cases 658 [584].

[[Footnote 5](#)]

2 Phillips on Evidence 106, 6th Am. ed.

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