

Mccarthy Vs. Mann

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Decided On : 1873

Appeal No. : 86 U.S. 20

Appellant : Mccarthy

Respondent : Mann

Judgement :

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McCarthy v. Mann

86 U.S. (19 Wall.) 20

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF MINNESOTA

SYLLABUS

A., on the 13th of February, 1850, made an entry and location, which proved to be wholly void, of a land warrant on public land, and then conveyed to B. by deed with full covenants. B. conveyed to C. by a similar sort of deed, and C. conveyed to D., not by deed like the two just mentioned, but by a mere quitclaim; quitclaiming, however, all his right, title &c., "both in law and equity and as well in possession *as in expectancy*." The Commissioner of the General Land Office cancelled the entry &c., and set it aside as void, and A. took back his money. C. conveyed to D., and he to E. &c.; Congress now passed an act enacting

"That the entry of A. &c.; be and the same is hereby allowed and reinstated as of the date of said entry, so that the title to said lands may enure to the benefit of *his grantees as far as he may have conveyed the same*, provided that the money . . . shall be again paid at said land office and that thereupon a patent shall issue in the name of said A. for said lands."

A. paid the money again, and got a patent reciting the Act of Congress conveying the lands to him in fee.

C., after the passage of this act of Congress, conceiving that the two deeds with full covenants had by the process of estoppel vested him with a good title, but that his own deed of mere quitclaim had not vested his grantee, D., with any title through that means, or in any way, conveyed *de novo* to F. *Held* that the Act of Congress did vest him, through

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the process of estoppel, with a full title, and that this title had passed by his conveyance, though but a

quitclaim, to D., and of course that this subsequent deed (the one to F.) passed nothing.

McCarthy filed a bill in the court below against Mann (under a statute of Minnesota which enables any person claiming title to unoccupied land the title of which is claimed adversely to proceed in that way) to have the question of title to a piece of unoccupied land settled by the said court.

Both parties claimed under one French, in different ways, now to be mentioned.

The act establishing, in 1849, the Territory of Minnesota reserved certain sections of the public lands to be surveyed to the use of the public schools.

In 1850, one Peter Poncin, owning a warrant, caused the same, with the consent of the proper officers, to be located on a tract of the land thus reserved, and soon afterwards conveyed it by deed to one Pepin, his heirs and assigns, the deed being a deed of warranty, with the usual covenants "with the said Pepin, his heirs and assigns," and, among them, covenants that he, the said Poncin, was well seized in fee of the premises and had good right to sell and convey the same in manner and form aforesaid, and that he, the said Poncin, his heirs and assigns, would forever warrant and defend the said Pepin, his heirs and assigns, in the peaceable and quiet possession and enjoyment of all the said lands against any and all persons claiming, or who might claim, the same.

Pepin not long afterwards conveyed the land in fee to one French by deed of the same full, formal, and technical character as that just above described, by which Poncin had conveyed it to him, Pepin.

Soon after this, again, French made a deed of the land to one Elfelt. But the deed was not a deed like the preceding deeds, a deed with covenants such as above-mentioned, but

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was a deed by which French "remised, released, and forever quitclaimed," and by the same did "remit, release, and forever quitclaim" to Elfelt, and "to his heirs and assigns forever," all his "right, title, interest, estate, claim, and demand, both in law and equity, and *as well in possession as in expectancy*," to the land now in suit. The deed was therefore a deed commonly known as a "quitclaim," with, however, the special clause above italicized.

The warrant of Pepin under which all these conveyances had been made having been located on land reserved by the organic act of the territory for schools, was of course void, and on the 10th of March, 1852, the Commissioner of the General Land Office set it aside.

Notwithstanding this, however -- and after the commissioner had set the location aside -- Elfelt, the grantee last above-mentioned, conveyed to one Van Etten. this deed, like French's deed to Elfelt himself, being a deed of quitclaim.

Whatever title, or other thing capable of being made into a title -- if anything of either -- was thus vested in Van Etten became afterwards vested by sufficient deeds in Mann.

In this state of things -- these different deeds of different sorts having been made, and the location on which they all rested having been void and been set aside -- Congress came in, and in July, 1854, by "An act authorizing a patent to be issued to Peter Poncin for certain lands therein described," enacted:

"That the entry by Peter Poncin of . . . [the land now in question, describing it], cancelled by the Commissioner of the General Land Office, *be, and the same is hereby, allowed and reinstated as of the date of said entry, so that the title to said lands may enure to the benefit of his grantees as far as he may have conveyed the same.* "

The act contained a proviso that the money paid for said lands should not have been withdrawn, or, if withdrawn, should be again paid at the land office; and enacted that

thereupon a patent should issue *in the name of said Pater Poncin* for said lands.

After the passage of this act, Elfelt executed to Van Etten a further deed, the same being a deed of quitclaim.

And subsequently to this again, Poncin having paid into the land office the price of the lands which he had attempted to locate in 1850 with his warrant already mentioned, the United States (March 24, 1855) issued to him a patent. The patent, reciting the Act of Congress, proceeded thus:

"Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant *unto the said Peter Poncin, and to his heirs*, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Peter Poncin, and to his heirs and assigns forever."

In this state of things, French, who, it will be remembered, had received a deed with full covenants from Pepin -- the said Pepin having himself previously received a similar deed from Peter Poncin -- and which said French, thus, of course -- if he had never made any conveyance of the land, would, on the issue of the above-mentioned patent, have been invested with all Poncin's title, on the well known common law principle of estoppel -- conceived that there was such a difference in the nature of the two deeds, with full covenants, just mentioned, which brought the title to him and the deed of simple *quitclaim*, which he had given to Elfelt, and which was the only deed that he had executed to pass any title *out* from him, that while the said doctrine of estoppel would apply to the former and vest him with the title given to Poncin, by the Act of Congress and the patent, it would not apply to the latter, and therefore would *not* vest Elfelt or

anybody claiming under him with the title of Poncin, or, in other words, with the title of him, French.

He thereupon executed a second deed of quitclaim to an entirely distinct person, one Furber.

Under Furber, and through this last-mentioned deed of French, the complainant McCarthy claimed.

Under the previous one, to Elfelt, claimed, as already said, the defendant Mann.

The court below dismissed the bill and the complainant took this appeal.

MR. JUSTICE SWAYNE recapitulated the facts of the case, and delivered the opinion of the Court.

The appellant, under a remedial statute of the state, filed the bill to enforce his claim of title to the real estate in controversy. The court below decreed against him, and he thereupon brought the case to this Court by appeal for review. The facts, so far as it is necessary to state them, are as follows:

The premises were a part of the public domain of the United States. On the 13th of February, 1850, Peter Poncin entered at the proper land office a tract of a hundred acres. The premises are a part of that tract.

On the 28th of March, 1850, Poncin conveyed the entire tract to Pepin, by deed of warranty. On the 19th of April, in the same year, Pepin conveyed with warranty to French. On the 19th of March, 1851, French, by deed of quitclaim, conveyed all his right, title, and claim, "both in law and in equity, as well in possession as expectancy," to Elfelt.

On the 10th of March, 1851, the Commissioner of the General Land Office set aside Poncin's entry, upon the ground that the section in which the land was situated was reserved by the Act of March 3, 1849, for school

purposes.

On the 15th of October, 1853, Elfelt conveyed, by deed of quitclaim, to Van Etten.

On the 27th of July, 1854, an act of Congress was passed whereby the entry of Poncin was reinstated, and it was enacted that upon the payment of the purchase money a patent should issue to him.

On the 19th of October, 1854, Elfelt executed to Van Etten a further deed of quitclaim. On the 24th of October, 1854, Van Etten, by deed of quitclaim, conveyed the undivided half of the tract to Robertson. On the 31st of the same month, Poncin paid into the land office the price of

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the land, and on the 24th of March, 1855, the United States issued to him a patent for it. On the 22d of July, 1855, Robertson and Van Etten laid the tract out into lots and platted them as an addition to the city of St. Paul. This addition is now worth more than half a million of dollars. The lots and blocks of lots in controversy are parts of this addition. All the deeds beforementioned were duly executed and recorded.

On the 14th of January, 1856, French conveyed, by deed of quitclaim, the entire tract to Furber. On the 28th of June, 1856, Furber conveyed by a like deed to Dunn. On the 31st of July, 1856, Dunn executed a like deed to Hammond, and on the 20th of September, 1862, Hammond a like deed to McCarthy, the appellant. The deeds to Furber and Dunn were duly recorded. Those to Hammond and the appellant have never been recorded.

The act of Congress under which the second entry of Poncin was made, is as follows:

"An act authorizing a patent to be issued to Peter Poncin, for certain lands therein described."

"SEC. 1. *Be it enacted*, that the entry by Peter Poncin of the north half of the southeast quarter and the south half of the northeast quarter of section thirty-six, in township number twenty-nine, of range twenty-three, in Stillwater land district, Minnesota, cancelled by the Commissioner of the General Land Office, *be, and the same is hereby, allowed and reinstated as of the date of said entry, so that the title to said lands may enure to the benefit of his grantees as far as he may have conveyed the same*, provided, that the money paid for said lands shall not have been withdrawn, or, if withdrawn, shall be again paid at said land office, and that thereupon a patent shall issue in the name of said Peter Poncin for said lands."

"SEC. 2. *And be it further enacted* that the superintendent of public schools in said Territory of Minnesota, *be, and he is hereby, authorized to select other lands in lieu of said section thirty-six, as far as the same have been granted or sold.*"

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The first entry by Poncin was clearly void, and the commissioner was right in setting it aside. When the act in question was passed, the United States held the land as if no entry had been made. Being the absolute owners, they could grant it upon such terms and conditions as Congress might prescribe. The government united the powers of ownership and legislation, and both were exercised in passing the act. The act declared first that the entry should be reinstated as of its original date, and that a patent should issue to Poncin; second, that the title should enure to the benefit of his grantees as he should have conveyed the land. The law is explicit and there is no difficulty in carrying out its provisions. It must be liberally construed to effect the purposes of its enactment. By Poncin's grantees was meant those claiming title under him. Those to whom he might have conveyed were no more intended to be beneficiaries under the act, than those holding remoter links in the same chain of title. When he paid his money and procured a certificate of entry pursuant to the act, an equity vested in each of those who would have held it, if the original entry had been valid, and when the patent issued, the legal title vested in the same parties. The act applied the doctrine of relation. It made no distinction between grantees with warranty and those without it. If there had been outstanding title

bonds, they also would have been within the equity of the act, and the holders could have enforced them accordingly. The law and equity of the case are with the appellees, and the decree of the circuit court is

Affirmed.

* By the same act, the superintendent of the public schools, in Minnesota, was authorized to select other lands in lieu of the section now as above-mentioned disposed of.

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