Roughton Vs. Knight

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Court : US Supreme Court

Decided On : Feb-20-1911

Appeal No. : 219 U.S. 537

Appellant : Roughton

Respondent : Knight

Judgement :

Roughton v. Knight - 219 U.S. 537 (1911)
U.S. Supreme Court Roughton v. Knight, 219 U.S. 537 (1911)

Roughton v. Knight

No. 711

Submitted January 6, 1911

Decided February 20, 1911

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I N ERROR TO THE SUPREME COURT

OF THE STATE OF CALIFORNIA

SYLLABUS

As the Forest Reserve provision of the Sundry Civil Act of June 4, 1897, c. 2, 30 Stat. 36, did not prescribe the method which those entitled to avail of its provision should pursue, it was competent for the Secretary of the Interior to adopt the rules and regulations, which this Court has already held to be reasonable and valid, and entitled to respect and obedience. *Cosmos Co. v. Gray Eagle Oil Co.,* 190 U. S. 301 .

One not following the rules and regulations adopted by the Land Department for exchange of lands under the Forest Reserve Act and not accompanying his relinquishment deed with a proper selection in lieu of the land relinquished, and whose relinquishment was returned to him by the Department, did not become entitled to a selection and exchange after the repeal of the act.

Where one attempting to avail of the statutory provision to exchange under the Forest Reserve Act of 1897 failed to comply with the rules and regulations of the Land Department, and his relinquishment deed was returned to him, no contract was created with the government which saved him any rights under the repealing act of March 3, 1905, c. 1495, 33 Stat. 1264.

103 P.Rep. 844 affirmed.

The facts, which involve rights of a patentee under the forest law acts of June 4, 1897, and March 3, 1905, are stated in the opinion.

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MR. JUSTICE LURTON delivered the opinion of the Court.

The question in this case is whether the complainant below, and plaintiff in error here, has acquired a vested right to an exchange of a 160-acre tract of land owned by him and situated inside the exterior boundary of a forest reserve for a tract of public land of similar area by reason of acts done in compliance with the terms of that provision of the Forest Law Act of June 4, 1897, providing for such

exchanges. The Supreme Court of California sustained a demurrer and dismissed his

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bill. 156 Cal. 123. A writ of error to that court brings the case here for review as to the federal question.

That the complainant came within the terms of the Act of June 4, 1897, there can be no doubt. He owned 160 acres of patented land within the exterior lines of a public forest reservation, and was entitled to relinquish title to the United States, and receive a patent for 160 acres of public land outside the reservation, to be selected by himself. The provision of that act conferring this privilege is set out in the margin, being found in the Act of 1897, 30 Stat. 36, c. 2.{1}

The contention is that he lost his right because he neglected to make a selection, and thereby complete any exchange until the act extending the privilege was repealed by the Act of March 3, 1905, 33 Stat. 1264, c. 1495. The repealing act is set out in the margin.{2}

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Before the repeal of the act, the plaintiff in error, in pursuance of the provisions thereof and of the regulations prescribed by the Secretary of the Interior, did these things:

He executed a deed of relinquishment to the United States, and caused the same to be duly recorded in June, 1899. He deposited this deed, together with an abstract of title, in the land office of the United States for the proper district at Visalia, California. This was in June, 1899. It is then averred that the deed and the abstract were forwarded to the Commissioner of the Land Office at Washington, and reached there about June 25, 1899, and were there retained until January 3, 1905, when they were returned to the Visalia land office for delivery to the complainant, and were delivered to him January 9, 1905, and that no objection as to either form or sufficiency of the relinquishment was made by the Commissioner

or any other official of the United States. Thus the matter stood from January 9, 1905, until March 3, when the repealing act was passed.

On March 14, 1905, eleven days after the repealing act, the plaintiff in error undertook to make a selection, and for that purpose filed his application to select the 160 acres subsequently patented to the defendant, with notice of the prior selection so made by complainant. Upon these facts, he demanded that a patent should issue to him for the land so selected, but the Commissioner and the Secretary of the Interior denied power to issue any such patent, the law having been repealed before the selection was made.

The issue is a sharp one. The complainant insists that, when he made and delivered his deed with an abstract showing a clear title to 160 acres

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within a forest reservation, he became entitled to make a selection of 160 acres in lieu thereof at any time, and that the repeal of the act did not deprive him of the right to a patent for the land selected on March 14, 1905. The plaintiff in error does not bring himself within any of the exceptions to the repealing act. No selection actually made before the repeal has proven invalid, and there was no contract with the Secretary of the Interior to be saved from impairment, unless the acts referred to constitute, in and of themselves, such part performance as to constitute a contract with the Secretary of the Interior. That there was no such contract is evident from a consideration of the character of the exchange provision and the regulations adopted by the Secretary of the Interior, prescribing the method of carrying out the act. Upon its face the act is neither more nor less than a proposal by the government for an exchange of claims to land unperfected, or lands held under patents, situated within the exterior lines of a forest reservation, for an equal area of public land subject to entry elsewhere. The reasons for the provision are found in the disadvantages which result to such a settler or owner who had acquired his right before the creation of a reservation in the public lands surrounding him. He was thereby isolated from neighborhood association, and deprived of the advantage of schools, churches, and of increasing value to his own

land from occupation by others of the lands thus devoted to reservation purposes. But the act did not prescribe the method by which one so situated might avail himself of the proposal. It was therefore competent for the Land Department to adopt rules and regulations for the administration of the act in this particular, and this was done, and those rules are found in 24 L.D. 592, 593.

In *Cosmos Exploration Co. v. Gray Eagle Oil Co.,* 190 U. S. 301 , 190 U. S. 309 , these regulations are referred to as reasonable and valid rules,

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"entitled to respect and obedience." The regulations which have a bearing here are Rules 14, 15, and 16.

To take advantage of the proposal contained in this act, the applicant must select the land he wishes to receive in lieu, and file a sufficient relinquishment of land within a forest reserve. Manifestly there must be an acceptance of the relinquishment by someone authorized to decide upon its sufficiency, and an assent to the particular selection made in lieu.

It was not unreasonable that, in the administration of this act, the Land Department should limit the authority of any official to accept a relinquishment. As far back as April 14, 1899, the Secretary of the Interior construed the act and made the regulation before mentioned. In Hyde's Case, 28 L.D. 284, he instructed the Commissioner of the General Land Office that

"the officers of the Land Department are not authorized to accept, consider, or pass upon a relinquishment of the tract within the limits of a forest reservation, except in connection with a proffered or tendered selection of other lands in lieu thereof."

In the case of William S. Tevis, February 28, 1900, 29 L.D. 575, 576, the Secretary instructed the Commissioner in the same terms, saying:

"Paragraphs 15 and 16 of the rules and regulations issued June 30, 1897, under said act (24 L.D. 589, 592), clearly require that in all cases of exchange of lands

under said act, whether the land relinquished be 'a tract covered by an unperfected *bona fide* claim or by a patent,' an application to select lieu lands must accompany the relinquishment of the lands within the limits of a forest reservation."

In a ruling made February 24, 1960, 34 L.D. 458, in connection with the application for an exchange, the facts were nearly identical with those in the present case. The applicant filed his deed of relinquishment with abstract of title on January 12, 1905. He made no selection until March 30, 1905, a date subsequent to the repeal of the

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act. The proposal was rejected. Upon a review by the Secretary, the rejection was sustained upon the ground that

"no contract arises until a selection is made and the conveyance of the base tract filed in the Land Department. . . . Under the Act of June 4, 1897, it is the filing of the deed in the local land office and the selection of land in lieu of that relinquished which initiates the exchange. Until that time, the exchange is not initiated and is merely a purpose in the private owner's mind."

The regulation and practice of the Land Department in requiring that a deed of relinquishment shall be accompanied by a selection was not unreasonable. The return to this complainant of his deed of relinquishment several months before the repeal of the act was obviously due to his delay in presenting a case for the consideration of the Department.

That a proposal for an exchange of land within a forest reservation for lands outside may be withdrawn before acceptance is an obvious proposition. There having been no contract in force between this appellant and the Secretary of the Interior at the date of the repeal, he had no right to save under the exceptions in the repealing act.

There was no error in the judgment of the California Supreme Court, and it is therefore

Affirmed.

"That in cases in which a tract covered by an unperfected *bona fide* claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the government, and may select in lieu thereof a tract of vacant land open to settlement, not exceeding in area the tract covered by his claim or patent, and no charge shall be made in such cases for making the entry of record, or issuing the patent to cover the tract selected: *Provided, further,* that in cases of unperfected claims, the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims."

" *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Acts of June fourth, eighteen hundred and ninety-seven, June sixth, nineteen hundred, and March third, nineteen hundred and one, are hereby repealed so far as they provide for the relinquishment, selection, and patenting of lands in lieu of tracts covered by an unperfected *bona fide* claim or patent within a forest reserve, but the validity of contracts entered into by the Secretary of the Interior prior to the passage of this act shall not be impaired: *Provided,* that selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issued therefor the same as though this act had not been passed, and if for any reason not the fault of the party making the same, and pending selection is held invalid, another selection for a like quantity of land may be made in lieu thereof."