

Gilson Vs. United States

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Appeal No. : 234 U.S. 380

Appellant : Gilson

Respondent : United States

Judgement :

Gilson v. United States - 234 U.S. 380 (1914)

U.S. Supreme Court Gilson v. United States, 234 U.S. 380 (1914)

Gilson v. United States

No. 207

Submitted May 6, 1914

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APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

SYLLABUS

The settled rule of this Court that the concurring findings of two courts below will not be disturbed unless shown to be clearly erroneous applies where the evidence is taken before an examiner. *Texas & Pacific Railway Co. v. Louisiana Railroad Commission*, [232 U. S. 338](#) .

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Quaere as to what is the effect on a commuted homestead entry under 2301, Rev.Stat., of an agreement for alienation made after entry and before commutation, and see *Bailey v. Sanders*, [228 U. S. 603](#) .

185 F. 484 affirmed.

The facts, which involve the validity of a patent of the United States for a tract of land issued under a homestead entry, are stated in the opinion.

MR. JUSTICE PITNEY delivered the opinion of the Court.

This is an equity action brought by the United States against appellant to cancel a patent issued to one Daniel

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Landis for a tract of 120 acres of land in Yakima County in the State of Washington, afterwards conveyed by Landis to appellant. Landis made a homestead entry in November, 1899, under 2289 of the Revised Statutes as amended by Act of March 3, 1891, 26 Stat. 1098, c. 561; in November, 1902, he commuted the entry and purchased the land under 2301, as amended by the same act, and in July, 1903, he received a patent. Upon the day on which he made the commutation entry, he gave a mortgage upon the land to appellant, and from that date ceased to live upon it, and as soon as the patent was issued, he made the conveyance to appellant. The grounds of the action were that Landis did not enter the land in good faith, but for the purpose and with the intent of acquiring

title to it for appellant and at his instigation; that the residence and improvements were not sufficient; that the affidavit upon which Landis' original application was allowed was false and fraudulent, in that he did not make the application in good faith for the purpose of actual settlement and cultivation, but made it for the benefit of appellant, with whom the entryman was then acting in collusion for the purpose of giving to appellant the benefit of the entry; that the proof of settlement and cultivation offered in support of the commutation entry was false and fraudulent, in that the entryman had not made settlement in November, 1899, or at any other time; had not built a house, except a partially completed shanty; had not resided on the land, and had not broken thirteen acres and cultivated three acres, as alleged in his final proofs, and that the statement made in his affidavit that he had not alienated any part of the land was also false, in that he had alienated or agreed to alienate it to appellant.

The trial court found that Landis made the homestead entry at appellant's instigation and for his benefit; that the evidence on which the register and receiver allowed

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the commutation entry included sworn statements by Landis and two witnesses to the effect that the claimant had lived continuously on the land and made improvements, including a corral and chicken house, and that he had cultivated three acres for three seasons; that this was a false statement, there having been no plowing or cultivation except during the third year; that the land was dry sagebrush land, not productive without irrigation; that Landis made only a pretense of settlement and a show of improving the land, in order to satisfy the scruples of the witnesses upon whom he depended to make final proof, and further, that appellant was cognizant of every detail of the transaction from its inception to the issuance of patent, and, indeed, directed the proceedings at every step, and therefore could not claim to be a *bona fide* purchaser.

The circuit court of appeals concurred in this view of the facts, and therefore sustained the conclusion reached by the trial court that the patent should be

cancelled, without finding it necessary to consider the question of law, suggested by appellant, that, inasmuch as final proof was not made under 2291, but under 2301 of the Revised Statutes, the fact that the claimant had made an agreement before commutation to convey the land to another would not affect the validity of the title obtained from the United States, because 2301 prescribes as requisite to commutation, proof only that the entryman has made settlement, cultivation, and residence for fourteen months, and does not require him to make oath that he has not alienated any portion of the land. The decree was affirmed (1185 F. 484), and the present appeal was taken.

Upon the question of fact as to the fraudulent nature of the proof upon which the commutation entry was allowed, we have the concurring findings of two courts, which, according to the settled rule, will not be disturbed by this Court unless clearly shown to be erroneous. [Stuart](#)

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v. Hayden, [169 U. S. 1](#) , [169 U. S. 14](#) ; *Towson v. Moore*, [173 U. S. 17](#) , [173 U. S. 24](#) ; *Dun v. Lumbermen's Credit Assoc.*, [209 U. S. 20](#) , [209 U. S. 23](#) ; *Washington Securities Co. v. United States*, *ante*, p. [234 U. S. 76](#) .

In behalf of appellant, it is urged that this rule does not apply where the evidence is taken before an examiner, as was done in this case. The rule, however, is subject to no such exception; indeed, prior to the adoption of the new Equity Rules (226 U.S. 13, Appendix, Rule 46), the evidence in equity actions was usually taken before a master or examiner. And in *Texas & Pacific Ry. v. Louisiana Railroad Commission*, [232 U. S. 338](#) , where the findings of the special master who heard the testimony were set aside by the circuit court and the conclusions of that court were concurred in by the circuit court of appeals, we deemed the case a proper one for applying the general rule.

In the present case, not only does the argument submitted in behalf of appellant fail to show clear ground for disturbing the concurring findings of the two courts, but it raises no reasonable doubt of their correctness.

This renders it unnecessary to deal with the question raised as to the effect of an agreement for alienation made after entry and before commutation. However, it is settled adversely to the contention of appellant by our recent decision in *Bailey v. Sanders*, [228 U. S. 603](#) , [228 U. S. 608](#) .

Decree affirmed.

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