

Cordova Vs. Grant

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Court : US Supreme Court

Decided On : Jan-13-1919

Appeal No. : 248 U.S. 413

Appellant : Cordova

Respondent : Grant

Judgement :

Cordova v. Grant - 248 U.S. 413 (1919)

U.S. Supreme Court Cordova v. Grant, 248 U.S. 413 (1919)

Cordova v. Grant

No. 104

Submitted December 18, 1918

Decided January 13, 1919

248 U.S. 413

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF TEXAS

SYLLABUS

Plaintiff claimed, under the laws of Texas, land lying between the present and former beds of the Rio Grande. Defendant, claiming under Mexican grants, set up that, as plaintiff's title depended on whether the international boundary had shifted with the river, and as our government, though claiming and exercising *de facto* jurisdiction over the locus, conceded the true boundary to be unsettled, and by its treaties and acts with Mexico had agreed upon a commission with exclusive jurisdiction to settle it, the courts were thereby deprived of jurisdiction, and the case should be dismissed or the trial stayed until the boundary should be established. Our government had rejected the action of a commission which sat under the last of the treaties referred to, and had waived objection, based on comity, to the litigation. *Held* that the district court had jurisdiction and might properly proceed with the case, and that its holding to that effect did not involve the validity or construction of a treaty. P. [248 U. S. 419](#) .

Writ of error dismissed.

The case is stated in the opinion.

Page 248 U. S. 417

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action of trespass to try title to land in Texas lying between the present and former bed of the Rio Grande. The plaintiff (the present defendant in error) alleged that his testator and those under whom the latter claimed had held the land under color of title from the Texas for the several statutory periods of limitation, and that the defendant unlawfully entered when the plaintiff had the legal title in possession as devisee. The jurisdiction of the district court was based upon diversity of citizenship. The defendant pleaded that the plaintiff's title depended upon whether the land was within the United States, and that that depended upon whether the Rio Grande, established as the boundary in 1852, had changed its channel in such a way as to continue to be the boundary or not --

the land in question having been upon the Mexican side of the river in 1852 and now being on the side of the United States. The defendant

Page 248 U. S. 418

went on to allege that, while the United States now exercises a *de facto* jurisdiction over the territory where the land lies, it does so with the admission by treaty and diplomatic correspondence that the boundary is unsettled, and that

"the treaties and acts of the respective governments placing said boundary disputes within the jurisdiction of certain special authorities, of which this court must take judicial notice, must necessarily have deprived the courts of each of said republics of jurisdiction,"

etc. On this ground, it was prayed that the court either dismiss the case or stay the trial until the boundary should be established. Subject to this, the defendant pleaded not guilty and the ten years statute of limitation of Texas. The plaintiff demurred to the plea to the jurisdiction as showing on its face that the United States and Texas were exercising *de facto* jurisdiction over the land; set up that it was agreed between the United States and Mexico that Mr. Wilbur Keblinger should decide what lands in the disputed territory were proper subjects of litigation in the courts of the United States and of Texas, that he had decided this land to be such, and that his finding had been acquiesced in by both governments. He further alleged that the government of the United States always had claimed and now claims the land as belonging to the United States, and he denied all the defendant's allegations of fact.

It was agreed that the patents from the State of Texas under which the plaintiff claimed bounded the grants on the Rio Grande, and that, if the additions now in controversy had been made by accretion, they belonged to the plaintiff. It also was admitted, and agreed that the court, in deciding upon the demurrer, might notice that the United States, the State of Texas, and the County and City of El Paso were then and for many years before exercising government control and political jurisdiction over the property in question, and that the United States and

state had enforced their laws over the whole of the same. It was agreed further that the court might take notice of the correspondence between the Secretary of State, the Mexican Ambassador, and Keblinger, the opinion of the Boundary Commission, and the action of the United States thereon. It appeared from the documents that the United States, while admitting that the boundary line was in question between the two countries, never had admitted any derogation of its *de facto* jurisdiction over the tract; that it had suggested to the federal courts that, as a matter of comity, they should not put into execution writs of ejectment, etc., against persons alleging Mexican titles, but that it found it necessary to limit this comity so as to exclude from it persons who had no *prima facie* Mexican titles in order to stop occupation by squatters who were taking advantage of the government's forbearance. Keblinger was appointed to determine what persons showed a *prima facie* title. He decided against the defendant and, with the sanction of the government, informed the plaintiff that the government would not object if he should proceed.

The district court sustained the demurrer to the plea to the jurisdiction and the only color of right to bring the case to this Court by direct appeal consists in a suggestion that the construction of a treaty is involved.

The decision of a court that it has jurisdiction on the ground taken by the demurrer simply means that the court finds the government in fact asserting its authority over the territory, and will follow its lead. It does not matter to such a decision that the government recognizes that a foreign power is disputing its right and that it is making efforts to settle the dispute. The reference to Keblinger and his finding are important only as showing that there is no present requirement of comity to refrain from exercising the jurisdiction which, in any event, the courts possess. Jurisdiction is power and matter of fact.

The United States has that power, and the courts may exercise their portion of it unless prohibited in some constitutional way.

If the passage quoted from the answer is sufficient to open the contention that treaties had contracted for the establishment of a boundary commission with exclusive jurisdiction, and so had prohibited the courts from dealing with the question, neither the validity nor the construction of any treaty was drawn in question; or, if an attenuated question can be discovered, it is no more than formal. A commission sat under the last of the treaties, and its action was rejected by the government as abortive. As the government had withdrawn its suggestion of comity so far as the present case is concerned, there was no reason why the court should not proceed to trial, and there is no reason why the present writ should not be dismissed as it was in *Warder v. Loomis*, 197 U.S. 619, and in *Warder v. Cotton*, 207 U.S. 582. It follows that some other questions argued cannot be discussed.

Writ of error dismissed.