

Preston v. Tremble.

it ought to run against a non-resident merchant, from the time of his coming, though for a mere temporary purpose, within the country. The court cannot assent to the correctness of this reasoning. To render it applicable, the rejoinder ought to have averred that the plaintiff had become a resident of the state of Maryland, more than three years before the institution of the suit. Not having done so, the words of the exception have never ceased to be applicable to the plaintiff; and consequently, the statute has never commenced to run.

It is the opinion of this court, that the circuit court erred in overruling the demurrer of the plaintiff to the rejoinder of the defendant in this cause, and that the judgment be reversed and annulled, and the cause remanded, with instructions to render judgment on the said demurrer in favor of the plaintiff, and that further proceedings may be had therein according to law.

Judgment reversed.

PRESTON v. TREMBLE. (a)

Merger.

If an equitable title be merged in a grant, the party has no relief in equity, although the grant be void, as being contrary to law.

ERROR to the Circuit Court for the district of East Tennessee, who had dismissed the plaintiff's bill in chancery, upon demurrer, for want of equity.

The bill stated, that Preston, the complainant, had title to a tract of land, in the state of Tennessee, but the defendant, Tremble, fraudulently and deceitfully entered into it, and holds him out. *In setting forth *355] the title, it stated, that the land formerly lay within the state of North Carolina, during which time, one Ephraim Dunlop made an entry for the land, in regular form, paid the purchase-money to the state, and performed every other requisite to complete the contract; but before a patent was obtained, the legislature of North Carolina passed a law, defining the limits of the Indian boundary, declaring all entries and surveys already made within those limits, to be null and void, and directing the entry-takers to refund all moneys received therefor. That Dunlop never received back the purchase-money, nor consented to annul the contract. That the law of North Carolina, rescinding the contract, was void. That Dunlop afterwards obtained a warrant to survey the land, and obtained a patent therefor, from the state of North Carolina, and afterwards, conveyed the land to John Rhea, who conveyed to Preston, the plaintiff.

P. B. Key, for plaintiff in error, contended, 1. That the land was within the territorial limits of North Carolina, who had a right to grant it. 2. That the entry and payment of the purchase-money, vested in Dunlop an equitable estate in fee in the land. 3. That the act of May 1778, was void and inoperative, so far as it attempted to rescind the contract, and destroy the equitable estate of Dunlop. 4. That although the patent which was issued in 1793, in contravention of the law of May 1778, was declared void and inoperative, to convey the legal title, yet the equitable estate existed and remained in Dunlop. 5. That no legal title to the land having passed to

(a) February 23d, 1813. Absent, Todd, Justice.

The Penobscot.

Dunlop, the plaintiff could not maintain an ejection. 6. That when no adequate relief exists at law, a court of equity will interpose its authority, to protect an equitable estate, and by analogy, will give such full relief as a court of law would, had the title been legal. *7. That the demurrer [*356 ought to be overruled.

MARSHALL, Ch. J.—If your title is good at law, you have no case in equity. If you have any title, it is at law. If you have no title at law, you can have none in equity. The equitable estate is merged in the grant. This is an attempt to substitute a bill in equity for an action of trespass.

Decree affirmed.

The PENOBSCOT. (a)

The Brig PENOBSCOT v. UNITED STATES.

Non-intercourse law.

Under the non-intercourse law, a vessel, in March 1811, had no right to come into the waters of the United States to inquire whether she might land her cargo.

THIS was an appeal from the sentence of the Circuit Court of the district of Georgia, which affirmed that of the district court, condemning the brig Penobscot, and her cargo of salt, for a violation of the acts of congress, interdicting commercial intercourse with Great Britain and her dependencies (viz., the acts of March 1st, 1809, 2 U. S. Stat. 528; May 1st, 1810, Ibid. 605; the president's proclamation of November 2d, 1810, and the act of 2d March 1811, Ibid. 651).

By the 4th section of the act of March 1st, 1809, it was not lawful to import into the United States, or the territories thereof, any goods, wares or merchandise whatever, from any port or place situated in Great Britain or Ireland, or in any of the colonies or dependencies of Great Britain, nor from any port or place in the actual possession of Great Britain; nor to import into the United States, &c., from any foreign port or place whatever, any goods, wares or merchandise of the growth, produce or manufacture of Great Britain or Ireland, &c. By the 5th section, such goods so imported (or put on board any vessel, &c., with intent of importing, &c.), as *well as all other articles on board, belonging to the same owner, are [*357 liable to forfeiture, and by the 6th section, the vessel is subject to forfeiture, if the goods are laden on board, with the knowledge of the owner or master of the vessel.

The act of May 1st, 1810, and the president's proclamation of November 2d, 1810, announcing that France had so revoked the edicts of Berlin and Milan, as that they ceased to violate the neutral commerce of the United States, and the act of March 2d, 1811, are only referred to, as reviving and enforcing against Great Britain, the provisions of the act of March 1st, 1809.

The claim of the owners of the vessel and cargo stated, that the vessel sailed from Antigua, on the 12th of February 1811, and being crank and not sea-worthy, put into Turk's Island, for ballast, where she took in a load of

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