

PRESTON'S HEIRS *v.* BOWMAR.*Land-law of Kentucky.*

It is a universal rule, that course and distance yield to natural and ascertained objects.

But where these objects are wanting, and the course and distance cannot be reconciled, there is no universal rule, that obliges the court to prefer the one to the other.

Cases may exist, in which the one or the other may be preferred, according to the circumstances.

In a case of doubtful construction, the claim of the party in actual possession ought to be maintained, especially, where it has been upheld by the decisions of state tribunals.

Preston's Heirs *v.* Bowmar, 2 Bibb 493, affirmed.

*581] ***ERROR** to the Circuit Court of Kentucky. This was an ejectionment, brought in the court below, in which the lessor of the plaintiff claimed title under a patent, describing the survey as "beginning at an ash, in the middle of a line of Glenn's land, and with it, north 20 degrees east, 800 poles, crossing three branches to a hoop-wood and sugar tree, corner to Moffat's land, and with a line thereof, north 70 degrees west, 100 poles, crossing the creek to a sugar tree, south 33 degrees west, 820 poles, crossing three forks of the creek, to two sugar trees, south 70 degrees east, 300 poles, to the beginning." The question arising upon the construction of this patent, is stated in the opinion of the court.

March 12th, 1821. This cause was argued by *B. Hardin*, for the plaintiff, and by *Talbot*, for the defendant.

March 16th. **STORY**, Justice, delivered the opinion of the court.— Whatever might be our opinion (and we wish to be understood as expressing none), if the question in this case were entirely new, it cannot be affirmed, that there has been such a clear mistake of construction, as that justice and law require us to depart from the decision of the local tribunals. The question here is, whether the third and fourth lines of this patent (following the order of the lines as they are given in the patent) are to be continued upon the courses called for by the patent, until they intersect, or whether the fourth line is to be extended from the beginning to the distance called *582] for by the patent, and then, the closing line is to be drawn, so as to strike the termination of the second and fourth lines, at the patent distances. In the former case, the fourth line will be longer than the distance called for by the patent; in the latter, the third line will vary from the course called for by the patent. The counsel have stated, that the question resolves itself into this, whether the course shall yield to distance, or distance to the course.

It may be laid down as an universal rule, that course and distance yield to natural and ascertained objects. But where these are wanting, and the course and distance cannot be reconciled, there is no universal rule that obliges us to prefer the one or the other. Cases may exist, in which the one or the other may be preferred, upon a minute examination of all the circumstances. In the present case, whichever construction is adopted, the plaintiffs will hold a larger portion of land than their patent calls for. We must consider, that the construction of the patent is somewhat doubtful. That it is susceptible of two constructions, each of which has some reasons to support it. If it be doubtful, it would seem reasonable, not to press the broadest construction, against a party, who is now in actual possession under a per-

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fectly good legal title. That possession ought not to be ousted, without a clear title in the other party, especially, where it has been upheld by the state tribunals. This very case, between the same parties, has been already adjudicated in the court of appeals of Kentucky; and that court, upon full deliberation, decided *in favor of the defendant. *Preston's Heirs v. Bowmar*, 2 Bibb 493. It would be a great mischief, for the same [*583 title to be in perpetual litigation from the conflict of opinion between the courts of the state and the federal courts; and we, therefore, acquiesce in the opinion of the court of appeals, upon the ground, that the point is one of local law, has been fully considered in that court, and is a construction which cannot be pronounced unreasonable, or founded in clear mistake.

Judgment affirmed.

OTIS v. WALTER.

Embargo.

Under the embargo act of the 25th April 1808, c. 170, if a vessel, not actually arriving at her port of original destination, excite an honest suspicion in the mind of the collector, that her demand of a permit to land the cargo was merely colorable, this is not a termination of the voyage, so as to preclude the right of detention.

Under what circumstances, the collector has a right to land the cargo of the vessel thus detained.

ERROR to the Supreme Judicial Court of Massachusetts.

March 12th, 1821. This cause was argued by the *Attorney-General*, for the plaintiff in error, and by *Webster* and *Wheaton*, for the defendant in error, citing *Otis v. Bacon*, 7 Cranch 596; *Crowell v. McFadden*, 8 Ibid. 98; *Slocum v. Mayberry*, 2 Wheat. 11.

*March 16th. LIVINGSTON, Justice, delivered the opinion of the [*584 court.—This is an action of trover, brought by the defendant in error, against the plaintiff and others, in the court of common pleas, held at Boston, within and for the county of Suffolk, to recover the value of eighty-six barrels of flour, and sundry other articles, in which judgment was recovered against the plaintiff in error, from which judgment there was an appeal to the supreme judicial court, which is the highest court of law in the commonwealth of Massachusetts, in which judgment was rendered against the plaintiffs in error, for the sum of \$2488.75, and costs of suit, and in favor of the other defendants. On the judgment, the defendant below, William Otis, has prosecuted a writ of error to this court, under the 25th section of the judiciary act of the United States; and we are now to decide, whether there was any error in the direction given by the judge before whom this action was tried, and which appears on the bill of exceptions attached to the record in this cause.

The property in question had been seized by William Otis, as deputy-collector of the customs for the port and district of Barnstable, in the commonwealth of Massachusetts, under the 11th section of an act in addition to the act, entitled, “an act laying an embargo on all ships and vessels in the ports and harbors of the United States,” and the several acts supplementary