

Watts v. Lindsey.

were transferable. It is obvious, that the transfer, if no law forbade it, would be made on a separate paper. If any particular mode of authentication was necessary, the law ought to have prescribed that mode. This not being done, the mode was left to the parties. The subsequent act of the legislature of Virginia, rather shows the mischief which had grown out of this state of things, and of the practice under the law, than that the practice under the law was contrary to the legislative construction of it.

This is one of those cases in which the equity of the plaintiffs is not, we think, sufficiently proved, to deprive the defendants of their legal title.

Decree affirmed, with costs.

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*WATTS v. LINDSEY'S Heirs and others.

Land-law of Ohio.

It is a rule at law, and in equity, that a party must recover on the strength of his own title, and not on the weakness of his adversary's title.¹

To support an entry, the party claiming under it must show, that the objects called for are so described, or are so notorious, that others, by using reasonable diligence, can readily find them.

The following entry was pronounced, under the circumstances, to be void, for uncertainty : " 7th of August 1787, Capt. Ferdinand O'Neal enters 1000 acres, &c., on the waters of the Ohio, beginning at the north-west corner of Stephen T. Mason's entry, No. 654, thence with his line, east 400 poles, north 400 poles, west 400 poles, south 400 poles : " The entry of Stephen T. Mason referred to being as follows : " 7th of August 1787, Stephen T. Mason, assignee, &c., enters 1000 acres of land, on part of a military warrant, No. 2012, on the waters of the Ohio, beginning 640 poles north of the mouth of the third creek running in front of the Ohio, above the mouth of the Little Miami river : thence running west 160 poles ; north 400 poles ; east 400 poles ; thence to the beginning."

The Ohio and Little Miami rivers are identified and notorious objects ; but the third creek above the mouth of the Little Miami is to be taken according to the numerical order of the creeks, unless some other stream has, by general reputation or notoriety, been so considered.

Cross creek, the stream which the party claiming under O'Neal's entry, assumed for the beginning, to run the 640 poles north from the mouth of the third creek as called for in Mason's, not being in fact numerically the third creek above the mouth of the Little Miami, and there being no satisfactory proof that it had acquired that designation by reputation—the claim was pronounced invalid.

APPEAL from the Circuit Court of Ohio.

February 10th, 1882. This case was argued by *Doddridge*, for the appellant, and by *Brush*, for the respondents.

*159] *March 1st. Tonn, Justice, delivered the opinion of the court.—This controversy arises from entries for lands in the Virginia military reservation, lying between the Scioto and Little Miami rivers, in the district of Ohio. The plaintiff in the court below (Watts) exhibited his bill in chancery, for the purpose of compelling the respondents to surrender the legal title, acquired under an elder grant, founded on a surveyor's entry, than the one under which he derives his title. The entry, set forth in the bill, and claimed by the plaintiff, is in the following words :

" 7th August 1787 : Captain Ferdinand O'Neal enters 1000 acres, &c.,

¹ Gilmer v. Poindexter, 10 How. 267. ;

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on the waters of the Ohio, beginning at the north-west corner of Stephen T. Mason's entry, No. 654, thence with his line, east 400 poles, north 400 poles, west 400 poles, south 400 poles."

The entry of Stephen T. Mason, referred to in the above entry, is in the following words :

"7th August 1787 : Stephen T. Mason, assignee, &c., enters 1000 acres of land on part of a military warrant, No. 2012, on the waters of the Ohio, beginning 640 poles north from the mouth of the third creek running into the Ohio, above the mouth of the Little Miami river ; thence running west 160 poles ; north 400 poles ; east 400 poles ; south 400 poles ; thence to the beginning."

The respondents, in their answers, deny the validity of O'Neal's entry ; allege that it is vague and uncertain, and that the survey made on it includes no part of the land described in the entry, and if properly *surveyed, would not interfere with any part of the land to which [*160 they claim title ; that the creek selected by the complainant as the third creek, in the entry of Mason, on which that of O'Neal depends, is not, in truth and in fact, the third creek running into the Ohio above the mouth of the Little Miami river ; but that another is. The depositions of several witnesses were taken, and other exhibits filed in the cause. Upon a final hearing in the circuit court, a decree was pronounced dismissing the plaintiff's bill. The cause is now brought into this court by appeal, and the principal question to be decided is, whether from the allegations and proofs in the cause, the entry claimed by the plaintiff can be sustained, upon sound construction, and legal principles arising out of the land laws applicable thereto.

Before we go into an examination of that question, we will dispose of some preliminary objections made by the counsel for the respondents. They were, that attested copies of the entries and patent referred to, and made exhibits in the bill, are not in the record ; that there does not appear in the record any assignment, or proof of an assignment, from O'Neal to the plaintiff. Nor does it appear from the plat, where the entry of O'Neal was actually surveyed, nor does it designate the creeks running into the Ohio above the mouth of the Little Miami river, so as to ascertain the third creek. Some of these objections seem to be well founded, and might induce the court to dismiss the bill, but such dismissal should be without prejudice to the *commencing of any other suit the party might choose to bring ; the effect of which would be only turning the [*161 parties out of court, without deciding the merits of the cause. We have, therefore, attentively examined the record, and are of opinion, it contains enough to get at and decide the merits.

It has been long and well established, as a rule of law and equity, that a party must recover on the strength of his own title, and not on the weakness of his adversary's title.

In order to uphold and support an entry, it is incumbent on the party claiming under it, to show that the objects called for in it are so sufficiently described, or so notorious, that others, by using reasonable diligence, could readily find them. As O'Neal's entry is dependent on Mason's, if the objects called for in the latter can be ascertained, the position of the former can be precisely and certainly fixed.

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The Ohio and Little Miami rivers, from general history, the one having been used before, at and since the time when these entries were made, as the great highway in going from the eastern to the western country, and each of them having been referred to in general laws, and designated as boundaries of certain districts of country, we consider, must be deemed and taken as being identified and notorious, without further proof. The third creek, running into the Ohio, above the mouth of the Little Miami river, is then the only and principal object to be ascertained, to fix the entry of Mason, *162] with specialty and precision. The plaintiff *has assumed, what is now called Cross creek, for the beginning, to run the 640 poles north from the mouth of the third creek, as called for in Mason's entry. The respondents contend, that what is now called Muddy creek, and sometimes Nine Mile, is "the third creek."

It seems to be admitted, in argument, that Cross creek is not, in truth and in fact, numerically the third creek above the mouth of the Little Miami. But the counsel for the plaintiff contends, that the early explorers of the country, when the entries were made, designated Muddy creek as the second. That streams, then called creeks, have since been degraded into runs, and other streams, then called runs, are now termed creeks. If this argument was supported by the proofs in the cause, it would be entitled to great consideration; but upon a careful and minute examination, there is a great preponderance of testimony against it; there is the deposition of one witness that affords some foundation for it; there are also the depositions of many witnesses who contradict it. But waiving this testimony, and examining this entry upon its face, it is obvious, that subsequent locators and explorers, commencing their researches at the mouth of the Little Miami river, would examine the creeks emptying into the Ohio above, according to their numerical order. The words "the third creek," emphatically applies to that order; nor would they depart from it, unless another stream, by general reputation and notoriety, had been so considered. It has, however, never *163] been held, that reputation or notoriety *could be established by a single witness; and it may be further observed, that the other witness, whose deposition has been taken on the part of the plaintiff, states, that he had meandered the Ohio, and in his connection, had laid down Muddy or Nine Mile creek, as the third, and that he so considered it, until the year 1806 or 1807, when from the information of the other witness, and an examination of the entries and surveys on the books of the principal surveyor, he was induced to change his opinion. It is also in proof, that the plaintiff and the last-mentioned witness, in searching for O'Neal's entry, claimed a different creek as being the third, and directed the survey to be commenced from it. If then, a locator and deputy-surveyor, who had meandered the Ohio, and designated Muddy creek as the third, and had so considered it for nearly ten years, it is surely a strong circumstance to show negatively, that Cross creek was not in fact numerically, nor by general reputation or notoriety, considered as "the third creek." If an examination of the records in the principal surveyor's office would show that the streams were designated and numbered differently, it was incumbent on the party to exhibit, at least, so much thereof as would conduce to prove the fact. It is incompetent to prove it by parol.

Matthews v. Zane.

Upon mature consideration of the whole case, it is the unanimous opinion of the court, that the decree of the circuit court be

Affirmed, with costs.

*MATTHEWS v. ZANE and others.

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Error to state court.—Public lands.—Statute.

A party claiming title to lands under an act of congress, brought a bill for a conveyance, and stated several equitable circumstances in aid of his title; the state court where the suit was brought, dismissed the bill, and the cause was brought to this court by appeal, under the 25th section of the judiciary act of 1789, upon the ground of an alleged misconstruction of the act of congress by the state court: *Held*, that this court could not take into consideration any distinct equity arising out of the contracts or transactions of the parties, and creating a new and independent title, but was confined to an examination of the plaintiff's title, as depending upon the construction of the act of congress.¹

The lands included within the Zanesville district, by the act of congress of the 3d of March 1803, § 6, could not, after that date, be sold at the Marietta land-office.

A statute, for the commencement of which no time is fixed, commences from its date.²

The decision of this court in *Matthews v. Zane*, 5 Cranch 92, revised and confirmed.

APPEAL from the Supreme Court of the State of Ohio, being the highest court of equity of that state, under the 25th section of the judiciary act of 1789, c. 20.

The bill filed by the plaintiff, Matthews, in the state court, was brought for the purpose of obtaining from the defendants, Zane and others, a conveyance of a tract of land to which the plaintiff alleged that he had the equitable title, under an entry, prior to that on which a grant had been issued to the defendants. *The validity of his entry depended on the construction of the act of congress of May 19th, 1800, c. 209, the 6th section [*165 of the act of March 3d, 1803, c. 343, and the act of the 26th of March 1804, c. 388, all relating to the sale of the public land in the territory north-west of the river Ohio.

The case stated, that on the 7th of February 1814, the plaintiff applied to the register of the Marietta district, and communicated to him his desire to purchase the land in controversy. The office of receiver being then vacant, no money was paid, and no entry was made; but the register took a note or memorandum of the application. On the 12th of May 1804, soon after the receiver had entered on the duties of his office, the plaintiff paid the sum of money required by law, and made an entry for the land in controversy, with the register of the Marietta district. In pursuance of the 12th section of the act of the 26th of March 1804, c. 388, and of instructions from the secretary of the treasury, the sale of the lands in the district of Zanesville (which had been formed out of the Marietta district, and included the land in controversy), commenced on the 3d Monday of May 1804, and on

¹ *s. p. Ross v. Barland*, 1 Pet. 655.

² *Warren Manufacturing Co. v. Etna Ins. Co.*, 2 Paine 502. Every bill takes effect as a law, from the time of its approval by the president, and then its effect is prospective, not retrospective; the doctrine, that in law, there is no fraction of a day, is a mere legal fiction, and has no application to such a case. *Richardson's Case*,

2 Story 571; *Ankrum's Case*, 3 McLean 285; contra *Welman's Case*, 20 Vt. 653; *Howes's Case*, 21 Id. 619. It is not, however, necessary, to the validity of a statute, that the president should affix a date to his approval of it; the time of its actual approval may be shown *abundante*. *Gardner v. The Collector*, 6 Wall. 499.