
 Udell et al. v. Davidson.

*GRANT B. UDELL AND JACOB MILLER, PLAINTIFFS [*769
IN ERROR, v. ALEXANDER B. DAVIDSON.

The act of 1838, (5 Stat. at L., 251,) relating to preëmption rights, provides, that "before any person claiming the benefit of this law shall have a patent for the land which he may claim, by having complied with its provisions, he shall make oath, &c., that he entered upon the land which he claims in his own right, and exclusively for his own use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title which he might acquire from the government of the United States should enure to the use and benefit of any one except himself, or to convey or transfer the said land, or the title which he may acquire to the same, to any other person or persons whatever, at any subsequent time."

Where a preëmptioner sold his inchoate title, which passed ultimately into the hands of a trustee, and the trustee loaned money out of the trust fund to the preëmptioner, in order to enable him to pay the government; and the title thus obtained from the United States was conveyed by the preëmptioner to the trustee, without any reference to the trust; and the trustee was ordered by a State court to hold the property subject to the trust,—he cannot remove the case to this court, by virtue of the twenty-fifth section of the Judiciary Act.

There is no title, right, privilege, or exemption, under an act of Congress, set up by the party and decided against him by the State court. By his own showing, he has acquired no title from the United States.¹

The allegation is, that a fraud was perpetrated upon the government, and another meditated upon the *cestui que trust*, both of which this court is called upon to maintain and carry out.²

The case is dismissed for want of jurisdiction.

THIS case was brought up from the Supreme Court of the State of Illinois, by a writ of error issued under the twenty-fifth section of the Judiciary Act.

The facts in the case are sufficiently set forth in the opinion of the court.

A motion to dismiss it, for want of jurisdiction, was made by *Mr. J. Mason Campbell*, which motion was sustained by him and opposed by *Mr. Coxe*.

Mr. Chief Justice TANEY delivered the opinion of the court.

A motion has been made to dismiss this case, for want of jurisdiction.

It appears that a man by the name of Gregory had obtained, by residence on the land mentioned in the proceedings, a right of preëmption, under the act of Congress of 1838. But, before he paid the price fixed by the government

¹ CITED. *Walworth v. Kneeland*, 15 How., 353.

² IN POINT. *Henderson v. Tennessee*, 10 How., 323.

Udell et al. v. Davidson.

in such cases, or made the entry, he sold his right to Miller, one of the plaintiffs in error. Miller afterwards conveyed to a man by the name of Joslyn, in secret trust for himself, and subject to his control. Subsequently to this conveyance, Joslyn, by the direction of Miller, conveyed to Udell, the other plaintiff in error, in trust to sell to the highest bidder, and apply the proceeds to the payment of the creditors of Miller, *pro rata*, if they were not sufficient to pay all demands.

*Udell accepted the trust, and, after having done so, *770] made an agreement with Gregory, by which Gregory was to enter the land at the proper office, at the preëmption price, and then convey to Udell in trust, for the benefit of Miller's creditors, reserving a small portion of the land to Gregory himself. Udell was to furnish the money to enable Gregory to make the entry.

Under this agreement, Udell executed a release to Gregory of all his right to the land, in order to enable him to make the entry as preëmptioner, and at the same time took from him a note for a thousand dollars, which was to be given up if Gregory made the conveyance according to his agreement.

The land was worth a thousand dollars. The government price to the preëmptioner was only two hundred dollars, which sum was advanced by Udell to Gregory. One hundred and fifty dollars of this money belonged to the creditors of Miller, and was so applied at his request, and upon his statement that this application would be for the interest of his creditors. The remaining fifty was advanced by Udell, to be repaid out of the proceeds of the land when sold. But it does not appear that the defendant in error, or indeed any of Miller's creditors, sanctioned this transaction at the time, or had knowledge of this application of the trust funds.

With the money thus obtained, Gregory made the entry, and then executed a deed to Udell. This deed, upon the face of it, is absolute, and contains no trust for the creditors.

After having thus obtained a conveyance, Udell refused to execute the trust, and therefore the defendant in error, as one of the creditors of Miller, in behalf of himself and the other creditors, filed a bill in chancery, setting out more at large the facts above stated, and praying that the land might be sold for their benefit, in pursuance of the trust.

The plaintiffs in error demurred to the bill, assigning various causes of demurrer, and, among others, that the transaction with Gregory, by which Udell obtained a conveyance, was in violation of the act of 1838.

The chancery court, upon the hearing, decided that the

land in the hands of Udell was chargeable with the trust, and directed it to be sold, and the proceeds to be applied accordingly. This decree was affirmed in the Supreme Court of the State, and the present writ of error has been presented upon that judgment.

It is unnecessary to notice any of the various causes of demurrer assigned by the plaintiffs in error, except that which relies on the provisions of the act of 1838. For this being a writ of error to a State court, we have no right to revise its *decision upon any of the other causes [*771 assigned, and the only question before this court is, whether any title, right, privilege, or exemption, claimed by the plaintiffs in error in the State court under this act of Congress, was drawn in question and decided against them.

They do not claim that Udell obtained a valid title by the entry made by Gregory, and his subsequent conveyance to Udell. And if their defence had been placed on that ground, it would not have given jurisdiction to this court, because the proceeding to charge it with a trust created by contract would have been no impeachment of the grant made by the United States.

They defend themselves upon the ground, that the transaction between them and Gregory, by which the entry was made under a previous contract to convey, was a violation of the act of 1838. This is undoubtedly true; for the act requires the party who claims the right of preëmption by residence to make oath that he has not contracted to sell or transfer the land to any other person. And he is not permitted to purchase at the low price at which the person entitled to preëmption is allowed to buy, until this oath is taken and filed with the register of the land-office. And if he swears falsely, he is liable to an indictment for perjury, and forfeits all title to the land, and deeds made by him convey no title, unless they are made to a *bonâ fide* purchaser without notice.

The plaintiffs in error admit that they participated in the fraud, and consequently Udell, upon their own showing, has acquired no right to the land under the act of Congress on which he relies. They do not claim that he obtained a valid title under the law, but insist that the transaction was against its policy, and in violation of its principles. What right or privilege does he then claim under this act of Congress? It is this. He not only admits, but insists, that, by a fraud upon the government, he has obtained a deed to himself for this land, and that he, being trustee for the creditors of Miller, used the money which belonged to his *cestui que trusts* to

 Neilson v. Lagow.

accomplish his purposes; and now contends, that, by means of this fraud upon the government, he has acquired under this act of Congress a right to perpetrate a fraud also upon his *cestui que trusts*.

This, in plain words, is the amount of his defence; and this is the right or privilege which he claims under the provisions of the act of 1838, and calls upon this court to recognize and maintain. We shall not comment on such a claim. The writ of error must be dismissed, for want of jurisdiction.

ORDER.

This cause came on to be heard on the transcript of the *772] record from the Circuit Court of Winnebago county, State of Illinois, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that this writ of error be, and the same is hereby, dismissed, for the want of jurisdiction.

 HALL NEILSON, PLAINTIFF IN ERROR, v. WILSON LAGOW.

Where, upon the trial of a case in a State court, a party claims the land in dispute, under an authority which he alleges has been exercised by the Secretary of the Treasury in behalf of the United States, and the decision was against the validity of the authority, the party is entitled to have his case brought to this court under the twenty-fifth section of the Judiciary Act.¹

THIS case was brought up from the Supreme Court of Indiana, by a writ of error issued under the twenty-fifth section of the Judiciary Act.

As a motion was made to dismiss it for want of jurisdiction, and the merits of the case were not discussed, a brief statement of the facts will be sufficient.

It was an action of disseizin, similar to an ejectment, brought by Lagow in the Circuit Court for the County of Knox and State of Indiana, against Neilson, Billis, and Thomas, to recover possession of a piece of property known by the name of the Steam-mill Tract, lying in the town of Vincennes. Billis and Thomas disclaimed all interest, and the suit was carried on by Neilson alone. On the 19th of September, 1821, Lagow and others conveyed the property to the President, Directors, and Company of the Bank of

¹ FURTHER DECISION. 12 How., 98. CITED in dissenting opinion. Gill v. Oliver's Exec., 11 How., 549.