
 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.

Vincennes, their successors and assigns, for ever, for the consideration of \$98,000.

On the 1st of July, 1822, the bank conveyed this property to Badollet, Harrison, and Buntin, and their successors, in trust for the use of the Secretary of the Treasury of the United States, in extinguishment of the debt due by the bank to the United States. The trustees were to sell whenever requested by the Secretary of the Treasury, and continue to pay until the United States were paid the sum of \$120,308, with interest. The Secretary of the Treasury was vested with power to fill up vacancies in the trust.

In July, 1822, there came on for trial in the court at Vincennes a *quo warranto*, which had been issued by the State of Indiana against the bank. The jury found a verdict of guilty, and the court decreed that all the franchises and property of the bank should be seized for the use of the State. The *sheriff returned that he had seized the [*773 franchises; but being unable to find any effects of any nature soever of the bank, he was unable to obey the command of the writ in respect to them. The writ was issued on the 6th of July, and the return made on the 19th of August, 1822.

In November, 1823, a judgment for \$123.80 was obtained in the court at Vincennes against Lagow and the other partners of the steam-mill company, and execution issued thereon. The property in question was levied upon, sold at auction, and purchased by Lagow, to whom a deed was executed by the sheriff on the 26th of December, 1823.

In 1826, another sale of the property took place, by authority of the Supreme Court of Indiana. Badollet, Harrison, and Buntin, the trustees, had filed a bill and obtained a decree against Lagow and his partners in the State court, which was carried up to the Supreme Court. That court ordered the steam-mill tract, with all the buildings, engines, and appurtenances, to be sold, and appointed three commissioners to make the sale. It was accordingly made, ratified by the court, and a deed executed by two of the commissioners on the 20th of June, 1827. The purchasers were Badollet, Harrison, and Buntin, the trustees, who took the deed to themselves, their heirs and assigns, without noticing the trust. The amount of the purchase-money was one thousand dollars. Evidence was given upon the trial, that no money was paid excepting the costs and counsel fee, which payment was made from the funds of the United States, by order of the Secretary of the Treasury.

On the 28th of June, 1827, a deed was executed by Lagow

Neilson v. Lagow.

and his partners, by which they renounced all claim upon each other arising from transactions of the steam-mill company, and conveyed the whole property, debts, &c., to Lagow, he undertaking to pay all debts due to other persons than the partners.

Evidence was given upon the trial, that Hall Neilson had had possession of that property since 1832, claiming to hold it under Badollet, Harrison, and Buntin, who were all dead, however, prior to the commencement of the suit.

When the testimony was closed, the court, at the instance of the plaintiff, Lagow, gave the following instructions to the jury.

1. That on the proof of possession as owners by the steam-mill company in 1820, and of the conveyance by the company to Lagow, of June, 1827, Lagow, the plaintiff, is entitled to recover, unless the defendant has shown a better title.

2. That the seventh section of the act of Congress of the 1st of May, 1820, forbids "the purchase of any land on account of the United States," unless authorized by act of Congress.

*774] *3. That the term "purchase of land" in law, and in the act of Congress, means any and every mode of acquiring an interest in real estate other than by inheritance.

4. That if the government is prohibited from purchasing land directly in its own name, it is also prohibited from purchasing indirectly in the name of an agent or trustee.

5. That if there is any act of Congress or law authorizing the conveyance from the bank to the trustees, it is incumbent on the defendant to show it; and from the fact that the defendant does not set up any such act or law, the jury may infer there is none.

6. That all acts, deeds, and agreements, contrary to the plain language, or even to the policy, of an act of Congress, are void.

7. That if the deed of trust from the bank is contrary to the letter, or to the spirit and meaning, or to the policy, of the act of the 1st of May, 1820, it is void; and the interest which the bank then had in the land remained in the bank.

14. That it is incumbent on the defendant to show the conveyance made by the trustees, if any such they did make.

20. That to defeat the plaintiff's title, founded on prior possession, as owner, it is necessary that the title set up by defendant should be shown to be a subsisting title, and superior to Lagow's title. To which instructions the defendant at the time excepted.

The court then, at the instance of the defendant, gave the following instructions to the jury, to wit, that if they believe,

Neilson v. Lagow.

from the evidence, that defendant, and those under whom he claims, had been in peaceable adverse possession more than twenty years at the time this suit was commenced, the claim of the plaintiff is barred by the statute of limitations, and they must find for the defendant; to which instruction the plaintiff at the time excepted.

The defendant then asked the court to give to the jury the following instructions, to wit:—

2d. That the plaintiff in this case, in order to recover, must establish a good title in himself, and that he cannot recover if the defendant has shown the real title to the land to be in another person; that it is sufficient if the defendant has made it appear to the jury that a legal and possessory title does not subsist in the plaintiff.

3d. That it was competent for the Bank of Vincennes to make a deed to the trustees for the benefit of the United States, and such a deed is valid and lawful for the purpose for which it was made; but the court refused to give the same to the jury; to which refusal of the court the defendant at the time excepted.

*Under these instructions and refusals the jury [*775 found a verdict for the plaintiff, Lagow. A motion was made for a new trial, which was overruled, and the case carried up to the Supreme Court of Indiana, where the judgment of the court below was affirmed. A writ of error, issued in the manner already stated, brought it up to this court.

A motion was made by *Mr. Bradley* to dismiss the case for want of jurisdiction, which was opposed by *Mr. Gillet*.

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

It appears, that, at the trial in the State court, the plaintiff in error claimed the land in dispute under an authority which he alleged had been exercised by the Secretary of the Treasury in behalf of the United States; and the decision was against the validity of the authority thus alleged to have been exercised. Whether the title of the plaintiff in error can be maintained under it, or not, will be the subject of inquiry when the case is heard on its merits. That question is not now before the court, and the only point to be determined at this time is, whether we have jurisdiction to try and decide it. We think it is evidently one of the cases prescribed for in the twenty-fifth section of the act of 1789; and the motion to dismiss is therefore overruled.

 Lewis v. Lewis.

ORDER.

On consideration of the motion made in this cause on a prior day of the present term, to wit, on Friday, the 2d instant, to dismiss the writ of error, and of the arguments of counsel thereupon had, as well against as in support of the motion, it is now here ordered by the court, that the said motion be, and the same is hereby, overruled.

*776] *WILLIAM LEWIS, WHO SUES FOR THE USE OF
NICHOLAS LONGWORTH, PLAINTIFF, v. THOMAS
LEWIS, ADMINISTRATOR DE BONIS NON OF MOSES BROAD-
WELL, DECEASED.

By a law of the State of Illinois, passed in 1827, "every action of covenant shall be commenced within sixteen years after the cause of such action shall have accrued, and not after." But by a proviso, persons beyond the limits of the State were exempted from the operation of the law, and might bring the action at any time within sixteen years after coming within the State. Afterwards, in 1837, this proviso was repealed.

The statute of 1827 begins to run, as to non-residents, from the time of the repeal of the saving clause, in 1837, and not before.¹

THIS case came up from the Circuit Court of the United States for the District of Illinois, on a certificate of division in opinion between the judges thereof.

It was an action of covenant under the following circumstances.

On the 12th of March, 1819, Broadwell executed a deed with a general warranty to William Lewis, by which he conveyed to him a tract of land in Ohio.

In June, 1825, one Matthews recovered, by ejectment, one hundred acres of the land.

Broadwell died in 1827, and one Cromwell was appointed his administrator.

In 1843, Thomas Lewis was appointed administrator *de bonis non*, and in the same year William Lewis brought this action.

Amongst other pleas filed (which it is not necessary to notice) was one of limitation, to which the plaintiff replied that he was beyond the limits of the State.

To this replication the defendant demurred.

¹ FOLLOWED. *Sohn v. Waterson*, 17 Wall., 600. CITED. *Sayles v. Richmond &c. R. R. Co.*, 4 Bann. & A., 241.