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*Lownsdale et al. v. Purris*

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(See *New Jersey Steam Navigation Co. v. Merchants' Bank*, 6 How., 381, et cas. ib. cit.)

The judgment of the court below is therefore reversed, and a *a venire de novo* awarded.

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DANIEL H. LOWNSDALE AND OTHERS, APPELLANTS, *v.* JOSIAH L. PARRISH.

Congress passed no law in any wise affecting title to lands in the Territory of Oregon until September, 1850; and therefore where a controversy arose, in July, 1850, relating to titles to land, neither party could be said to have a legal title.

Consequently, the amount in controversy could not be ascertained, so as to bring the case within the jurisdiction of this court; and there is no question arising under the Constitution or laws of the United States so as to give jurisdiction.

THIS was an appeal from the Supreme Court of the Territory of Oregon.

The facts are stated in the opinion of the court.

It was argued by *Mr. Gillet* and *Mr. Johnson* for the appellants, and *Mr. Baxter* for the appellee.

The arguments of the counsel were directed chiefly to the merits. On the point of jurisdiction, *Mr. Baxter* gave an account of the singular spectacle exhibited by the American settlers in Oregon, who established a provisional Government amongst themselves, whilst the entire Territory was still in the joint occupancy of the United States and Great Britain. *Mr. Baxter* then referred to the act of Congress passed on the 14th of August, 1848, (9 Stat. at L., 329,) which contained the two following clauses, viz:

"And the existing laws now in force in the Territory of Oregon, under the provisional Government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the Constitution of the United States, and the principles and provisions of this act.

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"But all laws heretofore passed in said Territory, making grants of land, or otherwise affecting or encumbering the title to lands, shall be and are hereby declared to be null and void."

*Mr. Baxter* examined the whole law, and inferred that its true construction was to declare the existence of such general laws of the United States in Oregon as might be executed by the judicial and executive authorities thus created, or such general authorities as then existed over the whole territory of the United States, but did not intend to extend over Oregon such special legislation as required special organization, not then existing in the Territory, to execute them. And when this town was laid off, the land law of Oregon had assured quiet possession of the tract of 640 acres to Pelligrove and Lovejoy, and those claiming under them, as long as the provisional Government continued. That all purchasers of town lots from these proprietors obtained a title to their lots, and the easements connected with them, grafted on, springing out of, and sustained by, the right of possession under the provisional Government; and the contracts for sales and purchase of these lots under the provisional Government were valid.

That the 17th section of the law establishing the Territorial Government affirmed these contracts, and they were valid and in force under the laws of the Territory. And there is nothing in the 6th or 14th sections of the act of 1848 inconsistent with this. This suit having been commenced before the passage of the land laws of 1850, must be decided on the laws of the provisional Government and the Territorial Government, and it was the duty of the courts of equity to preserve the rights of the parties as they stood under the laws of the provisional Government and the Territorial Government, and to enjoin all irregular proceedings in violation of those rights, until titles were granted by the Government of the United States, under the land laws of the United States.

Mr. Justice CATRON delivered the opinion of the court.

Parrish filed his bill in equity against Lownsdale and others in a District Court of Oregon Territory, praying for an injunction to restrain the defendants from obstructing a narrow



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piece of land, claimed as Water street, lying in front of the complainant's storehouse, and a square of ground claimed as his, two hundred feet on each side, laid off into eight lots, as city property, within the city of Portland, and on one of which the storehouse stands. The strip of land lying in front of these lots extends to the Wallamette river; at that point, the land is several hundred feet wide. The complainant alleges that it was dedicated to the public as a street, to the use of the proprietors of the town, for the purposes of commerce; the river there being within the flow of tide, navigable for ships, and requiring a wide front space to accommodate loading and discharge of cargoes.

The District Court found that Water street, in the city of Portland, was bounded by the river, opposite the lots of the complainant; and that the defendants at the commencement of the suit were about to obstruct the same, to the special injury of the plaintiff, as stated in the bill; and thereupon an injunction was granted, as prayed for. This decree was affirmed in the Supreme Court of Oregon, where the respondents carried the cause by appeal, and from that decree they have appealed to this court, and we are called on to revise the proceedings below.

The first question presented is, whether this court has jurisdiction and power to re-examine the controversy.

By the act of Congress organizing the inhabitants of Oregon Territory into a Government, it is provided (sec. 9) that writs of error and appeals from final decisions of the Supreme Court of Oregon shall be allowed to the Supreme Court of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars, to be ascertained by the oath of either party, or by a competent witness; and also in cases "where the Constitution of the United States, or an act of Congress, or a treaty of the United States, is brought in question."

The complainant assumes that he would sustain special damage by the obstruction of the space between his property and the river, but how much damage does not appear from the allegations in the bill, or otherwise; and it is difficult for us to

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see how either party to the suit could sustain damage to his rights of property, as the town was laid off in 1845, on property of the United States, whilst our inhabitants who had emigrated there, and those of Great Britain, held joint possession of the country in virtue of the treaty between the two nations of October 20th, 1818, (art. 13,) which was continued in force by the convention of August 6th, 1827.

In June and July, 1845, the people of Oregon Territory, "for mutual protection, and to secure peace and prosperity among themselves," elected delegates, who met in convention, and adopted laws and regulations for their government, "until such time (say they) as the United States of America extend jurisdiction over us." In this plan of Government, it is provided that any one wishing to establish a claim to land shall designate the extent of his claim by line-marks, and have it recorded in the office of the Territorial recorder; the claim not to exceed a mile square, or 640 acres. The description of claim under which the complainant and the respondents set up title is founded on this regulation. By the treaty of 15th June, 1846, the line dividing our possessions and those of Great Britain west of the Rocky Mountains was concluded; and on the 14th of August, 1848, Congress passed an act to establish the Territorial Government of Oregon, in which the laws then existing under the provisional Government (established by the people) are continued, and declared to be operative until altered. "But (says the act, sec. 14) all laws heretofore passed in said Territory, making grants of land, or otherwise affecting or encumbering the title to lands, shall be, and are hereby declared to be, null and void." Congress passed no law in any wise affecting title to lands in Oregon Territory till September 27, 1850; and the bill in this case was filed July 29, 1850, so that, when the litigation commenced, neither party to the suit had any title to or interest in the land whatever; and therefore the respondents and appellees could not sustain injury by being enjoined not to erect buildings on lands belonging to the Government in which they had no interest. It is proper to remark here, that we have nothing to do with, nor can we notice, rights acquired to this



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property by acts of Congress passed subsequently to the origin of this controversy.

Neither the Constitution of the United States, nor an act of Congress, or a treaty, was "*brought in question*" in the lower court; neither side could have legitimately raised such a question, and called for its decision; and to give this court jurisdiction of the *case*, in this instance, the question must have been raised and decided in the lower courts, and it must so appear on the record. (16 Peters, 281.)

Being of opinion that there is no jurisdiction in this court to examine and revise the decree of the Supreme Court of Oregon, we order the appeal to be dismissed.

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DICKERSON B. MOREHOUSE, PLAINTIFF IN ERROR, *v.* WILLIAM A. PHELPS.

By the acts of Congress passed in 1829, (4 Stat. at L., 334,) and 1836, (5 Stat. at L., 79,) commissioners were to be appointed to hear and determine all claims to lots of ground in the town of Galena, Illinois, and to give a certificate in favor of each person having the right of pre-emption.

Where a person presented his claim as the legal representative of a settler, obtained the certificate, and afterwards a patent to the legal representatives, it inured to the benefit of the person who had presented the claim, obtained the certificate, paid the money, and procured the patent.

Where this person acted for himself individually, and also as the administrator of his co-tenant who was dead, it was his duty and right, under the laws of the State, to pay both shares of the purchase-money.

One standing outside, who took no interest in the claim for many years after it was passed, and then claimed under a deed made by the settler in 1829, alleging that he was the proper legal representative, had not such a title as would enable him to maintain an action of ejectment.

The cases under incipient Spanish titles do not apply to this case, because the United States were the absolute owners of the lots in question, and could dispose of them at their pleasure.

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.

Phelps, who was the plaintiff in the court below, brought an ejectment for the undivided half of two lots in the town of