

Statement of the case.

so; for courts of equity must be able to act in a summary manner upon motions of this kind, and any other mode of investigation than the one adopted in this case, would have failed to give the speedy relief necessary under the circumstances. The practice pursued by the court was the usual and proper practice, and we see no good reasons to depart from it.

DECREE AFFIRMED.

REICHART *v.* FELPS.

1. A decision in the highest court of a State against the validity of a patent granted by the United States for land, and whose validity is drawn in question in such court, is a decision against the validity of an authority exercised under the United States, and the subject of re-examination here, although the other side have also set up as their case a similar authority whose validity is by the same decision affirmed.
2. Patents by the United States for land which it has previously granted, reserved from sale, or appropriated, are void.
3. A patent or instrument of confirmation by an officer authorized by Congress to make it, followed by a survey of the land described in the instrument, is conclusive evidence that the land described and surveyed was reserved from sale.
4. Where the United States, receiving a cession of lands claimed in ancient times by France, and on which were numerous French settlers, directed that such settlers should be "confirmed" in their "possessions and rights," and ordered a particular public officer to examine into the matter, &c.,—confirmation by *deed* was not necessary. The officer, being admitted to have authority to make confirmation, could make it by instrument in writing without seal.
5. Congress has no power to organize a board of revision to annul titles confirmed many years by the authorized agents of the government.

ERROR to the Supreme Court of Illinois; the case, which was one of ejectment, being thus:

In 1784, after the War of the Revolution, the State of Virginia then claiming the Northwest Territory, a part of which makes the now State of Illinois—and in which, from early times, inhabitants of Canada, while Canada was yet a French province, had settled—yielded her claim and title in the territory to the United States, on condition "that the

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French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincent's, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their *possessions and titles* confirmed to them, and be protected in the enjoyment of their rights and liberties."

On the 20th of June, 1788, Congress enacted, that from any general sale of lands in this region there should be a reserve of so much land as should satisfy all the just claims of the ancient settlers; "that they should be confirmed in the possession of such lands as they may have had at the beginning of the Revolution; that measures be immediately taken for confirming them in their possessions and titles, and that the governor of the Northwestern Territory be instructed to examine the titles and possessions of the settlers, as above described, in order to determine what quantity of land they may severally claim, *which shall be laid off for them at their own expense.*"

Under this authority, and some instructions not necessary to be mentioned, but reciting them all, the then governor of the Northwestern Territory, General St. Clair, on the 12th of February, 1799, issued a document, somewhat in the form of a land-patent, to one Jarrot, who "laid claim" to a piece of land in the county then and now known as St. Clair, Illinois, "confirming" to him in fee a tract described. This instrument of confirmation, signed by General St. Clair, and duly registered, October 19th, 1804, ended thus:

"In testimony whereof, I have hereunto set my hand, *and caused the seal of the Territory to be affixed*, at Cincinnati, &c., on the 12th day of February, A.D. 1799, and of the Independence of the United States the 23d."

The land claimed and thus described in the patent was regularly surveyed, April 10th, 1798, by one McCann, "lawfully authorized to survey such claims."

This title of Jarrot, thus confirmed, became afterwards vested in one Felps.

But an opposing title also came into existence. On the 20th of February, 1812, an act of Congress was passed,

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authorizing a board of commissioners to revise and re-examine the confirmations made by the governor of the Northwestern Territory; and the board, in pursuance of the act, made such a report to the government of the United States, that the government by its proper officers rejected this claim, and subsequently exposed the land previously confirmed to Jarrot to public sale, when a certain Reichart became the purchaser. Two patents were accordingly issued to him by the United States, one in 1838 and one in 1853.

Reichart, asserting the title conferred by these patents, now brought ejectment in a State court of Illinois against Felps, relying on his old French claim confirmed by Governor St. Clair.

The plaintiff having given his patents of 1838 and 1853 in evidence, the defendant on his part offered the survey of McCann, and a certified copy from the records of the instrument of confirmation given by Governor St. Clair. On this certified copy no evidence appeared of a seal having ever been on the original; though there was oral testimony tending to show that the original did have a seal in wax, with an emblem and letters.

The plaintiff objected to the survey, and to the copy of the instrument from Governor St. Clair, because it showed that the original had no seal.

The court overruled the exception, and gave judgment for the defendant, so deciding against the validity of the patents of the United States issued in 1838 and 1853; though deciding in effect in favor of the validity of the instrument of confirmation professing to be done under authority of Congress. The judgment having been affirmed in the Supreme Court of Illinois,* the case was brought here under the 25th section of the Judiciary Act of 1789, giving a right to the court to re-examine the final judgments of the highest State courts, "where is drawn in question the validity of a statute or of an authority exercised under the United States, and the decision is *against* their validity."

* *Reichart v. Felps*, 33 Illinois, 433.

Argument for the defendant in error.

Mr. Baker, for the plaintiff in error; a brief being filed for Mr. Koerner:

The deed of cession, of 1784, put the title *into* the United States. There was no tract of which possession did not vest in the United States. No power was given by any act of Congress to the governors of the Northwestern Territory to issue patents or deeds of confirmation. Moreover, whatever confirmations those governors did issue, were not considered final either by the Executive or by Congress. The copy of the patent shows that no seal was ever affixed to the instrument of confirmation. The instrument was, therefore, never executed, and is void. Oral testimony cannot counter-vail the better evidence of the copy.

Mr. Lyman Trumbull, contra:

The validity of the confirmation or grant of Governor St. Clair was brought before the Supreme Court of Illinois in 1829, in an ejectment by one Hill, who had entered and obtained a patent for a portion of the premises as public land. The court held the governor's confirmation valid.* After this decision, the United States, recognizing it as establishing the validity of the grant by Governor St. Clair, passed an act, August 11th, 1842, refunding the money paid by the patentee who had entered it as public land.†

This history of the government's dealing with the land in controversy, shows that it was reserved from the beginning from the public lands which were to be sold, and that the government never intended it should be sold as public land.

The patent issued by Governor St. Clair in 1799, devested the United States of any claim it might have had to the land, and its subsequent sale as public land was therefore void. It is assumed by the plaintiff that no authority was given to the governor of the Northwestern Territory to make confirmations or grants of these ancient possessions and titles. But the act of June 20th, 1788, affords an answer to this assumption; where it instructs the governor of the North-

* *Doe ex dem. Moore and others v. Hill*, Breese, 236.

† *6 Stat. at Large*, 860?

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western Territory to "examine the titles and possessions of the settlers, *in order to determine what quantity of land they may severally claim, which shall be laid off for them at their own expense.*" Who was to determine the quantity of land the claimants were to have, and to lay it off for them at their own expense, except he whose duty it was to examine the titles and possessions for that purpose? When this was done, and the land laid off as the law declared it should be, the United States gave up all claim, if it ever had any, to the land thus set off. No other evidence of this would have been necessary than the survey which was made and entered upon the Land Office records; and the fact that the governor thought proper to evidence the claimant's right by a more solemn instrument, in the shape of a patent, is only confirmatory of what would have been a good title without it. All that was necessary to be done was to separate the private claims from the other lands, so that the latter might be brought into market. The United States never pretended to make claim to the lands set off to private claimants; on the contrary, it has, by numerous acts, as shown in the history of this case, recognized them as valid. The governors exercised this power of confirmation for more than twenty years, and their confirmations are styled patents in acts of Congress.*

A grant, or a concession, made by that officer who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power. No excess of or departure from them is to be presumed.†

The land having been thus previously granted, reserved from sale, or appropriated, the patents of 1838 and 1853 are void.‡

The objections taken below as to the want of seal, &c., it is submitted, need no reply here.§ The original patent, it is testified, had a seal. None, however, was necessary.

* Act of April 21, 1806. Pub. Land Laws, &c., part 1, 143.

† Delassus v. United States, 9 Peters, 134.

‡ Stoddard v. Chambers, 2 Howard, 317.

§ See what is said in Reichart v. Felps, the case below, 33 Illinois, 439.

Opinion of the court.

Mr. Justice GRIER delivered the opinion of the court.

The patents under which the plaintiff claimed in the State court were declared by that court to be void. The case, therefore, is properly cognizable in this court under the twenty-fifth section of the Judiciary Act of 1789.

He claimed under two patents of the dates of 1838 and 1853, which exhibit conclusive evidence of title if the land claimed had "not been previously granted, reserved from sale, or appropriated." The only question to be decided in this case is, whether the land had been so granted, reserved, or appropriated.

The patent of Governor St. Clair, February 12th, 1799, duly registered in 1804, with the survey of McCann, April 10th, 1798, are conclusive evidence that the land in question was reserved from sale. The case of *Moore v. Hill*,* decided nearly forty years ago in the Supreme Court of Illinois, on the same survey and grant which is now before us, should have been conclusive against the objections which have been revived on the present writ of error. "This very able and elaborate opinion received the concurrence of the bar and the country at the time it was delivered, and has never been called in question since. There is no fact in the present case calculated to produce a result different from the one there announced."†

The objection that the patent from the governor was without a seal ought not to have been made. The act of Congress giving power to the governor did not require him to issue a patent nor to execute an instrument under seal. Any written evidence of his confirmation would have been a sufficient execution of the power. All that was necessary was an authentic declaration by the United States, through their authorized agent, that they had no claim to the land. It was not a grant by the United States, because the title was not in them.

Congress is bound to regard the public treaties, and it had

* Breese, 236.

† *Reichart v. Felps*, 33 Illinois, 439, A. D. 1864, per Breese, J., who reported the case A. D. 1829.

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no power to organize a board of revision to nullify titles confirmed many years before by the authorized agents of the government. And Congress became afterwards so well satisfied itself of this that it passed an act restoring to the purchasers the money which they had paid for titles obtained on the assumption of such a right.

JUDGMENT AFFIRMED.

RIGGS v. JOHNSON COUNTY.

After a return unsatisfied of an execution on a judgment in the Circuit Court against a county for interest on railroad bonds, issued under a State statute in force prior to the issue of the bonds, and which made the levy of a tax to pay such interest obligatory on the county, a mandamus from the Circuit Court will lie against the county officers to levy a tax, even although prior to the application for the mandamus a State court have perpetually enjoined the same officers against making such levy; the mandamus, when so issued, being to be regarded as a writ necessary to the jurisdiction of the Circuit Court which had previously attached, and to enforce its judgment; and the State court therefore not being to be regarded as in prior possession of the case.

ERROR to the Circuit Court for the District of Iowa.

The case somewhat fully stated was thus:

Statutes of Iowa enact:

That the county commissioners of any county may submit to the people of it at any election, the question whether the county will aid to construct *any road* which may call for extraordinary expenditure.

That when a question, so submitted, involves the borrowing of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes, and *no vote adopting the question proposed* will be of effect unless it adopt the tax also.

That the county judge, on being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast are in favor of the proposition submitted, shall cause certain records to be made; after which the