KEENE v. HARRIS ET AL.

Case No. 7,642.
{3 Wash. C. C. 178.}[1]

Circuit Court, D. Pennsylvania. Oct Term, 1812.

REAL PROPERTY—TITLE BY SETTLEMENT—CLAIM UNDER ANOTHER STATE.

Under the law of Pennsylvania, the defendants, who claimed by settlement and improvement, had no title, if such settlement and improvement were made under the title of Connecticut.

The lessor of the plaintiff claimed, under a lottery warrant dated 17th of May, 1785, the land in dispute lying on the east side of Tioga river, adjoining the New-York line, being part of the purchase made from the Indians on the 23d of October, 1784. It was surveyed in September, 1786, and a grant made for it in May, 1788. The defendants {Harris, Sheppard, and Stevens} claimed under a settlement and improvement commenced in the latter end of the summer, or early in the autumn of 1784, by one Joseph Thomas, who, in 1793, conveyed his right to one Swift, who conveyed to Harris the part of which he is in possession. The settlement and improvement were proved, and the question of fact was, whether the original settlement and improvement were made under the Connecticut claim, to this tract of country? The evidence was very strong to establish the affirmative.

Mr. Binney, for plaintiff.

By an act of the legislature of Pennsylvania, all conveyances of land lying in the part of the state where the land in question is situated, which do not, on the face of them, acknowledge the title of Pennsylvania, are declared to be void. This acknowledgment not being made in the deeds under which the

defendants claim, they are, of course, void; and the defendants must rest their title upon the settlement of Thomas. The inception of this title, being prior to the purchase from the Indians, could give no right whatever to Thomas, and was a violation of the laws of this state; which, for political reasons, prohibited settlements on the Indian lands, under heavy penalties, extending at one time to death. 2 Laws (Smith's Ed.) 123,113,119, 126, 124, 127; 1 Bin. 248. If the original settlement was against law, the continuance of it after the purchase from the Indians, can give no title; or otherwise, a settlement, though originally unlawful and even criminal, would be sufficient to defeat the right of a purchaser under the state. By no means could such a settler effectuate his title, but by obtaining, within a reasonable time after the purchase, a warrant from the state, and proceeding afterwards to have it surveyed, and to obtain a grant. 2 Laws (Smith's Ed.) 129.

By the act of 21st December, 1784,–2 Laws (Smith's Ed.) 273,—no right by settlement, to the lands purchased from the Indians, could be acquired, except a right of pre-emption; and not even that, unless the settlement was made before the year 1780, nor unless application for the same were made, and the consideration paid, on or before the 1st of November, 1785. In the case of Buchanan's Lessee v. M'Clure, 1 Bin. 385, it was decided, that an improvement and settlement on lands purchased from the Indians, in November, 1768, made between that date and the opening of the land office, 3d of April, 1769, gave no preference to the settler, against a descriptive application entered in the office on the day it opened. The act of 30th December, 1786, which gives a right of pre-emption to settlers, is confined to the purchase in November, 1768, and limits that right to the 10th of April, 1788. The first law which recognises settlement rights on the lands purchased in 1784, was passed 22d of April, 1794,–3 Laws (Smith's Ed.) 184, 193,—and the kind of settlement is pointed out in the act of the 22d September, 1794. The right by settlement has its origin in the tacit permission of the proprietors, which, after a length of time, became a part of the common law of this state. But it always presumed an implied contract between the proprietor and the settler, that the latter claiming and holding the land under and in right of the proprietor, would, in a reasonable time, perfect his title, by paying the consideration and obtaining a patent. It never could extend to one who claimed adversely to the proprietor, and who for so long a period has taken no steps to perfect his title. This is precisely the case of the defendants, who took possession of these lands, claiming under Connecticut, and in open opposition to this commonwealth.

Mr. Tilghman, for defendants, admitted, that if the defendants settled this land, claiming a right to do so under Connecticut, that they could not succeed.

On this admission, THE COURT left this fact to the jury, with directions to find for the plaintiff, if they should be of opinion that the defendants claimed under Connecticut. Verdict for plaintiff.

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