Case No. 12,574.

SEABURY ET AL. V. FIELD ET AL.

{1 McAll. 1.}[1]

Circuit Court, N. D. California. July Term, 1855.[2]

TREATY—TITLE TO LAND IN BAY OF SAN FRANCISCO—ADMISSION OF CALIFORNIA—VOID GRANT—EJECTMENT—PLAINTIFF'S TITLE.

1. On the ratification of the treaty of Guadalupe Hidalgo, property below low-water mark, in the bay of San Francisco, passed from Mexico to the United States. Intermediate the date of the treaty and the admission of California into the Union, the title remained in the government of the United States. During that period, no deed or transfer by any officer of this government, unauthorized by an act of congress, could alienate any portion of the public domain. Such conveyance was a mere nullity.

2. On the admission of California into the Union, she became subrogated to the rights over the disputed premises which had been vested in the United States, subject only to any cession of them by that provision of the constitution which surrenders to the general government the power to regulate commerce with foreign nations, and among the several states, and with Indian tribes.

3. Although a void grant cannot be confirmed by subsequent acts between individuals, it is otherwise as to confirmation by statute.

4. Plaintiffs cannot recover in ejectment, unless on a better title than defendants.

This is an action of ejectment {by Pardon G. Seabury and others against Edward Field} instituted for the recovery of a lot of land forming a portion of property Known as the "Beach and Water Lots," situate in front of the city of San Francisco, intermediate low-water mark and the ship-channel of the bay and between Rincon and Fort Montgomery Points. The plea filed was a general denial, equivalent to a plea of not guilty at common law. The facts of the

case arose mainly out of the documentary title of the respective parties.

Holliday & Saunders, for plaintiffs.

Lockwood, Tyler & Wallace, for defendants.

MCALLISTER, Circuit Judge (charging jury). The plaintiffs trace their title to one Thomas Sprague, to whom a grant to the lot in controversy was made on January 3, 1850, by John W. Geary, alcalde of the city of San Francisco. The power of said alcalde is predicated upon the proclamation of General Kearney, issued on the 10th of March, 1847, as military commander in California at the time. By that proclamation, the power to grant was assumed by virtue of alleged powers vested in him by the president of the United States. In the exercise of those powers, all the property known as the "Beach and Water Lots," was granted with certain reservations to the city of San Francisco. The court instructs you, on this point, that the proclamation of General Kearney, and the grant under it, passed no greater interest in the property than it would have done if signed by a private, unofficial person. During the period California was subject to the American arms, the military and municipal officers in the service of the United States government exercised their functions in subordination to it. Whatever may have been their powers during that anomalous condition of things, the power to grant was not one of them. They could do no act to affect the rights of the government of the United States to the public property; rights to be determined in their extent and character by the issue of the pending contest. On the ratification of the treaty of Guadalupe Hidalgo, the rights political and proprietary over the property in dispute, passed from the government of Mexico, where it had been, to that of the United States. There was no officer in the service of the government who could for any purpose, or at any period, make a valid alienation to any person, natural

or artificial, of any portion of the public property in land. The constitution of the United States confides to congress the exclusive power of disposing, and making all needful rules and regulations respecting the public property of the government. No interest, therefore, having passed under the proclamation of General Kearney to the city of San Francisco, it could transmit none to Sprague, by means of the grant made by their alcalde, Geary. As title, it gives no standing in this court to the plaintiffs. How far the documents they have produced in evidence may be available to them, considered in another aspect of this case, will be brought to your, consideration hereafter.

The documentary title of the defendants next claims attention. They claim under a grant from Alcalde Leavenworth, under date of September 28, 1848. This title is as invalid as the one under which the plaintiffs claim. No interest proprietary or political over the property in the bay of San Francisco, below low-water mark, was vested in the pueblo of San Francisco, under the Mexican government; if it be admitted that such pueblo ever had an organized existence. No such interest having ever vested in the Mexican ayuntamiento, none such could have been transferred to its successor, the American town council. But if it be admitted that the power did exist in the former to grant this water property, it by no means follows that such power, the delegation of sovereignty from the Mexican government, survived after the sovereignty of which it had formed a part, had ceased to exist. No officer, Mexican or American, could exercise 904 the granting power over public property of the United States. Nothing but an act of congress could authorize the exercise of such power. The court, therefore, charges you, that the two grants under which the parties in this case respectively claim, are mere nullities, neither of which conveyed a valid title to the land it assumed to transfer. Thus far, as to

documentary title, the parties stand on an equal footing.

It becomes necessary now, that you fix the attitude of the parties as it is ascertained by the evidence in this case as to the possession of the premises in dispute at the time of the passing of the act of the legislature of this state, on March 26, 1851 [Comp. Laws, 764], the origin of the title of both parties, as also, at the date of the commencement of this suit. The witnesses are few in number, and the facts to which they testify are not complicated. It is your especial province to decide on them, limited in your inquiries only by the boundaries of truth. Having fixed in your minds the position of the respective parties at the date of the said act of the legislature, known as the "Beach and Water-Lot Bill," it becomes the duty of the court to instruct you as to the legal effect of that act upon the rights of the parties. They both claim under this act. What was the interest of this state in the property in dispute at the time it was passed, is the first question. Reference has been made to Case of Pollard's Lessee [3 How. (44 U. S.) 212] as settling the question of ownership by this state in the said property by her annexation to the Union. The court does not consider that case as directly deciding the point, inasmuch as the decision turned to some extent on the fiduciary character imposed on the government of the United States, under the cession made to them in 1802, by the state of Georgia. But in view of the general reasoning, in that case, of the constitution of this state, embodying her boundaries, and the terms of the act of congress admitting her into the Union, the court instructs you that this state, on her accession to this confederacy, became subrogated to all the rights, political and territorial, in this water-property, which had been theretofore in the United States government after the treaty of Guadalupe Hidalgo. Those rights were consequently in this state at the time of the

passing of the act of the legislature under consideration. It is entitled, "An act to provide for the disposition of certain property of the state of California." Comp. Laws, 764. By its second section, the use and occupation of the property is granted to the city of San Francisco, for the term of ninety-nine years from its date, except all the lands being a portion of said property, which had been "sold by the authority of the ayuntamiento, town or city council, or any alcalde of the said town or city, or by any alcalde of the said town or city at public auction, in accordance with the terms of the grant known as 'Kearney's Grant to the City of San Francisco,' and confirmed by the ayuntamiento—town or city council—thereof, and also registered and recorded in some book of record now in the office, custody, or control of the recorder of the county of San Francisco, on or before the 3d day of April, 1850." All such lands as had been sold in the manner described, were granted to the respective purchasers thereof for the term of ninety-nine years. It is contended that this act is a confirmation of the grants under which the parties claim. The court does not so consider. Those profess to convey a fee; the act of the legislature transfers a chattel-interest, a term of years only; an estate differing in quantity and degree from that in the grants. It cannot be deemed the confirmation of a pre-existing estate, but the creation of a new one. The court considers this act a legislative grant of land for a term of years, and the reference therein made to lands which had been purchased and held under the prescribed form, as a "designatio personarum," to designate the classes of persons who were to take as grantees. The inquiry is, do the parties, or either, or both of them, belong to the class of grantees designated by the statute? Both claim to be so comprehended. On this point, the court instructs you that if you are satisfied from the evidence that the plaintiffs are purchasers of the lot

in controversy, comprehended within the boundaries mentioned in said act, which lot was sold at public auction by the authority of the town-council of San Francisco, in accordance with the terms of the grant known as Kearney's grant to the city of San Francisco, then, in such case, the plaintiffs are to be deemed as comprehended within one of the classes of grantees designated by the statute. And the court further instructs you, that, if you are satisfied from the evidence that the defendants hold the lot in controversy as purchasers under the grant of an alcalde of the city of San Francisco, which was confirmed by an ayuntamiento, or town or city council thereof, and also registered and recorded in some book or record in the office, custody, or control of the recorder of the county of San Francisco, on the 20th day of March, 1851, and which registry or record was made on or before the 3d day of April, 1850, then, in such case, the court instructs you that the defendants are also among those designated as the other class of grantees under said act. The mode and manner in which the confirmation of the town-council is to be given are not prescribed, and any form in which it may have been given, if it satisfies you of the fact, will be sufficient in this case. Should you be satisfied from the evidence of the authority or confirmation of the ayuntamiento, or town-council, to both the grants under which the parties respectively claim, then the court instructs you that the parties stand in equali jure, as to documentary title, and their rights must be adjusted by the parol testimony and the principles of law applicable 905 to the facts elicited. These will be found in the instructions prayed for by the respective counsel, which the court will now give.

The plaintiffs' counsel ask me to instruct you: "(1) If the jury believe that the lot in controversy was sold to Sprague, by Alcalde Geary, at public auction, in accordance with the terms of the grant known

as "Kearney's Grant" to the city of San Francisco, then the second section of the act of the California legislature, approved March 26, 1851, operates as a valid grant of the same lot, for the space of 99 years from the date thereof, to the said Sprague. (2) No title passed to Parker by the grant from Leavenworth, of September 25, 1848." The court has given you, and now reiterates, the principles embodied in the foregoing instructions.

The counsel for defendants have asked the following instructions, which I give you: "(1) Although a void grant cannot be confirmed by a subsequent act between individuals, yet It is otherwise as to confirmation by statute, and the legislature may, by statute, confirm a deed or grant which was absolutely void at the time of confirmation." The court gives this instruction with the addition,—"So that vested rights of third persons are not divested." "(2) The lot in question being covered with tide-water, vested in the state of California, upon the admission of the state into the Union. (3) The state having thus been the owner of the property in question, it was competent for the state to dispose of it by statute operating as a conveyance. (4) The act of March 20, 1851, operated as a legislative grant in the cases therein specified, and if the lot in question was sold or granted on September 25, 1848, by Leavenworth, as alcalde of San Francisco, and afterwards confirmed by the ayuntamiento, or town or city council, and registered on or before the 3d day of April, 1850, in some book of record in the office, custody, or control of the recorder of the county of San Francisco, at the date of the passage of the act, the said statute operated as a grant of the said lot to the said Parker, his heirs and assigns, and any person holding under him or them, for the term of ninety-nine years from the date of the act. (5) In case of equal rights, or equities, the maxim, 'Prior in tempore, potior in jure,' will prevail. (6) In ejectment, the plaintiff

cannot recover without showing a better title than the defendants; and unless the plaintiffs have shown in themselves a better title, the verdict must be for the defendants." The plaintiffs must recover on their legal title, as distinguished from the equitable title of the defendants.

Verdict for plaintiffs.

{NOTE. At this term a motion was made for a new trial, which was overruled. Case No. 12,575. This cause was carried, on writ of error, to the supreme court, where the judgment of this court was reversed. 19 How. (60 U. S.) 323.}

[1] {Reported by Cutler McAllister, Esq.}

[2] {Reversed in 19 How. (60 U. S.) 323.}