U.S. Supreme Court

WITHERSPOON v. DUNCAN

71 U.S. 210 (1866)

WITHERSPOON *v*. DUNCAN.

DECEMBER TERM, 1866.

1. The different States, as a general rule, have the right of determining the manner of levying and collecting taxes on private property within their limits; and can declare that a tract of land shall be chargeable with taxes, no matter who is the owner, or in whose name it is assessed and advertised; and that an erroneous assessment does not vitiate the sale for taxes. 2. Lands originally public cease to be public after they have been entered at the land office, and a certificate of entry has been obtained. 3. Lands so entered are liable to taxation; and if the taxes remain unpaid, they may be sold like other lands, even though no patent may as yet have issued. 4. The right to tax attaches as well to donation entries as to cash entries; the particular land in either case, when the entry is made and certificate given, being segregated from the mass of public lands, and becoming private property.

Mr. Carlisle, with a brief of Mr. Watkins, for the plaintiff in error:

We concede that when land has been sold by the United States, entered and *paid* for by the purchaser, who receives the usual certificate for the purchase-money, and in whose favor the usual patent certificate issues, it becomes the property of the purchaser. Such is the doctrine of *Carroll* v. *Safford*.[–]

[–] Page 212 3 Howard, 441.

But that case was one of an ordinary *cash* entry, and the usual certificates were issued to Carroll, the purchaser. The sale was made and consummated, so far as it could be done by the United States, and in due course of official routine, the patent issued to Carroll, who never pretended that there was any circumstance to vitiate his entry, or give to the officers of the United States charged with the supervision of the Land Department and the issue of patents, any color of authority to cancel it, or excuse for withholding the patent.

In order to make the case, now under consideration, analogous to that, not only must the patent have issued to Denton, in pursuance of his entry, but *he* should be himself the party upon the record, contesting the validity of the tax, upon his own land.

The counsel for defendant, in *Carroll* v. *Safford*, admitted that if from accident or the exceptions which he had before *213 adverted to, the certificate of purchase should not be matured into a patent, "the purchaser, at tax sale, could not acquire a better title than the holder of the certificate." That is his risk. But, he adds, "in the case of the present complainant it is not pretended that his titles were not perfected. On the contrary, the record brought up here alleges and admits that the patents for his lands were issued before the lands were sold for taxes."

The Supreme Court of the United States, in the case just named, never supposed they were overturning the numerous cases[fn–] decided or founded on the proposition that Congress, having power to dispose of the public domain, and to enact all laws and needful regulations respecting the sale thereof, where it has, by its legislation, provided for the issue of patents, they are necessary to complete the title; and, until the patent issues, the fee remains in the United States, and the le-

gal title has not passed. If this be not so, with the same propriety it could be contended that the verdict of a jury is sufficient, without any judgment of the court in pursuance of the finding; or that the existence of a judgment could be proved by parol evidence, without an exemplification of the record.

In most of tax title cases, the simple question has been, whether land, legally sold by an officer of the United States, became subject, under the State laws, to assessment and taxation against the purchaser of it as the owner, before the final emanation of the patent. In all of them the entries have been made in the usual mode of purchase at private sale, and it has not been pretended that there was any illegality or want of authority in the sales, or that the incipient title had failed. On the contrary, the bills to set aside the tax sales have been brought by the purchasers, asserting themselves to be the owners of the land by virtue of the patents which had issued upon their own entries. The whole scope of the decisions is, that by such entry the land *214 was sold and appropriated according to law; and the purchaser being for all beneficial purposes the owner of the land, it became subject to taxation as his property. Clearly, the purchase at tax sale would fail, unless the particular title should afterwards be consummated by patent. *Carroll* v. *Safford*, is careful not to omit this reservation. The court say: "It is true, if the land had been previously sold by the United States, or reserved from sale, the certificate or patent might be recalled by the United States, as having been issued through mistake."

Until the issue of the patent, the paramount title in all cases remains in the government; and until then all State legislation is subordinate to the primary right of soil and disposition remaining in the Federal Government, and does not profess to interfere with it,[fn_] and is contingent upon the issue or withholding of the patent; in regard to which the President, and the officers of the Land Department acting under him, have a discretion.

Now the heirs of Harrell, as we conceive, never had any ascertained right to the land in controversy, until the final decision of the Commissioner of the General Land Office in 1846, confirming their donation claim, and the issue of the patent to them for the lands applied for. Until then the whole subject remained under the control of the Land Department. If rejected, the entry of Denton would have held the land, and he would have received the patent.

The opinion in *Carroll* v. *Safford* proceeds upon the ground, that there is no lawful authority in any officer of the government to vacate a patent certificate upon a cash entry, made in accordance with law, and that it would be an abuse of power to do so; that the certificate imports an actual present sale of the land, and is as binding on the government as a patent; and *therefore* the land becomes subject to be assessed *to the owner of it*, for State taxes. How is it possible for this *215 reasoning to condemn the lands applied for by the heirs of Harrell in 1830, in satisfaction of their claim to a donation — when there was no actual sale for a valuable consideration paid to the United States, and they had received no final certificate or evidence of purchase; when they had no right, as against the government, to possess and enjoy the land; when the President and his subordinates in the Land Department, had not ceased to have a lawful control over the subject of the claim, but had a continuing power to disallow and reject it?

If the government of the United States had the right to cancel the entry of Denton; if it had the right to confirm the donation claim of the heirs of Harrell, and grant them a patent for the land in 1846, all of which is unquestioned — then, and to that extent, the land in controversy, and upon which the State tax was levied in 1842, was the property of the United States. If the land officers of the United States had a jurisdiction and supervising control over the subject of this title, then the patent granted in 1846, under the seal of the United States, must have the effect of investing the patentees with a clear title, an unincumbered estate in the

land, or else the tax sale in 1842 was a fundamental wrongful interference on the part of the State with the primary disposal of the land by the United States, and with the lawful regulations prescribed by her for securing title to the rightful owner.

It will not answer to say, that the heirs of Harrell had the best right to the land, because it ultimately prevailed. If the General Government had the right to take the land away from Denton, and give it to the heirs of Harrell, it had such a lawful power of disposal over it as could not be divested, or in the least degree impaired, by the intermediate sale of it for taxes. The government had the power to do effectually and completely what she professed to do, as an act of justice so long delayed. The patent would be a fruitless grant, if it can be effectually defeated by a State tax sale, whose only possible merit may be, that it was made in good faith, and without any intention to violate the compact. *216 *Mr. Reverdy Johnson, contra:*

The argument is, that at the time the land was assessed, the fee was in the United States, and the land not therefore subject to taxation. The position is too technical. What title did Harrell's heirs acquire under the certificate of entry of 1830? How is a party regarded who holds this certificate of entry? There are exceptions to the principle, but the general principle itself is that, as soon as the public land is purchased and paid for, it becomes the property of the purchaser, and may be sold and transferred by him (as is constantly the case), before being patented. It is the sale, not the patent, which is important. In *Carroll* v. *Safford*, the court, in speaking of the title under a certificate, says: "When the land was purchased and paid for, it was no longer the property of the United States, but of the purchaser. He held for it a certificate, which could no more be cancelled than a patent. It is true, if the land had been previously sold by the United States, or reserved from sale, the certificate or patent might be recalled by the United States, as having been issued through mistake. In this respect, there is no difference between the certificate-holder and the patentee."

In *Goodlett* v. *Smithson*,[fn-] it was decided, that "the patent is considered as evidence of title, by which it is shown that the prerequisites of sale have been complied with; by the act of entry and payment, the purchaser acquires a legal title, that may be aliened, descend or divested, in the same manner as any other legal title. So, previous to the issue of a patent, the estate of one in lands purchased of the United States, and for which he has received a certificate of payment, may be levied on and sold under execution, issued on a judgment at law, and ejectment can be maintained on such certificate."

With such rights under a certificate of entry, it would be strange, if the lands for which this certificate was given, should not be subject to taxation! If an individual could *217 purchase lands of the United States, settle, improve, and cultivate them, on certificates of purchase, then, in case, from the neglect and delay of the proper department, the patents are not issued for several years, the lands would be exempt from taxation, while lands adjoining were compelled to pay taxes, though their occupant was deriving no greater advantage from the possession and cultivation. A period of sixteen years elapses, during which time a party might have improved and cultivated the land, derived a subsistence from it, accumulated property on it, and wellnigh worn out the land, and yet, he must not pay taxes! Such a thing is possible, and easily to be done. And if this be the law, there is great consideration held out to induce persons not to get patents issued at all.

ERROR to the Supreme Court of the State of Arkansas; the case, as stated by the learned justice who gave the opinion of the court, being thus:

The State of Arkansas, on her admission into the Union, made a compact with the General Government not to tax the public lands within the State, nor interfere with their primary disposal by the United States, or with the regulations *211 adopted by Congress for securing the title in them to purchasers. It

was claimed that this compact had been broken by the decision of the Supreme Court of Arkansas in this case.

The facts on which the claim was based were these: On the 23d day of May, 1828, a portion of the public domain, within the limits of the Territory of Arkansas, was, by treaty, ceded to the Cherokee Indians, west of the Mississippi River, and suitable provision made for the removal of the settlers from it. As an indemnity for the loss of improvements and the trouble and expense of removing, each settler who did remove was entitled, by an act of Congress, to enter, at the proper land office in Arkansas, two quarter sections of the public lands of the territory, the sale of which was authorized by law.

The children of Timothy Harrell (one of the settlers on these ceded lands) furnished the requisite proof to the register and receiver of the land office, at Little Rock, of the settlement, removal, and subsequent death of their father, and were, on the 22d day of May, 1830, allowed to enter the lands in controversy. The proper certificate of this donation entry, as it is called, was transmitted, as is usual in land entries, to the General Land Office at Washington; but, for some unexplained reason, a patent was not issued for the lands embraced in it until the 5th day of February, 1846. By mistake, owing, doubtless, to the neglect of the land officers at Little Rock to make the proper cancellation on their books, and to the multiplication of land districts, these same lands were entered at the land office at Washington (within which district they were then included), on the 8th day of June, 1836, by G.W. Denton, who received the usual certificate of purchase. This entry was cancelled by the Commissioner of the General Land Office, on the issue of the patent to the heirs of Harrell, and, in February, 1849, the purchase-money refunded to Denton.

In 1842, these lands were listed for taxation, by the authorities of Arkansas, in the name of Denton, and sold (because the taxes were unpaid) to Duncan and Flanigan, the defendants *212 in error, who received a deed for them after the time for redemption had expired, and, by means of a proceeding peculiar to Arkansas, had their title confirmed by the decree of the proper court of record. Hardy, deraigning title through the heirs of Harrell, filed a bill in equity in the Circuit Court of Clark County, where the lands were situated, to annul the tax title thus acquired, and to quiet his own title. The Circuit Court, at the hearing of the case, dismissed the bill, and on appeal the Supreme Court of the State affirmed the decree.

This writ of error was brought to review that decision.

Mr. Justice DAVIS, after stating the case, delivered the opinion of the court.

It is not the province of this court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with the taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes.

Of course, the property must, under the compact, be taxable; but if it is, the mode of enforcing payment of taxes is wholly within legislative control. If, therefore, the lands in dispute could be taxed, the decision of the Supreme Court of the State is conclusive that the assessment, sale, and confirmation were regular, and divested the title derived through the heirs of Harrell. The taxability of the lands is, then, the only question which we are authorized to consider and determine.

The plaintiffs in error insist that the State had no power to impose a tax on them until the donation entry was actually confirmed and the patent had emanated. It is conceded that the power had been exercised, from an early period in *218 the history of the State,

to levy and collect a tax upon lands as soon as entered, and not to wait for the emanation of the patent, — a practice that has obtained in nearly all the Western States, whose admission was under a compact similar to that with Arkansas.

Arkansas covenanted to abstain from taxation of the public lands within her limits, and to refrain from legislation that should impede the Federal Government in disposing of them, or interfere with the regulations of Congress for the security of titles. It is clear that the government has not been hindered in selling them, nor Congress obstructed in securing titles; but it is claimed the contract has been violated, because these lands, when taxed, were owned by the United States. In no just sense can lands be said to be public lands after they have been entered at the land office and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the government has no power to revoke the entry and withhold the patent. A second sale, if the first was authorized by law, confers no right on the buyer, and is a void act.

According to the well-known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting the facts, by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be a part of the public domain. The government agrees to make proper conveyance as soon as it can, and in the meantime holds the naked legal fee in trust for the purchaser, who has the equitable title. As the patent emanates directly from the President, it necessarily happens that years elapse, before, in the regular course of business in the General Land Office, it can issue; and if the right to tax was in abeyance during this time it would work a great hardship to the State; for the purchaser, as soon as he gets his certificate of entry, is protected in his proprietary interest, can take possession, and make valuable and lasting improvements, which it *219 would be difficult to separate from the freehold for the purpose of taxation. If it was the purpose of the acts of Congress, by which the new States were admitted into the Union, to prohibit taxation until the patent was granted, the national authority would never have suffered, without questioning it, the universal exercise of the power to tax on the basis of the original entry.

This question was fully considered by this court in *Carroll* v. *Safford*,[–] and the views we have presented only reaffirm the doctrines of that case.

[–] Page 219 3 Howard, 450.

But it is insisted that there is a difference between a cash and a donation entry — that the one may be complete when the money is paid, but the other is not perfected until it is confirmed by the General Land Office and the patent issued.

That Congress has the entire control of the public lands, can dispose of them for money, or donate them to individuals or classes of persons, cannot be questioned. If the law on the subject is complied with, and the entry conforms to it, it is difficult to see why the right to tax does not attach as well to the donation as to the cash entry. In either case when the entry is made and certificate given the particular land is segregated from the mass of public lands and becomes private property. In the one case the entry is complete when the money is paid; in the other when the required proofs are furnished. In neither can the patent be withheld if the original entry was lawful.

The power to tax exists as soon as the ownership is changed, and this is effected when the entry is made on the terms and in the modes allowed by law. If this were not so, those who, through the bounty of Congress, get a title to the soil, *without* money, would enjoy higher privileges and be placed on a better footing than the great body of persons who, by the invitation

of the government, purchase lands *with* money. Such a discrimination could never have been contemplated by Congress.

These principles are well illustrated in the case at bar. *220 The heirs of Harrell, by means of the Cherokee treaty, had a claim to two quarter sections of land in Arkansas. If they furnished proof to the register and receiver of the proper land office of the settlement and removal of their father, and it was accepted and the claim allowed, then they had an equal right to purchase the lands in question with this claim as with money. The claim *was* allowed, the selections made, and a certificate of entry given, and it was their duty to see that the taxes were paid. It is true, that the entry might be set aside at Washington; but this condition attaches to all entries of the public lands.

They took upon themselves the risk of confirmation, and perilled their title when they suffered the lands to be sold for non-payment of taxes. It does not appear from the record why the patent was so long delayed; but the claim was finally approved on the original proofs, and the patent, when issued, related back to the original entry. The lands were, therefore, under the laws of the State, properly chargeable with taxes from the date of the first entry, in 1830.

The judgment of the Supreme Court of Arkansas is

AFFIRMED.