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TWO DOLLS. PER ANN. *Payable in Advance.*

Vol. 10.] *RALEIGH, (N. C.) MONDAY, JANUARY 13, 1806.* [No. 509.

Circuit Court of the United States,

NORTH-CAROLINA DISTRICT.

DECEMBER TERM, 1805.

GEORGE WM. COVENTRY, *Trustee,* For the devisees of the Earl Granville. *VERSUS,* JOSIAH COLLINS. } EJECTMENT.

This cause, which has excited so much interest in the state, and which we noticed in our last, was brought to recover a tract of land lying within the district of the Earl Granville, and is a parcel of that territory which was chartered to Lord Carteret by King Car. II. The plaintiff deduced his title from John Lord Granville, who held of Geo. II by grant, bearing date in 1744. The proprietory claim, derived from Car. II, had been surrendered to the crown, and a grant taken for the same lands as above; and whether the grant contained prerogatives or only the usual appurtenances to a fee simple appeared to be the question with the Court, and upon that point hung the decision of the cause.

The object in bringing this suit, was merely to try the principle; and should the plaintiff ultimately succeed he will claim all the lands within his district not granted or conveyed by the late Earl Granville or his ancestors.

Upon the close of the arguments, Judge POTTER addressed the Jury and remarked, that the meanest individual, of whatever nation or clime, had a right to demand a fair and impartial trial of his cause—that it was peculiarly the duty of the Court and Jury to divest themselves, as much as possible, of all bias, whether from favour or prejudice;—that it was particularly necessary in the case before them, to guard against such an influence, as popular clamour had been loud, and sentiments of the merits of the cause preconceived. He therefore advised them not to consider the national character of the parties, but to treat them as entirely unknown to them, or to consider them perfectly equal in point of favour.

He then informed the Jury that they possessed the right of finding either a general or special verdict—that the latter was a finding of the mere facts and referring the law thereon to the Court; and that the former was to compound their verdict of the law and facts. He observed that though it were his wish as an individual, that the determination of this court should undergo a revision, so that the law might be settled; yet he would not undertake to advise the finding of a special verdict merely for the purpose of affording means for carrying up the cause to the Supreme Court: and he thought it his duty to inform them too, that the principal reason for a special verdict was wanting in this case: he was ready to declare the law to them as he understood it, and that the opinion he had formed was precisely the same, in all probability, as that which he should deliver on a special verdict; but that they might take whichever course they thought proper, whether by finding a special verdict, or by finding a general verdict, concurring or not concurring with the opinion of the Court.

He then said, that the charge which he was about to give them, he had prepared in the form of an opinion, in order that the counsel might understand distinctly the reasons for that opinion:—he then delivered the following,

CHARGE:

IN deciding a cause of much importance, even between individuals whose rights alone are to be affected, it is to be supposed that the Court must possess great solicitude, lest, by a misguided judgment it may do a wrong to one of the parties, for which it may relent when it is too late. How much more must be the concern of the Court in the present case, where on the one hand, not only an individual may be greatly injured, but the national honor questioned; and on the other hand, the rights of thousands depend upon the decision.

In any case of such general concern and public expectation, I should ponder, though the case should be clear; I should hesitate, though my mind doubted not; and I should distrust my own judgment, though I had confidence in its powers. Embarrassing, therefore, was the case now under judgment, which had created a contrariety of opinion among the most learned in the law, and had shadowed my own intellects with much doubt and difficulty. This weight and difficulty was greatly increased too, by the loss of that guidance and support which I fondly expected, and, but for the peculiar situation in which he was placed, I should have derived from the Chief Justice

But hard and unpleasant as the task was, the impulse of duty bore down all difficulty; and by the light of the counsel I thought I perceived the truth of the cause in litegation.

If I am not informed upon the subject the fault is my own: for all that was necessary to be said in argument on either side, was amply expressed by the counsel at the bar—expressed too, in terms forcible; in method, clear; and in imagination, bold. And it is to this instructive argument that I owe much for the information I possess upon the subject. With this advantage, I have made it my business, as it was my duty, to assay the various points on which the cause might possibly turn, and to analyze to the utmost of my abilities, the true matter of the case. In doing this, I have followed the order adopted by the counsel; but as my opinion will only be delivered on one of the points made in the cause, I shall very concisely touch upon the others. Full of error as this opinion may possibly be, it was formed by the best lights of my mind; and I have at least the consolation of feeling that it is an upright one.

The right of the plaintiff as it stood on the twelfth of February, 17[illegible], was not denied in the argument, because it appeared to be satisfactorily proved: but it was contended that he had since been divested of his title for one of the following causes:

1st. That his title was vested in the state by the effect of the revolution or Bill of Rights.

2d. That it was confiscated.

3d. That the plaintiff was disabled by alienage to hold lands.

4th. That he was barred by the statute of limitations.

If in the grant from King George the 2d to John Lord Carteret, there is any transfer of sovereignty of the government, property, or territorial rights of the lands in question; then the plaintiff certainly was divested by the Treaty of Peace, to say nothing of the Declaration of Independence, or of the Constitution of this state. If there was neither sovereignty nor any royal privileges whatever granted, then the plaintiff is to be considered as a mere subject, and as such his right was saved by the Bill of Rights, however it might be affected afterwards. It is important therefore to know, if any and what Royal immunities were bestowed upon Lord Carteret (afterwards Lord Granville) by the grant; and this knowledge will lead us to a true construction of the Bill of Rights, as it bears upon this case.

After granting and confirming the land and *usual* privileges and appurtenances to the grantee, the clause runs thus, "together with all and singular the like and as ample rights, privileges, *royalties*, liberties, immunities, and *franchises of what kind soever*, within the said one eighth part of the said provinces or territories so divided, set out and allotted to the said John Lord Carteret as aforesaid, in as ample manner and form as the said John Lord Carteret, together with the said Duke of Beaufort, &c. (naming the several Lords proprietors) any or either of them could have held, used or enjoyed the same by virtue of the said letters patent, &c. except, nevertheless, out of this grant the powers of making laws, calling or holding of Assemblies, creating Courts of Justice, appointing Judges or Justices, pardoning criminals, creating or granting titles of honour, making ports or havens, taking customs or duties on goods laden or unladen, making and erecting counties, forts, castles, and cities, or furnishing them with habiliments of war, incorporating cities, boroughs, towns, villages or any other place or places, raising, employing or directing the militia, making war or executing martial law, exercising any of the regal rights of a county palatine, and of doing, using, or exercising any other the prerogatives, pre-eminences, rights, jurisdictions and authorities of, belonging or relating to the administration of the government of the said one eighth part of said provinces, &c to have and to hold the said one eighth part, &c. and all other the *royalties, franchises*, powers, privileges, &c. except as before excepted."

These exceptions are numerous and comprehensive, but they are at last nothing more than exceptions, and therefore cannot be said to comphehend *all* the King's prerogatives: for it would have been idle to grant certain royalties with an exception as broad as the grant, and absurd to say that an exception which is a constituent part, is equivalent to the integer. It is not an easy thing to enumerate all the prerogatives and regal dignities of a monarch, whose power is to most purposes undefined by any written instrument: nor at any rate can it be supposed that the solicitor who drew this grant aimed at a full enumeration.—The exceptions may possibly comprehend all the *direct* prerogatives of the crown; but they certainly do not include all the *incidental* prerogatives. A few of the latter, and such as appear not to be included in the exceptions, I will here undertake to enumerate. No costs can be recovered against the King—his debt shall be preferred before that of a subject—where the title of the King and a common person concur, the King's title shall be preferred; no distress can be made upon the King's possessions; no entry will bar the King; in his pleading, he need not plead an act of Parliament, as a subject is bound to do; he is not bound to join in demurrer to evidence, and the Court may direct the jury to find the matter specially; he is exempt from taxes; he never can be a minor; if a river, so far as there is a flux of the sea, leaves its channel, that channel belongs to the King; he is not bound by an act of Parliament, unless he be named therein by special and particular words—*nullum tempus occurrit regi*; and many other regalia of like import. Now let us consider the plaintiff (who deduces his title from Lord Carteret) possessed of those royalties as parcel of the grant, and see if he was affected by the Revolution or the Bill of Rights.

The declaration of Rights and of Independence of the United States were not the *necessary* consequence of the Revolution, any more than the Constitution of this state was: then, I cannot perceive the least colour for the supposition that the plaintiff was divested by the mere effect of the Revolution, unless it be upon the ground of alienage, of which some notice will be taken in its proper place.

The Bill of Rights in North-Carolina, which is part of the Constitution of the state, now presents itself. If the convention who formed this instrument considered the Earl Granville as a mere individual or subject, disrobed of all the royal dignities and franchises which he possesesd under the Letters Patent from Car. 2, then I have no hesitation in saying that his right was preserved by the saving clause in the 25th section. This opinion, however, I declare with much deference and respect for the deep learning and solid judgment of a gentleman, eminent in the law, who, I understand, has ruled the contrary; but as his opinions have not a binding force upon this court, and as I cannot adopt them without an entire surrender of my own opinion, I have no alternative.

No reason or argument is required to support the position I have laid down; the words of the proviso are simple and comprehensive—not *in themselves* capable (as it appears to me) of misconstruction; and by the generality of the expressions, the subjects of Great Britain as well as the citizens of North-Carolina were certainly included. To restrain the generality of these expressions, by other parts of the constitution and by the supposed intent of the Convention, collected from extraneous circumstances, has been the labour and study of many; but none have succeeded to my satisfaction. In this case it would be as unnecessary as it would be tedious to go through all the negative reasoning against this restraining principle; but I will endeavour to give the true construction of this section as it regards the present plaintiff.

I believe that the plaintiff possessed royalties under the grant from George 2d. It is then fair to suppose that the Convention entertained the same opinion. Indeed the grant itself was implied notice of the fact; it was a public and notorious thing, of which the Convention must be presumed to have knowledge. They moreover had express notice; for as early as the year 1748, the grant was recognized by an Act of Assembly.

In this point of view, let us see if the plaintiff's title is affected by the Bill of Rights. The Constitution of North Carolina, like those of other states in the Union, assumes the entire sovereignty of the state, and places it in the hands of the collective body of the people—meaning the citizens thereof. It declares that all political power is vested in and derived from the people only—That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof—that no man is entitled to exclusive or separate emoluments or *privileges* from the community, but in consideration of public services—and, that the property of the soil in a free government, being one of the essential rights of the collective body of the people; therefore all the territories, &c. are the right and property of the people of this state, to be held by them in sovereignty.

Now, this constitution must operate upon the present case in one of the following ways:—1st. It must strip the plaintiff's right of all its regalia, and leave the mere fee simple preserved by the proviso; which I cannot imagine. Or 2ndly, It protects the whole right, by leaving it unaffected. Or 3rdly, It works a total destruction of the right.

That the plaintiff's royalties *might* have been severed from the freehold, so as to continue the naked fee simple in him, I admit; but that it *was* done I cannot believe. It would not have been an ordinary thing, therefore, if it had been intended, it should have been so expressed. The royalties were engrafted in and made part of the plaintiff's title; and a man is not *presumed* to be divested of privileges appurtenant to a freehold by any ex post facto means, unless he be also divested of the freehold itself. Nor is such a construction consistent with the spirit of the Bill of Rights, which makes no partial deprivation, but distroys the right completely, unless it be supposed to be included in the proviso; and to suppose *that* in the present case, would leave the plaintiff's title *totally unaffected*; consequently he would retain his royalties. Then, whether his right is wholly preserved or wholly destroyed by the Bill of Rights; or rather, whether he is included in the proviso, is the question.—I think he is not included in the proviso; but that his right is totally destroyed. In drawing this conclusion, I take it for granted, as I think I have shewn, that the plaintiff did derive, at least *incidental* prerogatives from the King, by the grant of 1744; and *these*, in my opinion, are sufficient to answer the defendant's purpose. Can it be supposed that the people took to themselves the entire sovereignty of the state and declared the territory thereof to be *their* right and property; and yet intended to permit an alien, invested with regal immunities, to hold a large portion of that territory, without expressing such permission in plain terms? Or that they declared the property of the soil in a free government to be one of the *essential* rights of the collective body; and yet meant that a great share of that soil should be held and parcelled out by this royal substitute, without expressly granting this particular favor? Or can it be believed, after the declaration that no man or set of men are entitled to exclusive or separate emoluments or *privileges* from the community, but in consideration of public services, that an alien shall hold lands, and have attached to his tenure, many important exclusive privileges and pre-eminences? Shall the plaintiff by his royal franchise take all derelict lands within his boundary, to the exclusion of the state? Shall it be said that a man shall hold lands exempt from the operation of a statute, unless he be named therein by express words? Shall these lands be protected by the state, and yet exempt from taxation? and shall they be granted by the plaintiff in fee, saving an annual tribute with the right of escheat? In fine, can it be said that this is such an individual as was meant in the proviso, when, unlike other subjects and individuals, no laches can be imputed him—no time can run against him?

[*To be concluded in our next.*]