U.S. Supreme Court

CURTIN v. BENSON, 222 U.S. 78 (1911)

222 U.S. 78

J. B. CURTIN, Appt.,
v.
H. C. BENSON et al.

No. 1.
Submitted April 11, 1910

Ordered for oral argument October 21, 1910.
Argued October 25, 1911.
Decided November 20, 1911.

Messrs. Marshall B. Woodworth and J. B. Curtin, in propria persona, for appellant on original submission.

Mr. W. C. Prentiss for appellant on oral argument.[Curtin v. Benson 222 U.S. 78 (1911)]

[222 U.S. 78, 80] Assistant Attorney General Harr for appellees. [222 U.S. 78, 80] Assistant Attorney General Harr for appellees.

[222 U.S. 78, 82]

Mr. Justice Mckenna delivered the opinion of the court:

This suit was brought in the superior court of Tuolumne county, state of California, against the appellee Benson, and others, who were soldiers under Benson, to enjoin them from driving appellant's stock from his lands, or by any means interfering with them, and from preventing appellant driving his stock to his lands over certain toll roads. The case was removed to the United States circuit court for the northern district of California, where, after hearing, final judgment was rendered dismissing the bill of complaint.

The facts agreed to, and established by evidence supplementing the agreement, are as follows: Appellant is the owner of certain lands within the Yosemite National Park (the park was regularly and legally established, act October 1, 1890, 26 Stat. at L. 650, chap. 1263, U. S. Comp. Stat. Supp. 1909, p. 572; Joint Res. June 11, 1906, 34 Stat. at L. 831, U. S. Comp. Stat. Supp. 1909, p. 584), and lessee of other lands therein. Leading to the lands there are certain toll roads, which were established many years prior to the creation of the park.

Appellee Benson is a captain in the United States Army and superintendent of the park, and, as such, it was and is his duty to enforce the rules and regulations prescribed by the Secretary of the

Interior for the government of the park, and for this purpose he has a body of troops under his command. [222 U.S. 78, 83] The Secretary established and promulgated the following rules:

> '9. Owners of patented lands within the park limits are entitled to the full use and enjoyment thereof; such lands, however, shall have the metes and bounds thereof so marked and defined as that they may be readily distinguished from the park lands. Stock may be taken over the park lands to patented lands with the written permission and under the supervision of the superintendent.
> '10. The herding or grazing of loose stock or cattle of any kind on the government lands in the park, as well as the driving of such stock or cattle over the same, is strictly forbidden, except in such cases where authority therefor is granted by the super-intendent.'

Appellant claims the right, without complying with these rules, to drive his cattle over the toll roads and to graze them on his lands. On one occasion appellant placed cattle on his lands, and appellee Benson immediately removed them, and refused to allow them to be grazed thereon until appellant complied with the rules; and, prior to the commencement of the suit, refused to allow appellant to drive his cattle over the the toll roads to his lands, or to use the lands until he complied with the rules.

The testimony gave some particularity to the facts as agreed to. It appeared that appellant has within the park a few hundred acres, and, it may be inferred, 23,000 acres in the vicinity. He asserted that he had not complied with the regulations, and did not intend to do so until required And it was admitted that the largest part of the land was unfenced.

The following from the report of the superintendent of the park to the Secretary of the Interior for the year 1901 was put in evidence: 'After due consideration, based upon the best evidence I have been able to obtain, I can [222 U.S. 78, 84] see no objection to property owners and those holding leased land within the park limits grazing cattle near their own premises, under the supervision of the park authorities.'

Testimony was introduced on the part of appellees (their counsel expressing a doubt of its admissibility) 'to show that the regulation is a reasonable one, and the reason for it, and what effect will be produced if the regulation is not carried out.' To the offer counsel for appellant replied that he denied the power of the Secretary. 'It is simply a question of his power,' he said, and stated that if defeated on that point, he could show that the rules were not reasonable under the circumstances. The court, saying that it understood, heard the evidence, which was to the following effect: Appellee Benson had been superintendent of the park since April 10, 1905, and on duty there for several years prior to that time. Numerous people claimed land in the park as their ranges, and a number of them had the places surrounded by fences, 'sometimes inclosing, instead of 160 acres which they had, as high as several thousand acres of land.' They drove their cattle to the so-called ranges and immediately let them loose, and they strayed throughout the entire reservation. 'Senator Curtin's cattle have been in that condition for a great many year.' This he (Benson) Knew of his personal knowledge, because he was present at the time and had a correspondence with Mr. Curtin as far back as 1895, 1896, and 1897. He further testified that he was detailed on special duty to ascertain private land claims in the park, the object being to

ascertain who owned land 'and somewhere about where it lay;' that he did some surveying and found that a great many people-'Mr. Curtin, for instance'- had fenced more land than they were entitled to, had paid no attention to their own lines, had tracts of land inclosed upon which their cattle did not stay for more than three or four [222 U.S. 78, 85] days, 'but proceeded out to the rest of the park; so a regulation was ordered that they point out their metes and bounds, for this reason: though we might know absolutely where they were,' they would claim the cattle to be on their lands. If the metes and bounds were fixed by an 'agreed understanding' it could be definitely known whether they were within or without the claim. He further testified that the whole place had been overrun with cattle, and that the object of the regulations was 'to keep people to the use of their own lands and keep the government land from being interfered with.' He did not attempt to prevent Curtin from using his land, provided he complied with the regulations, but he did remove cattle from Curtin's land, on the ground that he had not complied with the regulations.

He testified further that he permitted Curtin to pasture his cattle on his land after he (Curtin) had it surveyed, but refused Curtin permission to fence according to the survey, the correctness of the survey being disputed.

It is objected by the government that appellant is not entitled to the relief he prays because he does not come into court with clean hands. It is urged as a ground of the charge that the testimony exhibits his purpose to be to use his lands as a basis, and the toll roads as a means, to make whole-sale trespasses upon the park lands. If the fact were established it might be hard to resist its effect, but it is not established. The evidence cited in support of it, and of which we have given the substance, refers to a period anterior to the time when this controversy arose. Indeed, anterior to the time when the regulations were established by the Secretary of the Interior, which was April 22, 1905; and the object of the testimony was to account for the regulations, and not to show the special and immediate justification of Benson's orders. We cannot now extend the evidence beyond the special and limited purpose of its introduction. We do [222 U.S. 78, 86] not think the case, as it was submitted to the circuit court, showed the ulterior purpose on the part of appellant to be a wilful trespass upon the lands of the park, but to be an honest assertion of rights.

On the merits of the case we may concede, arguendo, as contended by the appellees and disputed by appellant, that the United States may exercise over the park not only rights of a proprietor, but the powers of a sovereign. There are limitations, however, upon both. Neither can be exercised to destroy essential uses of private property. The right of appellant to pasture his cattle upon his land, and the right of access to it, are of the very essence of his proprietorship. May conditions be put upon their exercise such as appellees put upon them? In answering the question we shall assume, for the time being, that Benson has interpreted correctly the regulations of the Secretary of the Interior. His (Benson's) order is not, it will be observed, a regulation of the use of the land, as an order to fence the lands might be, but is an absolute prohibition of use. It is not a prevention of a misuse or illegal use, but the prevention of a legal and essential use,-an attribute of its ownership,-one which goes to make up its essence and value. To take it away is practically to take his property away; and to do that is beyond the power even of sovereignty, except by proper proceedings to that end.

A law requiring an owner in appellant's situation to fence his land might be within such power, though of that we are not required to express an opinion. A law making the trespass of his cattle on other lands a criminal offense might be within such power. Such laws might be considered as strictly regulations of the use of property,-of so using it that no injury could result to others. They would have the effect of making the owner of land herd his cattle on his own land, and of making him responsible for a neglect of it.

We have assumed so far that Benson has exercised a [222 U.S. 78, 87] power in accordance with the rules prescribed by the Secretary of the Interior. This, however, may be questioned. The orders of Benson are not that Curtin mark and define his lands, but that he do so 'by an agreed understanding' with him (Benson), so that there could be no subsequent controversy about their boundaries. But this gives to Benson power to force a concession to his 'understanding,' and to require Curtin to submit to a limitation of the area of his land or a limitation of its uses. It is no answer to say that the power would not be arbitrarily or unreasonably exercised. It must be judged by what can be done under it, not by what may be done under it.

It may be doubted, too, if the rules prescribed by the Secretary of the Interior warranted Benson's order in regard to the toll roads. The rules did not deal with the toll roads at all. They do deal with 'park lands,' and authorize stock to be taken over them by the 'written permission and under the supervision of the superintendent.' But even if it be held to apply to the toll roads, it is manifestly but a regulation of the transit of the stock merely, and not a use of the roads as a condition of the performance of something else.

We, however, rest our decision on the ground of the want of power of the Secretary or the superintendent to limit the uses to which lands in the park, held in private ownership, may be put.

Decree reversed and cause remanded for further proceedings in accordance with this opinion.