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UNITED STATES SUPREME COURT DIGEST

1754 TO DATE

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Supreme Court of the United States
From Earliest Times to Date

Volume 11

PRINCIPAL AND SURETY — QUO WARRANTO

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🔑184. Washington.

🔑185. —— Tide and shore lands.

🔑185(1). In general.

U.S.Wash. 1894. The title to tide lands is in the state, and the act of congress, 17 Stat. 649, providing for the issuance of "Valentine Scrip," and for its location upon "unoccupied and unappropriated public lands," cannot therefore be so construed as to authorize the entry with such scrip upon tide lands situated in the state of Washington.

Baer v. Moran Bros. Co., 14 S.Ct. 823, 153 U.S. 287, 38 L.Ed. 718.

U.S.Wash. 1894. The title to tide lands is in the state, and the act of congress, 17 Stat. 649, providing for the issuance of "Valentine Scrip," and for its location upon "unoccupied and unappropriated public lands," cannot therefore be so construed as to authorize the entry with such scrip upon tide lands situated in the state of Washington.

Mann v. Tacoma Land Co., 14 S.Ct. 820, 153 U.S. 273, 38 L.Ed. 714.

🔑185(2)–187.5. ***For other cases see the Decennial Digests and WESTLAW.***

Library references

C.J.S. Public Lands.

🔑187.5. Wyoming.

IV. COLONIAL AND PROPRIETARY GRANTS.

🔑188. Colonial charters and grants from the crown.

Library references

C.J.S. Public Lands § 200.

U.S. 1934. By force of grant, by letters patent from British Crown to Duke of York, title to bed of Delaware river within circle of twelve miles about town of New Castle inured, by estoppel, to grantee from Duke of York under previously executed deed of feoffment containing covenant for further assurance.

State of New Jersey v. State of Delaware, 54 S.Ct. 407, 291 U.S. 361, 78 L.Ed. 847.

U.S. 1926. People of states became sovereign as result of Revolution, acquiring rights of crown in public domain.

Com. of Massachusetts v. State of New York, 46 S.Ct. 357, 271 U.S. 65, 70 L.Ed. 838.

U.S.Ala. 1851. Under royal colonial government, right of soil and jurisdiction remained in the crown, and boundaries, though described in letters patent, were subject to alteration at pleasure of crown.

Howard v. Ingersoll, 54 U.S. 381, 13 How. 381, 14 L.Ed. 189.

Under proprietary colonial government, right of soil, as well as jurisdiction, was vested in proprietors and charters, being in nature of grants, their limits fixed thereby could not be altered but by consent of proprietors.

Howard v. Ingersoll, 54 U.S. 381, 13 How. 381, 14 L.Ed. 189.

U.S.Del. 1934. By force of grant, by letters patent from British Crown to Duke of York, title to bed of Delaware river within circle of twelve miles about town of New Castle inured, by estoppel, to grantee from Duke of York under previously executed deed of feoffment containing covenant for further assurance.

State of New Jersey v. State of Delaware, 54 S.Ct. 407, 291 U.S. 361, 78 L.Ed. 847.

U.S.Ky. 1818. The 6th section of the act of Virginia of 1748, entitled "An act directing the duty of surveyors of lands," is merely directory to the officer, and does not make the validity depend on his conforming with its requisitions.

Craig v. Radford, 16 U.S. 594, 3 Wheat. 594, 4 L.Ed. 467.

And a survey, though made by the deputy surveyor, is in law to be considered as made by the principal surveyor.

Craig v. Radford, 16 U.S. 594, 3 Wheat. 594, 4 L.Ed. 467.

U.S.Ky. 1809. The first survey under a military land warrant, in Virginia, for services rendered prior to 1763, gives the prior equity, unless this equity is impaired by the circumstances of the case. The survey is the act of appropriation.

Taylor v. Brown, 9 U.S. 234, 5 Cranch 234, 3 L.Ed. 88.

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For references to other topics, see Descriptive-Word Index

A subsequent locator of land, under a military land warrant in Virginia, for services rendered prior to 1763, without notice of the prior location, cannot protect himself by obtaining the elder patent.

Taylor v. Brown, 9 U.S. 234, 5 Cranch 234, 3 L.Ed. 88.

The locator of a military land warrant, for services rendered prior to 1763, undertakes himself to find waste and unappropriated land; and his patent issues on his own information to the government, and at his own risk. He cannot be considered as a purchaser without notice.

Taylor v. Brown, 9 U.S. 234, 5 Cranch 234, 3 L.Ed. 88.

The equity of a prior locator under a military land warrant, for services rendered prior to 1763, extends to the surplus land surveyed, as well as to the quantity mentioned in the warrant.

Taylor v. Brown, 9 U.S. 234, 5 Cranch 234, 3 L.Ed. 88.

U.S.La. 1853. The English statutes of mortmain forfeit to the King or superior lord the estates granted which right is to be exerted by entry and hence a license from the King severs the forfeiture.

McDonogh's Ex'rs v. Murdoch, 56 U.S. 367, 15 How. 367, 14 L.Ed. 732.

U.S.Mass. 1926. People of states became sovereign as result of Revolution, acquiring rights of crown in public domain.

Com. of Massachusetts v. State of New York, 46 S.Ct. 357, 271 U.S. 65, 70 L.Ed. 838.

U.S.Miss. 1827. A grant made by the British governor of Florida, in January, 1777, of land lying between the Mississippi and the Chatahouchee rivers, and between the thirty-first degree of north latitude and a line drawn from the mouth of the Yazoo river, due east, to the Chatahouchee, will not be recognized as title to the land, in the courts of the United States.

Harcourt v. Gaillard, 25 U.S. 523, 12 Wheat. 523, 6 L.Ed. 716.

U.S.N.J. 1934. By force of grant, by letters patent from British Crown to Duke of York, title to bed of Delaware river within circle of twelve miles about town of New Castle inured, by estoppel, to grantee from Duke of York under previously executed deed of feoffment containing covenant for further assurance.

State of New Jersey v. State of Delaware, 54 S.Ct. 407, 291 U.S. 361, 78 L.Ed. 847.

U.S.N.J. 1842. The purpose of letters-patent of Charles II to the Duke of York in 1664 and 1674 embracing territory which now forms the state of New Jersey was to enable the Duke of York to establish a colony on the North American continent to be governed as nearly as circumstances would permit according to the laws and usages of England, and in which the Duke of York, his heirs and assigns were to stand in the place of the king and administer the government according to the principles of the British Constitution.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

The grant of the territory now embraced in the state of New Jersey from the king of England to the Duke of York could not be interpreted by rules applicable to deed conveying private property.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

In construing the charter granting territory now forming state of New Jersey to the Duke of York in 1664 and 1674, court would not look merely to strict technical meaning of words of letters-patent but laws and institutions of England, history of the times, object of charter, contemporaneous construction and usages thereunder for the century which had elapsed since charter was granted were all entitled to consideration and weight.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

The king of England had power in 1664 and 1674 to grant the land now forming the state of New Jersey for the purpose of enabling the grantee to plant a colony.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

Under English laws since Magna Charta the king had no power to grant to a subject the portion of the soil covered by the navigable waters of the kingdom so as to give him an immediate and exclusive

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right of fishery either for shell fish or floating fish within the limits of his grant.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

Under the British law all vacant lands are vested in the crown as representing the nation and the exclusive power to grant them is admitted to reside in the crown as a branch of the royal prerogative.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

Under English law the crown was the proper organ to dispose of the public domain.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

Discoveries of territory made by persons acting under the authority of the British government were for the benefit of the nation.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

The territory now forming the state of New Jersey was held by the king at the time of the grant to the Duke of York in 1664 and 1674 in his public and legal character as the representative of the nation and in trust for them.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

U.S.N.Y. 1926. People of states became sovereign as result of Revolution, acquiring rights of crown in public domain.

Com. of Massachusetts v. State of New York, 46 S.Ct. 357, 271 U.S. 65, 70 L.Ed. 838.

U.S.N.Y. 1894. The grant, by charters from colonial governors of New York, to the town of Huntington, Long Island, of lands bounded north by "the Sound," included Huntington bay, although the statement of the appurtenances contained no words applicable to such exterior waters except the word "harbors," and the bay was not landlocked nor a place of absolute safety for shipping; it having been always known as a distinct body of water, not part of Long Island Sound, and called indiscriminately "bay" or "harbor" at the time of the original grant.

Lowndes v. Board of Trustees of Town of Huntington, 14 S.Ct. 758, 153 U.S. 1, 38 L.Ed. 615.

U.S.Pa. 1820. By the charter of Charles I to William Penn of March 4, 1668, he became entitled in his private and individual capacity to the fee-simple interest in the soil of the province of Pennsylvania, and he had power to dispose of the soil in such manner as he might think proper, and to reserve such portions as he might select and in such manner as he might please to prescribe.

Conn v. Penn, 18 U.S. 424, 5 Wheat. 424, 5 L.Ed. 125.

U.S.Vt. 1815. The royal charter of a town granted a tract of land to its inhabitants, to be divided into equal shares; one share to be for a glebe for the church of England, as by law established. Held, that the share thus granted for a glebe was not held in trust by the grantees.

Town of Pawlet v. Clark, 13 U.S. 292, 9 Cranch 292, 3 L.Ed. 735.

A grant in the royal charter of a town in the province of New Hampshire, before the Revolution, of "one share for a glebe for the church of England, as established by law," did not entitle any Episcopal church to the glebe, unless it was duly erected before the Revolution, or by the state since; and by the Revolution the state succeeded to all the rights of the crown as to the unappropriated as well as the appropriated glebes.

Town of Pawlet v. Clark, 13 U.S. 292, 9 Cranch 292, 3 L.Ed. 735.

U.S.Va. 1812. Lord Fairfax, at the time of his death, had the absolute property, seisin, and possession of the waste and unappropriated lands in the Northern Neck of Virginia.

Fairfax's Devisee v. Hunter's Lessee, 11 U.S. 603, 7 Cranch 603, 3 L.Ed. 453.

Grantees holding as tenants in capite of the king could not sell or alien without royal license.

Fairfax's Devisee v. Hunter's Lessee, 11 U.S. 603, 7 Cranch 603, 3 L.Ed. 453.

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U.S. v. Fernandez,
Pet. 303, 9 L.Ed. 43

Under royal charter expressly conveying territory to grantees and their heirs and assigns as tenants in capite with power to alien granted premises to any person willing to contract and buy premises clause granting power to alien premises was intended to give royal assent to alienation without claim of fine therefor.

Fairfax's Devisee v. Hunter's Lessee, 11 U.S. 603, 7 Cranch 603, 3 L.Ed. 453.

Sale or alienation without royal license of land held by grantees as tenants in capite of the king, was, in ancient strictness an absolute forfeiture of the land and after statute although the forfeiture did not attach a reasonable fine was to be paid to the king on alienation.

Fairfax's Devisee v. Hunter's Lessee, 11 U.S. 603, 7 Cranch 603, 3 L.Ed. 453.

🔑189–189.1. ***For other cases see the Decennial Digests and WESTLAW.***

Library references

C.J.S. Public Lands.

🔑189. Grants, concessions, and patents from colonial governments or proprietors.

🔑190. —— Power to make.

U.S.Fla. 1836. The proclamation of 1763 was the law of Florida while that province was under the dominion of Great Britain.

U.S. v. Fernandez, 35 U.S. 303, 10 Pet. 303, 9 L.Ed. 434.

🔑191. —— Mode of making, requisites, and validity.

U.S.Fla. 1836. Grants of Florida land both by Spanish and British governors were valid to pass right of the crown subject to right of occupancy of Indians in possession of land, and when that ceased, either by grant to individuals with the consent of the local governors, by cession to the crown, or by the abandonment by the Indians, the title of the grantees became complete.

U.S. v. Fernandez, 35 U.S. 303, 10 Pet. 303, 9 L.Ed. 434.

🔑192. —— Construction and operation in general.

U.S.Fla. 1832. The actual exercise of authority of colonial government to dispose of public lands without any evidence of disavowal, revocation, or denial by the king and his consequent acquiescence and presumed ratification are sufficient proof of such authority in absence of evidence to the contrary.

U.S. v. Arredondo, 31 U.S. 691, 6 Pet. 691, 8 L.Ed. 547.

The grants of colonial governments before the revolution are plenary evidence of the grant itself as well as authority to dispose of public land.

U.S. v. Arredondo, 31 U.S. 691, 6 Pet. 691, 8 L.Ed. 547.

U.S.N.J. 1842. A grant made by the authority of a state since the Revolution must be determined by different principles from those which apply to grants of the British crown.

Martin v. Waddell's Lessee, 41 U.S. 367, 16 Pet. 367, 10 L.Ed. 997.

🔑193. —— Lands included.

U.S. 1810. A grant, under a patent, of an island, by name, adding the courses and distances of the lines thereof, which, on resurvey, are found to exclude a part of the island, will nevertheless pass the whole island.

Lodge's Lessee, v. Lee, 10 U.S. 237, 6 Cranch 237, 3 L.Ed. 210.

U.S.N.Y. 1894. The grant, by charters from colonial governors of New York, to the town of Huntington, Long Island, of lands bounded north by "the Sound," included Huntington bay, although the statement of the appurtenances contained no words applicable to such exterior waters except the word "harbors," and the bay was not landlocked nor a place of absolute safety for shipping; it having been always known as a distinct body of water, not part of Long Island Sound, and called indiscriminately "bay" or "harbor" at the time of the original grant.

Lowndes v. Board of Trustees of Town of Huntington, 14 S.Ct. 758, 153 U.S. 1, 38 L.Ed. 615.

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⚷194. —— Use and disposal of lands by municipalities.

U.S.Ky. 1827. By the Virginia "land law" of 1773, 640 acres of land were reserved in villages, to be divided among the settlers. The heirs of A. filed a bill against the trustees of a town to recover a certain town lot alleged to have been granted to A. under that law. There was no record evidence of a grant, but an entry was made in the records of the board of trustees, after the death of A., directing the lot claimed to be appraised, and the valuation thereof to redound to the heirs of A. It appeared that there was a large spring on the lot claimed and that A. had used a part of the lot for a tannery. It was permitted defendants to show by parol that such lot was reserved to the public on account of the spring, that A. was allowed to use the lot for a tannery, for the purpose of encouraging mechanical trades in the town, and that the entry in the records of the trustees was made by mistake of their clerk, and should have been only for the appraisement of the works of A. on the lot. The bill was dismissed.

McConnell v. Town of Lexington, 25 U.S. 582, 12 Wheat. 582, 6 L.Ed. 735.

An heir at law of deceased resident of Lexington, Kentucky was not entitled to conveyance of lots allegedly granted to deceased by trustees of town of Lexington, on ground that lots were public lots and that deceased was merely permitted to use part of lot.

McConnell v. Town of Lexington, 25 U.S. 582, 12 Wheat. 582, 6 L.Ed. 735.

⚷195–196. ***For other cases see the Decennial Digests and WESTLAW.***

⚷196.5. —— Evidence of grant.

U.S.Pa. 1887. A warrant authorizing the survey of certain lands in Pennsylvania was issued in 1751 to C., by the proprietaries, but no return of the survey was ever made to the land office. *Held*, that it must be presumed, from the lapse of time, the right to a grant under the warrant had been abandoned, and one claiming title to the land in 1882, through C., and his grantees, could not sustain his title by showing that a private survey had been made, that it was recognized by the proprietaries, and that a warrant had been issued thereon to C. and payment for the land made to them by him, but that the absence of a return of the survey was fatal to his claim.

Paxton v. Griswold, 7 S.Ct. 1216, 122 U.S. 441, 30 L.Ed. 1143.

V. SPANISH, MEXICAN, FRENCH, AND RUSSIAN GRANTS.

⚷197. Recognition and enforcement by United States in general.

Library references

C.J.S. Public Lands §§ 202–204, 207, 208, 210, 215.

U.S.Ala. 1850. The existence of an imperfect and inoperative Spanish grant to land later located in state of Alabama could not enlarge power of United States over the land after Alabama became a state or authorize federal government to grant or confirm title to land when sovereignty and dominion over it had become vested in the state.

Goodtitle ex dem. Pollard v. Kibbe, 50 U.S. 471, 9 How. 471, 13 L.Ed. 220.

U.S.Ala. 1840. It was held that, under the act of congress of 1824 relating to Florida lands, the term "new grant" is the opposite of "old," and referred to grants made by the Spanish government before the cession, which new grants were not confirmed by the treaty unless improved.

Pollard's Heirs v. Kibbe, 39 U.S. 353, 14 Pet. 353, 10 L.Ed. 490.

U.S.Cal. 1878. Where the United States government did not undertake to regulate form of conveyances of land in California, after its conquest by military forces, the Mexican law, whether statutory or established by custom, was in force.

Palmer v. Low, 98 U.S. 1, 8 Otto 1, 25 L.Ed. 60.

U.S.Cal. 1876. Under statute confirming selections of school lands theretofore made by California but excepting from confirmation land claimed under a valid Mexican or Spanish grant, where extent of Mexican claim had been determined and all land outside the final survey had been restored to the body of the public lands at time validity of selection was determined, the State had the right at time claim was proved up to treat it as public land and to have claim confirmed though land claimed was part of a tract claimed

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Huff v. Doyle, 93 U.
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Merryman v. Bourne,
Wall. 592, 19 L.Ed. 6

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