

CHAPTER MDCCCXV.

1795.

An ACT to prevent intrusions on lands within the counties of Northampton, Northumberland, and Luzerne.

SECT. I. *BE it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That Intruders on lands within Northampton, Northumberland, and Luzerne, counties how punishable. That if any person shall, after the passing of this act, take possession of, enter, intrude, or settle on any lands within the limits of the counties of Northampton, Northumberland, or Luzerne, by virtue or under colour of any conveyance of half share right; or any other pretended title, not derived from the authority of this commonwealth, or of the late Proprietaries of Pennsylvania before the revolution, such person, upon being duly convicted thereof, upon indictment in any Court of Oyer and Terminer, or Court of General Quarter Sessions, to be held in the proper county, shall forfeit and pay the sum of two hundred dollars, one half to the use of the county, and the other half to the use of the informer; and shall also be subject to such imprisonment, not exceeding twelve months, as the court, before whom such conviction is had, may in their discretion direct.

SECT. II. *And be it further enacted by the authority aforesaid,* Combinations to convey, possess, and settle, under pretended titles, how punishable. That every person who shall combine or conspire for the purpose of conveying, possessing, or settling on any lands within the limits aforesaid, under any half share right or pretended title as aforesaid, or for the purpose of laying out townships by persons not appointed or acknowledged by the laws of this commonwealth, and every person that shall be accessory thereto, before or after the fact, shall for every such offence, forfeit and pay a sum not less than five hundred, nor more than one thousand dollars, one half to the use of the county, and the other half to the use of the informer; and shall also be subject to such imprisonment at hard labour, not exceeding eighteen months, as the court in their discretion may direct.

SECT. III. *And be it further enacted by the authority aforesaid,* Proceedings to eject intruders. That the court wherein any such conviction shall have been had shall issue their writ to the Sheriff of the county, wherein the said offence has been committed, or the said conviction had, or if the said court shall be of opinion that the Sheriff or Coroner are not impartial, then to any other person or persons they may think proper, commanding him or them, together with the power of the county, if he or they should judge their assistance necessary, to proceed to the lands in question, and therefrom to expel and eject all and every the person and persons thereon intruded as aforesaid; and if the said Sheriff, or other person or persons appointed as aforesaid, should make return to the said writ, that he or they have been unable to execute the same, by reason of the forcible resistance of the parties, or any other persons, or from a just apprehension of such resistance as would render the execution thereof by himself or themselves, and the power of the county, impracticable, the Prothonotary of the court to which such writ is so returned shall forthwith transmit a copy of the said writ and return, under the seal of the said court, to the Governor, and if, upon the said return, or if, upon

Proceedings if the officer returns that he is resisted forcibly, to call out the militia.

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SECT. IV. *And be it further enacted by the authority aforesaid,* That if a Judge of the court of Quarter Sessions for the proper counties, or a Judge of the Supreme Court, shall apprehend that the Sheriff and Coroner are not impartial, it shall and may be lawful for the said Judge to direct the venire for the grand inquest, and for the traverse jury, to any person or persons he or they may think proper.

SECT. V. *And be it further enacted by the authority aforesaid,* That if any person or persons shall resist any officer, or other person duly authorized, in the execution of this act, or any part thereof, every person or persons so offending, and every person that shall be accessory thereto, before or after the fact, shall, on conviction, forfeit and pay a sum not more than five thousand nor less than five hundred dollars, and undergo an imprisonment at hard labour for any period not less than three, nor more than seven years.

SECT. VI. *And be it further enacted by the authority aforesaid,* That in order to disseminate a knowledge of the provisions contained in this act, it shall be the duty of the Prothonotaries of the several Courts of Common Pleas of the counties of Northampton, Northumberland, and Luzerne; Northampton, and they are hereby respectively enjoined and required, to read, or cause to be read, in open court, the said act, and every part thereof, at least once in each of the three terms next after receiving the same; and also it shall and may be lawful for the Governor of this commonwealth to issue his proclamation, enjoining and requiring all persons having intruded as aforesaid to withdraw peaceably from the lands whereon such intrusions have been made; and further enjoining and requiring the several officers of government, and the good citizens of this state, to prevent or prosecute, by all legal means, such intrusions and intruders, and to afford their most prompt and effectual aid, in their several and respective capacities, to carry into full execution the laws of this commonwealth relative thereto, *Provided always,* That nothing in this act contained shall extend to the claims of persons claiming lands under and by virtue of an act, entitled "An act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands claimed by them within the county of Luzerne, and for other purposes therein mentioned*," passed the twenty-eighth day of March, one thousand seven hundred and eighty-seven: *And provided further,* That this act, or any thing therein expressed, shall not be considered as intended to affect any claims under the said law, nor as a legislative construction or opinion, respecting said act, or an act, entitled "An act to repeal an act, entitled "An act for

In what case the venire, to try offenders may be directed to others than the Sheriff or Coroner.

Penalty on resisting any officer in the execution of this act.

This act to be read in the several courts of Northampton, Northumberland and Luzerne; and the Governor may issue a proclamation.

Proviso, as to claims under the Confirming Law,

(* Chap. 1274.)

and the construction of the repealing law.

ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned, passed the first day of April, one thousand seven hundred and ninety, or the validity or effect of either of the said laws. (p)

Passed 11th April, 1795.—Recorded in Law Book No. V. page 430.

(p) The following interesting case has occurred under this act.

Mitchell v. Smith, 1 Binney, 110.

This was a writ of error to the Common Pleas of Luzerne county, and the record presented the following case. *Smith*, the plaintiff below, brought an action of debt against *Mitchell*, upon a sealed note for 483 dollars, 33 cents, dated 11th March, 1796, and payable to Smith or order, at the expiration of three years from the date, with lawful interest. The defendant pleaded payment, with leave to give the special matter in evidence. Upon the trial of the cause before *President Rush*, on the 23d April, 1802, it was in evidence that the note was given for land near *Frenchtown* in Luzerne, and out of the seventeen townships, which land had been granted to the plaintiff by the committee of the *Susquehanna* company, agreeably to a resolution of the company. That the plaintiff by deed, bearing even date with the note, conveyed this land to the defendant. That the plaintiff and defendant went together to view the land before the execution of the note or deed, and that upon the completion of the contract the defendant was put in peaceable possession of the land, and had so continued ever since. That the defendant, at the time of the contract, had full knowledge of the law against intrusions in Luzerne county, and of the general dispute relative to titles in the county.

Upon these facts, and the act in the text, the counsel for the defendant insisted that he was entitled to a verdict for the following reasons: First, because the consideration upon which the note was given, was illegal, and therefore the note was void. Secondly, because the transaction on which the contract originated was against the general policy of the law, and therefore should not be carried into effect. Thirdly, because the consideration on which the note was given had failed. His honour, in delivering the charge of the court, stated their opinion upon the several matters of law against the defendant, and told the jury, that if they were of opinion the defendant knew and was acquainted with every material circumstance relative to the bargain, it was their duty to make him pay the

money with the interest thereon; but if they were of opinion he was in any degree imposed upon, or purchased ignorantly, in that case, they ought to find a verdict in his favour. The jury found for the plaintiff.

To this charge a bill of exceptions was tendered and sealed, and the record removed to this court.

The act of Assembly in question enacts, &c. (See act in the text, sect. 1, 2.)

The cause was argued in March and September terms, 1803.

On the 13th September, 1804, the court delivered their opinions *seriatim*.

Shippen, C. J. This is a writ of error to reverse a judgment rendered in the Court of Common Pleas for the county of Luzerne, in an action brought on a bill obligatory for the sum of 483 dollars, 33 cents, to which the defendant pleaded payment, with leave to give the special matters in evidence.

It appears on the record, that the consideration for this bill, was a tract of land conveyed by the plaintiff to the defendant, lying without the seventeen townships, in the county of Luzerne, and held by him under a deed from a committee of the *Susquehanna* company, under the *Connecticut* title, and not derived from the authority of this commonwealth, or of the late proprietaries of *Pennsylvania* before the revolution. The principal question in the case is, whether this be a legal, or illegal consideration for the bill, and whether the contract for the sale and purchase of this land is a violation of the laws of this commonwealth, so tainting the whole transaction, as that this court cannot legally afford their aid to carry the contract into execution.

The mischiefs intended to be remedied by the act of 11th of April, 1795, were of a grievous nature. A warfare had been carried on between the claimants of land under the title of *Connecticut*, and the claimants under *Pennsylvania* for many years, and many lives had been lost in the contest. It was at length found necessary for Congress to interpose. They thought fit to appoint judges or commissioners to decide upon the claims of the respective states, who, after a full and solemn hearing, made their decree at *Trenton*, establish-

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† Vol. 2, p. 524, and see *Vanhorne's lessee v. Dargance*, 2 Dallas, 304.

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ing the right of government over the country in question, to be in *Pennsylvania*, but without deciding the particular titles of individuals claiming the right of soil. Notwithstanding this decree, not only the old settlers under the title of *Connecticut* retained their possessions, but a great number of new persons, under the same pretended title intruded into this part of *Pennsylvania*, and possessed themselves of, and settled, such vacant lands as they chose.

The Legislature of *Pennsylvania* passed repeated acts of Assembly to remedy the evils consequent upon such intrusions, some of them with a view to compromise with the first settlers. All of them, however, proved ineffectual to prevent new illegal settlements. At length the act in question was passed, called the intrusion law. This act is of a public nature, and intended to remedy a public evil. The point relied upon by the plaintiff, is, that the land sold by the plaintiff, and purchased by the defendant, was fairly bought and sold, all the circumstances being fully known to both parties, and carried into execution on the part of the defendant, by his taking possession, and occupying the land; and that although the act of Assembly imposes a penalty on the party offending, yet it *no where invalidates the contract*. On the part of the defendant, it is contended, that the contract, which is the foundation of this obligation, having been made in violation of the good policy, and direct provisions of the act of Assembly, this court will not afford their aid to carry such a contract into execution.

What then was the contract? It appears to be a contract for selling and conveying a tract of land which the plaintiff held under a deed from the committee of the *Susquehanna* company, or, in other words, under a *Connecticut* title. What says the law? "If any persons shall enter into possession of, or shall combine or conspire for the purpose of *conveying*, possessing, or settling on any lands within the ascertained limits, under colour of any half share right, or pretended title, not derived under the government, he shall forfeit, &c." Is not the actual conveying, possessing and settling this land, direct evidence of combining for that purpose, and of course a direct violation of the law? But it is objected, that where a law creates a new offence, and prescribes a specified mode of punishment, no other mode can be pursued. This is generally true where the act contains no prohibitory clause; in which case the common law punishment by indictment might be inflicted, although the

punishment directed by the act, was by bill, plaint or information. Here indeed there is no general prohibitory clause, the act directing only that if any person shall do so and so, he shall be punished so and so. Is this, however, a case involving a double punishment by prosecution? All that is contended for is, that the contract is illegal, being founded on a breach of the law, and of consequence a void contract, and cannot be enforced in a court of law. And for this purpose there cannot be a more express authority than the case in *Carth. 252*, where Lord C. J. *Holt* says "that every contract made by or about a matter or thing which is prohibited, and made unlawful by any statute, is a void contract, though the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender; because a penalty implies a prohibition, though there are no prohibitory words in the statute." This authority, although perhaps it might not warrant a conclusion that a penalty implies a prohibition for the purpose of making the offence punishable by indictment, in case the law had prescribed another and a specific punishment for the offence, yet it certainly is an authority to prove that a contract about a matter prohibited by statute is unlawful and a void contract, although, the act does not expressly say so, and that a penalty implies a prohibition, so as to make the contract void. The spirit of this law in *Carthew* has been followed up in numerous modern cases, particularly where goods have been purchased abroad with an intent to smuggle them into *England*. In these cases the seller of the goods although a foreigner residing in a foreign country, cannot recover the price of his goods in *England*, if he were any way concerned in the smuggling transaction; the whole contract being tainted and nullified by the illegal act, so as to prevent the recovery of the debt in the country whose laws were violated.

I would barely add, that if we could enforce the payment of the consideration money for this land, we must likewise have been obliged on the other hand to enforce the delivery of the possession, in case the money had been paid, and possession refused, which clearly would have been a most glaring infraction of the law; the remedies must be mutual, or not at all.

This subject has been lately canvassed in this court, in the case of *Maybin v. Coulon*, where we were compelled to resist the payment of an otherwise honest demand, on account of it being founded on, and connected with a

breach of the laws of trade, in covering the property of a foreigner, by using the name of a citizen of the United States, in obtaining the register of a ship. (4 Dallas' Rep. 298.)

For these reasons I am of opinion the judgment below must be reversed.

Yeates, J. Whether this case be considered on principle, or precedent, I am of opinion the judgment of the common pleas cannot be supported.

Courts of Justices sit to carry into execution dispassionately the general will of the community, disclosed by the laws. It would seem a solecism in jurisprudence that a contract which necessarily leads to defeat the provisions of an act of the Legislature, of the highest public concernment, should receive judicial sanction and support. The single bill on which the action is founded, is dated 11th March, 1796; and therefore the laws in force at that time only, can affect our determination. The intrusion law was passed 11th April, 1795. (The two first sections here recited.)

The bill of exceptions states that a deed bearing equal date with the single bill, was executed by the defendant in error to the plaintiff, for 1500 acres of land, in Smithfield township in the county of Luzerne, which the former claimed by a grant of the committee of the Susquehanna company, out of the seventeen townships; that both parties went together to view the lands previous to the execution of the bill or deed, and that the plaintiff in error was put in possession, and continued therein since the time of the contract.

It is evident, therefore, that the agreement was entered into in direct violation of the intrusion act, for the purpose of conveying, possessing and settling the lands interdicted, under a half share right or pretended title not derived from the authority of this commonwealth, or of the late proprietaries. It openly attacked the sovereignty of the state, over a considerable part of the lands clearly comprised within her chartered limits.

In Booth et al. v. Hodgson et al. 6 Term Rep. 409, Ld. C. J. Kenyon observes, that "It is a maxim in our law, that the plaintiff must shew that he stands on a fair ground, when he calls on a court of justice to administer relief to him." And in Jaques v. Withey and Reed, 1 H. Black. 67, it is said by counsel, and seemingly assented to by the court, that "where an action is in affirmation of an illegal contract, and the object is to enforce the performance of an engagement prohibited by law, clearly such an action was in no case to

be maintained. "And Ld. C. J. Ellenborough in the late case of Edgar et al. v. Fowler, in 1803, has said, "We will not assis an illegal transaction in any respect: we leave the matter as we find it, and then the maxim applies, *melior est conditio possidentis*." 3 East. 225. A broad ground is laid down by Ld. C. J. Holt in Barelett v. Vinor, Carth. 252. in these words "Every contract made for or about any matter or thing, which is prohibited and made unlawful by any statute, is a void contract though the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition, though there are no prohibitory words in the statute." If the law is correctly laid down in these authorities, I run little hazard in asserting that the suit of the plaintiff in the common pleas cannot be supported.

It cannot be denied that contracts which violate the rules of decency or morality, or oppose principles of sound policy of the country are illegal and void. The case cited on the part of the plaintiff in error fully prove the positions.

So also of contracts which immediately tend to defeat the legislative provisions for the security and peace of the community, though not made void by statutes. Thus, in Biggs v. Lawrence, 3 Term Rep. 454, a contract for goods to be smuggled into England was held invalid: and it is there said, that one who seeks redress in a court of law must not shew that he broke the laws of the country. In Clugas v. Penultima, 4 Term Rep. 466, it was resolved, that an inhabitant of Guernsey cannot recover in England for goods sold there, if intended to be smuggled into England. It was held immoral to evade the laws of the country, though the act was done in Guernsey, and though the contract might be legal in Guernsey, and enforced there. In Waymell v. Reed et al. 1 Term. Rep. 599, a vendor of goods abroad shall not recover the value of goods packed up in order to be smuggled into England; for even foreigners shall not be allowed to subvert the revenue laws. In Mitchel et al. v. Cockburne, 2 H. Black. 379, A. and B were engaged in a partnership in insuring ships, &c. which was carried on in the name of A. and A. paid the whole of the losses: such a partnership being illegal by the Stat. 6 Geo 1 c. 18, A. could not maintain an action against B. to recover a share of the money that had been so paid; because no contract arising directly out of such an illegal proceeding could be the foundation of an action. In the case before cited, 6 Term. Rep.

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405, A. B. and C. became partners in insuring ships contrary to the said statute of 6 Geo. 1, c. 18, § 12, but it was agreed the policies should be underwritten in the name of A. only. Several policies were effected and the premiums received by C. and D. and it was held, that A. could not recover against C. and D. And in *Camden v. Anderson*, 6 Term Rep. 730, a policy effected in contravention of a statute made for the purpose of protecting the monopoly granted to the *East India* company, was held void. Courts will not enforce contracts injurious to, and against the public good. Per Ch Justice, 2 Wils. 348, many contracts which are not against morality are still void, as being against the maxims of sound policy. Per Ld. Mansfield, Cowp. 39, and again, in the same book, page 343, his lordship uses the following expressions: "The objection that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy which the defendant has the advantage of contrary to the real justice as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this, *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. If from the plaintiff's own stating, or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes: not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it: for where both are equally in fault, *potior est conditio defendentis*." These observations afford a decisive answer to part of the arguments of defendants counsel.

But it has been further objected that most, if not all of the cases relied on, either respect offences prohibited at common law, or such as had been theretofore created by statute, and particularly smuggling transactions, which the courts were extremely jealous of, as they defrauded the royal revenue.

It was said that the act of 6th April, 1802, (chap. 2288, *infra*.) was made to supply the very deficiency which existed before, and which was now attempt-

ed to be supplied by a judicial decision; for sect. 4th vacates such contracts as the present, and the act did not take effect till the 1st May, 1802.

I answer, that it would be no great stride, in my idea, to maintain, that after the decree at *Trenton*, the sales of titles within the limits of *Pennsylvania*, under the grants of a sister state not recognized by our laws, would be indictable on the principles of the common law. Such acts are immediate attacks on the sovereignty of this state, tend to violences of the most alarming nature, and are public evil examples. But supposing it to be otherwise, and that the authorities in the *English* books related merely to smuggling transactions (though the fact is contrary,) I take it that the same grounds of decision which influenced the courts in *England* to determine such contracts to be invalid, would equally operate on our minds to declare the same as to agreements which intimately affect the public peace and national prosperity. In both cases the subject matter is of great magnitude. The public revenue is endangered and affected. Individuals are defrauded. Why should we not be as tenacious as *British* judges in instances of public revenue being defrauded, tending to infractions of the public peace, and where the very acts of contracting are express denials of the right of the people over a large portion of the state? It was candidly admitted during the argument, that the deed, of which the single bill in question was the consideration, vested no right or interest whatever in the grantee.

I will only add, that the subject of a contract ought to be such a thing as men have a lawful right and power of stipulating about, at pleasure, 1 *Pow. Cont.* 164. The law, by forbidding an act, takes from the contractor the power of obliging himself to do it, and consequently prevents the person contracting from gaining any right of requiring it to be done, *ib.* 165, a contract or agreement is unlawful, if it be to encourage unlawful acts or omission, *ib.* 195. On the whole I am of opinion that the judgment of the common pleas be reversed.

Smith, J. concurred, and assigned his reasons.

Brackenridge, J. The consideration of the bill in question is the giving possession, and the sale of a tract of land under a title derived from what is called the *Susquehanna* company. This claim is founded on the principle that the land is without the charter boundary of *Pennsylvania*. Hence it is ad-

verse to the claim of this state, both as to soil and jurisdiction. It is true, the mouth of the claimant paramount, the state of *Connecticut*, from whom the company derive their claim, is shut by a decision. But this does not conclude the possessor, as to the right of soil, nor in fact will it conclude his exertions as to jurisdiction. The very object of the sale is to induce settlers, and increase strength to support vexatiously the claim in the courts of the *United States*, or by force independent of law. Shall the courts of the state be called upon to enforce contracts, and assist combinations against herself. Exercising jurisdiction, the state is bound to preserve the peace and aid contracts, but not such as militate against her own rights. It would be unnatural, and against reason, which is a ground of the common law. It is against public policy. Self preservation forbids it. So that, independent of any act of the Legislature, I must hold the transfer illegal, and the obligation given under such consideration void.—Judgment reversed.

So, in the state of New York. In the case of *Woodworth and another, v. Dole and others*. 2 *Johns*. cases in error, 417. A. claiming title under the *Connecticut Susquehanna Company*, to land situate in the State of *Pennsylvania*, and claimed by that state, sold the land to B. who gave his notes for the purchase money, part of which was paid; and A. executed to B. a *quit claim*, deed for the land. B. afterwards filed his bill in chancery, praying that A. might be perpetually enjoined from assigning the notes, or proceeding at law to recover the amount; and that the money paid might be refunded: it was held, that the sale was *maintenance*, in selling a pretended title, and that both parties being *pari delicto*, a court of equity would not relieve either; and the bill was therefore dismissed. The individual states having submitted their territorial claims to the *Judiciary* of the *United States*, are to be so far considered as having ceded their sovereignty, and as corporations; and their right to transfer lands must be judged of by the same rules of common law, as the rights of other persons, natural or politic.

In a note to this case, it is said, "The above is the substance of the opinion of the majority of the court. But three Judges were of opinion, that the court, being in possession of the merits of the cause, in order to prevent further litigation, ought to have modified the decree, so as perpetually to enjoin the respondents from assigning, or suing on

the note; but the majority were for affirming the decree as it stood."

And, in *Whitaker v. Cone*, 2 *Johns*. cases in error, 58. In *assumpsit*, the plaintiff declared on two promissory notes made by the defendant to him for 135 dollars, 61 cents each, dated 9th Feb'y, 1796, one payable in cattle, and the other in money, the 1st Sep'r, 1798. Upon the pleas of *non assumpsit* and payment, and a notice was subjoined to the plea, according to the statute, that the notes in question were given without consideration, and were obtained by fraud and imposition, having been given on the sale by the plaintiff to defendant, through the agency of one *Hunt* of *Susquehanna* lands, to which neither the plaintiff nor *Hunt* had any title.

It appeared at the trial, that the lands in question, were certain lands in the State of *Pennsylvania*, claimed by the State of *Connecticut*, called *Connecticut Susquehanna* lands. The plaintiff, by contract had sold to *Hunt* a township of the said lands, and while *Hunt* was in treaty with the defendant and some others, for the sale of the same lands to them, it was suggested that the plaintiff could not fulfil his contract with *Hunt*, on account of doubts as to the validity of the *Connecticut* title; and the plaintiff who was present, said he had no doubt the *Pennsylvania* title might be purchased for a trifle; that he had lately received information from the *Susquehanna*, of certain papers which had come to light, very favourable to the *Connecticut* title; and the defendant and the others encouraged and induced by the plaintiff made the contract with *Hunt* for the purchase of the land, at two and fourpence, *Connecticut* currency, *per acre*. The defendant and the others took up the notes given by *Hunt* to the plaintiff, and gave their own notes to the plaintiff for the amount.

The lands were proved to be situated within the jurisdiction of the state of *Pennsylvania*; and upon the evidence, the Judge was of opinion, that the defendant had sufficiently shewn a want of consideration. The plaintiff then offered to prove, that the lands in question were vacant and unsettled at the time they were sold by *Hunt*, and that the lands contiguous were principally settled by persons under the *Connecticut* title, and that many of these settlements were made previous to the determination of the question of jurisdiction between *Pennsylvania* and *Connecticut*, but the Judge rejected the evidence as improper. The plaintiff submitted to a nonsuit, with liberty to move the court to set it aside, and for a new trial.

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These motions were accordingly made and argued.

Per Curiam. This case comes within the principle laid down in the case of *Woodworth, v. Dole and others*, decided in the court for correction of errors, in March last, (1800.) Buying and selling of lands out of the possession of the vendor, and held adversely at the time, is buying and selling a pretended title, and is not a valid consideration for a promise. It is a species of maintenance, and void on general principles of law and public policy. A sale by one state, of lands within the jurisdiction and under the adverse claim of another state, must be judged by the same principles of law, as a sale by an individual, since the several states, in respect to their territorial claims, have submitted themselves to the cognizance of the judiciary of the *United States*.

Though the sale was formally made by *Hunt* to the defendant, yet the plaintiff was privy thereto, and instrumental in effecting it, and he had previously conveyed the same lands, under the same title, to *Hunt*, whose notes he held for the purchase money, which were delivered up, in exchange for the present notes. If *Hunt* was not merely the agent of the plaintiff, in this transaction, yet the plaintiff received the notes, for the like consideration, and with full notice of all the circumstances; he is, therefore, to be affected by the objection against the legality of the consideration. The court are therefore of opinion, that the motion ought to be denied.

It is believed this long depending controversy is now nearly settled, though at a great expense to the state. Its history may be accurately traced in the council books remaining in the office of the Secretary of the commonwealth, and in the journals and minutes of the legislature under the province, and the commonwealth. But the documents are so numerous and voluminous, as to preclude even an abstract in a note. All therefore that is now practicable or useful, is a reference to the laws which have existed, or do now exist on this subject.

By an act to prevent and stay suits from being brought against the inhabitants of *Wyoming*, during the time therein mentioned, passed 13th March, 1783, (chap. 1002,) all process to dispossess the *Wyoming* settlers was stayed, although the decree of *Trenton*, pronounced by commissioners agreeably to the 9th article of the confederation of the *United States*, was in favour of the jurisdiction of *Pennsylvania*. But this act was repealed by an act passed 9th

September, 1783, (chap. 1019.) And the division of the townships of *Shawanese*, *Stoke* and *Wyoming*, into districts, was confirmed, and authority given to the executive to commission justices in those districts.

On the 15th September, 1784, an act was passed, (chap. 1180,) entitled "an act for more speedy restoring the possession of certain messuages, lands and tenements, in Northumberland county, to the persons who lately held the same;" which was limited in its continuance to the end of the next session; by which it was recited, that many persons at *Wyoming* had been violently dispossessed of the lands, &c. which they occupied; the executive was authorized to direct the justices of the peace in the county of *Northumberland* to proceed forthwith, in executing the laws relating to forcible entry and detainer; and their proceedings therein, or the writ of restitution thereupon, or the effect thereof in those cases, were not to be superseded, or delayed by *certiorari*, or any other writ issued by the Supreme Court.

By an act entitled "An act for quieting the disturbances at *Wyoming*, for pardoning certain offenders, and for other purposes therein mentioned," passed 24th December, 1785, (chap. 1185,) A general pardon and indemnity was offered for offences committed in the counties of *Northumberland* and *Northampton*, in consequence of any controversies which subsisted between the *Connecticut* claimants, and other citizens of this state, before the first of *November*, 1785; *Provided*, That no person having so offended, should receive the benefit of the act, unless he surrendered himself to some justice before the 15th April, 1786, and entered into a recognizance to keep the peace, and be of good behaviour for the term of twelve months. The executive was likewise authorized, to employ a sufficient number of the militia to enforce the laws in those counties, and to apprehend offenders, who should not surrender within the specified period. By the 5th section of the act, so much of the act of 9th September, 1783, (chap. 1019,) as confirms the division of the townships of *Shawanese*, *Stoke* and *Wyoming*, into two districts, for the purpose of electing justices of the peace, and enables the executive to commission the justices elect, was repealed, and the commissions granted in pursuance thereof, annulled.

By an act passed 25th Sept'r, 1786, (chap. 1233,) the county of *Luzern* was erected.

By an act entitled "An act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of *Luzerne*, and for other purposes therein mentioned," passed 28th March, 1787, (chap. 1274,) provision was made for ascertaining and confirming the titles of the *Connecticut* claimants, and for allowing the *Pennsylvania* claimants an equivalent, at their option, in the old or new purchases; which was suspended by an act passed 29th March, 1788, (chap. 1274,) and finally condemned and repealed by an act of 1st April, 1790, (chap. 1414, vol. 2, page 524.)

In *Vanhorne's lessee v. Dorrance*, 2 *Dallas*. 304, the court declared the act of 28th March, 1787, commonly called the confirming law, to be unconstitutional and void.

See also the act to compensate *David Meade*, and others, passed 9th March, 1796, (chap. 1866,) and the cases decided thereon, in the notes, vol. 2, pa. 242-3, &c.

On the 4th April, 1799, an act was passed, (chap. 2042,) entitled "An act for offering compensation to the *Pennsylvania* claimants of certain lands within the seventeen townships in the county of *Luzerne*, and for other purposes therein mentioned."—

This being a distinct subject, all the supplements and other laws connected with it, are given in the notes to the said chap. 2042, afterwards in this volume.

By an act passed 11th March, 1800, (chap. 2118,) the limitation act of 26th March, 1785, (vol. 2, pa 299,) is repealed, and rendered null and void, and declared to have no force or effect within what is called the seventeen townships, in the county of *Luzerne*, nor in any case where title is, or has at any time, been claimed under what is called the *Susquehanna* company, or in any way under the state of *Connecticut*, for any lands or possessions within this commonwealth.

By a supplement to the act in the text, passed 16th Feb'y, 1801, (chap. 2171,) In all trials on indictments for taking possession of, entering, intruding or settling on any lands founded on the act in the text, proof that the person indicted, entered into, intruded, settled on, or was in possession of the said land before the time of finding the said indictment, shall be sufficient to convict such person of the offence charged in the indictment, unless the said person indicted shall prove that he or she entered upon, took possession of, or settled on such land before the time of

passing the act in the text, or that he or she had, at the time of his or her entering into, taking possession of, or settling on such land, a good and *bona fide* title to such land derived from, or under this commonwealth, or the proprietors of *Pennsylvania* before the revolution.

On a conviction for a second offence, the offender shall forfeit 500 dollars, one half to the use of the county, the other half to the informer, and be subject to imprisonment at hard labour, not less than six months nor exceeding two years, at the discretion of the court: And any person convicted more than twice, shall be imprisoned at hard labour for any term not less than two years, nor exceeding seven years, and pay a fine not less than 500 dollars nor more than 1000 dollars, for the uses aforesaid.

The Governor was authorized to appoint an agent to inquire into offences committed against the act in the text; who was to be upon oath or affirmation; to hold his office during the Governor's pleasure, and receive a compensation of 1200 dollars, annually, payable quarterly; and any person resisting such agent, or any person acting under his authority; or any accessory before or after the fact; or those who conspire to resist or obstruct the said agent, or any person acting under his authority, or under the authority of this act, shall forfeit and pay, on conviction for every such offence, a sum not exceeding one thousand dollars, and be subject to imprisonment at hard labour, for any period not more than seven years, at the discretion of the court. (But this office was abolished by an act passed 4th April, 1805, chap. 2611, § 7.)

Every male person, above the age of 21 years, coming to reside within the counties of *Wayne*, *Northampton*, *Luzerne*, *Northumberland* or *Lycoming*, was directed to deliver within three months from his arrival, to the said agent, or to the constable of the township, or to the Sheriff of the proper county, or one of his deputies, a written declaration of his name and place of abode, and of the American state or the foreign country in which he last resided, and also whether he claimed any, and if any, what lands within the bounds of the commonwealth under a title derived directly or indirectly from or through the colony or state of *Connecticut*, or the *Delaware* or *Susquehanna* company, under the penalty of forty dollars. The returns of such declarations to be made to the sessions, under the penalty of 100 dollars, in case of default to be recovered on conviction on indictment in

1795.

the sessions, &c. And the several clerks of the sessions shall carefully preserve among their public papers all such declarations.

In all actions of ejectment for any lands to which any title or claim under *Connecticut*, &c. is pleaded or drawn in question, the plaintiff may recover, by way of damages, satisfaction for the mesne profits of the lands recovered in any ejectment, down to the time of the entry of judgment in such ejectment.

In all actions of trespass *vi et armis*, wherein any title or claim under *Connecticut*, &c. is pleaded or drawn in question, the plaintiff, on *affidavit* to be made by himself, or any person on his behalf, may hold defendant to special bail, in such sum as may be directed by the Judge, &c.

In every such action, the defendant shall at the first term put in his plea, specifying his title particularly, and on refusal or neglect to do so, judgment shall be entered as by default.

The Governor was authorized to call out the militia, on oath or affirmation of the agent, &c. that he had reason to apprehend personal danger in the discharge of his duty, &c.

The Governor is also authorized to issue his proclamation forbidding future intrusions, &c.

By an act, entitled "An act to maintain the territorial rights of this state, &c. passed 6th April, 1802, (chap. 2288,) after 1st May, 1802, no conveyance to be made of any land within the counties of *Luzerne*, *Lycoming* and *Wayne*, shall be good or effectual to pass any right, title, estate, interest or claim whatever, either at law or in equity, unless the title to the land in such conveyance mentioned, is derived from this state, or the late proprietaries thereof before the 4th of July, 1776, and unless the said conveyance shall expressly refer to and recite the substance of the warrant, survey, patent or title under which the same is derived, from this state, or the late proprietaries thereof before the said 4th July, 1776. And if any Judge or Justice shall take an acknowledgment, or proof of, or any Recorder of Deeds, or any other person, shall record any deed, which shall not have been derived as aforesaid, he shall forfeit for every such offence, the sum of 200 dollars, recoverable by action of debt, in any Court of Record in this state, one half to the commonwealth, the other to the person who will sue for the same; and such

acknowledgment and recording shall be void and of no effect; and every such Recorder of Deeds so offending, shall forfeit his office; *Provided*, That nothing herein contained shall be so construed, as to make valid any conveyance heretofore made, of any pretended title or claim to land under the colony or state of *Connecticut*, or either of the companies known by the names of the *Connecticut Susquehanna*, or the *Connecticut Delaware* company.

§ 2. No person in any manner interested in the said pretended title or claim, shall sit as Judge, or serve as juror, in any cause, civil or criminal, wherein the said pretended claim or title shall or may, directly or indirectly, be brought into question; and if any Sheriff shall summon any person or persons to serve as a juror or jurors, who are directly or indirectly concerned and interested in any *Connecticut* title, knowing him or them to be so concerned or interested, such Sheriff shall, on conviction, be fined in any sum not exceeding 500 dollars, to be recovered as other fines and forfeitures are recoverable by law.

§ 3. None of the penalties or disabilities created by the present act, except so far as relates to Judges, Sheriffs or Jurors, shall relate to land or the claimants of land within the seventeen townships of *Luzerne* county, or any of them, so far as concerns any act of theirs respecting lands within the said townships, which have been, or may hereafter be duly submitted according to law, under the provisions of the act of 4th April, 1799, (chap. 2042, ante.) or any supplement thereto.

§ 4. Any person who shall after 1st June, 1802, bargain, sell or convey, or by any ways or means obtain get or procure any pretended right or title, or make or take any promise, contract, grant or covenant, to have any right or title of any person or persons, in or to any lands, tenements or hereditaments within this state, under the said pretended title from the state of *Connecticut*, or either of the said companies, shall forfeit the sum of \$ 200, recoverable by action of debt, &c. and such promise, contract, grant or covenant, is hereby declared to be utterly void, and of no effect.

In the case of the *Commonwealth v. Franklin et al.* in the Supreme Court, December, 1802. The act in the text, was declared to be a valid and constitutional act. (MSS. Reports.)