38 Neb. 68
Supreme Court of Nebraska.

HEADLEY
v.
COFFMAN.

Oct. 17, 1893.

Syllabus by the Court.

1. The holder of a receiver's certificate cannot, after the entry upon which the paper was issued has been cancelled, maintain an action of ejectment against a party claiming under the United States, for he has only an equitable title; and this, notwithstanding section 411 of the Code of Civil Procedure, making such certificate proof of title equivalent to a patent against all but the holder of an actual patent. Morton v. Green, 2 Neb. 441, followed.

2. In such case, the authority of the commissioner of the land office to cancel the entry is not material. The refusal of the government, whether rightful or wrongful, to convey the legal title to the entryman, prevents him from maintaining ejectment against one in possession under a subsequent entry.

Commissioners' decision. Error to district court, Custer county; Gaslin, Judge.

Action in ejectment by Victor H. **Coffman** against Harvey B. **Headley**. Plaintiff had judgment, and defendant brings error. Reversed.

West Headnotes (3)

[1] **Ejectment**
Interest in Public Lands

Though Code Civ.Proc. § 411, provides that a certificate of the receiver of the land office shall be proof of title equivalent to a patent against all but the holder of an actual patent, the holder of such certificate cannot, after the entry on which the paper was issued has been canceled, maintain ejectment against one claiming under a subsequent entry, since he has only an equitable title.

1 Cases that cite this headnote

[2] **Ejectment**
Interest in Public Lands

The authority of the commissioner of the land office to cancel the entry is not material. The refusal of the government, whether rightful or wrongful, to convey the legal title to the entryman, prevents him from maintaining ejectment against one in possession under a subsequent entry.

Cases that cite this headnote

[3] **Ejectment**
Equitable Title

An equitable title is not available to plaintiff in ejectment.

Cases that cite this headnote

Attorneys and Law Firms

***701** Harry E. O'Neill and Alpha Morgan, for plaintiff in error.

Phelps & Sabin, for defendant in error.

Opinion

IRVINE, C.

We are met at the outset of this case by a question as to the jurisdiction of this court to review the judgment rendered in the district court. A transcript was filed as for an appeal more than six months after the rendition of judgment in the district court. There was a motion to dismiss the appeal, which was overruled by this court, and the appellant given leave to file a petition in error. We are cited to the recent decision of Fitzgerald v. Brandt, 54 N. W. Rep. 992, as sustaining the position that the case is not now properly before this court for review. We regard the order of the court permitting the appellant to file a petition in error as the law of this case, and sustaining the jurisdiction of the court to review the judgment as upon error. The action was one in ejectment, instituted

by **Coffman** against **Headley** to recover a quarter section of land in Custer county. It was submitted to the district court upon the pleadings and an agreed statement of facts, which has been incorporated into a bill of exceptions. On the 25th of August, 1884, William T. Hughes made proof of settlement and cultivation of the land in question, and made payment to the government of the purchase price under the pre-emption laws of the United States, and received the receiver's final receipt therefor. On September 2, 1884, Hughes conveyed by warranty deed ***702** to the Brighton Ranch Company, which on May 25, 1887, conveyed by quitclaim to one Hungate, who later conveyed to the plaintiff. On December 15, 1886, **Headley** filed in the United States land office at North Platte an affidavit of contest of the entry of Hughes, upon the ground that at the time of making proof Hughes did not reside on the land as required by law; that he had not cultivated and improved it as required, and that his entry and proof were not made in good faith, for his own use and benefit, but were made in fraud of the United States, and for the use and benefit of others. A hearing was ordered upon notice to Hughes, the result being that the general land office ordered Hughes' entry to be canceled, and permitted **Headley** to make a homestead entry, under which **Headley** entered into possession of the land. No patent has been issued. **Coffman** claims under Hughes' entry, and the final receipt issued to him. **Headley**, to defeat the action, contends that under the circumstances ejectment will not lie, and that the cancellation of Hughes' receipt divested him and his grantees of all interest in the land. We have been cited to a vast volume of authorities bearing more or less upon the questions at issue. These authorities seem at first reading to be so divergent as to confuse, rather than to assist, in forming a conclusion. Even the cases in the supreme court of the United States seem at first to conflict with one another. A closer examination does not entirely reconcile all the cases, but, where the conflict remains, it is due rather to general language in the opinions than to any conflict in the decisions themselves. General expressions have been made use of in the opinions, correct enough when applied to the case under discussion, but which, segregated from the facts of the case, have given rise to an unfortunate effort to apply them to other cases and other facts. To attempt a review of the authorities sufficiently complete to be of value would prolong this opinion to a length not justified by the object sought. A number of the cases relate to the right of states to tax land which has been purchased from the government, and full payment made, before the issuance of the patent. The leading case upon this subject seems to be Carroll v. Soffard, 3 How. 441. This line of cases goes upon the ground that upon final payment the land becomes in equity the property of the purchaser. In no such case has the question of conflicting claims been determined. Other cases, such as that of Iron Co. v. U. S., 123 U. S. 307, 8 Sup. Ct. Rep. 131, have been direct proceedings in equity by the United States to cancel a patent already issued. Others again, like Stoddard v. Chambers, 2 How. 284, have related to conflicting patents to the same lands. Others again, like Lindsay v. Hawes, 2 Black, 554, have been suits in equity to compel a conveyance by the patentee to one having a prior right. These cases depend upon principles so different from those involved in the present case that general language used in the opinions must be considered with great caution. Fenn v. Holme, 21 How. 481, and Hooper v. Scheimer, 23 How. 235, represent a class more nearly applicable. These cases were in ejectment, no patent having yet been issued for the land. There the plaintiffs relied on the certificate re-enforced by state statutes something similar to section 411 of our Code, and it was held that the plaintiff could not recover, because, until patent issued, the title remained in the United States, and the state statutes referred to were not binding upon the federal courts. Bagnell v. Broderick, 13 Pet. 436, differed from these cases in the fact that the certificate upon which one party relied was met by a patent to the adverse party. In that case the following forcible and significant language was used: “Congress has the sole power to declare the dignity and effect of titles emanating from the United States. * * * Until the issuance of a patent the fee is in the government. * * * Nor do we doubt the power of the states to pass laws authorizing purchasers of lands from the United States to prosecute actions of ejectment against trespassers on the lands purchased, but we deny that the states have any power to declare certificates of purchase of equal dignity with a patent.” Wirth v. Branson, 98 U. S. 118, and other cases of the same class, establish the doctrine that, after the right to a patent becomes complete, a subsequent sale, the first remaining in force, and not vacated, is absolutely void. Cornelius v. Kessel, 128 U. S. 456, 9 Sup. Ct. Rep. 122, fixes certain limitations upon the power of the land department to revoke and cancel entries, but recognizes its right to cancel on account of disqualification of the party or on account of the lands not being subject to entry.

We think it may be safely said that all the cases treat the subject upon the principle that the purchaser's rights are the same as they would be had the purchase been made from an individual, and under similar contractual relations. This principle is over and over again announced. If we accept it as a starting point, the solution of the present case is not difficult. Hughes had, by his acts and entry, entered into a contract with the United States, whereby the land was to be eventually

conveyed to him. One of the terms of that contract was that he should make proof at a certain time, and in a certain manner, that he had complied with certain of the conditions imposed. This proof was made. **Headley** thereafter brought to the attention of the proper officers the charge that the proof so made was false and fraudulent. The officer charged with the general supervision of the sale of public lands and issuance of patents, upon an investigation determined such charges to be well founded, and refused to issue the patent. This action is ejectment, and the plaintiff must recover ***703** upon the strength of his own title, and that title must be legal in its character. All the cases hold that, as between the United States and the purchaser, while the equitable title is complete in the purchaser when he has done everything upon his part to entitle him to a patent, yet the legal title passes only by the patent itself. The vendor, then, in this contract of sale, learning, or at least believing, that the conditions of the contract had not been performed, and that fraud had been perpetrated against it, refused to complete the sale by the conveyance of the legal title. It matters not in this case whether the commissioner of the land office had authority to cancel the entry, or whether the proceedings resulting in that act were coram judice. The important fact is that he did refuse to issue a patent, and the legal title did not pass out of the United States. Had the transaction been one between individuals, the vendor might, in a suit for specific performance, rely for defense upon the very matters which led the commissioner to refuse a conveyance, and, upon proof of those facts, defeat the case. The vendee could not recover in ejectment against the vendor, nor against the vendor's subsequent grantee. If he can do so here it must be by virtue of section 411 of the Code, which provides that "the usual duplicate receipt of the receiver of any land office, or, if that be lost or destroyed, or beyond the reach of the party, the certificate of such receiver, that the books of his office show the sale of a tract of land to a certain individual, is proof of title equivalent to a patent against all but the holder of an actual patent." There can be no doubt that a state has power to protect the possessory rights of purchasers of government land against trespassers by means of such a statute. The state cannot, however, provide by law for the disposition of lands of the United States. It cannot enact that, as against the United States, or persons claiming under the United States, the United States has parted with the legal title to lands, when, by statutes and repeated decisions, the United States, in the exercise of its exclusive authority to dispose of the public lands, has declared that title shall not pass except by other conveyance. Were this a case between the holder of a final receipt not resisted by the United States and some one claiming under an independent title, the statute could be given force and effect; but we have here a contest between the holder of a receipt which the United States have repudiated and one who claims under a subsequent contract of purchase from the United States itself. For this court to declare that by force of the statute the United States had divested itself of the title in such a manner as to permit the plaintiff to maintain ejectment against the subsequent vendee, would be in effect to wrest from the federal government its power of control over the disposition of its own lands, and to permit the state to nullify federal laws relating to a subject wholly within the powers of the federal government. In Morton v. Green, 2 Neb. 441, the same view was taken by the majority of the court, under very similar facts. The reasoning of Judge Crounse in that case seems to us conclusive. In fact we might very shortly have disposed of the present action by a reference to that opinion, had it not been contended that the dissenting opinion of Chief Justice Mason had been approved in later cases. The only case giving color to that theory is Carroll v. Patrick, 23 Neb. 834, 37 N. W. Rep. 671. It was there held that the statute of limitations began to run against the entryman from the date of entry. That was a case, however, where the plaintiff relied upon adverse possession, and that alone, as proof of title. The entryman might have maintained ejectment against him from the time of receiving his certificate, the case being one of the class to which we have held that section 411 of the Code applies. The language of Chief Justice Mason was cited in Carroll v. Patrick with approval, and it was a correct statement of the law as applied to the case there under discussion, which was not a case like Morton v. Green. We think, therefore, that the plaintiff did not show title in himself to sustain an action of ejectment. Reversed and remanded.

The other commissioners concur.

Parallel Citations

56 N.W. 701

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