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Supreme Court of the United States.
LANGDON *et al.*
v.
SHERWOOD.

January 9, 1888.

In Error to the Circuit Court of the United States for the District of Nebraska.

This was an action of ejectment, brought by Willis M. Sherwood against Anthony J. Langdon and Michael J. Langdon. Judgment was rendered for the plaintiff, and the defendants sued out a writ of error.

West Headnotes

Ejectment 142 ⚿11

142 Ejectment
142I Right of Action and Defenses
142k8 Title to Support Action
142k11 k. Interest in Public Lands. Most Cited Cases

Neither the certificate of location issued by the register of the local land office, nor the receiver's receipt, upon final proof, is sufficient evidence of title to support ejectment in the United States courts, though a different rule may prevail in the state courts by statutory provision.

Equity 150 ⚿431

150 Equity
150X Decree and Enforcement Thereof
150k431 k. Construction and Operation. Most Cited Cases

Under Code Neb. § 429, providing that when a decree shall be rendered in any court of the state for a conveyance, and the parties do not comply therewith within the specified time, it shall have the same effect as if the conveyance had been made conformable thereto, such decree conveys the legal title as fully as if the conveyance had been made by the parties themselves.

*****429 *75** *J. M. Woolworth*, for plaintiffs in error.

****77** *John M. Thurston*, for defendant in error.

***78** MILLER, J.

This is a writ of error to the circuit court of the United States for the district of Nebraska. The defendant in error brought in that court a suit in the nature of an action of ejectment to recover several tracts or parcels of land then in the possession of the plaintiffs in error. The case was first tried before a jury, and the verdict afterwards set aside. By a written agreement of the parties, it was then submitted to the court without a jury. That court made a general finding in favor of the plaintiff, Sherwood, and certain special findings, and upon both of these rendered a judgment***79** for him, for all the land claimed in his petition. A bill of exceptions was taken, which related to the introduction of evidence and the findings of the court. On this bill of exceptions and the special findings of fact, the plaintiffs here assign two principal errors.

The first one of these, which affects all the land embraced in the suit, has reference to the introduction and effect of a decree in chancery, rendered in the circuit court of the United States for the district of Nebraska, April 9, 1883, in which Sherwood was complainant, and the Sauntee Land & Ferry Company was defendant. The plaintiff in the action of ejectment, having given evidence which he asserted showed title to all the land in controversy in the Sauntee Land & Ferry Company, introduced the record of this suit in chancery to establish a transfer of the title by means of the proceedings in that suit from that company to himself. The bill of complaint set out that this company, while owner of the land, had made a verbal agreement with William A. Gwyer that the latter should take, have, and hold

the real estate mentioned, as his own property, and, as consideration for the same, should pay off, settle, and discharge the indebtedness of the company. The decree of the court established the fact that Sherwood had acquired the interest of Gwyer in the property, whereby he became the equitable owner of it all, and that he was entitled to have a conveyance of the legal title from the Sauntee Land & Ferry Company. The decree then proceeded in the following language: 'It is further ordered and decreed that the respondent, the Sauntee Land & Ferry Company, shall, within twenty days after the entry of this decree, execute, acknowledge, prove, and record, in the manner provided by law, a good and sufficient deed of conveyance to the complainant of all said real estate, to vest the entire legal title thereof in the respondent, and to deliver said deed of conveyance, so executed, acknowledged, proved, and recorded, to the complainant. It is further ordered and decreed that, in case said respondent shall fail, neglect, or refuse to make, execute, acknowledge, prove, record, and deliver to ****430** the complainant such deed of ***80** conveyance within the time hereinbefore fixed, then and in that case, this decree shall stand and be a good, sufficient, and complete conveyance from the respondent, the Sauntee Land & Ferry Company, to the complainant, Willis M. Sherwood, of all the right, title, and estate of said respondent in and to said real estate, and shall be taken and held as good, complete, and perfect a deed of conveyance as would be the deed of conveyance hereinbefore specified. And that the respondent, and all persons claiming through, from, or under it, be, and they are hereby, perpetually barred, restrained, and enjoined from asserting any right, title, ownership, or interest in or to said real estate adversely to the complainant, and from in any manner interfering with the peaceable and quiet possession of complainant in and of the same.'

No conveyance was ever made under this decree by that company, and it is objected that for this reason Sherwood did not acquire by that proceeding the strict legal title, but only obtained an equitable one, and the quieting of that title as against the Sauntee Land & Ferry Company. Section 429, Code Neb., is, however, relied upon by Sherwood's counsel as giving to the decree in his favor in the chancery suit the effect of an actual conveyance of the title. That section is as follows: 'When any judgment or decree shall be rendered for a conveyance, release, or acquittance in any court of this state, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time mentioned in said judgment or decree, such judgment or decree shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformable to such judgment or decree.' We are of opinion that, if this section of the Code be valid, if was the intention of the makers of it that a judgment and decree such as the one before us should have the same effect, where the parties directed to make the conveyance fail to comply with the order, as it would have had if they had complied, in regard to the transfer of title from them to the party to whom they were bound to convey by the decree. The ***81** language of this section of the Code hardly admits of any other construction. When the party decreed to make the conveyance does not comply therewith within the time mentioned in the judgment or decree, such judgment or decree shall have the same effect and operation, and be as available, as if the conveyance had been executed. The operation or effect here meant was the transfer of title, and it could not have been made any clearer if it had said that it should have the effect of transferring the title from the party who fails to convey to the one to whom it ought to be conveyed. This must have been the meaning of the minds of the legislators. It was undoubtedly the ancient and usual course, in such a proceeding, to compel the party who should convey to perform the decree of the court, by fine and imprisonment for refusing to do so. But inasmuch as this was a troublesome and expensive mode of compelling the transfer, and the party might not be within reach of the process of the court so that he could be attached, it has long been the practice of many of the states, under statutes enacted for that purpose, to at-

tain this object, either by the appointment of a special commissioner who should convey in the name of the party ordered to convey, or by statutes similar to the one under consideration, by which the judgment or decree of the court was made to stand as such conveyance on the failure of the party ordered to convey. The validity of these statutes has never been questioned, so far as we know, though long in existence in nearly all the states of the Union. There can be no doubt of their efficacy in transferring the title, in the courts of the states which have enacted them; nor do we see any reason why the courts of the United States may not use this mode of effecting that which is clearly within their power.

The question of the mode of transferring real estate is one peculiarly within the jurisdiction of the legislative power of the state in which the land lies. As this court has repeatedly said, the mode of conveyance is subject to ****431** the control of the legislature of the state; and as the case in hand goes upon the proposition that the title had passed from the government ***82** of the United States, and was in controversy between private citizens, there can be no valid objection to this mode of enforcing the contract for conveyance between them according to the law of Nebraska. *U. S.* v. *Crosby*, 7 Cranch, 115; *Clark* v. *Graham*, 6 Wheat. 577; *McCormick* v. *Sullivant*, 10 Wheat. 192; *U. S.* v. *Fox*, 94 U. S. 315; *Brine* v. *Insurance Co.*, 96 U. S. 627; *Insurance Co.* v. *Cushman*, 108 U. S. 51, 2 Sup. Ct. Rep. 236. We cannot see, therefore, any error in the circuit court in permitting the proceedings in the chancery suit to be given in evidence, nor in giving to them the effect of transferring from the Sauntee Land & Ferry Company such legal title as it had to any of the property in controversy.

The plaintiff, in order to sustain his right of action in this suit, offered in evidence, first, a certificate of the register of the land-office at Omaha, Nebraska, of the date of August 14, 1857, of the location by John Joseph Wright of a military land-warrant upon the S. W. 1/4 of the S. W. 1/4 of section 28, and the W. 1/2 of the N. W. 1/4 of section 33, in township 13 N., of range 10 E., containing 120 acres. He also offered the assignment of this land and the certificate to the Sauntee Land & Ferry Company. Another certificate of the receiver at Omaha, of the same date, was also offered, acknowledging the payment of $45.50 for the purchase of lot No. 1 of quarter section No. 33, in township No. 13 N., of range 10 E., containing 36 acres and 40-100, and an assignment thereof to the same company. To both of these certificates and assignments the defendants objected, on the ground that they were immaterial, and did not purport to be a conveyance of said lands, and that title could not be shown in this action of ejectment by a certificate of a register or receiver. In its findings, the court, upon this subject, finds specially that, by virtue of these certificates, 'the said Wright became seized in fee of the said lands, and that, by his deed of conveyance thereof, the same passed to the Sauntee Land & Ferry Company.'

***83** It has been repeatedly decided by this court that such certificates of the officers of the land department do not convey the legal title of the land to the holder of the certificate, but that they only evidence an equitable title, which may afterwards be perfected by the issue of a patent, and that in the courts of the United States such certificates are not sufficient to authorize a recovery in an action of ejectment. The ground of these decisions is that in these courts a recovery in ejectment can only be had upon the strict legal title, that this class of certificates presupposes the existence of the title in the United States at the time they were given, and that something more is necessary to show that this legal title was ever divested from the United States by a patent or otherwise. The decisions on this subject are quite numerous, and the principle on which they rest has been frequently asserted, and maintained with uniformity. In the case of *Bagnell* v. *Broderick* , 13 Pet. 436, this question was very fully considered; and the language of the court, expressive of the result arrived at, is that 'congress has the sole power to declare the dignity and effect of titles em-

anating from the United States; and the whole legislation of the Federal government in reference to the public lands declares the patent the superior and conclusive evidence of legal title. Until its issuance, the fee is in the government, which, by the patent, passes to the grantee; and he is entitled to recover the possession in ejectment.' *Fenn* v. *Holme*, 21 How. 481, was also a case of this character, and in that the court said: 'This is an attempt to assert at law, and by a legal remedy, a right to real property,-an action of ejectment to establish the right of possession in land. That the plaintiff in ejectment must in all cases prove a *legal* title to the premises in himself at the time of the demise laid in the declaration, and that evidence of an *equitable* estate will not be sufficient for a recovery, are principles so elementary and so familiar to the profession as to render unnecessary the citation of authority in support of them.' The case of ****432***Hooper* v. *Scheimer*, 23 How, 235, was an action of ejectment in the circuit court of the United States for the ***84** Eastern district of Arkansas. The plaintiff endeavored to maintain his right to recover possession by the production of an entry made in the United States land-office. A statute of Arkansas enacted that an action of ejectment may be maintained where the plaintiff claims possession by virtue of an entry made with the register or receiver of the proper land-office. This court, however, after referring to the case of *Bagnell* v. *Broderick*, and declaring that its principles are the settled doctrine of the court, adds: 'But there is another question standing in advance of the foregoing, to-wit: Can an action of ejectment be maintained in the federal courts against a defendant in possession, on an entry made with the register and receiver?' To which question it responds by saying: 'It is also the settled doctrine of this court that no action of ejectment will lie on such an equitable title, notwithstanding a state legislature may have provided otherwise by statute. The law is only binding on the state courts, and has no force in the circuit courts of the Union.' See, also, *Foster* v. *Mora*, 98 U. S. 425, for an assertion of the same principle.

The defendants in error rely upon section 411, Code Civil Proc. Neb., which is analogous in its provisions to the statute of Arkansas referred to in the case of *Hooper* v. *Scheimer*. That section is as follows: '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.' But, whatever effect may be given to this statute in the courts of the state of Nebraska, it is obvious that in the circuit court of the United States it cannot be received as establishing the legal title in the holder of such certificate. Where the question is one of a derivation of title from the United States, it is plain that this class of evidence implies that the title remains in the United States. The certificate is given for the purpose of vesting in the receiver of it an equitable right to demand the patent of the government after such further proceedings as the laws of the United States, and the course of business in the departments, may require. ***85** The circuit court cannot presume that a patent has been issued to the party to whom such certificate was issued, or to any one to whom he may have transferred it. The fact of the issue of a patent is a matter of record in the land department of the United States, and a copy of that record may be so easily obtained by application at the proper office that no necessity exists for the acceptance in an action at law of the receipt of a register or receiver as a substitute for the patent. If it never issued, it is obvious that the legal title remains in the United States, and, according to the well-settled principles of the action of ejectment, the plaintiff cannot be entitled to recover in the action at law. To receive this evidence, and to give to it the effect of proving a legal title in the holder of such a receipt, because the statute of the state proposes to give to it such an effect, is to violate the principle asserted in *Bagnell* v. *Broderick*, that it is for the United States to fix the dignity and character of the evidences of title which issue from the government. And it is also in violation of the other principle

settled by the cited decisions, that in the courts of the United States a recovery in ejectment can be had alone upon the strict legal title, and that the courts of law do not enforce in that manner the equitable title evidenced by these certificates.

There was error, therefore, in the decision of the court admitting these certificates from the land-office as evidence of title, and in the finding that there was such evidence of title in the plaintiff as justified the recovery. The judgment of the court on the facts found in regard to the remainder of the land is correct. It must, however, be reversed for the error in regard to the 156 acres and 40-100 included in the two certificates of the land-office. It is therefore remanded, with instructions to render judgment against the plaintiff for the 156 acres and 40-100, and in his favor for the remainder of the land.

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