

Webster Vs. Reid

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 52 U.S. 437

Appellant : Webster

Respondent : Reid

Judgement :

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Webster v. Reid

52 U.S. (11 How.) 437

ERROR TO THE SUPREME

COURT OF IOWA

SYLLABUS

Where a judgment was rendered by the Supreme Court for Iowa Territory and the record certified to this Court by the Supreme Court of the State of Iowa, after her admission into the Union, and the subject matter is within the jurisdiction of this

Court, it will take jurisdiction over the case.

Where the Legislature of the Territory of Iowa directed that suits might be instituted against "the Owners of the Half-breed Lands lying in Lee County," notice thereof being given through the newspapers, and judgments were recovered in suits so instituted, these judgments were nullities.

There was no personal notice to individuals, nor an attachment or other proceeding against the land, until after the judgments.

The law, moreover, directed that the court should decide without the intervention of a jury to determine matters of fact. This was inconsistent with the Constitution of the United States.

The court below erred in not permitting evidence to be offered to show that the judgments were fraudulent. It erred also in not allowing the defendant to give his title in evidence.

The defendant ought also to have been allowed to give evidence that the judgments had not been obtained in conformity with the law which required certain preliminary steps to be taken.

This case was brought up by a writ of error allowed by John F. Kinney, Judge of the Supreme Court of Iowa, on 10 November, 1847. The writ was issued, as usual, in the name of the President of the United States, and was addressed, "To the Honorable the Judges of the Supreme Court of the Territory, now State, of Iowa."

It was what was called an action of right brought by Reid against Webster, to recover the possession of 160 acres of land in Lee County, then in the Territory of Iowa. The suit was brought on 1 October, 1844.

The facts were these.

On 4 August, 1824, the United States made a treaty with the Sac and Fox Indians by which a tract of country between the Des Moines and Mississippi Rivers was reserved for the use of the half-breeds belonging to the Sac and Fox Indians. This

treaty was ratified on 18 January, 1825.

On 30 June, 1834, Congress passed the following Act, 4 Stat. 740:

"Be it enacted &c.;, that all the right, title, and interest, which might accrue or revert to the United States to the reservation of land lying between the Rivers Des Moines and Mississippi which was reserved for the use of the half-breeds belonging to the Sac and Fox nations, now used by them, or some of them, under a treaty made and concluded between the United States and the Sac and Fox tribes or nations of Indians at Washington, on 4 August, 1824, be, and the same are hereby, relinquished and vested in the said half-breeds

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of the Sac and Fox tribes or nations of Indians who, at the passage of this act, are, under the reservation in the said treaty, entitled, by the Indian title to the same, with full power and authority to transfer their portions thereof by sale, devise, or descent according to the laws of the State of Missouri."

On 16 January, 1838, the Territorial Legislature of Wisconsin passed an act for the partition of the half-breed lands and for other purposes. The preamble to the act was as follows:

"Whereas it is expedient in order to the settlement of that tract of land lying between the Mississippi and Des Moines Rivers, commonly called the 'half-breed lands,' which was reserved for the half-breeds of the Sac and Fox tribes of Indians, by treaty made at Washington City between the United States and those tribes on 4 August, 1824, which was released to said half-breeds, with power to convey their rights &c.;, by act of Congress, approved 30 June, 1834, that the validity of the titles of the claimants should be determined, and partition of said lands among those having claims should be made or a sale thereof for the benefit of such valid claimants, now therefore be it enacted"

&c.;

The act directed that all persons claiming any interest in said lands should file, within one year, with the clerk of the District Court of Lee County, a written notice of their respective claims &c.; Edward Johnston, Thomas S. Wilson, and David Brigham were appointed commissioners to receive testimony concerning the validity of claims, who should be entitled to \$6 *per diem*. The act consisted of twenty-four sections, and pointed out the manner in which the commissioners should discharge their duties. Certain persons were also appointed to sell portions of the land in order to pay all necessary expenses.

On 22 June, 1838, a supplement was passed, making certain changes, which need not be particularly noticed.

On 25 January, 1839, the Council and House of Representatives of the Territory of Iowa passed an act repealing the two preceding acts, and proceeding as follows:

"SEC. 2. That the several commissioners appointed by and under that act to sit and take testimony, may immediately or as soon as convenient, commence actions before the District Court of Lee County for their several accounts against the owners of the said 'half-breed lands,' and give eight weeks' notice in the Iowa Territorial Gazette to said owners of such suits, and the judge of said district court, upon the trial of said suits before it at its next term, shall, if said accounts are deemed correct, order judgment for the amount and costs to be

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entered up against said owners, and said judgment shall be a lien on said lands, and a right of redemption thereto; said judgment, when entered, shall draw interest at the rate of twelve percent per annum."

"SEC. 3. The words 'Owners of the half-breed Lands lying in Lee County' shall be a sufficient designation and specification of the defendants in said suits."

"SEC. 4. All the expenses necessarily incurred by said commissioners in the discharge of their duties under the above-named acts shall be included in their accounts."

"SEC. 5. The trial of said suit or suits shall be before the court, and not a jury, and this act shall receive a liberal construction such as will carry out the spirit and intention thereof."

"Approved, January 25, 1839."

At the August term, 1839, of the District Court for Lee County, Edward Johnston and David Brigham, two of the commissioners, recovered judgments against the owners of the half-breed lands, as follows:

"EDWARD JOHNSTON v. OWNERS OF THE HALF-BREED LANDS lying in Lee County, I.T. *In Debt.* "

"Now comes the auditor, appointed by the court to examine, adjust, and allow the account of the plaintiff in the above-entitled cause, to-wit, H. T. Reid, Esq., and makes report that he finds the sum of \$1,290 to be due from said defendants to said plaintiff, which report is accepted by the court. Whereupon, it is ordered by the court that the plaintiff recover of the defendants the sum of \$1,290, together with his costs of suit in this behalf expended."

"DAVID BRIGHAM v. THE OWNERS OF THE HALF-BREED LANDS lying in the County of Lee. *In Debt.* "

"Now comes the auditor appointed by the court to examine, adjust, and allow the account of the plaintiff in the above-entitled cause, to-wit, Oliver Weld, Esq., and makes report that he finds the sum of \$818 to be due from the said defendants to said plaintiff; which report is accepted by the court. Whereupon, it is ordered by the court that the plaintiff recover of the said defendants the sum of \$818, the amount stated in the auditor's report, and costs in his behalf expended."

On 26 November, 1841, executions were issued upon the above two judgments.

On 1 December, 1841, the sheriff levied the executions

"on the half-breed tract of land, situated between the Mississippi and Des Moines Rivers, granted by treaty to the

half-breeds of the Sac and Fox tribes of Indians,"

and advertised the same for sale on 1 January, 1842.

On 1 January, 1842, the sheriff sold the land, containing 119,000 acres, more or less, to Hugh T. Reid, for the sum of \$2,884.66.

On 2 January, 1843, William Stotts, Sheriff of Lee County and successor of the sheriff who had made the sale, executed a deed to Reid for the following tract, viz.:

"All that tract of land lying between the Mississippi and Des Moines Rivers and south of a line drawn from a point on the Des Moines River opposite the point where the northern boundary of the State of Missouri strikes the same to the Mississippi, commonly known as the half-breed lands lying in Lee County, and containing 119,000 acres, more or less; the said tract of land lying being and situate in the County of Lee and Territory of Iowa aforesaid, with all the right, interest, claim, and demand of the said owners of the half-breed lands lying in Lee County in, over, and to the same, and every part and parcel thereof, to have and to hold all the above-granted premises and appurtenances thereto belonging, or in any wise appertaining, to the said Hugh T. Reid, his heirs and assigns forever."

On 1 October, 1844, Reid brought a suit against Webster, and filed the following declaration:

" *Territory of Iowa, Lee County, ss.* "

"HUGH T. REID v. JOSEPH WEBSTER."

"Hugh T. Reid claims against Joseph Webster a tract of land, with the appurtenances, lying in the county aforesaid and described as follows, to-wit, the northeast quarter of section 12, in township 67 north, and range 5 west, containing 160 acres, more or less; and thereupon the said Hugh T. Reid says that he has right to the immediate possession of said property, and to the ownership thereof in

fee simple, and also to damages for its detention, and offers to prove that such is his right."

"H. T. REID, *Attorney for himself* "

The defendant put in the following plea:

" *Territory of Iowa, Lee County, sct.* "

" *District Court of said County, October Term 1841*"

"Joseph Webster denies the right of Hugh T. Reid to the tract of land, with the appurtenances, and damages for the detention thereof, as set forth in his declaration, or to any part thereof, and hereupon he prays a jury to determine the truth of this plea."

"MILLER, MILLS & COCHRAN, *for Defendant.* "

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On 12 May, 1845, the cause came on for trial, when the verdict of the jury was for the plaintiff.

There were eight bills of exceptions taken in the progress of the trial, which occupied twenty-six pages of the printed record. Into them were incorporated long legislative acts and deeds, of which a summary is given above.

Instead of transcribing these long exceptions, it will be sufficient to state the points involved.

" *First Exception* "

"The plaintiff offered in evidence the two judgments given in favor of Johnston and Brigham."

"This was the first evidence offered by the plaintiff to the jury. The defendant objected to the admissibility of the judgments as being rendered without jurisdiction, but the court overruled the objections and admitted the records, to which the defendant excepts and prays the court to sign and seal this his first bill of exceptions, which is done at the time the same was taken on the trial."

"CHARLES MASON, *Judge* "

" *Second Exception* "

"The plaintiff offered in evidence the above judgments, the executions issued thereon, the sheriff's return and deed to Reid, then a witness to prove that Webster was in possession of the land mentioned in the declaration, and had been so since the year 1839 or 1840, and that the land was within the half-breed reservation, and then the various legislative acts."

"The defendant then moved the court to enter a nonsuit against the plaintiff, which motion was overruled by the court, to which ruling and decision the defendant excepts and prays &c.;"

"CHARLES MASON, *Judge* "

" *Third Exception* "

"Be it known that on the trial of this cause, after the plaintiff had closed his evidence and defendant had moved the court for a nonsuit, as stated in a bill of exceptions numbered two in this cause, the defendant offered to prove to the jury that the judgments, executions, sheriff's sale, and sheriff's deed, constituting the evidence introduced by plaintiff, was all procured by fraud by said plaintiff and others, and that the whole title of plaintiff is based upon fraud and fiction, to the introduction of which evidence the plaintiff objected, and the court sustained the exception, and ruled that such evidence should not be admitted, to which defendant excepts, and prays the court to sign and seal this bill of exceptions."

"CHARLES MASON, *Judge* "

" *Fourth Exception* "

"The defendant then offered evidence to show the condition of the half-breeds, and then the following deeds:"

"1837, March 3. Na-ma-tau-pas, a half-breed, to John Bond."

"1837, March 20. John Bond to Theophilus Bullard."

"1838, April 7. Bullard to Webster, the defendant."

"The plaintiff objected to the introduction of any of the said deeds, and the court sustained the objection, and ruled that they should be excluded from the jury, to which opinion the defendant excepts, and prays the court to sign and seal this bill of exceptions."

"CHARLES MASON, *Judge* "

" *Fifth Exception* "

"Be it known that on the trial of this cause the defendant proved that he acquired the possession of the premises described in plaintiff's declaration by a purchase, as set forth in deeds included in defendant's fourth bill of exceptions, in the year 1838; that at the time he purchased, there were improvements on said tract, and that he took possession, and has been in possession ever since. The defendant then produced evidence and offered to prove by parol testimony that no service had ever been made upon any person in the suits in which the judgments were rendered upon which the sale was made to plaintiff, as set forth in defendant's second bill of exceptions, which bill is referred to here and made a part of this; that no notice was given by publication of the pendency of said suit; that the plaintiff was the counsel that procured said judgments; that said judgments were rendered upon a fictitious demand, and never proven before the auditor; that Webster and the owners of the half-breed tract of land, or some of them, were prevented from

appearing and defending by the fraudulent representations of said plaintiff; that the sale was in fact never made by the sheriff, Taylor; that the whole return of the sheriff, Taylor, was a fraudulent and false return. The plaintiff objected to the introduction of every part of said testimony, and the court ruled and decided that no part of said evidence was admissible, and ruled that the defendant should not introduce evidence to prove any of the facts above stated, to which ruling and decision the defendant excepts."

"CHARLES MASON, *Judge* "

" *Sixth Exception* "

"Be it known that on the trial of this cause, the defendant filed an affidavit, as follows, to-wit:"

" Joseph Webster makes oath and says that a certain deed, executed by Hawkins Taylor,

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Sheriff and Collector of Lee County, to R. F. Barrett, dated 27 September, 1841, and recorded in Lee County, is not in his power to produce on this trial, and is material evidence in his behalf, to be read in the said trial of H. T. Reid v. said Webster, as he is advised by his counsel."

" JOSEPH WEBSTER"

" Sworn and subscribed to before me, this 15 May, 1845."

"J. C. WALKER, *Clerk* "

"By J. G. WALKER, *Deputy* "

"After which, offered the recorder's record of Lee County as evidence of the deed mentioned in the affidavit. The plaintiff objected, the court sustained the objection, and ruled that the record of the deed should not be introduced as evidence, to which the defendant excepts and prays &c.;"

"CHARLES MASON, *Judge* "

" *Seventh Exception* "

"The plaintiff offered in evidence the judgments, the execution, and the deed of the sheriff to Reid, the same as mentioned heretofore. The defendant excepted, but the court overruled the objection and admitted the deed, to which ruling the defendant excepts and prays &c.;"

"CHARLES MASON, *Judge* "

" *Eighth Exception* "

"Be it remembered that on the trial of this cause, the plaintiff proved nothing in addition to the evidence introduced as set forth in bill of exceptions number two; all the evidence given to the jury by the plaintiff, on examination in chief, or in rebutting evidence, is the evidence contained in defendant's bill of exceptions on the motion to nonsuit plaintiff, and it is here referred to and fully admitted."

"Upon this state of facts the defendant prays the court to instruct the jury as follows, to-wit:"

"1st. That, unless it was proved to the satisfaction of the jury that there was some person or persons within the Territory of Iowa, at the time of the issuing of the process, or appeared at the trial, or at some stage of the proceedings, that were within the jurisdiction of the district court of Lee County, during the pendency of the suits of Johnston and Brigham, upon which this title accrued, that owned or had an interest in those lands, they must find for the defendant."

"2d. That unless they find from the evidence that there were owners, and persons or corporations, other than the government, who were owners, or had an interest in said land, at

the commencement of these suits by Johnston and Brigham, they must find for the defendant."

"3d. That unless the jury find that someone or more of the owners of the half-breed tract of land were citizens of the Territory of Iowa at the time of the passage of the Act of Iowa legislature passed January 25, 1839, or between that time and the time of the execution of the deed by the sheriff to the plaintiff, they must find for the defendant."

"4th. That unless it has been proved to the jury that the defendants sued by Johnston and Brigham, and upon whose judgments the plaintiff claims his title, were a corporation by virtue of law, and acting as such, are liable as such, or a partnership firm by that name, or some kind of an association who had assumed the name of owners of the half-breed Lands in Lee County, the plaintiff cannot recover."

"5th. That if it is not proved to the jury that the judgments of Johnston and Brigham were rendered against some person or persons, body corporate or association of individuals, whose existence has been proved to exist at the commencement of the suit, or at the rendition of the judgments, they must find for the defendant."

"6th. That a judgment against a dead person or a person who has no existence whatever is no judgment at all in contemplation of law, and a sale under such a judgment is void."

"Which said instructions so prayed for by the defendant as above stated to be given severally as stated above to the jury the court refused to give, and the court refused each and every instruction severally above prayed for, as mentioned from one to six, to which refusal and ruling and decision of the court the defendant excepts and prays the court to sign and seal this bill of exceptions."

"CHARLES MASON, *Judge* "

It has already been stated, that the jury found a verdict for the plaintiff. Webster, the defendant, sued out a writ of error, and carried the case to the supreme court.

In January, 1846, the Supreme Court of the Territory of Iowa affirmed the judgment of the court below, when Webster brought the case up to this Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

A judgment was obtained by the defendant, Reid, against the plaintiff in error, Webster, at May term, 1845, in the District Court of Lee County, Iowa Territory, for the recovery of a quarter-section of land, which judgment was removed by writ of error to the supreme court of the territory, and afterwards, at January term, 1846, the judgment of the district court was affirmed.

On 3 March, 1845, an act was passed by Congress to admit the State of Iowa into the Union. By the fifth section of that act it was made a fundamental condition to the admission of the state that certain provisions of the act should be "assented to by a majority of the qualified electors at their township elections," on which the President was required, by proclamation, to announce the admission of the state into the Union.

The judgment in this case was rendered by the territorial court before the State of Iowa had been admitted. The writ

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of error from that court was directed to the supreme court of the territory, and the record has been certified in obedience to it by the supreme court of the state, where, it seems, the records of the territorial supreme court are deposited.

As this proceeding was commenced and consummated in the territorial courts, over which this Court can properly exercise a revisory jurisdiction, the district court of the United States would have been a more appropriate deposit for the record. But under the circumstances this is not considered material to a revision of the proceedings, no mandate being required to give effect to the judgment of this Court.

The subject matter being clearly within our jurisdiction, and having possession of the record, we see no objection to an examination of the case. This Court held in [*Gelston v. Hoyt*](#), 3 Wheat. 246, under the twenty-fifth section of the Judiciary Act of 1789, giving appellate jurisdiction to this Court from the final judgment of the highest state court,

"The writ of error may be directed to any court in which the record and judgment on which it is to act may be found, and if the record has been remitted by the highest court and to another court of the state, it may be brought by the writ of error from that court."

In principle, that case is analogous to the one under consideration. If the record contain the judgment duly certified, over which we can exercise jurisdiction, it is not essential that it should be certified by the court rendering the judgment.

The questions in the case arise on exceptions taken to the rulings of the court at the trial.

To sustain the plaintiff's title, two judgments and executions thereon, with the sheriff's return, were offered in evidence. The first in behalf of Edward Johnston v. "The Owners of half-breed Lands lying in Lee County," Iowa Territory, for twelve hundred and ninety dollars, at August term, 1839; the other in behalf of David Brigham v. the same defendants for the sum of eight hundred and eighteen dollars, at the same term. Executions having been issued on these judgments, the sheriff returned on both of them that he had levied "on the half-breed Sac and Fox reservation in Lee County, Iowa Territory, commonly called the half-breed tract," and had advertised and sold the same for the sum of twenty-eight hundred and eighty-four dollars, sixty-six cents.

In pursuance of this sale, the sheriff made to Hugh T. Reid, the purchaser, a deed for the lands levied on, containing one hundred and nineteen thousand acres, more or less.

The above proceeding took place under a law of the Territorial Legislature of Iowa passed 25 January, 1839. By the first section of that law, "An act for the partition of

the

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half-breed lands, and for other purposes," and an act supplementary thereto, were repealed. The preamble to the repealed act expresses its object --

"Whereas it is expedient, in order to the settlement of that tract of land lying between the Mississippi and Des Moines Rivers, commonly called the half-breed lands, which was reserved for the half-breeds of the Sac and Fox tribes of Indians, by treaty made at Washington City between the United States and those tribes on 4 August, 1824, which was released to said half-breeds, with power to convey their rights &c.;, by act of Congress, approved 30 June, 1834, that the validity of the titles of the complainants should be determined and partition of said lands among those having claims should be made, or a sale thereof for the benefit of such valid claimants."

The second section of the repealing act provided, that the several commissioners by and under the act repealed, who were authorized to sit and take testimony &c.;, under said act,

"may immediately, or as soon as convenient, commence actions before the district court of Lee County, for their several accounts against the owners of the said 'half-breed lands,' and give eight weeks' notice in the Iowa territorial Gazette to said owners of such lands, and the judge of said district court, upon the trial of said suits before it at its next term, shall, if said accounts are deemed correct, order judgment for the amount and costs to be entered up against said owners, and said judgment shall be a lien on said lands,"

&c.;

The third section declares, "The words *Owners of the half-breed Lands lying in Lee County*' shall be a sufficient designation and specification of the defendants in said suits."

By the fifth section it was provided, that

"The trial of said suits shall be before the court, and not a jury, and this act shall receive a liberal construction, such as will carry out the spirit and intention thereof."

The deed from the sheriff to Reid, and also the judgment and executions on which it was founded, having been given in evidence, though objected to by Webster, he offered to prove to the jury that the judgments, executions, sheriff's sale, and sheriff's deed were all procured by fraud of the plaintiff, and others, and that the whole title of the plaintiff was founded upon fraud and fiction, to which the plaintiff objected, and the court refused to admit the evidence.

The defendant then offered evidence conducing to prove that Na-ma-tau-pas, under whom he claimed the land, was a half-breed of the Sac Indians, accompanied by a deed from him for the premises in controversy, to John Bond, dated 3 March, 1837, and also a deed from Bond to Theophilus Bullard

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for the same land dated 20 March in the same year, and also a deed from Bullard to Webster for the same land dated the 7 April, 1838, all of which deeds were duly acknowledged, but the plaintiff objected to said deeds being admitted as evidence, and the court sustained the objection.

The defendant then offered to prove that he entered into the possession of the premises, which were improved, and that he had occupied them up to the time of the trial. And he then offered to prove by parol testimony that no service had ever been made upon any person in the suits in which the judgments were rendered, under which the sale was made; that no notice was given by publication of the institution of said suits; that the plaintiff was the counsel that procured said judgments; that said judgments were rendered upon a fictitious demand, never proved before the auditor; that Webster and the owners of the half-breed tract of land, or some of them, were prevented from appearing and defending by the fraudulent representations of said plaintiff; that the sale was in fact never made by the sheriff, Taylor; that his returns were fraudulent and false; which evidence, being objected to, was overruled by the court.

Other exceptions were taken, but it is deemed unnecessary to refer to them.

This was an extraordinary procedure from its commencement. With the view to produce a settlement of the large tract of land owned by the half-breed Indians in the County of Lee, to settle the claims to those lands, partition them among the claimants, or make a sale thereof for the benefit of such claimants, the Act of 16 January, 1838, containing twenty-four sections, was passed. Thomas S. Wilson, David Brigham, and Edward Johnston were appointed commissioners, who were vested with certain powers to carry out the objects of the act, and who were to receive each six dollars per day for their services. The judgments on which the land was sold were obtained by two of the commissioners for services rendered under the above act. To satisfy these two claims, the entire tract of the half-breeds was sold, containing 119,000 acres.

By the act under which the suits were instituted, no other designation of the defendants was required than "Owners of the half-breed Lands lying in Lee County." These suits were not a proceeding *in rem* against the land, but were *in personam* against the owners of it. Whether they all resided within the territory or not does not appear, nor is it a matter of any importance. No person is required to answer in a suit on

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whom process has not been served or whose property has not been attached. In this case, there was no personal notice, nor an attachment or other proceeding against the land, until after the judgments. The judgments therefore are nullities, and did not authorize the executions on which the land was sold.

By the seventh article of the amendments of the Constitution it is declared, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The organic law of the Territory of Iowa, by express provision and by reference, extended the laws of the United States, including the Ordinance of 1787, over the territory so far as they are applicable.

The act under which the above proceeding was had prohibited the trial by jury in matters of fact on which the suits were founded. In this respect, the act was void.

The district court erred in overruling the evidence offered by the defendant to prove fraud in the judgments, executions, sheriff's sale, and sheriff's deed.

When a judgment is brought collaterally before the court as evidence, it may be shown to be void upon its face by a want of notice to the person against whom judgment was entered, or for fraud.

The district court also erred in overruling the evidence of title offered by the defendant. The deeds upon their face appeared to have been duly executed, and there was no suggestion that they did not relate to the land in controversy. If no partition had been made, so that Na-ma-tau-pas could not give an exclusive title to the land, yet, being proved to be a half-breed, he had the power to convey at least his interest in the land, which gave a right of possession to some extent to Webster. The deeds showed that he was not a trespasser, and had a right to defend his possession. The extent of his right of possession under his deed it is not necessary now to determine.

There was also error in the district court in overruling the evidence offered by the defendant to show that no notice was given by publication, as the act requires. If jurisdiction could be exercised under the act, it was essential to show that all its requisites had been substantially observed. It was necessary for the plaintiff to prove notice, and negative proof that the notice was not given under such circumstances could not be rejected.

For the above reasons,

The judgment of the supreme court of the territory affirming the judgment of the district court is reversed.

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ORDER

This cause came on to be heard on the transcript of the record from the supreme court of the Territory, now State, of Iowa and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said supreme court in this cause be and the same is hereby reversed with costs, and that a statement of this decision be certified to the Supreme Court of Iowa.

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