

**Myers Vs. Croft**

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**Court :** US Supreme Court

**Decided On :** 1871

**Appeal No. :** 80 U.S. 291

**Appellant :** Myers

**Respondent :** Croft

**Judgement :**

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**Myers v. Croft**

**80 U.S. (13 Wall.) 291**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF NEBRASKA*

## **SYLLABUS**

1. When the grantee in a deed is described in a way which is a proper enough description of an incorporated company, capable of holding land, as *ex. gr.*, "The Sulphur Springs Land Company," the court, in the absence of any proof whatever

to the contrary, will presume that the company was capable in law to take a conveyance of real estate.

2. A grantor not having perfect title who conveys for full value is estopped, both himself and others claiming by subsequent grant from him, against denying title, a perfect title afterwards coming to him.

3. Under the 12th section of the Act of September, 1841, "to appropriate the proceeds of the sales of public lands and to grant preemption rights" -- which section, after prescribing the manner in which the proof of settlement and improvements shall be made before the land is entered, has a provision that "all assignments and transfers of the rights hereby secured, prior to the issuing of the patent, shall be null and void" -- a preemptor who has entered the land, and who at the time is the owner in good faith and has done nothing inconsistent

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with the provisions of the law on the subject, may sell even though he has not yet obtained a patent. The disability extends only to the assignment of the preemption right.

An act of Congress entitled "An Act to appropriate the proceeds of the sales of the public lands and to grant preemption rights," approved September 4, 1841, after prescribing the manner in which the proof of settlement and improvement shall be made before the land is entered, has this proviso: "and all assignments and transfers of the right hereby secured prior to the issuing of the patent shall be null and void."

Under and by virtue of this act, one Fraily, on the 3d of September, 1857, entered a quarter-section of land in Nebraska, at the land office for the Omaha Land District, with the register thereof.

On the same 3d of September, 1857 -- no letters patent having as yet issued to him -- in consideration of \$36,000, as appeared on the face of the deed, he conveyed by a warrantee deed the premises to "The Sulphur Springs Land

Company," the company being not otherwise described in the instrument and there being nothing in the instrument or in other proof to show whether the said grantee was a corporation and capable of taking land or an unincorporated company.

On the 1st of May, 1860 -- more than two years after the date of the deed above mentioned -- Fraily made another deed for the sum, as appeared by the instrument, of \$6,000 to a certain Myers.

In this state of things, Myers sued Croft, who was in under the company, in ejectment to try the title to the land. And the deed to "The Sulphur Springs Land Company" being in evidence on the part of the defendant, the plaintiff moved the court to rule it from the jury for the reasons:

1st. That he had not shown that the Sulphur Springs Land Company was an organization capable of receiving the conveyance of land, and

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2d. That under the provisions of the act of Congress already quoted, the deed was void.

The court overruled the motion, charging contrariwise, that the deed was valid and passed the title to the premises. To this ruling and charge the plaintiff excepted, and judgment having been given for the defendant the case was now here.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

In relation to the first objection -- that the Sulphur Springs Land Company was not a competent grantee to receive the title -- it is sufficient to say, in the absence of any proof whatever on the subject, that it will be presumed the land company was capable in law to take a conveyance of real estate. Besides, neither Fraily, who made the deed, nor Myers, who claims under him, is in a position to question the

capacity of the company to take the title after it has paid to Fraily full value for the property. [ [Footnote 1](#) ]

The other objection is of a more serious character, and depends for its solution upon the construction to be given the last clause of the 12th section of the Act of Congress of September 4, 1841. The act itself is one of a series of preemption laws conferring upon the actual settler upon a quarter section of public land the privilege (enjoyed by no one else) of purchasing it on complying with certain prescribed conditions. It had been the well defined policy of Congress in passing these laws not to allow their benefit to enure to the profit of land speculators, but this wise policy was often defeated. Experience had proved that designing persons, being unable to purchase valuable lands on account of their withdrawal from sale, would procure middlemen to occupy them temporarily, with indifferent improvements,

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under an agreement to convey them so soon as they were entered by virtue of their preemption rights. When this was done and the speculation accomplished, the lands were abandoned.

This was felt to be a serious evil, and Congress, in the law under consideration, undertook to remedy it by requiring of the applicant for a preemption, before he was allowed to enter the land on which he had settled, to swear that he had not contracted it away, nor settled upon it to sell it on speculation, but in good faith to appropriate it to his own use. In case of false swearing the preemptor was subject to a prosecution for perjury and forfeited the money he had paid for the land, and any grant or conveyance made by him before the entry was declared null and void, with an exception in favor of *bona fide* purchasers for a valuable consideration. It is contended by the plaintiff in error that Congress went further in this direction, and imposed also a restriction upon the power of alienation after the entry, and the last clause in the 12th section of the act is cited to support the position.

This section, after prescribing the manner in which the proof of settlement and improvement shall be made before the land is entered, has this proviso: "and all assignments and transfers of the right hereby secured prior to the issuing of the patent shall be null and void."

The inquiry is what did the legislature intend by this prohibition? Did it mean to disqualify the preemptor who had entered the land from selling it at all until he had obtained his patent, or did the disability extend only to the assignment of the preemption right? Looking at the language employed as well as the policy of Congress on the subject, it would seem that the interdiction was intended to apply to the right secured by the act, and did not go further. This was the right to preempt a quarter section of land by settling upon and improving it, at the minimum price, no matter what its value might be when the time limited for perfecting the preemption expired. This right was valuable and, independently of the legislation of Congress, assignable. [ [Footnote 2](#) ]

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The object of Congress was attained when the preemptor went, with clean hands, to the land office and proved up his right, and paid the government for his land. Restriction upon the power of alienation after this would injure the preemptor, and could serve no important purpose of public policy. It is well known that patents do not issue in the usual course of business in the General Land Office until several years after the certificate of entry is given, and equally well known that nearly all the valuable lands in the new states, admitted since 1841, have been taken up under the preemption laws, and the right to sell them freely exercised after the claim was proved up, the land paid for, and the certificate of entry received. In view of these facts, we cannot suppose, in the absence of an express declaration to that effect, that Congress intended to tie up these lands in the hands of the original owners until the government should choose to issue the patent.

If it had been the purpose of Congress to attain the object contended for, it would have declared the lands themselves unalienable until the patent was granted. Instead of this, the legislation was directed against the assignment or transfer of

the right secured by the act, which was the right of preemption, leaving the preemptor free to sell his land after the entry if at that time he was, in good faith, the owner of the land, and had done nothing inconsistent with the provisions of the law on the subject.

*Judgment affirmed.*

[ [Footnote 1](#) ]

[Smith v. Sheeley](#), 12 Wall. 358.

[ [Footnote 2](#) ]

[Thredgill v. Pintard](#), 12 How. 24.

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