

United States Vs. Carpenter

United States Vs. Carpenter

SooperKanoon Citation : sooperkanoon.com/84784

Court : US Supreme Court

Decided On : Apr-14-1884

Appeal No. : 111 U.S. 347

Appellant : United States

Respondent : Carpenter

Judgement :

United States v. Carpenter - 111 U.S. 347 (1884)

U.S. Supreme Court United States v. Carpenter, 111 U.S. 347 (1884)

United States v. Carpenter

Argued April 2, 1884

Decided April 14, 1884

111 U.S. 347

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MINNESOTA

SYLLABUS

The location of land scrip upon lands reserved for Indians under the provisions of a treaty with an Indian tribe, and the issue of a patent therefor, are void.

This was a suit in equity to vacate a patent of the United States issued to one August Cluensen, on the 15th of May, 1874, embracing a tract of land in the County of Pipestone, in the State of Missouri, described as the southwesterly quarter of section one (1), in township one hundred and six (106), range forty-six (46), west of the fifth (5th) principal meridian, according to the government surveys. The ground of the suit was that by treaty between the United States and the Yankton tribe of Sioux or Dacotah Indians, ratified on the 26th of February, 1859, the tract, which embraces what is known as the Red Pipestone Quarry in that county was reserved from sale or appropriation under any scrip or warrant of the government. The eighth article of the treaty stipulated that the Yankton Indians should be "secured in the free and unrestricted use" of the quarry, or "so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes," and the United States agreed to cause to be surveyed and marked so much thereof as should be

"necessary and proper for that purpose, and retain the same and keep it open and free for the Indians to visit and procure stone for pipes so long as they shall desire."

Revision of Ind. Treaties 860. The bill alleged that the tract described is a part of the Red Pipestone Quarry mentioned in this article.

In the execution of their agreement, the United States caused so much of the quarry as appeared to be necessary and proper for the purposes of the reservation provided for to be surveyed and marked. A diagram and the field notes of the survey

Page 111 U. S. 348

were duly returned, filed, and recorded in the General Land Office and in the office of the Surveyor General of Minnesota. In February, 1860, copies of them were transmitted by the Commissioner of the General Land Office to the Surveyor

General of the United States for that state, with instructions "to lay the same down" on the map of the state in his office, and to respect them, when the public surveys reached the locality, by closing their lines upon the reservation. At this time the land included in the reservation was not surveyed, but afterwards, for some unexplained reason and in violation of the instructions, it was surveyed with other public lands in its vicinity. In July, 1872, after this survey, the commissioner directed the surveyor general to locate the reservation on the official plat in his office from the field notes and plat of the original survey and to transmit authentic copies to the general and local land offices or, if it should be impossible to locate it from these data, to direct a resurvey of the tract so that it might be located and described upon the official plats and its boundaries respected in accordance with the treaty.

In pursuance of these instructions, the surveyor general caused a resurvey of the quarry reserve and immediately marked it upon the official plats in his office. Its boundaries, as resurveyed, correspond and are substantially coincident with the lines of the original survey, and embrace the quarter section of land above described. Notwithstanding the reservation by the terms of the treaty and its survey, and appropriation to the purposes mentioned, one August Cluensen, on the 15th of July, 1871, was permitted by the land officers of the district to locate upon the quarter section a piece of land scrip issued under the authority of the laws of the United States, known as Louisiana Agricultural College scrip, and to enter the section at that office with this scrip. On the 15th of May, 1874, a patent was issued to him pursuant to his entry. All the interest which he thus acquired, if any, was subsequently transferred by divers mesne conveyances to the defendant Herbert M. Carpenter, who now claims to be the owner of the premises covered by the patent. The bill avers that all the provisions of the treaty are still in force; that the Yankton Indians have always continued

Page 111 U. S. 349

to visit and procure stone from the quarry, and have always desired and still desire so to do, and that the officers and agents of the government, in all that they did in connection with the entry of the land and issuing the patent, acted without

authority of law and in violation of the provisions of the treaty. The bill concludes with a prayer for a decree that the patent and the entry on which it rests may be vacated, and for further relief. To this bill the defendants demurred for want of equity. The demurrer was sustained and the bill dismissed, and the case comes here on appeal.

MR. JUSTICE FIELD delivered the opinion of the Court. He stated the facts in the foregoing language and continued:

The action of the government in causing the tract described to be marked on the official plats in the land offices as reserved from sale was clearly within the line of its duty under the stipulations of the treaty. The bill alleges that the tract was a part of the Red Pipestone quarry mentioned in the eighth article. After the treaty, until the survey was made and the actual extent of the reservation was thus designated, no part of the land containing the quarry could have been taken up either by settlement or by location under the Louisiana Agricultural College scrip. The whole of such land was by the treaty withdrawn from private entry or appropriation until the government had determined whether any portion less than the whole should be reserved. Its power of selection, if the whole was not retained, could not be restricted by the action of private parties. So, in any view which can be taken, the entry of Cluensen was void. It matters not whether the land had been surveyed or not, the treaty was notice that a part of the quarry would be retained by the government, and that the whole might be, for the use of the Indians. This purpose and the stipulation of the United States could not be defeated by the action of any officers of the Land Department.

Page 111 U. S. 350

The court therefore erred in sustaining the demurrer. The decree must accordingly be reversed, with directions to overrule the demurrer, the defendant to have leave to answer, and

It is so ordered.

