Deffeback Vs. Hawke

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Appellant : Deffeback

Respondent : Hawke

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Deffeback v. Hawke

Submitted October 14, 1885

Decided November 16, 1885

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APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF DAKOTA

SYLLABUS

No title from the United States to land known at the time of sale to be valuable for its minerals of gold, silver, cinnabar, or copper can be obtained under the preemption or homestead laws, or the townsite laws, or in any other way than as prescribed by the laws specially authorizing the sale of such lands, except in the States of Michigan, Wisconsin, Minnesota, Missouri and Kansas.

A certificate of purchase of mineral land, upon an entry of the same by a claimant at the local land office, if no adverse claim is filed with the register and receiver and the entry is not cancelled or disaffirmed by the officers of the Land Department at Washington, passes the right of the government to him, and as against the acquisition of title by any other party, is equivalent to a patent. The land thereby ceases to be the subject of sale by the government, which thereafter holds the legal title in trust for the holder of the certificate.

The officers of the Land Department have no authority to insert in a patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribed. The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location, as well as to the land beneath the surface.

There can be no color of title in an occupant of land who does not hold under an instrument or proceeding or law purporting to transfer the title or to give the right of possession. Nor can good faith be affirmed of a party in holding adversely where he knows that he has no title, and that under the law, which he is presumed to know, he can acquire none. So held where, in an action of ejectment for known mineral land by the holder of a patent

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of the United States, the occupant set up a claim to improvements made thereon under a statute of Dakota which provided that

"In an action for the recovery of real property upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the

value of such improvements must be allowed as a counterclaim by such defendant,"

he not having taken any proceedings to acquire the title under the laws of Congress authorizing the sale of such lands or to acquire the right of possession under the local customs or rules of miners of the district.

It would seem that there may be an entry of a townsite even though within its limits mineral lands are found, the entry and the patent being inoperative as to all lands known at the time to be valuable for their minerals or discovered to be such before their occupation and improvement for residences or business under the townsite title.

This is an action to recover a parcel of mineral land situated in the County of Lawrence, in the Territory of Dakota, claimed by the plaintiff under a patent of the United States bearing date on the 31st of January, 1882. The complaint alleges that on the 20th of November, 1877, the plaintiff, being in the actual, peaceable, and exclusive possession of the premises, filed his application in the United States land office at Deadwood, in that county and territory, to enter the land as a placer mining claim; that on the 31st of January, 1878, he entered the same and paid the government price therefor, and that on the 31st of January, 1882, a patent of the United States conveying a fee simple title to the land was executed and delivered to him, the land being described as mineral entry No. 8, and mineral lot No. 53; that while thus the owner and in possession of the premises, the defendant, on or about the 1st of July, 1878, with full notice of the plaintiff's title, unlawfully and wrongfully entered upon a portion of the premises, which is particularly described, and ousted the plaintiff therefrom, and has ever since withheld the possession thereof, to his damage of $500.

The complaint also alleges that the value of the rents and profits of the premises from the entry of the defendant has been $800, and it prays judgment for the possession of the premises, for the damages sustained, and for the rents and profits lost.

To the complaint the defendant put in an answer, admitting that on the 20th of November, 1877, the plaintiff filed in the United States Land Office his application for a patent of the placer mining claim, described as mineral lot No. 53; that it includes the premises in controversy, and that on the 31st of January, 1878, the plaintiff paid to the receiver of the land office the price of the land per acre, and received from the register and the receiver a certificate or receipt therefor, which payment and receipt are commonly called an entry.

The answer also contains two special pleas by way of counterclaim, upon which affirmative relief is asked, namely that the plaintiff be decreed to be a trustee of the premises for the defendant and be directed to convey them, or an interest in them, to him or to allow to him compensation for improvements thereon. In the first of these it sets up various matters as grounds to charge the plaintiff as trustee of the premises for the defendant. In the second special plea it alleges improvements made upon the premises either by the defendant or his grantor as a ground for compensation under the statute of the territory.

In the first special plea, the answer avers substantially as follows:

That on the 28th of February, 1877, the day on which the treaty with the Sioux Indians was ratified, by which the lands in Lawrence County were first opened to settlement and occupation, the land included in mineral lot No. 53, together with a large amount of other land in its immediate vicinity, was appropriated, set apart, and occupied for townsite purposes, and, as such, was surveyed and laid out into lots, blocks, streets, and alleys, for municipal purposes and trade, and was then, and has ever since been, known and called the Town of Deadwood; that the town then contained a population of 2,000 inhabitants, and about 500 buildings, used as residences or for business, and not for agriculture; that the town was then, and has ever since been, the center of trade and business west of the Missouri River in the Territory of Dakota, and at the commencement of this action, contained a population of about 3,000 inhabitants, and buildings and improvements of the

value of about a million of dollars;

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that the land in controversy was one of the lots originally laid out and occupied for townsite purposes, and has always been thus occupied by the defendant or his grantors, with the buildings and improvements thereon, for the purpose of business and trade and not for agriculture; that the placer mining claim, for which the plaintiff filed his application for a patent, as alleged in the complaint, was not located or claimed by him or any other person until after the selection, settlement upon, and appropriation of that and adjacent lands for townsite purposes, and that on the 29th of July, 1878, the Town of Deadwood being unincorporated, the probate judge of Lawrence County entered at the local land office, the said townsite, paid the government price therefor, and received from its officers a receipt for the money and a certificate showing the entry and purchase by him in trust for the use and benefit of the occupants, including the defendant, and that such townsite embraces the land covered by the plaintiff's patent.

The answer further alleges in substance that thereafter, on the 10th of April, 1879, the Commissioner of the General Land Office at Washington ordered a hearing before the land office in Deadwood between the plaintiff and the probate judge, as trustee for occupants of the townsite, as to the character of the land for mineral purposes, at which hearing it was not disputed that the defendant and other occupants of town lots in Deadwood were the prior appropriators of the land, but the Commissioner refused to allow the consideration of any other fact than the mineral character of the land, holding as a proposition of law, decisive of and controlling the case and the rights of the parties, that the only question of fact that could be considered was the mineral or nonmineral character of the land, and that the fact of the prior occupation and appropriation of the land for townsite purposes did not confer any right upon the occupants; that the register and the receiver followed these instructions and decided the controversy solely upon the ground of the mineral character of the land; that their decision, upon appeal to the Commissioner of the General Land Office, and thence to the Secretary of the Interior, was affirmed, and those officers, the Commissioner and the Secretary,

awarded the

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land, with the improvements thereon, to the plaintiff and refused to patent the same, or any interest therein, to the said probate judge or to the defendant, but cancelled the entry of the judge and directed and caused the patent mentioned in the complaint to be issued to the plaintiff, whereas the defendant insists that the patent should have contained an exception or reservation excluding from its operation all town property, and all houses, buildings, lots, blocks, streets, and alleys, and other improvements on the land, not belonging to the plaintiff, and all rights necessary or proper to the occupation, possession, and enjoyment of the same; that the decision of the Commissioner and the Secretary in awarding the property to the plaintiff and refusing to recognize or protect the prior rights of the defendant and other occupants of the town was contrary to law and an erroneous construction thereof, and that therefore the plaintiff, by reason of his patent, holds the land in controversy, and the buildings and improvements thereon, in trust for the defendant, all of which should be conveyed to him, he offering to pay his just proportion of the legal expenses of procuring the patent.

In the second special plea, the answer sets up that on the 28th day of February, 1877, one Henry B. Beaman, being one of the occupants of the townsite, was in the peaceable and lawful possession of the premises in controversy, with a building and other improvements thereon, and that, from that time until his conveyance to the defendant, he remained in the continuous occupation thereof, using the same as a town lot for business and trade, claiming title thereto in good faith against all persons, except the United States, and claiming the right to acquire the title from the United States as a town lot; that thereafter the said Beaman sold and conveyed the premises to the defendant, who purchased them in good faith, and, before the plaintiff acquired any title thereto, made permanent improvements thereon of the value of $1,300, and that the value of the land itself without the improvements would not exceed $100.

The answer concludes with a prayer that the plaintiff take nothing by his suit, and be decreed to convey to the defendant the premises in controversy, excepting and reserving to himself

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the right to mine and extract the precious metals from them, provided, in so doing, he shall not materially injure, endanger, or interfere with the buildings and improvements thereon and the necessary use and enjoyment of them by the defendant, and that in the event it should be determined that the plaintiff is the owner of and entitled to the possession of the premises, then the value of the improvements thereon be specifically found, and the defendant have judgment for the same and for such other and further relief as may be just, with costs.

To each of the special pleas of the answer the plaintiff interposed a general demurrer on the ground that it did not state facts sufficient to constitute a defense to the action nor a counterclaim in the defendant's favor against him, which was sustained, with leave to the defendant to file an amended answer. The defendant refused to amend, and elected to stand on his pleadings. Judgment was therefore entered for the plaintiff. On appeal to the supreme court of the territory, the judgment was affirmed, and the case is brought to this Court on appeal.

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MR. JUSTICE FIELD delivered the opinion of the Court. After stating the facts in the language above reported, he continued:

The principal question presented by the pleadings for our consideration is whether, upon the public domain, title to mineral land can be acquired under the laws of Congress relating to townsites. The plaintiff asserts title to mineral land under a patent of the United States, founded upon an entry by him under the laws of Congress for the sale of mineral lands. The defendant, not having the legal title, claims a better right to the premises by virtue of a previous occupation of them by his grantor as a lot on a portion of the public lands appropriated and used as a

townsite -- that is, settled upon for purposes of trade and business, and not for agriculture, and laid out into streets, lots, blocks, and alleys for that purpose.

In several acts of Congress relating to the public lands of the United States passed before July, 1866, lands which contained minerals were reserved from sale or other disposition. Thus, the Preemption Act of 1841 excepts from preemption and sale "lands on which are situated any known salines or mines," 5 Stat. 453, c. 16, 10, and the act of 1862,

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extending to California the privilege of settlement on unsurveyed lands, previously authorized in certain states and territories, contains a clause declaring that the provisions of the act "shall not be held to authorize preemption and settlement of mineral lands." 12 Stat. 410, c. 86, 7. Similar exceptions were made in grants to different states and in grants to aid in the construction of railroads. Thus, in the grant to California of ten sections of land for the purpose of erecting the public buildings of that state, there is a proviso "that none of said selections shall be made of mineral lands," 10 Stat. c. 145, 13. And in the grants to the Union Pacific Railroad and its associated companies to aid in the building of the transcontinental railroad and branches, there is a proviso declaring that all mineral lands, other than of coal and iron, shall be excepted from them. 12 Stat. 489, c. 120, 3; 13 Stat. 356, 358, c. 216, 4. A similar exception is made in grants for universities and schools, and in the law allowing homesteads to be selected, it is enacted that mineral lands shall not be liable to entry and settlement for that purpose.

By the Act of July 26, 1866, this policy of reserving mineral lands from sale or grant was changed. That act declared that the mineral lands of the public domain were free and open to *exploration and occupation* by all citizens of the United States and persons who had declared their intention to become citizens, subject to such regulations as might be prescribed by law and to the local customs or rules of miners in mining districts so far as they were not in conflict with the laws of the United States. 14 Stat. c. 262, 1. It then provided for acquiring by patent the title to "veins or lodes of quartz, or other rock in place, bearing gold, silver, cinnabar, or

copper." On the 9th of July, 1870, this act was amended so as to make placer claims, including all forms of deposit, "excepting veins of quartz or other rock in place," subject to entry and patent under like circumstances and conditions and upon similar proceedings as those provided for vein or lode claims. 16 Stat. 217, c. 235, 12. The Act of May 10, 1872, to promote the development of the mining resources of the United States repealed several sections of the act of 1866, and,

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among others, the first section, but enacted in place of it a provision declaring that "all valuable mineral deposits" in lands belonging to the United States, both surveyed and unsurveyed, were "free and open to exploration and purchase, and the lands in which they are found to occupation and purchase," subject to the conditions named in the original act. 17 Stat. 91, c. 152, 1. Other sections pointed out with particularity the procedure to obtain the title to veins, lodes, and placer claims, and defined the extent of each claim to which title might be thus acquired. By the Act of February 18, 1873, mineral lands in the states of Michigan, Wisconsin, and Minnesota were excepted from the Act of May 10, 1872, and those lands were declared to be free and open to exploration and purchase according to legal subdivisions in like manner as before. 17 Stat. 465, c. 159. The provisions of the act of 1872, with the exceptions made by the act of 1873, were carried into the Revised Statutes, which declare the statute law of the United States upon the subjects to which they relate as it existed on the first of December, 1873. Section 2345. All other provisions contained in the act of which any portion is embraced in this revision are in express language repealed. Section 5596. No reference, therefore, can be had to the original statutes to control the construction of any section of the Revised Statutes when its meaning is plain, although in the original statutes it may have had a larger or more limited application than that given to it in the revision. *United States v. Bowen,* 100 U. S. 508 , 100 U. S. 513 .

Turning to that portion of these statutes treating of mineral lands and mining resources which is contained in chapter six of title XXXII, we find that its first section declares that "in all cases, lands valuable for minerals shall be reserved from sale except as otherwise expressly directed by law." 2318. Title, therefore, to

lands known at the time to be valuable for its mineral could only have been acquired after December 1, 1873, under provisions specially authorizing their sale, as found in these statutes, except in the States of Michigan, Wisconsin, and Minnesota, and after May 5, 1876, in the States of Missouri and Kansas. By the act of Congress of this later date, "deposits

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of coal, iron, lead, or other mineral" in Missouri and Kansas were excluded from the operation of the Act of May 10, 1872 -- that is, from such provisions of that act as were reenacted in the Revised Statutes. 19 Stat. 52, c. 91. In those portions of the Revised Statutes which relate to preemption and to homestead entries, the clauses from the original acts excepting mineral lands are retained. 2258, 2302.

If, now, we turn to the laws relating to townsites on the public lands, and the provisions authorizing the sale of lands under them, or to the entry of townsites for the benefit of their occupants, as contained in the Revised Statutes, we shall find a similar exception from sale or entry under them of mineral lands. Title XXXII of the Revised Statutes contains the law as to the public lands. Chapter eight of that title relates to the reservation and sale of townsites on the public lands. It contains provisions authorizing the President to reserve from the public lands townsites on the shores of harbors at the junction of rivers, important portages, or at any natural or prospective centers of population; it declares when the survey of such reservations into lots may be made, and the sale of the land had; it prescribes with particularity the manner in which parties who have founded, or who may desire to found, a city or town on the public lands may proceed, and the title to lots in them be acquired. It also provides for the entry at the proper land office of portions of the public lands occupied as a townsite, such entry to be made by its corporate authorities or, if the town be unincorporated, by the judge of the county court of the county in which the town is situated, the entry to be in trust for the use and benefit of the occupants according to their respective interests. The chapter also contains many other clauses respecting townsites, but with provisions against the acquisition of title to mineral land under them. In one section it declares that

"Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession, and the necessary use thereof,"

with a reservation also that nothing in the section shall be construed to recognize any color of title

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in possessors for mining purposes as against the United States. Section 2386. In another section, near the conclusion of the chapter, and following all the provisions affecting the question before us, it declares that

"No title shall be acquired under the foregoing provisions of this chapter to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws."

2392.

It is plain from this brief statement of the legislation of Congress that no title from the United States to land known at the time of sale to be valuable for its minerals of gold, silver, cinnabar, or copper can be obtained under the preemption or homestead laws or the townsite laws, or in any other way than as prescribed by the laws specially authorizing the sale of such lands, except in the States of Michigan, Wisconsin, Minnesota, Missouri, and Kansas. We say "land known at the time to be valuable for its minerals" as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term "mineral," in the sense of the statute, is applicable. In the first section of the act of 1866, no designation is given of the character of mineral lands which are free and open to exploration. But in the act of 1872, which repealed that section and reenacted one of broader import, it is "valuable mineral deposits" which are declared to be free and open to exploration and purchase. The same term is carried into the Revised Statutes. It is there enacted that "lands valuable for

minerals" shall be reserved from sale, except as otherwise expressly directed, and that "valuable mineral deposits" in lands belonging to the United States shall be free and open to exploration and purchase. We also say lands known at the time of their sale to be thus valuable, in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which years afterwards rich deposits of mineral may be discovered. It is quite possible that lands settled upon as suitable only for agricultural purposes, entered by the settler and patented by the government under the preemption laws, may be found years after the patent has been issued to contain valuable

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minerals. Indeed, this has often happened. We therefore use the term "known to be valuable at the time of sale" to prevent any doubt's being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued.

In the present case, there is no dispute as to the mineral character of the land claimed by the plaintiff. It is upon the alleged prior occupation of it for trade and business, the same being within the settlement or townsite of Deadwood, that the defendant relies as giving him a better right to the property. But the title to the land being in the United States, its occupation for trade or business did not and could not initiate any right to it, the same being mineral land, nor delay proceedings for the acquisition of the title under the laws providing for the sale of lands or that character. And those proceedings had gone so far as to vest in the plaintiff a right to the title before any steps were taken by the probate judge of the county to enter the townsite at the local land office. The complainant alleges, and the answer admits, that on the 20th of November, 1877, the plaintiff applied to the United States Land Office at Deadwood to enter the land as a placer mining claim, and that on the 31st of January, 1878, he did enter it as such by paying the government price therefor. No adverse claim was ever filed with the register and receiver of the local land office, and the entry was never cancelled nor disapproved by the officers of the Land Department at Washington. The right of the government therefore passed to him, and though its deed, that is, its patent,

was not issued to him until January 31, 1882, the certificate of purchase, which was given to him upon the entry, was, so far as the acquisition of title by any other party was concerned, equivalent to a patent. It was not until the 28th of July following that the probate judge entered the townsite. The land had then ceased to be the subject of sale by the government. It was no longer its property; it held the legal title only in trust for the holder of the certificate. *Witherspoon v. Duncan,* 4 Wall. 218. When the patent was subsequently issued, it related back to the inception of the right of the patentee.

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The position that the patent to the plaintiff should have contained a reservation excluding from its operation all buildings and improvements not belonging to him and all rights necessary or proper to the possession and enjoyment of the same, has no support in any legislation of Congress. The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribed. The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location, as well as to the land beneath the surface. The Act of Congress of May 10, 1872, contemplates the purchase of the land on which valuable mineral deposits are found, and its provisions in this respect are retained in the Revised Statutes, 2319.

Whilst we hold that a title to known valuable mineral land cannot be acquired under the townsite laws, and therefore could not be acquired to the land in controversy under the entry of the townsite of Deadwood by the probate judge of the county in which that town is situated, we do not wish to be understood as expressing any opinion against the validity of the entry so far as it affected property other than mineral lands, if there were any such at the time of the entry. The acts of Congress relating to townsites recognize the possession of mining claims within their limits, and in *Steel v. Smelting Co.,* 106 U. S. 449 , we said that

"land embraced within a townsite on the public domain, when unoccupied, is not exempt from location and sale for mining purposes; its exemption is only from settlement and sale under the preemption laws of the United States. Some of the most valuable mines in the country are within the limits of incorporated cities, which have grown up on what was at its first settlement, part of the public domain, and many of such mines were located and patented after a regular municipal government had been established. Such is the case with some of the famous mines of Virginia City, in Nevada. Indeed, the discovery of a rich mine in any quarter is usually followed by a large settlement in its immediate neighborhood and the consequent organization

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of some form of local government for the protection of its members."

It would seem, therefore, that the entry of a townsite, even though within its limits mineral lands are found, would be as important to the occupants of other lands as if no mineral lands existed. Nor do we see any injury resulting therefrom, nor any departure from the policy of the government, the entry and the patent being inoperative as to all lands known at the time to be valuable for their minerals or discovered to be such before their occupation or improvement for residences or business under the townsite title.

The claim of the defendant under the second special plea to allowance for improvements made upon the property is as untenable as his claim to the title. It is asserted under a statute of the territory which provides that

"In an action for the recovery of real property upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a counterclaim by such defendant."

The case presented by the defendant is not covered by the provisions of this law. There can be no color of title in an occupant who does not hold under any

instrument, proceeding, or law purporting to transfer to him the title or to give to him the right of possession. And there can be no such thing as good faith in an adverse holding where the party knows that he has no title and that, under the law, which he is presumed to know, he can acquire none by his occupation. Here, the defendant knew that the title was in the United States; that the lands were mineral and were claimed as such by the plaintiff, and that title to them could be acquired only under the laws providing for the sale of lands of that character, and there is no pretense that he ever sought or contemplated seeking the title to them as such lands or claimed possession of them under any local customs or rules of miners in the district.

Judgment affirmed.