whether the facts so alleged warrant the inference sought to be deduced. They certainly furnish no ground which can, consistently with judicial propriety, be made a justification for the fears expressed on the part of the complainants as to the future. At the time referred to, of the former assessments, the right of appeal by *certiorari and supersedeas* had not been affirmed by the supreme court of Tennessee, and the board of examiners could not be justly accused of endeavoring to defeat a right which it is most likely they did not believe to have an existence. The situation is now different. The supreme court of the state has spoken, and upon deliberation has declared the legal rights of the complainant. It is not for me to assume that the chief officers of the state, by law forming the board of examiners, and made defendants to these bills, will be disloyal to the constitution and law of the state by a contempt of the authority and jurisdiction of its judicial tribunals. I shall, therefore, act in the present matter upon the contrary assumption, that when they shall have acted according to their own convictions of duty upon the record of the assessment of the property of these complainants, submitted to them by the board of assessors, reasonable notice will be given to the parties, and sufficient delay before certifying and remitting the result of their action to the comptroller to enable them to avail themselves of the right to have that action judicially reviewed by the courts of the state. A failure in these particulars will necessarily give rise to two questions: *First*, whether the proceeding in that event can be considered process of law; and, *second*, whether such a deprivation of the opportunity to resort to a remedy given by the law confers upon a court of equity jurisdiction to give the relief which might otherwise have been obtained at law. These questions are not before me now.

The motions for injunctions are therefore now denied and overruled, with leave, however, to the parties respectively hereafter to renew them upon supplemental bills, if hereafter they should be advised to file them.

SOUTHERN PAC. R. CO. *v.* DULL and others.

(*Circuit Court, D. California.* December 15, 1884.)

1. LAND GRANT TO SOUTHERN PACIFIC RAILROAD COMPANY—ACT OF MARCH 3, 1871—GRANT VESTED, WHEN.

The words "that *there be* and *is hereby granted*," in the act of congress of March 3, 1871, granting lands to the Southern Pacific Railroad Company of California, constituted a *present* grant that could only be defeated by failure to perform the conditions subsequent, and, upon proper proceedings, to take advantage of the failure to perform them; and the general right to the land, subject to the exceptions found in the act, vested at the date of the passage of the act, March 3, 1871, and attached to the specific lands at the moment of the filing of the plat in the office of the commissioner of the general land-office, as provided by section 3 of the act, on April 3, 1871, and from the latter date it was

not in the power of any officers of the government, by any action of theirs, to divest or in any way limit or modify the vested rights of the company.

2. SAME—MEXICAN GRANT—FINAL LOCATION—GRANT OF SAME LANDS TO RAILROAD.

As, under the act of June 14, 1860, the location of a Mexican grant becomes final after the publication by the surveyor general of the notice provided by the act, in the absence of an application to have the plat and survey returned to the district court for examination, and all lands outside of such final survey become public lands, and subject to other disposition, under the laws, the grant, by the act of March 3, 1871, attached to such lands within the exterior limits of the Tajanta grant, but outside the limits thereof, as thus finally located, before the date of the filing of the plat by the company.

3. SAME—RIGHTS OF SETTLERS—CONVEYANCE BY PATENTEE.

D. entered upon land within the exterior limits of the Tajanta grant to secure a pre-emption claim, but, supposing that the land was *sub judice*, abandoned it and settled on other land. Four years later, and eighteen months after the filing of the plat required by the act of March 3, 1871, by the Southern Pacific Railroad Company, he returned. *Held*, that he could acquire no title, and that the patent issued to him was void, or in trust for the company, and that he could convey no better title to a purchaser for value without actual notice of the title of the company.

In Equity.

Joseph D. Redding, for complainant.

Barclay & Wilson and *Estee & Wilson*, for defendants.

SAWYER, J. This is a bill in equity to control the legal title vested in the defendants by virtue of a patent of the United States, and to decree that defendants hold the title in trust for complainant, *or for any other relief in equity to which complainant may be entitled.* The land is within the limits of the grant to complainant of the alternate odd sections of land to aid in the construction of a railroad from the intersection of the Texas Pacific Railroad, on the Colorado river, to connect with San Francisco, California, under the acts of congress of July 27, 1866, §§ 3, 18, (14 St. 294, 299,) and of March 3, 1871, § 23, (16 St. 573.) A topographical map of the country through which this part of the Southern Pacific Railroad was to pass, was duly made by the engineers and adopted by the company, upon which map was delineated the line and route of the road so that its location appeared thereon, with reference as well to the sections of the public lands as to the towns, cities, counties, and rivers in the said region. The map, with the line and route so delineated thereon, certified by the chief engineer, president, and secretary of complainant, and under the corporate seal of the corporation, was, on April 3, 1871, duly filed with the secretary of the interior, who duly accepted it, and on said day transmitted the same to the commissioner of the general land-office, to be filed in that office, and on that day it was filed by the commissioner, in his office, whereby the line of the road was definitely located, and the grant attached to all lands at that time subject to the grant under the said several acts. On April 21, 1871, the commissioner of the general land-office transmitted a copy of said map to the receiver of the land-office at Los Angeles, which map was duly filed in that office on April 29, 1871. The road was afterwards fully completed

by complainant, in accordance with the said acts of congress and subsequent acts amendatory thereof, and extending the time for completing said road, whereby the rights of said complainant become perfected to all the lands within the purview of the grant, as designated by these acts. The land in question is part of an odd section within the limits of the grant. After the completion and acceptance of the road, the complainant, in due form of law, repeatedly applied at the proper land-office for the patent to which it claimed to be entitled, tendering all necessary charges and expenses, but a patent was refused.

On November 25, 1867, defendant Dull, having all the qualifications necessary for the purpose, in good faith entered as a pre-emptor upon the land in question, with the intention of acquiring the title of the United States. He built a house on the land, and resided there, continuously, from November 15, 1867, till about June 1, 1868, —a little over six months,—when he left the land and located in another place, in consequence of the survey made in the mean time by Hansen, hereinafter mentioned, which included the land in question, within the boundaries of Tajanta *rancho*, as surveyed by him, believing, as he did, that land so situated was not open to pre-emption. In the latter part of 1872 the survey of Hansen was rejected by the government at Washington, as having been made without jurisdiction, and as being void. Thereupon, after such rejection, and a year or more after the filing of the plat as aforesaid by complainant, by which the line of the road was definitely located, Dull returned and again settled on the land, and on April 9, 1874, filed his declaratory statement in the proper land-office. The patent in question was afterwards issued to him on December 30, 1880, upon a settlement, as stated by the secretary of the interior in his opinion, to have been made in the latter part of 1872, being the settlement made on his second entry before referred to.

The survey of Hansen was made under the following circumstances: The Tajanta *rancho* grant, being a Mexican grant of a league of land within larger exterior limits, having been finally confirmed under the act of 1851, a survey of the *rancho*, as confirmed, was made by Deputy Surveyor Hancock, in December, 1858. This survey was approved by the surveyor general, September 17, 1860, after the passage of the act of June 14, 1860, relating to the subject, and it is governed by that act. 12 St. 33. The notice of the survey and filing of the approved plat was published, in all respects, as required by the provisions of that act. The plat and survey were retained in the office of the surveyor general for the time required by the act, and no application for ordering it into court, and no such order having been made, the survey became final, under the provisions of said act, in the latter part of September, 1860, and was afterwards duly transmitted by the surveyor general to the general land-office at Washington. Some time prior to February, 1868, the confirmee of

the grant applied to the surveyor general to set aside the Hancock survey, already become final, and have a new one made, which application was referred to the commissioner of the general land-office for his instructions. The commissioner directed the surveyor general to examine the case, and if he found the matter to be still within the jurisdiction of the surveying department, to have a new survey made. The surveyor general afterwards ordered George Hansen to make a survey, and he thereupon made the survey hereinbefore mentioned, in the month of February, 1868, and forwarded it to the general land-office; but the commissioner and the secretary of the interior decided that it was not within the jurisdiction of the surveyor general to make the survey, on the ground that the Hancock survey of 1858 had become final in 1860 under section 5 of said act of 1860, which provides that "the said plat and survey, *so finally determined by publication*, order, or decree, *as the case may be, shall have the same effect and validity in law as if a patent for the land so surveyed had been issued by the United States.*" The said Hansen survey was rejected as void on that ground. The Hancock survey, which became final under the statute in September, 1860, did not include the land in controversy, but the land was situate within the exterior boundaries of the Tajanta *rancho*, as claimed in the petition for confirmation, and the confirmee continued to claim the land, as being within the grant, until the rejection of the Hansen survey by the secretary of the interior, on the ground stated, on February 21, 1872. In December, 1872, after the rejection of the Hansen survey, on the ground stated, defendant Dull returned to the land, and thenceforth occupied in good faith till the issue of his patent. He filed his declaratory statement in the proper office, April 9, 1874.

Prior to the commencement of this suit defendant Dull conveyed the land in question, and his title, whatever it is, has passed to and become vested in defendant Scheffelin, who, prior to his purchase, caused the county records of the county of Los Angeles, in which the land is situated, to be searched, and the legal title thereto appeared upon said records to be vested in his grantor, free from incumbrances; and said purchase was made by him without any actual knowledge, in fact, of any right, title, interest, or claim of complainant, or any other person, of, in, or to said land, or any part thereof. He purchased the land in good faith, for his own use and benefit, and paid therefor $2,500, which was the full value of the land at that time. The congressional grant to the complainant, relied on, is found in section 23 of the act of March 3, 1871, (16 St. 579,) and is in the following language:

"That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and