

CALIFORNIA & OREGON LAND CO. v. MUNZ.

*Circuit Court, D. Oregon.* DEADY, J. This action is brought by the plaintiff, a corporation duly formed under the laws of California, against the defendant, a citizen of Oregon, to recover the possession of the E. ½ of section 21, in township 86 S., of range 14 E. of the Willamet meridian. It was heard and submitted with the foregoing case of *Pengra v. Munz, ante*, 830. February 14, 1887.

The facts and circumstances of the two cases are similar, except that in this case the defendant, on June 25, 1880, took a lease for one year from the plaintiff for the north half of the section at a rent of \$80, and covenanted therein to surrender the premises to the lessor at the end of the term. The lease was evidently intended to cover the east half instead of the north half of the section, as that was the portion belonging to the lessor. But it took effect at least as a lease of the north-east quarter, and by reason of it the defendant is estopped to deny the

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plaintiff's title thereto. It is familiar learning that a tenant is estopped to deny his landlord's title, either during the term or the continuance of the possession taken under the lease. 1 Washb. Real Prop. 356; *Zeller v. Eckert*, 4 How. 289; *Sawyer v. Sargent*, 7 Pac. Rep. 120.

In his testimony, the defendant says that he was imposed upon in this matter by the agent of the plaintiff, from whom he took the lease. But the circumstances do not support the assertion. The agent simply told the defendant that the plaintiff had the title to the land, and that, if he cut hay on it, without his permission, he would be prosecuted; when the defendant, to use his own language, asked for and obtained the lease, to save trouble. Afterwards, when the mistake was made in listing the section as swamp land, the defendant undertook to take advantage of it, and buy in what he doubtless thought was a paramount title to that of his landlord, and thereby hold the possession in his own right.

There must be a finding for the plaintiff in this case as in the other.