

The assignee of a claim against the United States is the "party" to whom the claim belongs. He owns it; and, being such owner, he is entitled, in my judgment, to redress against the United States, as if it "were suable," not by the assignor or original holder alone, but generally, as if the United States were a private person.

The court is as competent to deal with the claim in the hands of the assignee as in those of the assignor. Proof of the assignment is the only additional circumstance in the case, and that is a very simple matter.

U. S. v. Jones, 131 U. S. 1, 9 Sup. Ct. Rep. 669, was a suit under the act of 1887 by an assignee. The objection was not made in that case, and it appears to have been taken for granted, that the assignee could maintain the suit if the assignor could.

Sooner or later this question must be decided by the supreme court, and it may as well be in this case as any other.

My impression is that under the act of 1887 the assignee may sue the United States, in respect to the claims mentioned therein, as if it were a private person, and I will give judgment accordingly.

FINANCE CO. OF PENNSYLVANIA *et al.* v. CHARLESTON, C. & C. R. Co. *et al.*

In re HART.

(Circuit Court, D. South Carolina. November 2, 1891.)

ATTORNEY'S LIEN—MISUSE OF PAPERS—RIGHT OF INSPECTION.

An attorney in possession of papers of a railroad company upon which he has a lien for legal services cannot be compelled to permit an inspection thereof by the company's attorney, or to deliver them up to the court, upon a suggestion that he is now retained by persons bringing suits against the company upon causes of action arising out of transactions with which he was professionally connected while counsel for the company, and that his possession of the papers relating thereto would give him an undue advantage, when no particular suits are specified, and the attorney denies that he is prosecuting any action to which the papers in his possession relate either directly or indirectly.

At Law. In the matter of the suggestion of counsel for D. H. Chamberlain, receiver, against James F. Hart, Esq.

A. T. Smythe, for receiver.

C. E. Spencer, for respondent.

SIMONTON, J. James F. Hart, Esq., was for many months general attorney for the Charleston, Cincinnati & Chicago Railroad Company. His connection with the company in this capacity ceased 30th June, 1891. At the time he so ceased to be its attorney he had in his hands papers belonging to it, obtained by him in his official capacity. These he claims a lien upon until his arrears of salary, amounting to several thousand dollars, have been paid. The present proceeding is based upon the statements that the said James F. Hart is the attorney for persons

bringing actions against the said Charleston, Cincinnati & Chicago Railroad Company for causes of action arising out of transactions with which he was professionally connected as counsel for the company during the continuance of that relation; that in the prosecution of said suits he would have great advantage in holding in his possession papers of the railroad company received by him as its counsel, and intended to be solely for its advantage; that an inspection of these papers by the receiver and his counsel is necessary for the proper conduct of their cases by them. The answer of Mr. Hart to a rule issued against him upon the filing of this suggestion admits that he was the attorney for this road, and that many papers belonging to it came into his hands while he was such attorney, and he declines to surrender them until he is compensated for his service. He adds that his services were rendered to the railroad company, and that from February 28, 1891, to July 1, 1891, he represented the present receiver; "that on 30th June, 1891, the receiver decided to dispense with the further legal services of respondent, and so notified him in writing, a copy of which is annexed to his return." He denies that he has, or ever had, any writing, paper, or document having relation, directly or indirectly, to any action which he has been retained to prosecute, or is now prosecuting, against said company. He ends with a prayer for the protection of his lien.

There can be no doubt that an attorney has a lien upon the papers of his client which are the result of his labor, or come into his hands professionally, and that he can retain them until his fees are paid. 1 Jones, Liens, 122. The cases which have rewarded the research of the counsel differ somewhat upon the question whether, during such retention, the client or the succeeding attorney can inspect them. The weight of authority is in favor of the affirmative. *Ross v. Laughton*, 1 Ves. & B. 349; *Commerell v. Poynton*, 1 Swanst. 1. Both cases are much shaken by *Lord v. Warmleighton*, Jac. 580; *Newton v. Harland*, 4 Scott, N. R. 769. But see, in support of them, *Colegrave v. Manley*, 1 Turn. & R. 400; *Heslop v. Metcalfe*, 3 Mylne & C. 186; *Cane v. Martin*, 2 Beav. 585; *Wilson v. Emmett*, 19 Beav. 233. But none of these cases permit the inspection of papers, except when a particular suit was in progress, and the papers pertained to that suit. In the present instance, no case is specially named. A general description is used, to-wit, cases in which he had acquired knowledge as attorney for the company, and which he now brings against the company. The respondent denies that any one case of this kind exists. There is nothing then upon which the court can proceed. It may be well to say that, notwithstanding the recognition of the lien claimed by an attorney, this court will not permit such a lien to be used as charged in this suggestion, happily by mistake, as it appears. If it be shown to the court that such a misuse of papers is threatened, contemplated, or made, they will be at once impounded and lodged with the clerk. The rule is discharged.

AMERICAN MORTG. CO. OF SCOTLAND, Limited, v. HOPPER.

SAME v. CROW.

(Circuit Court, D. Oregon. November 2, 1891.)

1. PRE-EMPTION CERTIFICATE.

The land department has no authority of its own motion to set aside or cancel the final certificate of a settler under the pre-emption law. *Smith v. Ewing*, 11 Sawy. 56, 23 Fed. Rep. 741; *Wilson v. Fine*, 14 Sawy. 224, 40 Fed. Rep. 52,—followed.

2. ACTION OF EJECTMENT.

A legal estate in the plaintiff is necessary to the maintenance of an action of ejectment under the law of this state; but actual possession at the time of the ouster complained of is a sufficient estate against a mere intruder.

3. SAME.

A purchaser from a pre-emptor, who has obtained a final certificate, has not such a legal estate in the land, and cannot, apart from the fact of possession, maintain an action to recover the possession thereof from any one.

(Syllabus by the Court.)

At Law. These actions were submitted to the court together, without the intervention of a jury, upon an agreed state of facts.

Mr. William B. Gilbert, for plaintiff.

Mr. J. J. Balleray, *Mr. Raleigh Stott*, and *Mr. W. L. Boise*, for defendants.

DEADY, J. It is alleged in the complaints that the plaintiff is a foreign corporation, formed under the laws of Great Britain, and that the defendants are citizens of Oregon; that it is the owner and entitled to the possession of the S. E. $\frac{1}{4}$ of section 22, in township 3 N., of range 31 E., Wallamet meridian, and of the S. W. $\frac{1}{4}$ of section 4, in township 2 N., of the same range; that the defendant Crow wrongfully withholds from it the possession of said S. E. quarter section, and the defendant Hopper does the like with reference to said S. W. quarter section, each of which exceeds in value the sum of \$2,000.

The answers contain a denial of the ownership of premises by the plaintiff, and an allegation that the defendant Crow is the owner of said south-east quarter section, and Hopper of said south-west quarter section.

It is admitted that Jesse Fulford entered said south-east quarter section at the proper land-office under the pre-emption law, and received his final certificate therefor on August 31, 1882, and thereupon conveyed the same to W. C. Smith, who mortgaged it to the plaintiff on the same day as security for a loan of money; that on September 10, 1885, the plaintiff commenced a suit in the proper state court to foreclose said mortgage, and such proceedings were had thereon that the property was sold to the plaintiff, who received a sheriff's deed therefor on October 12, 1887; and that the money loaned to Smith was loaned in good faith, and without notice of any defect or deficiency in his entry, and the money paid thereon had not been returned.

That on May 7, 1885, the defendant Crow applied at the land-office to enter said south-east quarter section under the homestead law; that