

In our opinion these arguments and authorities do not apply in this case. This is not a case of subscription to the capital stock of an incorporated company, nor a case of transfer of stock by an ordinary stockholder, but it is a case where the bank as an actor made a fraudulent sale of its own stock, and now by its receiver holds the proceeds thus acquired. In other words, the receiver of the bank holds property that does not belong to the bank, to which neither he as receiver nor the creditors of the bank are entitled in equity and good conscience.

Further than this, on counsel's theory of the bill that the stock sold was Winegar's, and not the bank's, it is to be noticed that the scope of the bill covers two distinct subjects for equitable relief,—the one being to restore the appellant to the equitable right of which it has been divested, the other to protection from assessments and charges as a stockholder in the First National Bank of Palatka; appellant may be entitled to the one and not to the other. To withhold from the demands of the creditors of the bank property fraudulently acquired by the bank does not necessarily require a denial of an assessment on the stock of the bank, if necessary to pay debts. And in this view of the case we are clearly of the opinion that appellant is entitled to a rescission of the sale of stock in question, as against Winegar, the Florida Land & Improvement Company, and the First National Bank of Palatka; and also as against the receiver of the bank, at least so far as to restore to appellant the vendor's lien upon the lands described in the bill for the amount of the purchase price still unpaid, leaving the receiver to collect assessments on stock from such stockholders as under the law may be liable. Considering, however, as we do, that the bill charges and the demurrer admits that the bank was the real vendor of the stock, we think that in equity the appellant is entitled to have a complete rescission of the fraudulent transaction complained of. The decree sustaining the demurrer and dismissing the bill should be reversed; and it is so ordered.

UNITED STATES *v.* CULVER *et al.*

(Circuit Court, W. D. Arkansas. June 29, 1892.)

1. PUBLIC LANDS—CANCELLATION OF PATENT—MINERAL LANDS.

Section 2318 of the Revised Statutes of the United States provides "that in all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law." In such case, the title of the lands in defendants could not be held valid because acquired against the law.

2. SAME—FRAUD.

If the lands are valuable for mineral, and they were purchased by defendants as agricultural lands, with the knowledge that they were mineral lands, the patent issued by the government would convey no title, because issued unadvisedly, or by mistake of an officer of the government while acting ministerially. In such a case, the parties purchasing the land are guilty of a fraud, and upon that ground a court of equity will pronounce the patent void.

3. SAME—PURCHASE IN GOOD FAITH.

Although there may be no fraudulent concealment by purchasers of the public land at cash entry, yet if, under the law, the lands were reserved from sale, it is the well-settled rule that purchasers obtain no title by their purchase; the sale is absolutely void.

(*Syllabus by the Court.*)

In Equity.

Statement by PARKER, District Judge:

This is a suit brought by the United States for the purpose of procuring the cancellation of two certain patents issued by the government to the defendants to certain lands named in the complaint. The complaint alleges that the lands are mineral, and were known to defendants to be such at the time they were purchased, and that the defendants made the government officers at the time of the purchase certain false and fraudulent statements relating thereto. The lands were purchased by defendant Culver under the proclamation of President Hayes, dated October 8, 1877, offering them, together with a large quantity of other lands, for sale, and were purchased by defendant Culver at the Camden land office, at private sale, about July 7, 1878. They were purchased as agricultural lands. Patents were issued on the 9th day of July, 1878, and on February 12, 1881, to Culver, and on May 11, 1881, Culver, by deed, conveyed the lands to his codefendant, Julian S. Rumsey, for a nominal consideration. That Rumsey was not an innocent purchaser from Culver, but that Culver was simply acting either as partner or agent of Rumsey, and that they both had full knowledge of the mineral character of the lands in question.

W. H. H. Clayton, U. S. Dist. Atty.

Sandels & Hill, for defendants.

PARKER, District Judge, (*after stating the facts.*) I am satisfied the evidence shows that the lands described in the complaint are lands valuable for mineral. That they are mineral lands, and that Charles E. Culver, the party who actually bought them by private cash entry, knew their mineral character at the time he bought them, and that Julian S. Rumsey, the ancestor of the other defendants, knew of their mineral character at the time Culver conveyed them to him. In fact, while the lands were entered in the name of Culver, they were entered for Culver and Rumsey. That they bought the lands because they desired to hold them as mineral lands. That they both had examined the lands in question, and had had them examined by a mineral expert, who reported to them his belief as to their mineral character. Their act in buying them by cash entry as agricultural land, with such knowledge as to their true character, would vitiate the sale by the government to these parties, and they would not be entitled to hold the land against the government, because of the fraud perpetrated by them upon the officers of the government. It is claimed by the defendants that these lands were thrown open to purchase by cash entry by the proclamation of President Rutherford B. Hayes of October 8, 1877. If they were lands valuable for mineral, they were not so thrown open to purchase by the said proc-

lamation, as the same expressly exempted from sale "all lands appropriated by law for the use of schools, military, or other purposes." If the lands were valuable for mineral by section 2318, Rev. St. U. S., they had already been appropriated for other purposes, and consequently they were not within the proclamation of the president. Section 2318 of the Revised Statutes of the United States provides "that in all cases lands valuable for mineral shall be reserved from sale, except as otherwise expressly directed by law." If these lands were valuable for mineral, the defendant could have no title against the plaintiff, as the lands purchased by defendant Culver were not liable to purchase as agricultural land at the time of the purchase. In such case, the title of the lands in defendants could not be held valid, because acquired against the law. *Stoddard v. Chambers*, 2 How. 284. If the lands are valuable for mineral, and were knowingly purchased as agricultural lands, the patent issued by the government would convey no title, because issued unadvisedly, or by mistake of an officer of the government while acting ministerially. In such a case, a court of equity will pronounce the patent void. *U. S. v. Stone*, 2 Wall. 525. It is clearly a case where the executive officer had no authority to issue the patent, because the lands were not subject to cash entry as agricultural land. *Manter v. Crommelin*, 18 How. 87. If there was no fraudulent concealment by Culver and Julian Rumsey, but, under the law, the lands were reserved from sale, the rule is well settled that the defendants obtained no title by their purchase; that the sale is absolutely void. *Morton v. Nebraska*, 21 Wall. 660; *Sherman v. Buick*, 93 U. S. 216; *Stoddard v. Chambers, supra*. The preponderance of evidence shows that the lands are valuable for mineral, and that the defendant Culver and Julian Rumsey, the ancestor of the other defendants, knew this fact at the time of the purchase of the land.

Upon both legal grounds set out above, the patent must be held void, and a decree should be entered for the cancellation of the same, and it is so ordered.

FINN v. HOYT, Commissioner.

(District Court, D. Alaska. May, 1892.)

COMMISSIONERS' COURT OF ALASKA—JURISDICTION—MANDAMUS—OREGON STATUTES.

By section 5 of the act of May 17, 1884, providing a civil government for Alaska, four commissioners are to be appointed, who shall exercise all the duties and powers conferred on justices of the peace under the general laws of Oregon, which laws in force at that time are adopted as the laws of the district, so far as applicable. Code Civil Proc. Or. 2057, provides that a civil action in a justice court is commenced and prosecuted to final judgment in the manner provided for similar actions in courts of record. Sections 906 and 907 provide that justice courts are always open for the transaction of business, and that the rules of proceeding and evidence are the same as in courts of record. Section 940 declares that, when jurisdiction is conferred on a court or judicial officer, all the means to carry it into effect are given, and that, if no method of proceeding is specified, any suitable mode or process may be adopted. *Held*, that where a commissioner's court has obtained jurisdiction of a cause, but the commissioner is necessarily absent on the