

plaint; that they have not been divested of their title; and that they are now entitled to have a decree declaring and establishing their title to the extent indicated, and to recover costs.

Decree accordingly.

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HATCH v. FERGUSON et al.

(Circuit Court, D. Washington, N. D. October 6, 1893.)

**EQUITY—DEEDS—CANCELLATION—ESTOPPEL.**

Where a sale of land is negotiated by one who, without specific authority, assumes to act for the owner, and obtains from the owner a deed to the purchaser, and receives the purchase money, and immediately after completing the transaction informs the grantor of the sale and the terms, and the grantor fails to disavow the sale or make any protest until after receiving and expending the whole of the purchase money and great enhancement in the value of the land by reason of improvements by the purchaser and his vendees, such grantor will not be permitted in equity to claim that the deed was fraudulently obtained by false representations as to the nature and contents of the instrument by such agent in pursuance of a conspiracy between him and the purchaser.

**In Equity.** Suit by Hester Hatch against E. O. Ferguson, Henry Hewitt, Jr., and the Everett Land Company to determine adverse claims to the title to land upon which the city of Everett is in part located, and to annul a deed conveying her title to said land, for alleged fraud. Dismissed.

A. D. Warner, Stratton, Lewis & Gilman, Junius Rochester, and W. Scott Beebe, for complainant.

Francis O. Barlow and Brown & Brownell, for defendants.

**HANFORD, District Judge.** A general statement of the case, sufficient for the purpose of this decision, is contained in my opinion in the case of Hatch v. Ferguson, 57 Fed. Rep. 959. The complainant herein is the daughter of Josephine Hatch. In her complaint she charges that a deed to the defendant Hewitt of her interest in the lands referred to in said opinion was signed by her at the request of the defendant Ferguson, who at the time falsely and fraudulently represented the same to be merely a paper to show that she was of age, and not under his guardianship, and that, believing said instrument to be such a paper as he represented, she signed it without intending to convey her interest in said land. The testimony proves conclusively that she knowingly received and used the money paid as consideration for said deed, without making any protest against the sale, and the case might be disposed of in accordance with my opinion in her mother's case. There is, however, additional ground for pronouncing against this complainant. She is able to speak and understand the English language; and the rule in the case of Jackson v. Tatebo, (Wash.) 28 Pac. Rep. 916, therefore, does not apply in this case; and, even were the onus probandi upon the defendants, the suit, in my opinion, must be a failure, for the reason that by a decided preponderance of the evidence it is shown that the complainant was not

deceived, as she alleges, but, on the contrary, the deed was executed by her freely, voluntarily, and knowingly.

Let a decree be entered dismissing the suit, with costs to the defendants.

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RUSS v. TELFENER.

(Circuit Court, W. D. Texas, Austin Division. July 11, 1893.)

No. 1,918.

1. **PRINCIPAL AND AGENT—UNAUTHORIZED ACTS OF AGENT—RATIFICATION BY PRINCIPAL.**

Ratification by a principal of an unauthorized contract made by his agent relates back to the beginning of the transaction, and, when deliberately made, with a knowledge of the circumstances, cannot be recalled.

2. **SAME—LIMITATION OF AGENT'S AUTHORITY—PRIVATE INSTRUCTIONS.**

Private instructions limiting the authority of an agent will not avoid the principal's liability for acts done by the agent in violation thereof, when the other party to the transaction had no reason to know, and no actual knowledge, of such limitation.

3. **SAME—EXECUTION OF CONTRACT BY AGENT—EVIDENCE—BURDEN OF PROOF.**

The denial by defendant that an alleged contract was executed by his duly-authorized agent throws upon plaintiff the burden of proving by a preponderance of evidence the legal and binding execution thereof.

4. **VENDOR AND PURCHASER—DAMAGES FOR BREACH OF CONTRACT—COLLATERAL CONTRACT.**

In an action for breach of a contract for the sale of lands by plaintiff he cannot recover any damages for the breach of a collateral contract whereby, for a consideration named, he has agreed to have the lands surveyed and the field notes returned, as required by law.

5. **DAMAGES—MEASURE OF—BREACH OF CONTRACT—SALE OF RIGHT IN STATE LANDS.**

The measure of damages for breach of a contract assigning a right to purchase state lands, which has been acquired under Act Tex. July 14, 1879, is the difference between the price agreed upon by the parties and the market price of the right at the time of the breach.

6. **PUBLIC LANDS—SALE OF STATE LANDS—TEXAS STATUTE—PUBLIC SURVEYOR'S DECISION—CONCLUSIVENESS.**

Under Act Tex. July 14, 1879, providing for the sale of certain lands owned by the state, the decision of the public surveyor is conclusive, in the absence of evidence to the contrary, on the question whether the purchaser is a "responsible party," within the meaning of section 3 of the act.

7. **SAME—RIGHT TO PURCHASE.**

The right to purchase acquired by application to the public surveyor, as provided in Act Tex. July 14, 1879, providing for the sale of certain state lands, is assignable.

At Law. Action by George W. Russ against Joseph Telfener for breach of a contract for the purchase of certain rights acquired by plaintiff in state lands. Judgment was given for plaintiff, but on writ of error this was reversed by the supreme court. 12 Sup. Ct. Rep. 930, 145 U. S. 522. The cause is now up for a second trial.

Hancock & Shelley and Miller & Fiset, for plaintiff.  
J. L. Peeler, for defendant.