

claimed upon the hearing that the certified check which Hogg professed to tender Weill was for more than \$445,000, nor is any explanation of this discrepancy attempted. Hogg, as president of the Oregon Pacific Company, the owner of nearly all the stock of the Willamette Valley Company, executed the mortgage deed containing this recital. In all that was done or professed to have been done under this power there was nothing consistent or straightforward. The sale of an option by Hogg, as Weill's attorney, to a company in fact owned by himself, without communicating the fact to his principal; the pretended tender of a certified check for \$445,000; the recital in the deed by Hogg, as president of the Oregon Pacific Company, on October 1, 1880, that the Willamette Valley Company had the right to "become the owner" of the property in question upon payment of \$600,000; the pretended deed by Hogg, as attorney in fact for Weill, conveying absolutely the same property on November 3, 1880, acknowledged more than two years later,—admit of no explanation consistent with fair dealing and honest motives. In more than 10 years that have elapsed since the expiration of Hogg's power, the owners of the property have expended large sums of money in complying with the conditions upon which the grant was made by congress, in defending their title in the courts, and for other necessary expenses in connection with these lands. The pretended purchaser of the property or of the option to purchase has not offered to pay any of these expenses, and does not propose to do so now. Its insolvency confesses its inability to pay such charges or purchase price of the alleged sale. The plaintiff is entitled to the relief prayed for, and such will be the decree.

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LA CHAPELLE v. BUBB et al.

(Circuit Court, D. Washington, E. D. July 2, 1894.)

**ALLOTMENT TO INDIANS OF LAND ENTERED FOR HOMESTEAD — INDIAN AGENT — INJUNCTION.**

Land entered by complainant under the homestead law, on which he had made valuable improvements, was included by the government in allotments made to certain Indians in fulfillment of a treaty stipulation, and his homestead filing was canceled. *Held* that, the land not being within the boundaries of an Indian reservation, an Indian agent had no authority to eject complainant therefrom forcibly, and that complainant's possession should be protected by injunction pending a determination of the validity of his claim.

This was a suit by Alfred W. La Chapelle against Capt. John W. Bubb, U. S. A., as Indian agent of the Colville Indian Agency, and certain Indian defendants, for an injunction to restrain said Indian agent from forcibly dispossessing the complainant of land which he claimed as a settler under the homestead law of the United States. Complainant moved for an injunction *pendente lite*.

T. M. Reed, Jr., for complainant.

Wm. H. Brinker, U. S. Atty., and F. C. Robertson, Asst. U. S. Atty., for defendants.

HANFORD, District Judge. The land in controversy is not within the limits of an Indian reservation. The complainant in good faith settled upon it, and filed in the proper United States district land office an application to enter said land under the homestead law, and has since resided upon and cultivated the same, and made valuable improvements thereon, and is now prepared to make proof of full compliance with the requirements of said law, so as to become entitled to a patent. The government, however, after receiving said homestead application, has included said land in allotments made to the Indian defendants hereip, in fulfillment of a treaty stipulation made with Chief Moses and other Indians of the Colville and Columbia Indian reservations, and canceled the homestead filing made by the complainant; and the defendant Bubb, as Indian agent, now proposes and intends to eject the plaintiff from said premises by force, and has given notice to that effect. The rights of the complainant and of the Indian defendants, respectively, to the land described in the complaint, have been the subject of a contest in the land department; and, upon a final hearing of that matter, the secretary of the interior has made a decision adverse to the plaintiff, pursuant to which his homestead filing was canceled, as aforesaid. The complainant contends that said decision is erroneous, by reason of unfairness in the proceedings and of misconstruction of the law.

Manifestly, the plaintiff's contention is in good faith. Until a judicial determination of the questions of law affecting the same, his claim to the land in controversy cannot be extinguished. If he has a superior right in law, irreparable injury will be done by dispossessing him. It is no part of the function pertaining to the office of an Indian agent to forcibly eject persons from premises not within the boundaries of an Indian reservation. If the Indians are entitled to possession, they should make application for judicial process to enforce their rights according to the laws of the land. This court will not, at the present stage of the case, express any opinion as to the validity of the plaintiff's claim to the land. Being the owner and in possession of valuable improvements which he has placed upon the land, it is the duty of the court to protect his possession until the final hearing upon the merits.

Injunction granted.

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PUGET SOUND NAT. BANK OF SEATTLE v. KING COUNTY et al.

(Circuit Court, D. Washington, N. D. June 18, 1894.)

No. 141.

COLLECTION OF TAXES—REPEAL OF STATUTE—SAVING CLAUSE.

The repeal, by Laws Wash. 1893, pp. 323-385, of all previous acts providing for assessment and collection of taxes, did not affect pending proceedings for collection of personal property taxes by a county treasurer under a warrant annexed to an assessment roll, issued to him pursuant to statute in force at the date thereof, as section 75 of the act continues in force such warrants, previously issued, as to taxes due and unpaid.

This was a suit by the Puget Sound National Bank of Seattle against King county and others for an injunction to restrain the col-