

of complainant's alleged rights under the contract of January 4, 1869. Inasmuch, however, as the defendant trustees are required to fix the rates annually in the month of February, it is perhaps not out of place to call attention to the case of *Spring Valley Water-works v. City of San Francisco*, 82 Cal. 286, 22 Pac. 910, 1046, in which the supreme court of California, in considering that provision of the state constitution relating to the fixing of water rates, held that the governing body of the municipality has not the right to fix rates arbitrarily, without investigation; and that, while not bound to give notice to a water company of its intention to fix such rates, it is nevertheless in duty bound to make proper efforts to obtain all information necessary to enable it to act intelligently and fairly in fixing the rates, and a failure to do so may defeat its action; that, when the constitution provides for the fixing of rates or compensation, it means reasonable rates and just compensation; and attention also to those decisions of the federal courts in which it is held that the fixing of any such unreasonable rates as amount to a taking of private property without due process of law, or as operate to deprive a party of the equal protection of the laws, are contrary to the provisions of the constitution of the United States, and, in appropriate proceedings, will be declared invalid. *Reagan v. Trust Co.*, 154 U. S. 412, 14 Sup. Ct. 1047; *Ames v. Railway Co.*, 64 Fed. 165, and cases there cited.

From the views above expressed, it results that the bill must be dismissed, at complainant's cost; and it is so ordered.

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CARTER v. THOMPSON et al.

(Circuit Court, D. Montana. November 19, 1894.)

1. PUBLIC LANDS—TOWN-SITE PATENT—OFFER AT AUCTION.

Offer of public lands for sale at auction is not a condition precedent to their being patented for a town site.

2. SAME—ATTACKING PATENT.

A patent for a town site cannot be attacked by one whose rights, if any, in the land, attached after issue of the patent, on the ground that the land was theretofore known to be mineral land, but it can be assailed only in a direct proceeding by the United States.

3. PLACER MINING RIGHTS—QUIETING TITLE.

One having a placer mining right, which can only be acquired in public land, can maintain suit to quiet title, if at all, only as to his limited interest.

Suit by J. A. Carter against J. D. Thompson and others to quiet title to mining property. Heard on demurrers to the bill.

J. A. Carter, for complainant.

Toole & Wallace, Sanders & Sanders, McConnell, Clayberg & Gunn, Massena Bullard, H. G. McIntire, and George B. Foote, for defendants.

KNOWLES, District Judge. In this case complainant commenced an action to quiet title. He sets forth that he located the premises

in his complaint described as a placer mining claim. The manner of making, and the steps taken in making, this location are set forth particularly. There is no doubt, therefore, but the only title he has to said premises is derived from this location. The title of the defendants is also set forth in these words: "For the only claim or interest they or either of them have, in privity with the government of the United States, is asserted by them, and each of them, under and by virtue of a pretended entry of and patent to the Helena town site in said Lewis and Clarke county, a copy of which said patent is hereunto attached, and marked 'Exhibit B,' and made a part hereof." The patent shows a grant of the premises in dispute, with other lands, to one Miers F. Truett, probate judge of Lewis and Clarke county, Mont. T., in trust for the several use and benefit of the occupants of the town site of Helena, according to their respective interests, etc. In the bill there is an allegation that the premises in dispute are mineral land, and known to be such at the time of and prior to the application to enter said land under the town-site law. The location of the claim under which complainant asserts title was made on the 7th day of September, 1893. The town-site patent was issued June 15, 1872. The claim seems to be made that this patent was issued before the land was offered for sale at public auction. Complainant has not noticed the difference between the statutes which provide for the pre-emption of public lands, and the one providing for the sale of such lands for town-site purposes, and the statute for the private sale of land. In the case of *Railway Co. v. Dunmeyer*, 113 U. S. 629, 5 Sup. Ct. 566, the supreme court points out "that sale, pre-emption, and homestead are three different modes of acquiring an interest in public lands." There may be added to this list the acquiring an interest in public lands by the proper officers in trust for town-site purposes. Public lands could be pre-empted or obtained as a homestead or for town-site purposes without the land having been offered for sale at public auction. Public lands could not be acquired at private sale until such an offer was made. So that the authorities cited upon that point have no bearing. It seems to be claimed that, as the lands were known to be mineral before the application or issuing of the patent, therefore it is void. The question as to whether the land was mineral or not was one upon which the land department passed in issuing the patent to Miers F. Truett, the probate judge. In speaking of the functions of the land department in the case of *Steel v. Refining Co.*, 106 U. S. 447, 1 Sup. Ct. 389, the supreme court said: "Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable, except by direct proceedings for its annulment or limitation." In the case of *Davis' Adm'r v. Weibbold*, 139 U. S. 525, 11 Sup. Ct. 628, the supreme court, in speaking of the effect of an exception in grants of mineral lands, said, as to the effect of a patent: "The grant or patent, when issued, would thus be held to carry with it the determination of the proper

authorities that the land patented was not subject to the exception stated." In the case of *Barden v. Railroad Co.*, 154 U. S. 288, 14 Sup. Ct. 1030, the supreme court held that it was within the province of the land department to inquire into the character of lands, when issuing a patent therefor, as to whether it was mineral or not; and, if lands were determined to be nonmineral, this determination would be conclusive, in the absence of fraud, imposition, or mistake. The court says upon this point: "Their judgment in such cases is, like that of other special tribunals, upon matters within their exclusive jurisdiction, unassailable, except by a direct proceeding for its correction or annulment." The conclusion is that the land granted to Miers F. Truett, in trust for the Helena town site, must be classed as nonmineral. It was so determined by the land department. This determination cannot be attacked in a collateral proceeding. This was so held in the case of *Barden v. Railroad Co.*, *supra*. If any fraud was practiced, or any mistake of law or fact occurred, in issuing the patent to Truett to the Helena town site, complainant cannot take advantage of this. He had no rights at that time to be affected by either the fraud or mistake. His rights, if any, accrued, according to his own showing, 21 years after the issuing of such patent. The supreme court has fully decided this matter in the cases of *Vance v. Burbank*, 101 U. S. 514; *Bohall v. Dilla*, 114 U. S. 47, 5 Sup. Ct. 782. The only way this patent can be set aside or annulled is by a direct proceeding instituted by the United States for some fraud practiced on it, or on account of some mistake of fact or law occurring when the patent was issued. Complainant, therefore, by his own showing, presents facts to the court which show that he is not entitled to recover in this case.

There is another point that I have not discussed in this case. The complainant has only a placer mining right. This may be only a license to work the ground located or it may amount to an easement. This I do not decide. Whatever the right is, it can only be acquired in public land, not in land that is already patented. *Davis' Adm'r v. Weibbold*, *supra*. But, admit that complainant has this license or easement, with only such a title can he institute proceedings to annul a patent of the United States to this ground? I think not. I do not think he has sufficient interest in the land to justify him in maintaining such an action as this. He has only a very limited interest in the land, if any, and only to the extent his interest is interfered with can he maintain a suit to remove a cloud therefrom or to quiet a title thereto. If only a license, as some authorities maintain, he would have no such interest, for he would have no title to be quieted. The demurrers in this case are sustained, and the bill dismissed, at complainant's costs.

CENTRAL TRUST CO. OF NEW YORK v. EAST TENNESSEE, V. & G.  
RY. CO. et al. (MEREDITH, Intervener).

(Circuit Court, N. D. Georgia. November 6, 1894.)

No. 507.

RAILROADS—RIGHTS OF PASSENGERS—SIGNATURE ON TICKET.

Plaintiff purchased a round-trip ticket at M., in the state of Louisiana, from that place to T., in the state of Georgia, entitling him to passage over several connecting railroads. The ticket contained a contract, which was signed by plaintiff, stipulating, among other things, that, on the day of his return from T., plaintiff would identify himself, by his signature on the ticket, before the agent of the railroad at that place, who would witness the same; that, if not so signed and witnessed, the ticket should be void; that no agent should have power to modify the contract; and that plaintiff would not hold any of the railroads liable on account of any statement, not in accordance with the contract, made by any agent. On the day of his return from T., plaintiff offered to identify himself before the agent, and requested him to sign the ticket, but the agent told him it was unnecessary, and refused to sign the ticket. Plaintiff traveled part of the way, on his return, without objection, but was ejected from the train by the conductor on one of the railroads forming the line, because his ticket was not signed and witnessed as required by its terms, plaintiff being unable and refusing to pay his fare. *Held* that, the contract between the railroad and plaintiff being express and its terms not having been complied with, the conductor had a right to expel plaintiff from the train, and no right of action accrued to plaintiff in consequence.

This was a suit by the Central Trust Company of New York against the East Tennessee, Virginia & Georgia Railway Company for the foreclosure of a mortgage. M. L. Meredith filed an intervening petition praying for an allowance of damages against the receivers appointed in the suit. The petition was referred to a special master, to whose report the intervener filed exceptions.

The only question urged before the court is the one discussed by the special master in his report, and that is whether this case is controlled by the case of *Mosher v. Railway Co.*, 127 U. S. 390, 8 Sup. Ct. 1324. The question at issue will clearly and fully appear from the report (dated August 24, 1894) of the special master (Benjamin H. Hill), which is as follows:

"To the honorable the judges of said court: This is an action for damages brought by M. L. Meredith against the receivers of the East Tennessee, Virginia & Georgia Railway Company, and by an order passed by this court on March 26th, 1894, the same was referred to me as special master 'to hear and report to the court both the law and facts.' In pursuance of said order, and after due summons, I have taken the testimony and heard argument of counsel, and now submit the following report:

"I find the following to be the facts: On the 3d day of August, 1892, the intervener, M. L. Meredith, purchased at Monroe, in the state of Louisiana, from the agent of the Cincinnati, New Orleans & Texas Pacific Railroad Company, what is commonly known as a 'round-trip ticket,' from said last-mentioned place, to wit, Monroe, via Chattanooga and Atlanta, to Tallulah, in the state of Georgia, said ticket being good to return until the 31st day of October thereafter. The coupons on said ticket, both going and returning, were good for passage over the East Tennessee, Virginia & Georgia Railway Company's road, then being operated by the receivers of this court between Atlanta and Chattanooga. At the time intervener purchased said ticket, he entered into a special contract with the several roads over whose lines the ticket entitled him to be carried upon certain terms and conditions, of which those material to be here stated were as follows: '(6) I further agree that on the day of my departure, returning, I will identify myself as the original purchaser of this ticket by my signature on the