

this case. The decree below must be reversed, and the cause remanded, with directions to enter a decree for the relief prayed in the bill; and it is so ordered.

---

UNITED STATES v. ST. PAUL & S. C. R. CO. et al.

(Circuit Court of Appeals, Eighth Circuit. May 6, 1895.)

No. 565.

**PUBLIC LANDS—RAILWAY GRANTS — ERRONEOUS CERTIFICATION — BONA FIDE PURCHASERS.**

A bona fide purchaser of lands erroneously certified to a state under a railroad grant has a good defense against a suit brought by the United States under the act of March 3, 1887 (24 Stat. 556), to cancel the certification and restore the title to the government. U. S. v. Winona & St. P. R. Co. (No. 564) 67 Fed. 948, followed.

Appeal from the Circuit Court of the United States for the District of Minnesota.

Robert G. Evans, for the United States.

Thomas Wilson (Lloyd W. Bowers, on the brief), for appellees.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. This is an appeal from a decree dismissing a bill brought by the appellant, the United States, under the act of March 3, 1887 (24 Stat. 556), to restore to the United States the title to 80 acres of land which at the commencement of the suit was held by the appellee Alfred J. Mohler. The land in controversy is within the place limits of the grant by the act of March 3, 1857 (11 Stat. 195), to the territory and state of Minnesota to aid in the construction of the railroad of the appellee the St. Paul & Sioux City Railroad Company. At the time of the definite location of the line of the railroad opposite this land, in 1858, pre-emption rights had attached to it. Notwithstanding that fact, the secretary of the interior, on August 26, 1864, certified it to the state of Minnesota as a part of the lands granted by the act of March 3, 1857, to aid in the construction of the railroad of the St. Paul & Sioux City Railroad Company. On January 4, 1868, the state conveyed it to the railroad company. By five mesne conveyances the title of the railroad company to this land was transmitted to the appellee Mohler. His immediate grantor conveyed it to him on May 19, 1891, by a warranty deed with full covenants. He then paid \$2,900 for it in money and property, and had no notice of any defects in his title until the subpoena was served upon him in this suit, long after he had purchased and completed his payment for the land.

The decree below must be affirmed, with costs, because the appellee Mohler was at the time of the commencement of this action the holder of the legal title to this land, and he was a bona fide purchaser of it for value, without notice of any defects in his title. The reasons for this conclusion are stated at length in U. S. v. Winona & St. P. R. Co. (No. 564) 67 Fed. 948.

## UNITED STATES v. UNION PAC. RY. CO. et al.

(Circuit Court of Appeals, Eighth Circuit. May 6, 1895.)

No. 495

## PUBLIC LANDS—RAILWAY GRANTS—BONA FIDE PURCHASERS.

A bona fide purchaser of the title of a land-grant railroad company to lands patented to it by mistake, and which were excepted from the grant by reason or prior pre-emption claims, that were subsequently canceled, has superior equities, constituting a good defense to a suit brought by the United States under the act of March 3, 1887, to set aside the patent and restore the title to the government. *U. S. v. Winona & St. P. R. Co.* (No. 564) 67 Fed. 948, followed. 61 Fed. 143, affirmed.

## Appeal from the Circuit Court of the United States for the District of Kansas.

This is an appeal from a decree which dismissed a bill exhibited by the appellant, the United States, under the act of March 3, 1887 (24 Stat. 556), to set aside a patent of 160 acres of land issued on September 10, 1874, to the Kansas Pacific Railroad Company, under the act of July 1, 1862 (12 Stat. c. 120, §§ 3, 9, pp. 489, 492, 494), and the acts amendatory thereof, and to restore to the United States the title under that patent, which at the commencement of this suit was held by the appellee William Hoard. The original grant was made to the Leavenworth, Pawnee & Western Railroad Company of Kansas. The name of that company was subsequently changed to the Union Pacific Railway Company, Eastern Division; then to the Kansas Pacific Railroad Company; and that company was afterwards consolidated with the appellee the Union Pacific Railway Company, which has succeeded to all the rights this railroad company acquired under any of its names. In all particulars essential to the determination of this case the terms of this grant were the same as those of the grant considered in the case of *U. S. v. Winona & St. P. R. Co.* (No. 564) 67 Fed. 948. 11 Stat. 195. But the act of July 1, 1862, authorized the president of the United States to issue a patent for the lands within the grant opposite the constructed road whenever 40 consecutive miles of it had been completed. On May 8, 1867, the railroad company filed its map of the definite location of its line of railroad opposite the land here in controversy. This land was part of an odd section within the place limits of the grant. At the time of the definite location of the line of the road opposite this land a declaratory statement had been filed upon it under the pre-emption laws. This filing was canceled by the proper officer of the land office on October 3, 1871. On September 29, 1871, one J. G. Mohler made a homestead entry upon said tract of land, which was canceled on September 9, 1873. On July 28, 1885, Mohler applied to the proper officer of the land office for the reinstatement of his homestead entry. His application was rejected, and he made application to purchase the land under section 2 of the act of June 15, 1880, but this application was rejected. On March 11, 1873, the Kansas Pacific Railroad Company conveyed this land by warranty deed to one Powers. On September 3, 1875, Powers conveyed by like deed to one Berg. On April 22, 1881, Berg, by like deed, conveyed to one Whitman. On July 28, 1883, Whitman conveyed by like deed to one Quinn. On September 1, 1885, Quinn conveyed the land to the appellee William Hoard. The patent to the Kansas Pacific Railroad Company and the deeds which conveyed the title under that patent to Quinn were duly recorded in the office of the county where the land is situated, and an abstract of title, which disclosed this complete chain of title, was furnished to Hoard before he purchased. There was a one-story house, a barn, and a stable upon the land, and 110 acres of it were under cultivation when Hoard made the purchase. He bought the land of Quinn, who was then in possession of it, in 1885, and paid him \$5,000 for it. He has since lived upon and cultivated it as a farm. He had no notice of any defects in the title or of any claim of any one but Quinn to any interest in the land until after he had purchased and paid for it.