

MICHIGAN LAND & LUMBER CO., Limited, v. PACK et al.

SAME v. BUTMAN.

(Circuit Court of Appeals, Sixth Circuit. May 7, 1895.)

Nos. 179 and 180.

PUBLIC LANDS—SWAMP-LAND ACT—VESTING OF TITLE—ACT MARCH 3, 1857.

Upon facts similar to those in *Lumber Co. v. Rust*, 68 Fed. 155, except that there had been, in this case, no approval of the lists of lands, including those in controversy, by the secretary of the interior, but only a selection thereof by the surveyor general and report by him to the commissioner of the land office, the lists so reported having, afterwards, been superseded by other lists made in accordance with corrected surveys, *held*, that such selection was not confirmed by Act March 3, 1857 (11 Stat. 251).

Error to the Circuit Court of the United States for the Eastern District of Michigan.

These were two actions of ejectment by the Michigan Land & Lumber Company, Limited, against Pack, Woods & Co. and Myron Butman, respectively. Judgment was rendered in the circuit court for the defendant in each case. Plaintiff brings error. Affirmed.

J. W. Champlin and Frank E. Robson, for plaintiff in error.

Hanchett, Stark & Hanchett and Humphrey & Grant, for defendants in error.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

SEVERENS, District Judge. The controlling facts in each of these cases are similar to those involved in the case of *Same Plaintiff v. Rust* (No. 178, just decided) 68 Fed. 155, and are subject to the application of the same principles upon which that decision rests. The most material difference in the facts consists in this: that in these cases there was no approval and certification of the lands in suit by the secretary of the interior, as in the *Rust Case*, but the plaintiff founds its title upon the selection of lists of swamp lands made by the surveyor general, and reported to the commissioner of the general land office, in pursuance of the instructions of the commissioner of November 21, 1850, in which the surveyor general was directed to tender the option to the state in respect to the basis on which the granted lands should be identified. Those lists, as has been said, were never approved by the secretary, but were superseded by other lists, which were made in correction of the mistakes in the former lists, upon the ascertainment of the frauds and errors of the original survey. The old lists had been thus superseded before the passage of the act of March 3, 1857. We are entirely unable to agree with the plaintiff in its contention that the original selection of the surveyor general was confirmed by that act. We do not think that congress intended to resurrect the lists which had been already discarded because erroneous. But we have discussed this subject in the principal case, and indicated the grounds of our opinion so fully that it is unnecessary to repeat them

here. There is no other difference in the essential facts of the cases which requires especial consideration. The details vary, but not enough to affect the main drift of the facts or the principles applicable to them. We think the judgment in each of these cases should be affirmed.

PAULY JAIL-BLDG. & MANUF'G CO. v. BOARD OF COM'RS OF KEARNEY COUNTY.

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

No. 532.

COUNTY COMMISSIONERS—POWERS—KANSAS STATUTE.

The statutes of Kansas (1 Gen. St. 1889, par. 1633) provide that boards of county commissioners (who have power to purchase sites for, build, and keep in repair, county buildings, levy taxes therefor, and care for the county property) shall not build "any permanent county buildings," or assess any tax for that purpose, without submitting the question to a vote of the electors of the county. *Held*, following the decision of the supreme court of Kansas, that a board of county commissioners has power, without a vote of the electors, to make a contract for the erection of cells in the jail building of the county.

In Error to the Circuit Court of the United States for the District of Kansas.

This was an action by the Pauly Jail-Building & Manufacturing Company against the board of county commissioners of Kearney county, Kansas, on a contract for the erection of cells in a jail. Judgment was rendered in the circuit court for the defendants. Plaintiff brings error.

Milton Brown (J. W. Phillips, of counsel), for plaintiff in error.

M. G. Kelso, Joseph W. Ady, Samuel R. Peters, and John C. Nicholson, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. Is it beyond the powers of the board of county commissioners of a county in the state of Kansas to make a contract for the manufacture and erection of cells in the cell room of the jail building of the county without submitting the question of the purchase of such cells to the voters of the county? This is the single question presented in this case. The Pauly Jail-Building & Manufacturing Company, the plaintiff in error, brought an action in the court below against the board of county commissioners of Kearney county, Kan., the defendant in error, to recover the purchase price of two cells which the plaintiff had furnished to the defendant pursuant to a written contract between them. A jury trial was waived, and the court, after hearing the evidence, made and filed special findings of fact to the effect that the plaintiff had agreed with the defendant, for the sum of \$6,000, to manufacture and erect in the cell room of the jail building in the town of Lakin, in the county of Kearney and state of Kansas, two cells, furnished complete, and ready for occupancy, including all the attachments connected therewith, in accordance with the specifica-