

local bills of lading under a special contract of carriage limited to its own line. It does not do such business upon through rates, which it divides with other carriers, or assume any obligation to or for them in respect of such carriage; and the delivery which it makes to other carriers, and its reception from them of freight, is not substantially different from a delivery to or reception from any consignee or consignor. If it is possible for a domestic railroad company, located and doing business wholly within a state, to so limit its business as not to be embraced by the act as one engaged in interstate commerce, it would seem as though it were done in this instance. Without going into a discussion of the general subject, it appears to me that the case is covered by what was said by the supreme court of the United States in *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 16 Sup. Ct. 700, and by the decision of Judge Sage in *Interstate Commerce Commission v. Bellaire, Z. & C. Ry. Co.*, 77 Fed. 942. The result is that the defendant is not subject to the requirement of the commission to make report to it of its business under section 20 of the interstate commerce act, and that the motion for a mandamus to compel it to do so must be denied.

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SANTANA LIVE-STOCK & LAND CO. et al. v. PENDLETON et al.

(Circuit Court of Appeals, Fifth Circuit. June 7, 1897.)

No. 567.

1. PUBLIC LANDS—HEADRIGHT CERTIFICATE ISSUED TO HEIRS—ASSETS OF ESTATE.

A headright certificate for land, issued by the proper officers of the republic of Texas, to the heirs of a deceased settler entitled thereto by prior settlement, under the laws of Mexico, became assets in the hands of the administrator of such settler, and subject to be applied by the proper probate court to the payment of his debts.

2. SAME—SALE OF LANDS BY ADMINISTRATOR—SUBSEQUENT RELOCATION OF CERTIFICATE.

The sale by an administrator, under order of the probate court, to pay debts, of land located under a headright certificate issued to the heirs of the decedent, passed all right and title of the estate to such certificate, and, on its subsequently becoming floated on account of a conflict with a prior location, the grantee took title to land patented to the heirs by virtue of said certificate, on its subsequent relocation, under Rev. St. Tex. 1879, art. 3961, providing that such title shall vest in the heirs or assigns of the original settler according to their interest in the certificate. In such case, the misdescription of the land in the administrator's deed becomes immaterial.

3. ADMINISTRATOR—SALE OF LAND TO PAY DEBTS.

An order made, on application by an administrator, to sell 600 acres of land, or so much as necessary to pay debts, to be taken from one half league and labor owned by the estate, authorizes the sale of so much of the half league and labor as may be required, though more than 600 acres.

4. PRESUMPTION OF REGULARITY.

After the lapse of 50 years, every reasonable presumption will be indulged in to support titles acquired at administrators' sales, made under orders of courts of competent jurisdiction; and where the records show that such sales were duly reported, and deeds executed, a confirmation will be presumed, when necessary.

**In Error to the Circuit Court of the United States for the Northern District of Texas.**

The defendants in error, Mary Ann Pendleton and other heirs at law of Creed T. Pendleton, deceased, instituted their action of trespass to try title in the United States circuit court at Waco, against D. S. McDaniel and the other plaintiffs in error herein, on February 6, 1896, claiming one league and labor of land lying in Coleman county, Tex., patented to the said Creed T. Pendleton on the 9th day of January, 1874, by virtue of headright certificate No. 21, issued by the board of land commissioners of Washington county, Tex., on the 14th of March, 1839. Subsequent to the filing of the original petition, to wit, on November 24, 1896, the plaintiffs below filed their first amended original petition, wherein they brought their action of trespass to try title against the plaintiffs in error as defendants, for said land, and in which they claimed rents in the sum of \$2,000 per annum from the 1st day of March, 1893. On November 26, 1896, the defendants, who are plaintiffs in error here, filed their first amended original answer, wherein they demurred generally, and pleaded not guilty. The defendant the Santana Live-Stock & Land Company, as to 844 acres of the land sued for, and 134 acres, 178 acres, and 140 acres particularly described, pleaded the three, five, and ten years' statutes of limitation. The Santana Live-Stock & Land Company also suggested improvements in good faith, setting them forth, to the amount of \$1,100. The defendant D. S. McDaniel claimed 140 acres of the land in controversy by answer, describing it, and pleaded the three, five, and ten years' statutes of limitation, and also suggested improvements in good faith to the amount of \$362.50. The defendant J. D. Smith claimed in his answer 355.8 acres of the land sued for, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith to the value of \$307.20. The defendant J. R. McMillin claimed 54 acres of the land sued for, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith to the value of \$25. The defendant W. M. Newman claimed 640 acres of the land in controversy, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith of the value of \$1,100. The defendant S. J. Pieratt claimed 160 acres of the land in controversy, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith to the value of \$770.97. The defendant Henry Braun claimed 120.3 acres of the land sued for, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith to the value of \$183. The defendant W. B. Braun claimed 359.8 acres of the land in controversy, pleaded the three, five, and ten years' statutes of limitation, and suggested improvements in good faith to the value of \$1,020. The case was called for trial on the 15th of December, 1896, and verdict and judgment were rendered and entered in favor of the plaintiffs (defendants in error), on the 18th of December, 1896. The verdict of the jury, under a peremptory instruction of the court, found for the plaintiffs, the heirs of Creed T. Pendleton, a three-fourths undivided interest in the land sued for, and also found the rental value of the land without improvements for two years preceding the institution of the suit to be five cents per acre per annum, and its rental value from October, 1883, up to two years preceding the institution of the suit, to be five cents per acre per annum without improvements. They further found the value of the land without improvements to be \$2.50 per acre, and that the land was increased in value by the improvements only to the extent of said improvements. They also found for the defendants for improvements in good faith as follows, these amounts being three-fourths of the value of said improvements: Santana Live-Stock & Land Company, \$840; J. D. Smith, \$230.40; J. R. McMillin, \$18.75; W. M. Newman, \$832.50; S. J. Pieratt, \$492.66; Henry Braun, \$106; W. B. Braun, \$661.87. There was no finding in the verdict as to the claim of defendant D. S. McDaniel for improvements, or upon any other special issue. Thereupon the court entered its judgment adjudging an undivided three-fourths interest in the lands sued for to plaintiffs, the heirs of Creed T. Pendleton, and further adjudged that the premises sued for were of the value of \$2.50 per acre, without improvements, and that the rental value of the premises for two years preceding the institution of the suit was 5 cents per acre. It further adjudged that the rental value of the premises, without im-