record shows, we think, that, if Fairchild was attempting to prosecute a suit against West in his own name, he would be effectually barred of his right to the property in controversy by two adjudications which appear to have been made by the district court of Dickinson county, Iowa,—the one on November 16, 1876, and the other on October 2, 1885. The first of these adjudications was a decree in favor of West's grantors in a suit brought by them to quiet the title to the land in controversy against the claim of Fairchild and wife under the homestead entry of October 3, 1866; and the second was a judgment in favor of West in an ejectment suit brought by him against Fairchild and wife, after West had acquired the title to the property, and had been ousted from the possession thereof by Fairchild. It is suggested in behalf of the appellant that these adjudications ought not to be regarded as depriving Fairchild of his right to the land, because his title under the homestead entry, when these adjudications were made, was incomplete, and for that reason could not be asserted as a defense. The record shows, however, that his title under the homestead entry was asserted as a defense in each of said actions, and that, before either action was brought, to wit, on October 25, 1871, he made his final proof as a homesteader, and obtained a receiver's receipt entitling him to a patent; and that, before either action was brought, a patent for the land in controversy was in fact issued to Fairchild, which patent, however, was afterwards, in some manner which is not disclosed by the evidence, obtained by the officers of the land department, and marked "Canceled." It is obvious, therefore, that when the suits in the district court of Dickinson county, Iowa, were brought against Fairchild, his equitable title to the land in controversy under the homestead laws of the United States was as perfect as it could ever become, since no act remained to be done by him which would strengthen his right to a patent. Moreover, under the laws of Iowa, a suit to quiet title such as was brought against Fairchild in 1876 was then, as now, an equitable proceeding, and in 1885 a defendant in an action of ejectment was then, as now, entitled to plead any defense thereto, whether it was of a legal or equitable character. McClain's Code Iowa, §§ 3861, 4503, 4506; Rosierz v. Van Dam, 16 Iowa, 175; Van Orman v. Spafford, Id. 186; Kramer v. Conger, Id. 434; Shawhan v. Long, 26 Iowa, 488. In both of said actions Fairchild availed himself of these privileges by pleading the same state of facts constituting an equitable, if not a full legal, defense to the suits (Simmons v. Wagner, 101 U. S. 260; Nycum v. McAllister, 33 Iowa, 374), upon which the United States now relies to annul the title of the defendant West, and in both of said actions a judgment adverse to the claim of Fairchild was rendered. Inasmuch, then, as the government sues for the sole benefit of Fairchild, and for the professed purpose of reinvesting him with a title which he has lost, we are of opinion that, whether the present action be regarded as brought under the act of March 3, 1887 (24 Stat. 556, c. 376), or as brought in pursuance of its general right to sue, the government should be held estopped by the previous adjudications against the real party in interest in the state court. The subject-matter and the issue to be tried being the same in this proceed-

ing as in the former actions, the losing party on the former trials ought not to be permitted to renew the controversy in the name of a merely nominal plaintiff, and thereby avoid the effect of the former adjudications. Southern Minnesota Railway Extension Co. v. St. Paul & S. C. R. Co., 12 U. S. App. 320, 325, 5 C. C. A. 249, and 55 Fed. 690. This doctrine was applied by this court in the case of Union Pac. Ry. Co. v. U. S., 32 U. S. App. 311, 319, 15 C. C. A. 123, and 67 Fed. 975, which was a suit brought by the United States under the act of March 3, 1887, wherein we held that the United States was bound by an estoppel which might have been invoked against the real party in interest if the suit had been brought in his name, because it appeared that the United States had no substantial interest in the controversy, and was merely a nominal plaintiff.

On the argument of the case some reliance was placed by counsel for the appellant on the decision of this court in the case of U. S. v. Winona & St. P. R. Co., 32 U. S. App. 306, 15 C. C. A. 117, and 67 Fed. 969. It was contended, in substance, as we understand, that the decision in that case lends some support to the view that the United States, in the present action, is not affected by the previous adjudications in the state court of Iowa against the defendant Fairchild. With reference to such contention, it may be said that in the case last cited this court held that the bill was properly filed by the United States under the act of March 3, 1887. Indeed, no controversy arose, or could well have arisen, in that case, touching that issue, because the case was one in which the executive department of the government had erroneously certified certain lands to the state of Minnesota for the benefit of a railroad company, and there was no pretense that the legislative branch of the government had ever confirmed or ratified such erroneous action on the part of the land department. The case was one which was clearly within the provisions of the act of March 3, 1887. We were accordingly of the opinion in that case, which we still entertain, that the United States had not definitely parted with its right to the land in dispute, but had a substantial interest in the controversy, which very properly exempted it in that case from certain defenses which the railroad company might possibly have interposed as against the original pre-emption claimant. In the present case, however, as has already been shown, congress did ratify and confirm the erroneous action of the land department, doing so with full knowledge of all the facts, and by so doing it placed the government in such a position that it can no longer claim that it has any right to the premises in dispute, or any pecuniary interest in the pending action. It sues professedly for the benefit of a private individual, having been placed by the act of congress aforesaid in such an attitude that it cannot assert any right to the property in dispute on behalf of the public. We think, therefore, that the cases are clearly distinguishable; that our former ruling is in harmony with the views heretofore expressed; and that, as applied to the case in hand, our former decision does not support the contention that the United States is exempt in the present action from such defenses as res judicata, limitations, and laches, although such defenses could be successfully pleaded as against a person for

whose benefit it sues. Without considering some other questions which were decided by the trial court, it is sufficient to say that, for the reasons already stated, we are satisfied that the bill of complaint was properly dismissed, and the decree to that effect is accordingly affirmed.

COFFEEN v. CHICAGO, M. & ST. P. RY. CO.

(Circuit Court of Appeals, Seventh Circuit. January 3, 1898.)

No. 423.

PRIVATE SWITCH—INJUNCTION—PARTIES.

One acting under authority of an ordinance of the city council cannot be restrained, at the suit of the owner of abutting property, from constructing in a public street a private switch, subject to municipal control, and connecting with the line of a public carrier, as the validity of the ordinance granting the right can only be assailed by an officer acting in the name of the people of the state, or by a bill for injunction brought by the city. Doane v. Railroad Co., 46 N. E. 520, 165 Ill. 510, followed.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

This appeal is from an order denying a motion to dissolve an interlocutory injunction whereby the appellant, M. D. Coffeen, was restrained "from laying down, constructing, or attempting to lay down or construct a railroad switch track in North Jefferson street or Wyman street, in the city of Chicago, under and by virtue of an ordinance heretofore granted, or alleged to have been granted, by the city council of the city of Chicago to the said defendant, M. D. Coffeen, and from laying or constructing any railroad track or tracks on either of said streets with or without such assumed or alleged authority," etc. The ordinance mentioned was passed on February 3, 1896, and in the first section provides "that permission and authority is hereby granted to M. D. Coffeen or his assigns to construct, maintain, and operate a private single railroad switch for a period of ten years from and connecting with the tracks of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company at a point east of Jefferson street near its intersection with the Milwaukee avenue viaduct; thence on a gradual curve in a southwesterly direction across Jefferson and Wyman streets, and west on and along the south side of Wyman street to Desplaines." The grant is followed by provisos that Coffeen shall enter into bond to save the city harmless from damage caused by the passage of the ordinance; that the privileges granted shall be subject in all respects to the ordinances in force or that may be passed concerning railroads; and that the switch shall be constructed and maintained under the direction and supervision of the department of public works. The bill which was brought by the Chicago, Milwaukee & St. Paul Railway Company shows that the construction and use of the proposed switch will cause special injury to that company, as owner of more than half of the abutting property, and that no petition, oral or written, was ever made or presented to the city council for the passage of the ordinance. The motion for a temporary injunction, both parties being present, was submitted and determined upon the averments of the bill alone. Thereafter the appellant filed a sworn answer, and later an amended answer, also verified, showing, among other things, that the so-called "Wyman Street" is, and always has been, simply an alley without sidewalks; that after executing the bond required by the ordinance, and receiving from the commissioner of public works a permit to construct the switch, the appellant contracted for the construction and operation of the switch by the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, with whose road the switch was to be connected and operated; and that the switch was constructed by that company prior to February 24, 1896; but that, during the night of that day, the complainant, after having assured the defendant that his track would not be