

Marshall *v.* Ladd.

be vacated, and the order now directed will be certified to the Circuit Court for the District of Louisiana. See 8 Wall. 292.

Mr. P. Phillips for the motion. *Mr. T. J. Durant* opposing.

THE STATE OF VIRGINIA, PETITIONER.

ORIGINAL.

No. 11. Original. December Term, 1868. — Decided February 15, 1869.

The court withholds its decision on this motion for a writ of prohibition, until the certificate of division of opinion on the allowance of the writs of *habeas corpus* complained of can be filed, and a hearing had thereon.

THIS was a petition for a writ of prohibition. The case is stated in the opinion.

Mr. Chief Justice Chase delivered the opinion of the court.

The Chief Justice, who holds by allotment the Circuit Court for the District of Virginia, has informed the court that before the pending motion for prohibition was made, he signified to the district judge his dissent from the opinion expressed by him in favor of the allowance of the writs of *habeas corpus* complained of in the petition; and that he has advised the district judge now holding the Circuit Court, to direct that this division of opinion in respect to the motion for the writ now pending in the case of Peter Phillips, be certified to this court.

There is nothing in the provisional order, staying further proceedings by the district judge, which can be properly construed as prohibiting this course; and it is expected that the certificate will be filed at an early day.

On the first Friday thereafter the court will hear argument upon it; and in the meantime the decision of this court on the motion for a writ of prohibition, pending, will be withheld.

The clerk will advise counsel accordingly, and will certify this direction to the district judge for the District of Virginia.

Mr. J. H. Bradley and *Mr. James Lyons* for petitioner.

MARSHALL *v.* LADD.

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 78. December Term, 1868. — Decided February 15, 1869.

The legal title must prevail in ejectment; and neither party can set up facts which go to show that equitably the other party is the rightful owner of the property.

APPENDIX.

Cases Omitted in the Reports.

The rulings of the court of Oregon upon the statutes of that State raise no Federal question in this case.

EJECTMENT. The case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

In this case an action of ejectment was brought, by one of the defendants in the suit just decided (*Silver v. Ladd*, 7 Wall. 219), against the plaintiff in that suit and his tenant, Marshall, for a part of the land included in the certificate to Mrs. Thomas, the validity of which we have affirmed.

In this case Ladd, the plaintiff, introduced his patent from the United States, and the defendants introduced the certificate of location to Mrs. Thomas, and relied on that and on the facts which went to show that it was rightfully issued, to defeat the recovery under Ladd's patent.

The court refused several instructions prayed by defendants, based on that defence, and told the jury that the legal title which passed from the United States to the plaintiff, must prevail over the claim to hold possession under the certificate.

In this the court was undoubtedly correct. It is of the essence of the action of ejectment that the legal title must prevail. And neither party can set up in that proceeding facts which go to show that, equitably, the other party is the rightful owner of the property. It is the peculiar province of a court of equity to restrain the assertion of a legal title wrongfully held, or to compel its transfer to the person rightfully entitled to it.

We need not here decide whether certain statutes of Oregon, intended to give to settlements made under the donation law the effect of a legal title, were applicable to a case where a patent had issued, or were properly construed by the Oregon court. Any error of that court in construing the statute of the State, cannot be reviewed here.

The remedy of plaintiff in error is to compel a conveyance of the title from Ladd, and with it a decree for possession, or an action of ejectment founded on the title so acquired.

The judgment of the Supreme Court of Oregon is *Affirmed.*

Mr. J. H. Mitchell, Mr. J. S. Smith and Mr. Rufus Mallory for plaintiffs in error. *Mr. Edward Lander, Mr. T. J. Coffey and Mr. J. Hubley Ashton* for defendants in error.