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Opinion of the Court.

In the present case, the parties will not be compelled to resort to some form of original proceeding to obtain relief under the act of April 28, 1904, as, apart from the statute, the decree must be reversed, and thereupon the record will be open for such adjudication as the then situation may demand.

In No. 88, writ of error dismissed; in No. 102, decree reversed and cause remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE HARLAN was of opinion that the decree of the state Supreme Court should be affirmed for the reasons given, and, therefore, dissented.

NORTHERN PACIFIC RAILWAY COMPANY v. HASSE.

ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

No. 118. Submitted January 6, 1905.—Decided February 20, 1905.

This case is governed by the decision in *Northern Pacific Railway Company v. Townsend*, 190 U. S. 267, and *Northern Pacific Railway Company v. Ely*, ante, p. 1.

THE facts are stated in the opinion.

Mr. C. W. Bunn and *Mr. James B. Kerr* for plaintiff in error.

There was no appearance or brief filed for defendants in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was an action of ejectment brought by the Northern Pacific Railway Company in the Superior Court of Kittitas

HARLAN, J., dissenting.

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County, Washington, to recover possession of part of its right of way, the land being partly within and partly without a right of way of two hundred feet in width. Defendants asserted title by virtue of a homestead application, filed May 24, 1883, final proof July 12, 1888, and patent September 27, 1889; and adverse possession for the period named in the statute of limitations. Judgment was entered in favor of the railway company, and defendants carried the case by appeal to the Supreme Court of Washington, which held the statute of limitations applicable, reversed the judgment below and remanded the case with directions to dismiss the action. 28 Washington, 353.

The grant of right of way, unlike the land grant, was effective from the date of the act, and the fact that the railroad was not built until after defendants' entry does not affect the disposition of the case. *Railroad Company v. Baldwin*, 103 U. S. 426; *Bybee v. Oregon & California Railroad Company*, 139 U. S. 663, 679.

The judgment must be reversed on the authority of *Northern Pacific Railway Company v. Townsend*, 190 U. S. 267, and remanded for further proceedings not inconsistent with the opinion of this court in *Northern Pacific Railway Company v. Ely*, ante, p. 1.

Judgment reversed.

MR. JUSTICE HARLAN dissented.