

*Fenn v. Holme.*

services performed for the United States in a capacity other than that of collector. It follows, that for services performed in making these contracts and disbursements, which were not within his duties as collector, he can make no further charge.

What has thus far been said relates exclusively to the defendant's claims under the act of 1849. The subsequent acts are so much more unfavorable to these claims, that I do not deem it necessary to enter into a particular discussion of them. They are the acts of September 30, 1850, (9 Stat. at L., 533,) March 3, 1851, (9 Stat. at L., 608,) and August 31, 1852, (10 Stat. at L., 86.) I have examined these acts, and am satisfied each of them deprives *every* collector, whose compensation exceeds twenty-five hundred dollars, of all participation in these commissions, though they are required to render the service of superintendents of lights or disbursing agents in procuring supplies for them.

---

WILLIAM FENN, PLAINTIFF IN ERROR, *v.* PETER H. HOLME.

The plaintiff in ejectment must in all cases prove a legal title to the premises in himself, at the time of the demise laid in the declaration, and evidence of an equitable title will not be sufficient for a recovery.

Hence, the holder of a New Madrid certificate, upon which no patent had been issued, and whilst it was yet uncertain whether or not the proposed location of it was reserved under older surveys, could not recover in ejectment. The legal title was in the Government.

The cases referred to, showing the necessity of preserving the distinction between legal and equitable rights and remedies.

The practice of allowing ejectments to be maintained in State courts upon equitable titles cannot affect the jurisdiction of the courts of the United States.

This case was brought up by writ of error from the Circuit Court of the United States for the district of Missouri.

The case is explained in the opinion of the court.

It was argued by *Mr. Gibson* and *Mr. Gamble* for the plaintiff in error, and by *Mr. Leonard* for the defendant; but the

---

*Fenn v. Holme.*

---

point upon which the decision of this court turned did not attract the attention of the counsel.

Mr. Justice DANIEL delivered the opinion of the court.

The defendant in error, as a citizen of the State of Illinois, instituted an action of ejectment against the plaintiff in the court above mentioned, and obtained a verdict and judgment against him for a tract of land, described in the declaration as a tract of land situated in St. Louis county, being the same tract of land known as United States survey No. 2,489, and located by virtue of a New Madrid certificate No. 105, and containing six hundred and forty acres.

Both the plaintiff and defendant in the Circuit Court trace the origin of their titles to the settlement claim of one James Y. O'Carroll, who, it is stated, obtained permission as early as the 6th of September, 1803, from the Spanish authorities, to settle on the vacant lands in Upper Louisiana, and who, in virtue of that permission, and on proof by one Ruddell of actual inhabitancy and cultivation prior to the 20th of December, 1803, claimed the quantity of one thousand arpens of land near the Mississippi, in the district of New Madrid. Upon this application, the land commissioners, on the 13th of March, 1806, made a decision by which they granted to the claimant one thousand arpens of land, situated as aforesaid, provided so much be found vacant there.

On the 14th of December, 1810, the commissioners, acting again on the claim of O'Carroll for one thousand arpens, declare that the board grant to James Y. O'Carroll three hundred and fifty acres of land, and order that the same be surveyed as nearly in a square as may be, so as to include his improvements. The claim thus allowed by the commissioners was, by the operation of the 4th section of the act of Congress approved March 3, 1813, enlarged and extended to the quantity of six hundred and forty acres. (Vide Stat. at Large, p. 813, vol. 2.)

In the year 1812, a portion of the lands in the county of New Madrid having been injured by earthquakes, Congress, by an act approved on the 17th of February, 1815, provided that

---

*Fenn v. Holme.*

---

"any person or persons owning lands in the county of New Madrid, in the Missouri Territory, with the extent the said county had on the 10th day of November, 1812, and whose lands have been materially injured by earthquakes, shall be and they hereby are authorized to locate the like quantity of land on any of the public lands of the said Territory, the sale of which is authorized by law." (Stat. at L., vol. 3, p. 211.)

On the 30th of November, 1815, the recorder of land titles for Missouri, upon evidence produced to him that the six hundred and forty acre grant to James Y. O'Carroll had been materially injured by earthquakes, in virtue of the act of Congress of 1815, granted to said O'Carroll New Madrid certificate No. 105, by which the grantee was authorized to locate six hundred and forty acres of land on any of the public lands in the Territory of Missouri, the sale of which was authorized by law. Upon the conflicting claims asserted under this New Madrid certificate, and upon the ascertainment of the locations attempted in virtue of its authority, this controversy has arisen.

Each party to this controversy professes to deduce title from the settlement right of O'Carroll, through mesne conveyances proceeding from him. With respect to the construction of these conveyances, several prayers have been presented by both plaintiff and defendant, and opinions as to their effect have been expressed by the Circuit Court; but as to the rights really conferred, or intended to be conferred, by these transactions, it would, according to the view of this cause taken by this court, be not merely useless, but premature and irregular to discuss, and much more so to undertake to determine them.

This is an attempt to assert at law, and by a legal remedy, a right to real property—an action of ejectment to establish the right of possession in land.

That the plaintiff in ejectment must in all cases prove a *legal* title to the premises in himself, at the time of the demise laid in the declaration, and that evidence of an *equitable* estate will not be sufficient for a recovery, are principles so elementary and so familiar to the profession as to render unnecessary the citation of authority in support of them. Such authority may,



---

*Fenn v. Holme.*

---

however, be seen in the cases of *Goodtitle v. Jones*, 7 T. R., 49; of *Doe v. Wroot*, 5 East., 132; and of *Roe v. Head*, 8 T. R., 118. This legal title the plaintiff must establish either upon a connected documentary chain of evidence, or upon proofs of possession of sufficient duration to warrant the legal conclusion of the existence of such written title.

By the Constitution of the United States, and by the acts of Congress organizing the Federal courts, and defining and investing the jurisdiction of these tribunals, the distinction between common-law and equity jurisdiction has been explicitly declared and carefully defined and established. Thus, in section 2, article 3, of the Constitution, it is declared that "the judicial power of the United States shall extend to all cases in *law* and *equity* arising under this Constitution, the laws of the United States," &c.

In the act of Congress "to establish the judicial courts of the United States," this distribution of law and equity powers is frequently referred to; and by the 16th section of that act, as if to place the distinction between those powers beyond misapprehension, it is provided "that suits in equity shall not be maintained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be had at law," at the same time affirming and separating the two classes or sources of judicial authority. In every instance in which this court has expounded the phrases, proceedings at the common law and proceedings in equity, with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal; and the latter, as meaning the administration with reference to equitable as contradistinguished from legal rights, of the equity law as defined and enforced by the Court of Chancery in England.

In the case of *Robinson v. Campbell*, 3 Wheat., on page 221, this court have said: "By the laws of the United States, the Circuit Courts have cognizance of all suits of a civil nature at common law and in equity, in cases which fall within the lim-

---

*Fenn v. Holme.*

---

its prescribed by those laws. By the 24th section of the judiciary act of 1789 it is provided, that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply. The act of May, 1792, confirms the modes of proceeding then used at common law in the courts of the United States, and declares that the modes of proceeding in suits in equity shall be according to the principles, rules, and usages, which belong to courts of equity, as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the judicial courts of the United States. It is material to consider whether it was the intention of Congress by these provisions to confine the courts of the United States, in their mode of administering relief, to the same remedies, and those only, with all their incidents, which existed in the courts of the respective States; in other words, whether it was their intention to give the party relief *at law*, where the practice of the State courts would give it, and *relief in equity only* when, according to such practice, a plain, adequate, and complete remedy could not be had at law? In some States in the Union, no court of chancery exists to administer equitable relief. In some of those States, courts of law recognise and enforce in suits at law all equitable rights and claims which a court of equity would recognise and enforce; in others, all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law. A construction, therefore, that would adopt the State practice in all its extent, would at once extinguish in such States the exercise of equitable jurisdiction. The acts of Congress have distinguished between remedies at common law and equity, yet this construction would confound them. The court therefore think, that to effectuate the purposes of the Legislature, the remedies in the courts of the United States are to be at common law or in equity—not according to the practice in the State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles.”



---

*Fenn v. Holme.*

---

In the case of *Parsons v. Bedford et al.*, 3 Peters, on pp. 446, 447, this court, in speaking of the seventh amendment of the Constitution, and of the state of public sentiment which demanded and produced that amendment, say:

"The Constitution had declared, in the 3d article, that the judicial power shall extend to all cases *in law and equity* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c. It is well known that in civil suits, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that the distinction was present in the minds of the framers of the amendment. By *common law*, they meant what the Constitution denominated in the 3d article *LAW*, not merely *suits* which the common law recognised among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where *equitable rights* alone were recognised and equitable remedies administered."

The same doctrine is recognised in the case of *Strother v. Lucas*, in 6 Peters, pp. 768, 769 of the volume, and in the case of *Parish v. Ellis*; 16 Peters, pp. 453, 454. So, too, as late as the year 1850, in the case of *Bennett v. Butterworth*, reported in the 11th of Howard, 669, the Chief Justice thus states the law as applicable to the question before us:

"The common law has been adopted in Texas, but the forms and rules of pleading in common-law cases have been abolished, and the parties are at liberty to set out their respective claims and defences in any form that will bring them before the court; and, as there is no distinction in its courts between cases at law and in equity, it has been insisted in this case, on behalf of the defendant in error, that this court may regard the plaintiff's petition either as a declaration at law or a bill in equity. Whatever may be the laws of Texas in this respect, they do not govern the proceedings in the courts of the United States; and, although the forms of proceedings

---

*Fenn v. Holme.*

---

and practice in the State courts have been adopted in the District Court, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the General Government, establishes this distinction between law and equity, and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in such cases in the State court. But if the claim be an equitable one, he must proceed according to the rules which this court has prescribed, regulating proceedings in equity in the courts of the United States."

The authorities above cited are deemed decisive against the right of the plaintiff in the court below to a recovery upon the facts disclosed in this record, which show that the action in that court was instituted upon an equitable and not upon a legal title. With the attempt to locate O'Carroll's New Madrid warrant No. 150, in addition to its interference with what was called the *St. Louis common*, there were opposed five conflicting surveys. In consequence of this state of facts, the Commissioner of the General Land Office, on the 19th of March, 1847, addressed to the surveyor general of Missouri the following instructions: "If, on examination, it should satisfactorily appear to you that the lands embraced by said surveys were at the date of O'Carroll's location reserved for said claims, the O'Carroll location must yield to them, because such land is interdicted under the New Madrid act of the 17th of February, 1815; but if, at the time of location, either of the tracts was not reserved, but was such land as was authorized by the New Madrid act to be located, the New Madrid claim No. 105 will of course hold valid against either tract in this category. The fact on this point can be best determined by the surveyor general from the records of his office, aided by those of the recorder. If there be no valid claim to any portion of the *residue* of the O'Carroll claim, and such residue was such land as was allowed by the New Madrid act of 17th of February, 1815, to be located, on the return here of a proper



---

*Fenn v. Holme.*

---

plat and patent certificate for said residue, a patent will issue."

At this point the entire action of the land department of the Government terminated. No act is shown by which the extent of the St. Louis common, said to be paramount, was ascertained; no information supplied with respect to the validity or extent of the conflicting surveys, as called for by the Commissioner; no plat or patent certificate, either for the whole of the warrant or for any residue to be claimed thereupon, ever returned to the General Land Office, and no patent issued. The plaintiff in the Circuit Court founded his claim exclusively and solely upon the New Madrid warrant.

The inquiry then presents itself, as to who holds the *legal* title to the land in question. The answer to this question is, that the title remains in the original owner, the Government, until it is invested by the Government in its grantee. This results from the nature of the case, and is the rule affirmed by this court in the case of *Bagnall et al. v. Broderick*, in which it is declared, "that Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Government in reference to the public lands declares the patent to be the superior and conclusive evidence of the *legal title*. Until it issues, the fee is in the Government, which by the patent passes to the grantee, and he is entitled to enforce the possession in ejectment. (13 Peters, p. 436.)

A practice has prevailed in some of the States (and amongst them the State of Missouri) of permitting the action of ejectment to be maintained upon warrants for land, and upon other titles not complete or legal in their character; but this practice, as was so explicitly ruled in the case of *Bennett v. Butterworth*, (11 How.,) can in no wise affect the jurisdiction of the courts of the United States, who, both by the Constitution and by the acts of Congress, are required to observe the distinction between legal and equitable rights, and to enforce the rules and principles of decision appropriate to each.

The judgment of the Circuit Court is to be reversed with costs.