which they present, if the law arising upon the evidence is given by the court with such fulness as to guide correctly the jury in its findings, as was the case here; nor is a judgment to be set aside because the charge of the court may be open to some verbal criticisms, in particulars considered apart by themselves, which could not when taken with the rest of the charge have misled a jury of ordinary intelligence. The propriety of the rulings of the court in this case is fully vindicated in its opinion on the motion for a new trial.

The evidence of the condition of the deceased—that she was *enceinte* at the time of the accident—could not materially have affected the jury in the estimation of the damages, after the clear and explicit charge of the court, as to the character of the damages which only they were authorized to consider.

The other evidence in the case, to the admission of which objection was taken, was not material, and could not have influenced the result.

JUDGMENT AFFIRMED.

MYERS *v.* CROFT.

1. When the grantee in a deed is described in a way which is a proper enough description of an incorporated company, capable of holding land, as *ex. gr.*, "The Sulphur Springs *Land* Company," the court, in the absence of any proof whatever to the contrary, will presume that the company was capable in law to take a conveyance of real estate.
2. A grantor not having perfect title who conveys for full value is estopped, both himself and others claiming by subsequent grant from him, against denying title; a perfect title afterwards coming to him.
3. Under the 12th section of the act of September, 1841, "to appropriate the proceeds of the sales of public lands and to grant pre-emption rights"—which section, after prescribing the manner in which the proof of settlement and improvements shall be made before the land is entered, has a provision that "all assignments and transfers of the rights hereby secured, prior to the issuing of the patent, shall be null and void"—a pre-emptor who has entered the land, and who, at the time, is the owner in good faith, and has done nothing inconsistent

Statement of the case.

with the provisions of the law on the subject, may sell even though he has not yet obtained a patent. The disability extends only to the assignment of the pre-emption right.

ERROR to the Circuit Court for the District of Nebraska; the case being thus:

An act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4th, 1841, after prescribing the manner in which the proof of settlement and improvement shall be made before the land is entered, has this proviso: "and all assignments and transfers of *the right hereby secured prior to the issuing of the patent shall be null and void.*"

Under and by virtue of this act, one Fraily, on the 3d of September, 1857, entered a quarter-section of land in Nebraska, at the land office for the Omaha land district, with the register thereof.

On the same 3d of September, 1857—no letters patent having as yet issued to him—in consideration of $36,000, as appeared on the face of the deed, he conveyed by a warrantee deed the premises to "The Sulphur Springs Land Company;" the company being not otherwise described in the instrument, and there being nothing in the instrument or in other proof to show whether the said grantee was a corporation and capable of taking land or an unincorporated company.

On the 1st of May, 1860—more than two years after the date of the deed above mentioned—Fraily made another deed, for the sum, as appeared by the instrument, of $6000, to a certain Myers.

In this state of things Myers sued Croft, who was in under the company, in ejectment, to try the title to the land. And the deed to "The Sulphur Springs Land Company" being in evidence on the part of the defendant, the plaintiff moved the court to rule it from the jury, for the reasons:

1st. That he had not shown that the Sulphur Springs Land Company was an organization capable of receiving the conveyance of land; and,

2d. That under the provisions of the act of Congress, already quoted, the deed was void.

The court overruled the motion, charging contrariwise, that the deed was valid and passed the title to the premises. To this ruling and charge the plaintiff excepted, and judgment having been given for the defendant the case was now here.

Messrs. N. Cobb and L. Douglass, for the plaintiff in error:

1st. Although the Sulphur Springs Land Company, as we may here admit, was in fact incorporated, the fact nowhere appears in proof. Being a chartered company it was incumbent on the defendant to show the terms of the charter, and that by them the company could take the lands.

If not a corporation, the deed was void for want of certainty in the name of the grantee.

2d. Does the 12th section of the act of Congress of September 4th, 1841, intend to prohibit the pre-emptor from all alienation of the property which he has acquired under the pre-emption act prior to the issuing of the patent, or does it intend simply to prevent the transfer of the right to pre-empt?

The former view is the one best sustained by the statute. That is the way it reads; and when a statute is plain, it should not be frittered away by refinements. Until payment made for the land and certificate of purchase procured the pre-emptor has nothing which he can assign. If after certificate of purchase was obtained, there was intended to be no restriction on the sale of the land by the pre-emptor, why did the act use the words "prior to the issuing of the patent?"

The other view is, that the right secured is the right to pre-empt: and that this right is fully secured when the purchase is made of the United States. The right thus preferably to purchase cannot be transferred, and it is this alone (it may be argued) which is prohibited. If so, why did the statute use the words "prior to the issuing of the patent," instead of prior to the issuing of the certificate? Congress

knew the difference between a certificate of purchase and a patent. They are different instruments and subserve a different purpose. The certificate shows that the party has entered the land and is entitled to a patent at some future time; the patent transfers the title.

According to the course of business ordinarily, patents do not issue for years after the entry is made. This case proves that fact, and it is not unreasonable to suppose Congress was apprised of that fact.

The view we take of this law best accords with the policy of the pre-emption privilege. The object of the government was, in fact, to induce settlements upon the public lands, but chiefly to confer the preferable right to purchase on those persons, usually in indigent circumstances, who actually settled or improved them. It was not to aid the speculator in lands.*

Pre-emptions for purposes of speculations will be less likely to be made if the pre-emptor is obliged to wait until the patent issues before he can alienate.

There was a similar provision in the act of 29th May, 1830.† The language of the two acts is almost literally the same. By the act of January 23d, 1832,‡ the prohibition as to assignment and transfers of the right of pre-emption contained in the act of 1830 is removed, and it is provided that "all persons who have purchased lands under the act of May 29th, 1830, may assign and transfer their certificates of purchase or final receipts, and patents may issue in the name of such assignee, anything in the act aforesaid to the contrary notwithstanding." This shows that it was understood by Congress as restricting alienations by the pre-emptor, after payment and before patent issued. The effect of allowing such transfers was such that Congress, in passing the carefully-framed act of September 4th, 1841, renewed the prohibition against transfers which was contained in the act of 1830. The government had witnessed the practical effect of both policies, and the judgment of Congress as em-

* Marks *v.* Dickson, 20 Howard, 501, 505.

† 4 Stat. at Large, 420, § 3.

‡ Ib. 496.

bodied in the latter act as to which is the better policy should be respected by the courts, and the language of the statute should be allowed its fair and natural meaning.

Though the point has never been before this court, it has frequently been before the State courts, and they have with great uniformity held that the pre-emptor had no transferable interest prior to the issuing of the patent.*

Mr. Justice DAVIS delivered the opinion of the court.

In relation to the first objection—that the Sulphur Springs Land Company was not a competent grantee to receive the title—it is sufficient to say, in the absence of any proof whatever on the subject, that it will be presumed the land company was capable, in law, to take a conveyance of real estate. Besides, neither Fraily, who made the deed, nor Myers, who claims under him, is in a position to question the capacity of the company to take the title after it has paid to Fraily full value for the property.†

The other objection is of a more serious character, and depends for its solution upon the construction to be given the last clause of the 12th section of the act of Congress of September 4th, 1841. The act itself is one of a series of pre-emption laws conferring upon the actual settler upon a quarter section of public land the privilege (enjoyed by no one else) of purchasing it, on complying with certain prescribed conditions. It had been the well-defined policy of Congress, in passing these laws, not to allow their benefit to enure to the profit of land speculators, but this wise policy was often defeated. Experience had proved that designing persons, being unable to purchase valuable lands, on account of their withdrawal from sale, would procure middle men to occupy them temporarily, with indifferent improvements,

* Arbour *v.* Nettles, 12 Louisiana An. 217; Poirrier *v.* White, 2 Id. 934; Penn *v.* Ott, 12 Id. 233; Stanbrough *v.* Wilson, 13 Id. 494; Stevens *v.* Hays, 1 Indiana, 247; McElyea *v.* Hayter, 2 Porter (Ala.), 148; Cundiff *v.* Orms, 7 Id. 58; Glenn *v.* Thistle, 23 Mississippi, 42–49; Wilkerson *v.* Mayfield, 27 Id. 542; McTyer *v.* McDowell, 36 Alabama, 39; Paulding *v.* Grimsley, 10 Missouri, 210.

† Smith *v.* Sheeley, 12 Wallace, 358.

under an agreement to convey them so soon as they were entered by virtue of their pre-emption rights. When this was done, and the speculation accomplished, the lands were abandoned.

This was felt to be a serious evil, and Congress, in the law under consideration, undertook to remedy it by requiring of the applicant for a pre-emption, before he was allowed to enter the land on which he had settled, to swear that he had not contracted it away, nor settled upon it to sell it on speculation, but, in good faith, to appropriate it to his own use. In case of false swearing the pre-emptor was subject to a prosecution for perjury, and forfeited the money he had paid for the land; and any grant or conveyance made by him *before* the entry was declared null and void, with an exception in favor of *bonâ fide* purchasers for a valuable consideration. It is contended by the plaintiff in error that Congress went further in this direction, and imposed also a restriction upon the power of alienation *after* the entry, and the last clause in the 12th section of the act is cited to support the position.

This section, after prescribing the manner in which the proof of settlement and improvement shall be made before the land is entered, has this proviso: "and all assignments and transfers of the right hereby secured prior to the issuing of the patent shall be null and void."

The inquiry is, what did the legislature intend by this prohibition? Did it mean to disqualify the pre-emptor who had entered the land from selling it at all until he had obtained his patent, or did the disability extend only to the assignment of the pre-emption right? Looking at the language employed, as well as the policy of Congress on the subject, it would seem that the interdiction was intended to apply to the right secured by the act, and did not go further. This was the right to pre-empt a quarter section of land by settling upon and improving it, at the minimum price, no matter what its value might be when the time limited for perfecting the pre-emption expired. This right was valuable, and independently of the legislation of Congress assignable.*

* Thredgill *v.* Pintard, 12 Howard, 24.

Syllabus.

The object of Congress was attained when the pre-emptor went, with clean hands, to the land office and proved up his right, and paid the government for his land. Restriction upon the power of alienation after this would injure the pre-emptor, and could serve no important purpose of public policy. It is well known that patents do not issue in the usual course of business in the General Land Office until several years after the certificate of entry is given, and equally well known that nearly all the valuable lands in the new States, admitted since 1841, have been taken up under the pre-emption laws, and the right to sell them freely exercised after the claim was proved up, the land paid for, and the certificate of entry received. In view of these facts we cannot suppose, in the absence of an express declaration to that effect, that Congress intended to tie up these lands in the hands of the original owners, until the government should choose to issue the patent.

If it had been the purpose of Congress to attain the object contended for, it would have declared the lands themselves unalienable until the patent was granted. Instead of this, the legislation was directed against the assignment or transfer of the right secured by the act, which was the right of pre-emption, leaving the pre-emptor free to sell his land after the entry, if at that time he was, in good faith, the owner of the land, and had done nothing inconsistent with the provisions of the law on the subject.

JUDGMENT AFFIRMED.

PENDLETON COUNTY *v.* AMY.

1. On suit upon the coupons of railroad bonds payable, both bonds and coupons, by their terms, to the bearer—the declaration alleging the plaintiff to be owner, holder, and bearer of the coupons—a plea that the plaintiff was not, either at the time when the declaration or when the plea was filed, the owner, holder, or bearer, is a traverse of a material allegation of the declaration, and though faulty as argumentative, must, on *general* demurrer, be held good.