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Statement of the case.

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time before the first settler makes his declaration, shall have the better right. As Towsley's settlement and possession were continuous, and as his declaration was made before Johnson or any one else asserted claim to the land or made a settlement, we think his right was not barred by that section, under a sound construction of its meaning.

We are of opinion that the decree of the Supreme Court of Nebraska must be

AFFIRMED.

Mr. Justice CLIFFORD, dissenting:

I dissent from the judgment of the court in this case, upon the ground that the case is controlled by the act of Congress which provides that the decision of the Commissioner of the General Land Office shall be final unless an appeal is taken to the Secretary of the Interior. In my judgment the decree of the commissioner is final if no appeal is taken, and in case of appeal that the decision of the appellate tribunal created by the act of Congress is equally final and conclusive, except in cases of fraud or mistake not known at the time of the investigation by the land department.

Mr. Justice DAVIS took no part in the decision of this or the next case, being interested in the question involved.

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NOTE.

At the same time with the preceding case was adjudged another from the same court with it, to wit, the case of

SAMSON v. SMILEY.

The case of *Johnson v. Towsley*, held applicable although no patent certificate was issued to the claimant who showed the better right of pre-emption; the general principle being laid down that when a party is deprived of his right of pre-emption otherwise perfect, by a mistaken construction of the act of Congress by the land department, equity will relieve.

IN this case the controversy had been between one Samson and a certain Smiley, and the register and receiver had decided in favor of Smiley. Samson accordingly brought the case

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Syllabus.

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here. The case differed, as this court considered, in no respect from the case just decided, but one, which was that when the register and receiver decided in favor of Smiley against Samson, in the contest for the right of pre-emption to the land, they did not give him a patent certificate as they did to Towsley. The reason for this seemed to be that the contest between him and Samson was prosecuted immediately from the register and receiver's decision to the commissioner, and from the commissioner's decision affirming that of the register and receiver, to the secretary, so that there was no period, until the final decision of the latter, when either party could have been permitted to make the entry; but the record showed that, on a full and thorough investigation, all the officers of the land department decided that Smiley had established his right of pre-emption, and the secretary overruled this on the sole ground that he had filed a declaratory statement for another tract of land.

After argument by *Mr. Trumbull, for Samson et al., plaintiffs in error, and by Messrs. M. H. Carpenter, J. M. Woolworth, and A. J. Poppleton, contra*, the judgment of the court was delivered by Mr. Justice MILLER, to the effect that the land in question, having never been subject to private entry, the construction of the statute made by the secretary was erroneous, and operated to deprive Smiley of his right, otherwise perfect, to the land, and to vest the legal title, which he ought to have received, in Samson. The case came, therefore, as the court considered, within the principle just decided in *Towsley v. Johnson*, and the judgment of the Supreme Court of Nebraska was accordingly

AFFIRMED.

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GIBSON v. CHOUTEAU.

1. Statutes of limitation of a State do not apply to the State itself, unless it is expressly designated, or the mischiefs to be remedied are of such a nature that it must necessarily be included; and they do not apply to the United States.
2. The power of Congress in the disposal of the public domain cannot be interfered with, or its exercise embarrassed by any State legislation; nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition.