

ROGER L. MOREHART

IBLA 71-314

Decided October 26, 1971

School Lands: Indemnity Selections -- State Selections -- Exchanges of Land: Forest Exchanges

Where a State has received title to a school indemnity selection, the base land for which the indemnity is taken remains in federal ownership and where, after the State has received such indemnity land, it issues an instrument of conveyance for the base land to private party A, who conveys it to B, who conveys it to the United States as base for a forest lieu selection, which is satisfied, and thereafter the United States issues an indemnity clear list to the State for the school land in place to validate the State's purported conveyance to A, the title to the school land in place inures to the United States under the doctrine of after-acquired title.

Conveyances: Generally -- Conveyances: Interest Conveyed

A federal grant of land to a State for the purpose of validating the State's purported conveyance of such land to a third party does not vitiate federal ownership of the land where the United States has received a deed to the land from the assignee of the State's grantee. Under California law, where a person purports to convey the fee simple to certain land and subsequently acquires title to the land so conveyed, the after-acquired estate inures to the benefit of the original grantee or his successors in interest.

Public Lands: Generally

Lands conveyed to the United States under the Act of June 4, 1897, 30 Stat. 11, 36, as a basis for a forest lieu selection which is consummated, are public lands of the United States.

Public Sales: Generally -- Public Sales: Applications

Where a public sale application is rejected on the basis that the land has been conveyed out of federal ownership, and it is found that the land is public land, the application will be remanded for further appropriate consideration.

IBLA 71-314 : R 2195

ROGER L. MOREHART

: Public sale application rejected

: Reversed and remanded

DECISION

Roger L. Morehart has appealed from the decision of the Riverside land office dated May 10, 1971, which rejected his public sale application.

The decision was based on the following:

On October 10, 1916, the State of California selected lots 1 and 2 of Sec. 16, T. 11 N., R. 29 W., SBM in State Indemnity Selection San Francisco 09838. The selection was approved December 17, 1920 by Clear List No. 86 without a reservation of any minerals to the United States. Accordingly, the land sought in your petition-application is no longer under the Jurisdiction [sic] of the Bureau of Land Management and the petition-application is rejected.

A letter in response to our inquiry from the Title Officer of the California State Lands Division recites in part as follows:

The records of this office show that the State of California was indemnified for its entitlement in the subject Section 16 as follows:

<u>Acres</u>	<u>Clear List</u>	<u>Approval Date</u>
160.00	25 SF	3/24/1873
280.00	28 SF	11/12/1873
23.67	48 SF	11/16/1882
<u>139.19</u>	54 SF	11/7/1891
602.86		
- <u>320.00</u>	State's entitlement	
282.86	Overcertification	

The overcertification of indemnity acquired by Clear Lists approved AFTER MARCH 1, 1877, totalling 162.86 acres, was satisfied by issuance of State patent to the United States on December 7, 1909.

The overcertification of indemnity acquired by Clear Lists approved PRIOR TO MARCH 1, 1877, totalling 120 acres, was satisfied by cash payment. Controller's Warrant No. 5606 was transmitted to the General Land Office, Washington, D.C. with the State Surveyor General's letter of December 29, 1913.

The above-mentioned patent and cash payment reduced the State's acquisition [sic] of indemnity to 320 acres of land elsewhere within the State. This was the State's actual entitlement.

More specifically, the State was indemnified by Clear List No. 25, San Francisco Land District, approved March 24, 1873, for the SE 1/4 1/ of the unsurveyed Section 16. After approval of the United States plat of survey on May 8, 1885, the State apparently overlooked the fact that it had previously relinquished its right to any portion of the SE 1/4 and processed the application of George Black to purchase Lots 1 and 2, issuing a patent therefor on March 2, 1903.

When the State selected Lots 1 and 2 of Section 16, T. 11 N., R. 29 W., S.B.M. and received title thereto by Clear List No. 86, San Francisco Land District, approved December 17, 1920, our interest had apparently been conveyed to our patentee, George Black. According to information provided this office by Mr. Morehart's attorney, Mr. Black had conveyed Lots 1 and 2 to C. W. Armstrong who in

1/ Lots 1 and 2 lie in the SE 1/4 sec. 16, for which a school indemnity selection would lie if the base land did not vest in the State. 43 U.S.C. §§ 851, 852 (1970).

turn exchanged his interest with the United States for land in Section 34, T. 5 N., R. 96 W., Sixth Principal Meridian, Colorado. 2/

The file relating to Clear List No. 86 of December 17, 1920, which purportedly vested title to lots 1 and 2 (the lands in issue) in the State of California states in part as follows:

[T]he selections were made in accordance with the pursuant to a basis of adjustment agreed upon and adopted by officials of the state and of the Land Department of the United States on June 16, 1911 and letters G of this office dated May 3, 1912 and August 13, 1913, for the benefit of the transferees of the State and to compensate the United States for lands certified to the State in excess of the quantity to which it was entitled on account of the sections or portions thereof selected in the foregoing list.

Thus it is apparent that the purported conveyance was to protect the title given by the State of California to its grantees.

As shown above, the State in 1873 had already received indemnity for the lands in issue. It thereby abandoned its claim to the school land in place. See Riggio v. McNeely, 135 La. 391, 65 So. 552 (1914).

In essence the case involves the following facts: The State of California received a quid pro quo for the base lands in 1873. In 1903 it inadvertently conveyed such base lands to Black, who conveyed them to Armstrong, who in turn conveyed them to the United States. In 1920 the United States issued a clear list to the State of California for such lands, inter alia, to make good the grant to Black. This raises the question of to whose benefit the after-acquired title of the State of California inures.

2/ This is confirmed by the official records of the Bureau of Land Management. Armstrong made lieu selection no. 8142, for which patent no. 108615 issued on February 10, 1910, under serial Glenwood 0631. Armstrong had conveyed the lands in issue to the United States in 1903.

In Barberi v. Rothchild, 7 Cal. 2d 537, 61 P.2d 760 (1936), the court stated:

In Clark v. Baker, 14 Cal. 612, 627-631, 76 Am. Dec. 449, this court reviewed the early cases adopting the common-law rule that after-acquired title did not inure to the benefit of the mortgagee and therein expressly rejected that rule because of the provisions of sections 33 and 36 of Conveyance Act. (Stats. 1850, p. 249). Section 33 of that act provided that: 'If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple absolute,' and shall subsequently acquire the full legal estate, that shall inure to the benefit of the original grantee. Section 36 defined a conveyance as embracing 'every instrument in writing by which any real estate or interest in real estate is created, aliened, mortgaged, or assigned, except wills * * *.'

Since the adoption of the Civil Code, section 1106 has read: 'Subsequently acquired title passes by operation of law. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.' Section 1215 has defined 'conveyance' to embrace every instrument in writing 'by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills.' The difference in the language used in the Conveyance Act and that used in section 1106 of the Civil Code is that the former relates to the one who 'shall convey any real estate' and the latter to one who 'purports by proper instrument to grant.' Though both statutes add the words 'in fee simple,' it was said in the Clark Case that this did not affect the plain purpose of the statute which was 'to provide that the subsequently-acquired estate shall be as completely covered by the instrument, whether conveyance or mortgage, as if originally possessed by the grantor or mortgagor.' (p. 761)

See Crane v. Salmon, 41 C. 63 (1871). Cf. Watkins v. Lynch, 71 C. 21, 11 P. 808 (1886); People v. Jackson, 62 C. 548 (1881).

Thus it is clear that under California law after-acquired title by a purported grantor inures to the benefit of his purported grantee. ^{3/} Cf. Daniell v. Sherrill, 48 So. 2d 736 (Fla. 1950); Annot., 23 A.L.R.2d 1423 (1952); Lobean v. Trustees of Internal Improvement Fund, 118 So. 2d 226 (Fla. 1960); Martin v. United States, 270 F.2d 65 (4th Cir. 1959); Annots., 58 A.L.R. 345 (1929) and 144 A.L.R. 544 (1943); Elizabeth M. Jones (On Rehearing), 52 L.D. 411 (1928).

^{3/} The rationale for the rule is supported by Van Renssalaer v. Kearney, 18 U.S. (11 How.) 631, 643-644 (1850) as follows:

"The principle deducible from these authorities seems to be, that, whatever may be the form or nature of the conveyance used to pass real property, if the grantor sets forth on the face of the instrument, by way of recital or averment, that he is seised or possessed of a particular estate in the premises, and which estate the deed purports to convey; or, what is the same thing, if the seisin or possession of a particular estate is affirmed in the deed, either in express terms or by necessary implication, the grantor and all persons in privity with him shall be estopped from ever afterwards denying that he was so seised and possessed at the time he made the conveyance. The estoppel works upon the estate, and binds an after-acquired title as between parties and privies.

"The reason is, that the estate thus affirmed to be in the party at the time of the conveyance must necessarily have influenced the grantee in making the purchase, and hence the grantor and those in privity with him, in good faith and fair dealing, should be forever thereafter precluded from gainsaying it.

"The doctrine is founded, when properly applied, upon the highest principles of morality, and recommends itself to the common sense and justice of every one. And although it debars the truth in the particular case, and therefore is not unfrequently characterized as odious, and not to be favored, still it should be remembered that it debars it only in the case where its utterance would convict the party of a previous falsehood; would be the denial of a previous affirmation upon the faith of which persons had dealt, and pledged their credit or expended their money.

"It is a doctrine, therefore, when properly understood and applied, that concludes the truth in order to prevent fraud and falsehood, and imposes silence on a party only when in conscience and honesty he should not be allowed to speak."

Accordingly, the patent given by the State of California to Black inures to the benefit of his ultimate assignee, i.e., the United States. The lands are, therefore, federally owned. ^{4/} The records show that they are not within any reservation. Since the lands were conveyed to the United States as base for a forest lieu selection, which was consummated, they are public lands. Cf. Foster Cline et al., Colorado 014505 (August 7, 1957). The records further indicate that the lands constitute an isolated tract and are therefore subject to sale under 43 U.S.C. § 1171 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision below is reversed and the case is remanded to the Bureau of Land Management for further appropriate consideration.

^{4/} It is noteworthy that the Bureau of Land Management apparently considered the land to be federally owned. Despite the 1920 clear list which did not reserve minerals to the United States, oil and gas lease Sacramento 042442 (later designated LA 088806) was issued for the lands effective June 1, 1952. Similarly, oil and gas lease LA 0134579 was issued for the lands as of November 1, 1955.

Frederick Fishman, Member

We concur:

Francis E. Mayhue, Member

Newton Frishberg, Chairman.

