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Fraud: Public Lands; Bona Fide Purchasers

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for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit for continuing their kind." The court points out that the principle that sustains compulsory vaccination is broad enough to cover the cutting of the Fallopian tubes.[7] And they say that three generations of imbeciles are enough.

Thus we can draw the rule that a state law authorizing sterilization of mental defectives under careful safeguards are valid under the Fourteenth Amendment of the United States Constitution, and do not deny due process and equal protection of the law.

There apparently is no such legislation in Wisconsin; at least, the writer has not been able to find any relative statute or law within the confines of the Wisconsin Statutes.

AL WATSON, '28

Fraud: Public Lands; Bona Fide Purchasers.

The late case of *Independent Coal and Coke Company* v. *United States,*[1] was in the nature of an ancillary suit brought by the government, in aid of a former, for the restoration to the government of some 5,500 acres of public lands located in Utah, title to which was procured by a fraud perpetrated upon the land officers of the United States. The government had, in 1894, granted these lands to the State of Utah to aid in the establishment of an agricultural college, certain schools and asylums, and for other purposes.

The lands were later purchased from the state, upon application and agreements, supported by affidavits that such lands were non-mineral and did not contain deposits of coal. In January, 1907, the United States brought the first suit against the purchasers of the lands, and founded its action upon the charge that the procurement of the lands was had by the employment of fraud and misrepresentation, as the purchasers had, at the time of the certification, been fully cognizant of the presence of coal deposits on the lands. The litigation resulted in a judgment for the government. *Milner* v. *United States*[2] and *United States* v. *Sweet.*[3]

A decree was subsequently entered by the district court declaring that the United States "is the owner" and "entitled to the possession" of the lands in question, and perpetually enjoining the defendants from setting up a claim to such premises. This declaration was firmly established by a later affirmation by the Supreme Court.

The resultant holding of the second suit was to the effect that one acquiring title to public land through the title of a state subsequent to the certification by the United States to the state takes subject to the equities of the United States existing at the time of the certification. Furthermore, intervention by the state, as a party, was deemed unnecessary, even though an agent of the government; upholding *Williams* v. *United States,*[4] wherein this court said, "The state was

[7] *Jacobson* v. *Massachusetts,* 197 U.S. 11; 25 S. Ct. 358; 49 L. Ed. 643; 3 Ann. Cases 765.

[1] 47 Sup. Ct. Rep. 714, 71 Law. Ed. 758.

[2] 143 C.C.A. 13, 228 Fed. 431, 439.

[3] 245 U.S. 563, 38 Sup. Ct. Rep. 193.

[4] 138 U.S. 514, 34 Law. Ed. 1026, 11 Sup. Ct. Rep. 457.

not an intentional party to any wrong on the general government. It is the dignified and proper course to be pursued by a state to leave to the determination of the courts the question of right between the government and the alleged wrongdoer, and conform its subsequent action to that determination."

In consideration of this subject it is not out of place to observe that recognized authorities have consistently maintained that a fraudulent procurer of a conveyance may not defeat the defrauded grantor or protect himself from the consequences of his fraud by having the title conveyed to an innocent third person. Numerous authorities sustain the foregoing principle, the leading of which are *Moore* v. *Crawford,*[5] and *McDaniel* v. *Sprick.*[6]

The Supreme Court of Wisconsin has adjudicated that such fraud will prevent a re-acquisition from a succeeding bona fide holder except when such obviously fraudulent taint continues to or reattaches to the transaction on the basis of equitable principles which obligate restitution. In *Troy City Bank* v. *Wilcox,*[7] the foremost Wisconsin authority on this principle, it is conclusively stated that a bona fide purchase of an estate, for a valuable consideration, purges away the equity from the estate, in the hands of all persons who may derive title under it, *with the exception* of the original party, whose conscience stands bound by the violation of his trust and meditated fraud. If such estate becomes revested in him, the original equity will re-attach to it in his hands.

Likewise, a purchaser with notice of an outstanding equity, despite a transfer to an innocent purchaser for value, may not on a later repurchase hold free of such equity. Of the many authorities adhering to this doctrine, which is national in scope, the exceptionally well reasoned case of *Clark* v. *McNeal,*[8] is a valuable reference.

Thus, from the learned opinion of Mr. Justice Stone in *Independent Coal and Coke Company* v. *United States, supra,* we can deduce with great clarity, that the obligation of restitution, having its inception in a fraudulent transaction, persists as to every interest afterwards acquired by a tainted contract, or enjoyed as the fruit of such fraud. The decree in this litigation was based firmly on recognized equitable holdings, and the opinion subtly instills the doctrine that the court will deal firmly and without equivocation with those who perpetrate fraud upon the states and their public lands granted by the national government.

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Insurance: Automobile liability insurance; Direct liability of Insurer.

In *Ducommun* v. *Strong et al,*[1] the Supreme Court of Wisconsin announced a proposition which has given rise to much apprehension among insurance companies doing business in this state. It will also affect the

[5] 130 U.S. 122, 128; 32 Law. Ed. 878, 880; 9 Sup Ct. Rep. 449.
[6] 269 Mo. 424, 249 S.W. 611.
[7] 24 Wis. 671.
[8] 114 N.Y. 287, 11 Am. St. Rep. 638, 21 N.E. 405.
[1] 214 N.W. 616.