SUPREME COURT DECISION—THE PRATT-YOUNG CASE.

Supreme Court of the Territory of Utah, June Term, A.D. 1876. Sarah M. Pratt, respondent, vs. Brigham Young, appellant; on appeal from the Third District Court.

Opinion by M. Schaeffer, Chief Justice.

This proceeding was originally instituted in the Probate Court of Salt Lake County, under the act of the Legislature of the Territory of Utah, approved Feb. 17, 1869, entitled, "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress, both parties, appellant and respondent, claiming title to the half lot in controversy by virtue of the act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon the public lands."

In the Probate Court it was adjudged that the appellant was entitled to said half lot. From this judgment an appeal was taken to the Third District Court of this Territory, by the respondent, and on the trial in such District Court the judgment of the Probate Court was reversed and for nought declared, and a judgment rendered to the effect that the respondent, Sarah M. Pratt, was justly entitled to said half lot.

Appelant now brings this cause here by appeal from the judgment of the District Court, and assigns for errors:

First. That the Court erred in overruling respondent's motion to dismiss the appeal. We think the appeal from the Probate Court was properly taken, and there was no error in overruling the motion to dismiss.

The second and main error assigned is, that "this court erred in its findings and judgment under the evidence," by which we understand the attorneys of the appellant to mean, that the evidence does not support the findings, and that the judgment is against the law. Section 2,387 of the Revised Statutes of the United States, which is part of the act of Congress approved March 2nd, 1867, provides that "whenever any portion of the public lands have been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of the occupants thereof according to their respective interests, the execution of which trust, as to the disposal of the lots in such town and the proceeds of the sale thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated." Under this act of Congress the lot in question was entered by the Mayor of Salt Lake city. He is, therefore, the trustee who holds the legal title in trust for the *cestui que trust;* i. e., he holds the lot "for the several use and benefit of the occupants thereof, according to their respective interests."

In this particular case two things must concur to give the right to the title to the lot in controversy, to either of the contestants. First, there must have been a town or city, with resident occupants, on the public lands, duly incorporated, to secure the title from the National Government. This is conceded, and therefore, the legal title is in the Mayor, as the representative of such town or city. If there is no proper *ces tui que trust*, as provided by the aforesaid act of Congress, then the Mayor holds the title for the benefit of the corporation; but if there be an actual occupant of such lot at the time of the entry by the mayor, then he, the occupant, becomes the legal *ces tui que trust*, and the Mayor holds the legal title for his benefit.

There must therefore be, *secondly*, an actual *bona fide* occupancy by the individual who is entitled to such benefit, and when there is more than one of such occupants, then the title is held in trust for the use and benefit of such occupants, according to their respective interests. Whilst this act of Congress confers certain rights and privileges upon the aggregate inhabitants of the town or city thus located upon public lands, it is nevertheless apparent that the primary object was to secure individual rights to the respective inhabitants of the towns and cities who were also the respective occupants of the several lots or parcels of land claimed by them.

The power conferred by this act of Congress upon the Territorial Legislature is to make regulations for the execution of the trust. It has no power to interfere with or to modify the rights conferred by the act of Congress, and if the Territorial Legislature, by its act approved February 17, 1869, entitled "An Act prescribing Rules and Regulations for the execution of the Trust, arising under an act of Congress," undertook to confer rights upon persons, associations, or corporations, other than those mentioned in the act of Congress, such attempt to confer such rights is simply void. We can readily conceive of a case where an individual was prior to the entry by the Mayor, in the actual *bona fide* occupancy of a lot, and where he was wrongfully ousted by an intruder or trespasser before such entry was made, in which case we think the original *bona fide* occupant should receive the legal title thereto, notwithstanding the wrongful occupancy by the other at the time of the entry; but we do not understand that the act of Congress in any case confers the right to the title of any lot upon any individual who was never the personal occupant of such lot. But suppose that the Territorial Legislature by its act approved February 17th, 1869, conferred the right to the title of the half lot in controversy upon persons claiming to be the rightful owner of possession, occupant or occupants, or to be entitled to the occupancy or possession of such lot, and supposing that such legislation is in harmony with or justified by the act of Congress above referred to—which we only admit for the purpose of the argument—what are the respective rights of the parties herein to the half lot in controversy? It is clearly shown by the evidence that the respondent, Sarah M. Pratt, occupied this lot from 1854 to 1861, and that during that time she made valuable improvements thereon, and that in 1861, she with her husband and family went south in this Territory and remained there until 1867; that during the time she was south as aforesaid, the said lot was occupied by some of the family of the appellant, by virtue of a purchase by appellant from the husband of respondent.

That on the 12th of March, 1868, she, the respondent, with her children, with and by the consent of appellant, resumed the actual possession of the said half lot, made valuable improvements thereon and continued to occupy the same from thence hitherto.

That Orson Pratt, the husband of respondent, has not lived with respondent and her family since March 12, 1868, and that he has five other families with some of whom he is supposed to have resided, and that the respondent and her children have supported themselves since 1868 with very little, if any aid, from the said Orson Pratt. It also appears from the evidence that the possession of the said half lot was freely and voluntarily given to respondent in 1868 without any contract for rent or any understanding or agreement, expressed or implied, that she should become or be the tenant of appellant or any one else, at will or otherwise, even if that were possible under the peculiar circumstances of the case, which we think is not the fact. Whatever interest the appellant had in the premises on or before March 12th, 1868, vanished upon the abandonment or surrender of the possession to the respondent, and she being, for the purposes of this proceeding, the head of her family and actually occupying the said half lot as the residence and home of herself and family from the 12th of March, 1868, until long after the entry made by the Mayor of Salt Lake City, she is in our opinion entitled to a deed for the same. The admission or rejection of the evidence which the Court below declined to consider, does not affect the status of the case, and if it had been admitted as competent by the District Court, and if the Court had given it all the force which could reasonably be claimed for it, the appellant would not, in our opinion, be entitled to the half lot in controversy.

The judgment of the Court below must therefore be affirmed.

It is ordered and adjudged and decreed that the findings and the judgment of the Third District Court, rendered in this cause, be, and the same are hereby approved and affirmed, and that the appellant, Brigham Young, pay the costs of this court.

MARRIED.

In this city, July 10th, 1876, by President D. H. Wells, Miss JANE E. SKELTON, of Alma City, to Mr. FRANKLIN I. DUNFORD, youngest son of Mr. George Dunford, Esq., of this city.

A guardian angel o'er his life presiding,
Doubling his pleasure, and his care dividing.

In this city, July 10, 1876, Mr. WILLARD ERASTUS WEIHE and Miss LARINDA M. PRATT, daughter of Mr. Orson Pratt, Sen.

But happy they! the happiest of their kind;
Whom gentle stars unite, and in one fate
Their hearts, their fortunes, and their beings blend.

ESTRAY NOTICE.

I HAVE in my possession the following described animals:

One bay MARE, 2 years old, branded on left thigh and left shoulder, both illegible.

One brown MARE, 9 or 10 years old, branded on left shoulder X vented, also on right shoulder W.

One sorrel MARE, 6 or 7 years old, branded W on right shoulder, has a colt with her.

One sorrel yearling MARE, branded on left shoulder and thigh, both illegible.

One white and yellow speckled HEIFER, 2 years old, branded on right shoulder H D, under nick in right ear.

One red HEIFER, 2 years old, white in face and under belly, branded on left hip T H, on left ribs H. two slits in left ear and the upper piece cut off.

One red yearling HEIFER, white face and under belly, no marks or brands visible.

If said animals are not claimed before July the 22d, 1876, they will be sold at public auction to the highest responsible bidder. Sale at 10 o'clock a.m.

SAMUEL BATEMAN,
District Poundkeeper.

Gardner's Mill, West Jordan, July 11, 1876.