

Den Vs. Association of New Jersey Company

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 56 U.S. 426

Appellant : Den

Respondent : Association of New Jersey Company

Judgement :

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Den v. Association of New Jersey Company

56 U.S. (15 How.) 426

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEW JERSEY

SYLLABUS

The soil under the public navigable waters of East New Jersey belongs to the state and not to the proprietors. This Court so decided in the case of [Martin v. Waddell](#),

16 Pet. 367, and the principle covers a case where land has been reclaimed from the water under an act of the legislature.

This action of ejectment was brought to recover a tract of land at Paulus Hook, now Jersey City, on the Jersey shore, formerly under the tidewaters of the Hudson River, and below low water mark. The *locus in quo* has been reclaimed from the water by artificial means, and was in the possession of the Jersey Associates, and occupied by them as building lots.

Upon the trial in the circuit court, it was ruled that the plaintiff had failed to make out a title, and the jury found for the defendants.

The plaintiff excepted to the opinion of the court, and the cause came up on a writ of error.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This is an action of ejectment brought by the plaintiff in error against the defendants in the Circuit Court for the District of New Jersey to recover a parcel of land situate in Jersey City. The land in question has been reclaimed from the water by the defendants under the authority of the legislature, and is now in their possession, and occupied by them as building lots.

The plaintiff claims the premises under sundry mesne conveyances from the Proprietors of East New Jersey, and the title of the proprietors is the point in question. And they claim that by virtue of the various grants by which they became proprietors of East New Jersey, the fee of the soil under the navigable waters of that part of the state was conveyed to them as private property subject to the public use, and as that use has ceased in the premises in question, they are entitled to their exclusive possession.

It is not necessary to state particularly the charters and grants under which they claim. They are all set out in the special verdict in the case of [*Martin v. Waddell*](#),

reported in 16 Pet. 367. The title claimed on behalf of the proprietors in that case was the same with the title upon which the plaintiff now relies. And upon very full argument and consideration in the case referred to, the Court was of opinion that the soil under the public navigable waters of East New Jersey belonged to the state, and not to the proprietors, and upon that ground gave judgment for the defendant. The decision in that case must govern this.

The counsel for the plaintiff, however, endeavor to distinguish the case before us from the former one upon the ground that nothing but the right of fishery was decided in *Martin v. Waddell*, and not the right to the soil. But they would seem to have overlooked the circumstance that it was an action of ejectment for the land covered with water. It was not an action for disturbing the plaintiff in a right of fishery, but an action to recover possession of the soil itself. And in giving judgment for the defendant the court necessarily decided upon the title to the soil.

It is true the defendant claimed nothing more than the exclusive right of planting and growing oysters on the soil for which the ejectment was brought. The special verdict found that he was in possession under a law of New Jersey which gave him the exclusive privilege of planting and growing oysters on the premises in question upon the payment of a certain rent to the state. The principle question therefore in dispute between the parties in that suit, and indeed the only one of any value, was the oyster fishery. But the right to the fishery depended on the right to the soil upon which the oysters were planted and grown,

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and if the plaintiff could have shown that the proprietors under whom he claimed were legally entitled to it, the judgment of the court must have been in his favor.

Nor do we see anything in the opinion delivered on that occasion in relation to the rights of fishery further than they contributed to illustrate the character and objects of the charter to the Duke of York, and to show that the soil, under public and navigable waters, was granted to him, not as private property, to be parceled out and sold for his own personal emolument; but as a part of the *jura regalia* with

which he was clothed, and as such was surrendered by the proprietors to the English Crown when they relinquished the powers of government, and consequently belonged to the State of New Jersey when it became an independent sovereignty.

There being nothing in the title now claimed for the proprietors to distinguish this case from that of *Martin v. Waddell*, it is not necessary to examine the other and further grounds of defense taken by the defendants.

The judgment of the circuit court must be

Affirmed with costs.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of New Jersey and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.