

Jones Vs. Soulard

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Court : US Supreme Court

Decided On : 1860

Appeal No. : 65 U.S. 41

Appellant : Jones

Respondent : Soulard

Judgement :

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Jones v. Soulard

65 U.S. (24 How.) 41

ERROR FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF MISSOURI

SYLLABUS

The eastern line of the City of St. Louis, as it was incorporated in 1809, is as follows: from the Sugar loaf due east to the Mississippi; "from thence, by the Mississippi, to the place first mentioned."

This last call made the city a riparian proprietor upon the Mississippi, and, as such, it was entitled to all accretions as far out as the middle thread of the stream.

This rule, so well established as to fresh water rivers generally, is not varied by the circumstance that the Mississippi, at St. Louis, is a great and public watercourse. The rule with respect to tidewater rivers, where the tide ebbs and flows, does not apply to the present case.

Therefore, Duncan's Island, upon which was the land in dispute, and which became connected with the shore as fast land, was included in a grant made by Congress in 1812 to the Town of St. Louis for the public schools, and it neither passed to the State of Missouri by her admission into the Union in 1820 nor by the act of Congress passed in 1851.

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This was an action of ejectment brought by Soulard, a citizen of Illinois, against Jones, a citizen of Missouri, to recover a parcel of ground lying in the City of St. Louis, in Missouri, described as the northern half of United States survey four hundred and four of the St. Louis series of school lands. In finding a verdict for the plaintiff, the jury described the property as so much of the northern half of the United States survey 404 of the St. Louis series of school lands as is contained in the St. Louis city block 873.

In the course of the trial below, it was admitted that the plaintiff had in him all the title to the land that was vested in the schools under the acts and proceedings which will be presently mentioned, and that the defendant, who was in possession, had in him all the title that was vested in the City of St. Louis and Robert Duncan under his preemption entry.

As to the description of the property, it was further admitted that on the 13th of June, 1812, there was a naked sand bar in the Mississippi River near St. Louis which was at that time surrounded on all sides by fresh water, navigable in fact for the craft usually navigating said river, but many miles above the influence of the

ebb and flow of the tide, and was covered by ordinary high water when the river was within its banks, and that it continued to be such a bar, and unfit for cultivation, until after Missouri was admitted into the Union; that the premises in dispute were part of an island called Duncan's Island, which was formed from said sand bar, after Missouri was admitted into the Union; and that they lie, and always did lie, west of the main channel of the Mississippi River, and within township 45 north, range 7 east of the 5th principal meridian, and are also within the assignment to the schools, and the outboundary directed to be run by the 1st section of the Act of 13 June, 1812, provided that that boundary is to be construed as extending to the middle of the main channel of the Mississippi River; that said premises are also within Duncan's preemption entry aforesaid; and that the island is now connected with the Missouri shore by the filling up of the

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intervening channel, brought about by dikes constructed by the City of St. Louis since the year 1840.

It was proved that the premises in the possession of said defendant were worth three thousand dollars.

As the plaintiff below claimed under the schools, and the principal question in the case was, whether or not the land assigned to the schools extended into the river so as to make the middle of the channel the eastern boundary thereof, it is necessary to state the title more particularly.

In 1809, the Town of St. Louis was incorporated by an order of the Court of Common Pleas for the District of Louisiana. Its eastern boundary was the River Mississippi.

On the 13th of June, 1812, Congress passed an act confirming the titles of the inhabitants of out-lots, village lots &c.;, which were to be surveyed; and enacting, further

"That all town or village lots, out-lots, or common field lots, included in such surveys, which are not rightfully owned or claimed by any private individuals, or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes shall be and the same are hereby reserved for the support of schools in the respective towns or villages aforesaid."

As the property in question was not rightfully owned or claimed by any private individual, or held as commons, or reserved by the President, of course it fell within the reserving clause, provided the legal boundaries included it.

On the 26th May, 1824, an act was passed directing the Surveyor General to survey, designate, and set apart the vacant lots for the support of schools mentioned in the act of 1812. This survey was not executed until 1856, and the report of the Surveyor General stated that the property in question was within the limits of the Town of St. Louis as it stood incorporated on the 13th of June, 1812.

In 1831, Congress passed an act on the 27th of January relinquishing all their right, title, and interest, in and to the town and village lots, out-lots, and common field lots, in the State of Missouri, reserved for the support of schools, to be sold and disposed of, or regulated for the above purposes, in

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such manner as may be directed by the legislature of said state.

In execution of the above power, the Legislature of Missouri passed an act on the 13th of February, 1833, creating a school corporation. By it all free persons residing in St. Louis were erected into a corporation, who were directed to take possession of all the lots which had been reserved for school purposes, the title to which was vested in the corporation.

It has been before stated that it was admitted, on the trial below, that all this title was vested in Soulard, the plaintiff in the ejectment.

The defendant claimed title under the following heads:

1. An entry made by Robert Duncan, in 1835, including the premises in controversy, but which had been cancelled by the Commissioner of the General Land Office, as having been made in violation of law.

2. Under an act of the Legislature of Missouri, passed in 1851, transferring the title of the state to two islands in the Mississippi River, in the County of St. Louis -- one called and known as Duncan's Island, on which are the premises in controversy, situated &c.; to the City of St. Louis. The defendant below had, in himself, the whole of this title.

After the evidence was concluded upon both sides, the circuit court gave to the jury the following instructions, *viz*:

"The jury is instructed that if the land in controversy be within the congressional township 45 north, of range 7 east, west of the middle of the main channel of the Mississippi River, and bounded on the west by the United States survey number 1,333, then it is within the outboundary directed, by the 1st section of the Act of 13 June, 1812, to be run for St. Louis; and the assignment of the schools read in evidence, the deed of the schools to H. G., B. A., and J. G. Soulard, and the lease of the said H. G. and B. A. Soulard, taken in connection with the Acts of Congress of June 13, 1812, the Act of 26 May, 1824, and the Act of 27 January, 1831, and the Act of the 13 February, 1833, of the Legislature of Missouri, vest in the plaintiff the legal title to the northern half of the survey 404, and, if the defendants were in possession

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of said premises at the commencement of this suit, the jury must find for the plaintiff."

To the giving of which the defendant objected, but the court overruled the objection and gave the instruction, to which opinion the defendant then and there excepted. And thereupon the defendant moved the court for the following instructions, *viz*:

"If as early as the 13th of June, 1812, the land sued for was at low water only a naked bar in the Mississippi River, near St. Louis, surrounded on all sides by navigable water and covered at ordinary high water when the river was within its banks, and continued to be such a bar, unfit for cultivation, at the time Missouri became a sovereign state, then the plaintiff cannot recover upon the title he has shown in evidence."

Which the court refused to give, and to which opinion of the court the defendant then and there excepted.

Upon these two exceptions the case came up to this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

Soulard sued Jones to recover the northern part of a United

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states survey of land laid off for the St. Louis schools. The part sued for fronts the Mississippi, and includes a sand bar, formerly covered with water when the channel of the river was filled to a navigable stage. The land is included in the survey approved June 15, 1843, designating the school lands; and the controversy would be governed beyond dispute by the principles declared in the case of [Kissell v. St. Louis Public Schools](#), 18 How. 19, had this been fast land in 1812, when the grant to the schools was made. But it is insisted that the title to this accretion within the Mississippi River did not pass by the act of 1812, and remained in the United States till the State of Missouri became one of the states of the Union, in 1820, when the title vested in the state as a sovereign right to land lying below ordinary high water mark. And furthermore, that if the state did not take by force of her sovereign right, she acquired a good title to the land known as Duncan's Island by the act of Congress to reclaim swamp lands. These claims the state conveyed by a statute to the City of St. Louis, and that corporation conveyed them to Jones, the plaintiff in error.

Soulard claims under the corporation of the St. Louis schools. The school survey No. 404 contains 78 96/100ths acres, including the land in controversy.

The Town of St. Louis was incorporated in 1809 by the Common Pleas Court of St. Louis County, in conformity to an act of the territorial legislature passed in 1808, and the only contested question in the cause is whether the eastern line of the corporation extends to the middle thread of the Mississippi River or is limited to the bank of the channel. The calls for boundary in the charter are

"beginning at Antoine Roy's mill on the bank of the Mississippi; thence running sixty arpens west; thence south on said line of sixty arpens in the rear, until the same comes to the Barrieu Donoyer; thence due south until it comes to the Sugar Loaf; thence due east to the Mississippi; from thence by the Mississippi, to the place first mentioned."

The expression used in designating boundary on the closing line in the charter is as apt to confer riparian rights on the

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proprietor of the tract of seventy-nine acres as the call could well be unless the last call had been for the middle of the river.

Many authorities resting on adjudged cases have been adduced to us in the printed argument presented by the counsel of the defendant in error to show that from the days of Sir Matthew Hale to the present time, all grants of land bounded by fresh water rivers, where the expressions designating the waterline are general, confer the proprietorship on the grantee to the middle thread of the stream, and entitle him to the accretions.

We think this as a general rule too well settled, as part of the American and English law of real property, to be open to discussion; and the inquiry here is whether the rule applies to so great and public a watercourse as the Mississippi is, at the City of St. Louis? The land grant to which the accretion attached has nothing peculiar in it to form an exemption from the rule; it is an irregular piece of land, of

seventy-nine acres, found vacant by the Surveyor General, and surveyed by him as a school lot, in conformity to the act of 1812.

The doctrine that on rivers where the tide ebbs and flows, grants of land are bounded by ordinary high water mark, has no application in this case; nor does the size of the river alter the rule. To hold that it did, would be a dangerous tampering with riparian rights, involving litigation concerning the size of rivers as matter of fact, rather than proceeding on established principles of law.

1. We are of the opinion that the city charter of St. Louis of 1809 extends to the eastern boundary of the State of Missouri, in the middle of the River Mississippi. *Dovaston v. Payne*, 2 Smith's Leading Cases 225.

2. That Duncan's entry set up in defense in the court below is void, as this Court held in the case of [*Kissell v. the St. Louis Schools*](#), 18 How. 19.

3. That the school corporation held the land in dispute, with power to sell and convey the same in fee to the defendant in error, Soulard, in execution of their trust.

It is ordered that the judgment of the circuit court be affirmed.