Banks Vs. Ogden

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 57

Appellant : Banks

Respondent : Ogden

Judgement :

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69 U.S. (2 Wall.) 57

ERROR TO THE CIRCUIT COURT FOR

THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

1. A plat of an addition to a town, not executed, acknowledged, and recorded in conformity with the laws of Illinois, operates in that state as a dedication of the streets to public use, but not as a conveyance of the fee of the streets to the

municipal corporation.

2. A conveyance, by the proprietor of such an addition, of a block or lot bounded by a street, conveys the fee of the street to its center, subject to the public use.

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3. When a street of such an addition is bounded on one side by Lake Michigan, the owner of the block on the other side takes only to the center, while the fee of the half bounded by the lake remains in the proprietor, subject to the easement.

4. When the lake boundary so limits the street as to reduce it to less than half its regular width, the street so reduced must still be divided by its center line between the grantee of the lot bounded by it and the original proprietor.

5. Accretion by alluvion upon a street thus bounded will belong to the original proprietor, in whom, subject to the public easement, the fee of the half next the lake remains.

6. The limitation of the 8th section of the bankrupt act of 1841 does not apply to suits by assignees or their grantees for the recovery of real estate until after two years from the taking of adverse possession.

This was an ejectment brought to December Term 1859, in the Circuit Court for the Northern District of Illinois to recover a lot of ground, *A A* , formed by accretion on the western shore of Lake Michigan. The case was thus:

Kinzie, being owner in fee of a fractional section of land bounded on the east by the said lake and lying immediately north of the original Town of Chicago, made a subdivision of it in 1833, which he called Kinzie's Addition, and deposited a plat of it in the office of the county recorder, where it was recorded in February, 1834, though not in accordance with certain statutes of Illinois which, it was contended in the argument, give an effect to plats properly made, acknowledged, and recorded that changes the rule of the common law regarding the streets on which the lots are sold.

The north and south street of the subdivision nearest the lake was called Sand Street; the east and west street nearest the north line of the fraction was named Superior Street. The waters of the lake limited Sand Street on the north by an oblique line extending from a point on its eastern side, about a hundred feet below, to a point on its western side about a hundred feet above Superior Street, as indicated on the diagram opposite. The northeastern block of the subdivision, numbered 54, was bounded, on its eastern side, in part by Sand Street and in part by the lake. Sand Street therefore terminated in a small triangular piece of land,

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image:a

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b, c, d, between the lake and Block 54. This triangle was less than thirty-three feet wide at its lower or southern end, and diminished to a point at its northern extremity. Upon this triangle, distinctly shown by the plat, new land was formed in 1844-1845 -- the date must be observed -- *by accretion,* and extended eastwardly in the direction of the dotted lines more than two hundred feet. The question was to whom did this *new land* belong?

In 1842, Kinzie had been declared a bankrupt under the bankrupt act of 1841, and his whole property passed of course by operation of law to his assignee.

Under this title, the assignee claimed, subject to public use as a street, the eastern half of the triangle, and the newly formed land as accretion. Acting upon this claim, he sold, under petition and order of the district court, made in 1857, part of the accretion, being the land in controversy, to one Sutherland, who conveyed to Banks, plaintiff in the ejectment. Of course this newly formed land had not been included in the assignee's inventory of the bankrupt's effects.

On the other hand, Ogden, the defendant, deriving title by regular conveyance in 1833 from Kinzie, to that part of Block 54 to which the triangle was adjacent, conceived that the fee of the whole triangle, subject to the public use, passed to *him* with the land bounded by it. His theory was that Sand Street, which was sixty-six feet wide below its meeting with the lake, continued sixty-six feet wide to its northern termination, and that the whole triangle being everywhere less than thirty-three feet wide, was west of the middle line of the street, and therefore belonged to him as owner of the adjoining land. As the legal result of these propositions, he claimed the whole accretion as formed upon land of which he held the fee.

It is necessary here to state that the bankrupt act, under which Banks, the plaintiff, claimed, enacts, by its eighth section, that

"No suit at law or in equity shall in any case be maintained by or against the assignee of the bankrupt touching any property or rights of property of the bankrupt,

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transferable to or vested in him, in any court whatever unless the same be brought within two years of the declaration of bankruptcy, or after the cause of suit shall have first accrued."

At what date Ogden, the defendant, *went into possession did not appear.* The bankrupt act (10) also enacts that all proceedings in bankruptcy shall, if practicable, be brought to a close by the court within two years after a decree.

Upon this case, the court below instructed the jury that the law was for the defendant, and, judgment having been so entered after verdict, the case was now before the court on error.

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THE CHIEF JUSTICE delivered the opinion of the Court, and, after stating facts, proceeded as follows:

The rule governing additions made to land bounded by a river, lake, or sea has been much discussed and variously settled by usage and by positive law. Almost all jurists and legislators, however, both ancient and modern, have agreed that the owner of the land thus bounded is entitled to these additions. By some the rule has been vindicated on the principle of natural justice that he who sustains the burden of losses and of repairs imposed by the contiguity of waters ought to receive whatever benefits they may bring by accretion; by others, it is derived from the principle of public policy that it is the interest of the community that all land should have an owner, and most convenient that insensible additions to the shore should follow the title to the shore itself.

There is no question in this case that the accretion from Lake Michigan belongs to the proprietor of land bounded by the lake. The controversy turns on ownership.

In deciding this controversy, we derive to important aid from the statutes of Illinois referred to in the argument.

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The plat of Kinzie does not appear to have been executed, acknowledged, and recorded in conformity with either of them. [Footnote 1] It operated, therefore, only as a dedication, and the law applicable to dedications must control our judgment.

It is a familiar principle of that law that a grant of land bordering on a road or river carries the title to the center of the river or road unless the terms or circumstances of the grant indicate a limitation of its extent by the exterior lines. There is indeed a passage in one of the judgments of the Supreme Court of Illinois which, if taken literally, would exclude grantees of lots in towns and cities from any interest whatever in the streets beyond the common use. The court said: "In the case of a valid plat," that is, a plat duly executed, acknowledged, and recorded,

"the title to the ground set apart for public purposes is held by the corporation for the use and benefit of the public; in the case of a dedication by a different mode, the fee continues in the proprietor, burdened with the public easement. [Footnote

2]"

This rule would limit the grantee of Block 54 to the lines of the block, and he would take nothing in Sand Street, but the propositions quoted were not essential to the decision of the question before the court, and there are other cases [Footnote 3] which seem to warrant a belief that when the operation of an ordinary dedication shall come directly before that tribunal, it will not apply any other principle to its construction than that generally recognized.

We shall assume, therefore, that the owner of the southeast part of Block 54 was the owner of the adjacent part of Sand Street to its center. But adjacent to that part of the block, Sand Street had been reduced, as the plat clearly shows, to the small triangle already described, and it must follow that it was to the center line of the street thus reduced that the defendant acquired title. He took, subject to the public use, the westerly half of the triangle and no more.

But Kinzie was the original owner of the whole fractional

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section. He retained every part of which he did not divest himself by deed or dedication. By the dedication of Sand Street, he gave to the public the use and only the use of the land within the artificial and natural lines marked on the plat. By the conveyance of Block 54 west of the street, he conveyed the fee of Sand Street within those lines to its center. On the east side of the street, opposite that block, he conveyed nothing, for he had nothing to convey. The fee, therefore, of the eastern half of the triangle which there formed the street remained in him. In the words of the Supreme Court of Illinois, clearly just when applied to the land in question, "the fee continued in the proprietor, subject to the easement."

Upon Kinzie's bankruptcy, the fee of this strip of land passed to the assignee. It was about this time or shortly afterwards that the alluvion began to form upon it, and continued to increase until the commencement of the suit below. The title to the accretion thus made followed the title to the land, and vested in the assignee.

It is unnecessary to consider the effect of the accretion, under the dedication, upon the width of the street, for whatever that effect may have been, the fee of the east half and of the accretion beyond the true width, whatever that width was, remained constantly in Kinzie or the assignee. A part, therefore, of the bankrupt's estate remained unsold when the order of sale, under which the plaintiff in error claims, was made by the district court, and the only remaining inquiry is whether that order was lawfully made.

The eighth section of the bankrupt act of 1841 limited suits concerning the estate of the bankrupt by assignees against persons claiming adversely, and by such persons against assignees, to two years after decree of bankruptcy or first accrual of cause of suit. There is no express limitation upon sales, nor any limitation upon any action other than suits, by the assignee except a general requirement in the tenth section that all proceedings shall, if practicable, be brought to a close by the court within two years after decree. We are not satisfied that the limitation in the eighth

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section can be applied to sales of real estate made by assignees under orders of district courts having general jurisdiction of proceedings in bankruptcy. But it is not necessary now to pass upon this point. The limitation certainly could not affect any suit, the cause of which accrued from an adverse possession taken after the bankruptcy, until the expiration of two years from the taking of such possession, and there is nothing in the record which shows when the adverse possession relied on by the defendant in error commenced, and therefore nothing which warrants the application of the limitation to the petition for the order of sale.

We think the court below erred in instructing the jury that the defendant in error, upon the case made, was entitled to their verdict. Its judgment must therefore be reversed, and the cause remanded with directions to issue a

New venire.

[Footnote 1]

Jones v. Johnson, 18 How. 153.

[Footnote 2]

Manly v. Gibson, 13 Ill. 312.

[Footnote 3]

Canal Trustees v. Havens, 11 Ill. 557; *Waugh v. Leech,* 28 *id.* 488.