

Glacier Mountain Silver Mining Co. Vs. Willis

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Court : US Supreme Court

Decided On : May-14-1888

Appeal No. : 127 U.S. 471

Appellant : Glacier Mountain Silver Mining Co.

Respondent : Willis

Judgement :

Glacier Mountain Silver Mining Co. v. Willis - 127 U.S. 471 (1888)

U.S. Supreme Court Glacier Mountain Silver Mining Co. v. Willis, 127 U.S. 471 (1888)

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No. 166

Submitted April 9, 1888

Decided May 14, 1888

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ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLORADO

SYLLABUS

After hearing, counsel the court of its own motion dismisses a case for want of jurisdiction. Plaintiff in error moves to reinstate it, supporting the motion by affidavits as to the value of the property in dispute. The Court orders service on the other party, and on return vacates the judgment of dismissal.

In an action of ejectment, the description of the land claimed was as follows

"Commencing near the base of said mountain east of Bear Creek and running southeast and parallel with Coley Tunnel through said mountain five thousand feet from the mouth or starting point of said tunnel at a stake marked and in or at the mouth of said Silver Gate Tunnel and two hundred and fifty feet northeast and two hundred and fifty feet southwest from said stake or tunnel to its termination."

Held that it was a sufficient description.

In ejectment for the possession of a mine in Colorado, the complaint, after describing the land and a tunnel claim therein, averred that "The said tunnel claim so located embraces many valuable lodes or veins which have been discovered, worked, and mined by the plaintiff and its grantors."

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Held that this was a sufficient description of the lodes for which recovery was asked.

A complaint in ejectment in Colorado for a mine which alleges a valid and legal location by those under whom the plaintiff claims, and possession and occupation by the plaintiff for more than five consecutive years prior to the ouster, and payment of taxes by him during that time, sets up a sufficient claim to title as against everybody except the United States.

Mineral locations on public lands made prior to the passage of any mineral law by Congress are governed by local rules and customs then in force, but their effect cannot be determined on the demurrer in this action.

The case as stated by the Court was as follows

This was a writ of error to the Circuit Court of the United States for the District of Colorado to review a judgment of that court sustaining a demurrer to the "second amended complaint" filed by the Glacier Mountain Silver Mining Company, plaintiff in error, against J. Frank Willis, Charles Buckland, and Donald M. Frothingham, defendants in error, which complaint is in the words and figures following, to-wit:

"For second amended complaint, the plaintiff complains and alleges that it is a corporation organized and existing under the laws of the State of Ohio and is a citizen of the State of Ohio; that the defendants are and each of them is a citizen of the State of Colorado, and that the property in controversy exceeds the value of \$500."

"Plaintiff further alleges that on the 21st day of June, 1865, one Joseph Coley and one George C. Reeves, each being a citizen of the United States, went upon the public domain of the United States theretofore wholly unoccupied and unclaimed and located on said day a tunnel and tunnel site at the base of Glacier Mountain, in Snake River mining district, County of Summit, Colorado."

That afterwards and on the same day, they marked the boundaries of their said location and commenced to run a tunnel into said Glacier Mountain, and, after fully complying with the laws of the United States, the laws of the Colorado, and the local rules and regulations of the said Snake River mining district, they caused to be made out and recorded in the recorder's office of the County of Summit aforesaid

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a location certificate of said tunnel claim, which said certificate described the location and boundaries of said tunnel claim.

"That from the day of said location until the ouster hereinafter set forth, the said locators of said tunnel claim and their grantees remained continuously in possession of said tunnel claim, working and mining thereon, and have expended

thereon more than the sum of \$5,000."

"That the plaintiff is the owner of the said tunnel claim, above described, by location and purchase, and is now entitled to the quiet and peaceable and exclusive possession thereof, by virtue of a full compliance on its part and on the part of its grantors with the laws, rules, and customs above set forth; that the plaintiff and its grantors have been in the peaceable and undisputed possession of said tunnel claim by virtue of such location, occupation, preemption, and record for more than five years prior to the ouster hereinafter complained of."

"That plaintiff and its grantors, for more than five consecutive years prior to the acts of the defendants hereinafter mentioned, paid all taxes legally or otherwise assessed upon said tunnel claim, and have worked and mined the same from said 21st day of June, 1865, up to the time of the acts of the defendants hereinafter set forth."

"That the said tunnel claim, so located, embraces many valuable lodes or veins which have been discovered, worked, and mined by the plaintiff and its grantors."

"That the said tunnel claim was by its locators named the 'Silver Gate Tunnel Claim,' and is described more fully as follows: commencing at the base of said Glacier Mountain east of Bear Creek, and running southeast and parallel with Coley tunnel, through said mountain, five thousand feet from the mouth or starting point of said tunnel at a stake marked, and in or at the mouth of said Silver Gate Tunnel, and two hundred and fifty feet northeast, and two hundred and fifty feet southwest, from said stake or tunnel, to its termination."

"Said tunnel site is situate on Glacier Mountain, in Snake River mining district, County of Summit, and State of Colorado, and is five thousand feet in length by five hundred feet in width. "

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"Plaintiff further alleges that while it was in the quiet and peaceful possession of said tunnel claim and every part thereof, the defendants, wrongfully and without

right and without consent of the plaintiff, to-wit, on or about the 2d day of July, 1883, entered upon the premises, and into said tunnel, so run by plaintiff and its grantors on said claim, and wrongfully and unlawfully ousted the plaintiff therefrom, claiming the said tunnel as the War Eagle."

"That on or about said last-mentioned date, the defendants, without right, made a pretended location of a lode claim across said tunnel and within said tunnel claim, and therein wrongfully ousted the plaintiff therefrom, claiming that they had discovered a lode which they called the Tempest Lode."

"That the defendants have ever since hitherto unlawfully and wrongfully withheld the possession of the said premises and tunnel claim from the plaintiff, to its damage in the sum of \$1,000."

"Wherefore plaintiff demands judgment against the defendants --"

"(1) For the recovery of the possession of said Silver Gate Tunnel, tunnel site, and claim."

"(2) For the sum of \$1,000 damages for the wrongful withholding thereof."

"(3) For costs of suit."

The demurrer of the defendants rested upon four grounds:

"First. That the property sought to be recovered in this action is not described by its legal subdivisions, nor by its metes and bounds."

"Second. That the lodes alleged to be embraced within the said tunnel site location, and for which a recovery is asked by the said plaintiff, are not mentioned nor described, nor any location of them, or any of them, alleged."

"Third. That said complainant does not show any valid and legal subsisting preemption or location of said Silver Gate Tunnel site."

"Fourth. That the claim of the said plaintiff to a strip of ground 5,000 feet in length by 500 feet in width as a tunnel site is unwarranted and unprecedented, and was

not at the

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date of said pretended location, nor at any time subsequent thereto, authorized by any local, state, or congressional law. "

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MR. JUSTICE LAMAR, after stating the case as above reported, delivered the opinion of the Court.

The opinion of the court below is not found in the record, and we are not advised, by brief or otherwise, as to the grounds

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upon which the court sustained the demurrer. We must therefore determine the issues presented in the case by reference to the bill of complaint and to the causes assigned for demurrer.

First. That the property sought to be recovered in this action is not described by its legal subdivisions, nor by its metes and bounds. We do not think this ground is tenable. The complaint, after setting forth the location by plaintiff's grantors of the tunnel and tunnel site in Snake River Mining District, Summit County, Colorado, at the base of the Glacier Mountain, states that they (said grantors) caused to be made out, and recorded in the recorder's office of the county aforesaid, a location certificate of said tunnel claim, which said certificate described the location and boundaries of said tunnel claim; that the said tunnel claim was by its locators named the "Silver Gate Tunnel Claim," and is described more fully as follows:

"Commencing at the base of said Glacier Mountain east of Bear Creek, and running southeast and parallel with Coley tunnel, through said mountain, five thousand feet from the mouth or starting point of said tunnel at a stake marked, and in or at the mouth of said Silver Gate Tunnel, and two hundred and fifty feet northeast, and two hundred and fifty feet southwest from said stake or tunnel, to its

termination."

We think this description is sufficiently plain and distinct to enable the sheriff, in case of a recovery, to execute a writ of possession or to enable a surveyor to ascertain the exact limits of the location. The strict rule of pleading which formerly required exact accuracy in the description of premises sought to be recovered has, in modern practice, been relaxed and a general description of the property held to be good. The provisions of state statutes, as to the description of the premises by metes and bounds have been held to be only directory, and a description by name, where the property is well known, is often sufficient.

As to the second cause of demurrer, we think that, though the lodes alleged to be embraced within the said tunnel site location are not each separately described, the statement in the complaint that all the lodes in the tunnel claim have been

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worked and mined by the plaintiff and its grantors comprehends every part of the property for the recovery of which the action is brought.

With reference to the third ground of the demurrer, it is only necessary to say that the complaint alleges that a valid and legal location of said tunnel was made by persons under whom the plaintiff claims, and that the plaintiff held possession of the same for more than five consecutive years prior to the ouster by the defendants, and paid all the taxes during that period legally or otherwise assessed upon said property. This, under the laws of Colorado, would give the plaintiff a right to the premises in dispute superior to any other claim except that of the government.

The fourth ground of demurrer is:

"That the claim of the said plaintiff to a strip of ground 5,000 feet in length, by 500 feet in width, as a tunnel site is unwarranted and unprecedented, and was not at the date of said pretended location, nor at any time subsequent thereto, authorized by any local, state, or congressional law."

Under 2323 Rev.Stat., the right is given to locate a tunnel 3,000 feet from the face of said tunnel, and the right is also given to the lodes discovered in said tunnel, "to the same extent as if discovered from the surface," which is 300 feet on each side of the tunnel. Under the local laws of Colorado, the right is given to "250 feet each way from said tunnel, on each lode so discovered." 1801, 5, General Laws of Colorado, 627. The objection presented by the demurrer is that the tunnel is 5,000 feet in length, whereas the statute only recognizes a right of 3,000 feet from the mouth thereof, and that this renders the whole claim void.

We do not assent to this proposition. The location would be good to the extent of 3,000 feet at least. *Richmond Mining Co. v. Rose*, [114 U. S. 576](#) , [114 U. S. 580](#) . This would be true had the location been made under the mining laws now in force. It will be observed, however, that this location was made prior to the passage of any general mineral law. It was made in 1865, and the first general statute passed by Congress on the subject is that of July 26, 1866. It is alleged by the plaintiff in error that this location was made in accordance

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with the local rules and customs of miners in force at the time of the location, and that therefore such location was recognized and protected by the general mineral laws of July 26, 1866, 14 Stat. 251, and that of May 10, 1872, 17 Stat. 91. This allegation, however, is denied by the defendants; but, as these local rules and customs differ in the several mining districts as to the extent and character of the mine, the question cannot properly be determined on demurrer.

The Land Department of the government, and this Court also, have always acted upon the rule that all mineral locations were to be governed by the local rules and customs in force at the time of the location when such location was made prior to the passage of any mineral law by Congress. *Jennison v. Kirk*, [98 U. S. 453](#) , [98 U. S. 457](#) ; *Broder v. Water Co.*, [101 U. S. 274](#) , [101 U. S. 276](#) ; *Jackson v. Roby*, [109 U. S. 440](#) , [109 U. S. 441](#) ; *Chambers v. Harrington*, [111 U. S. 350](#) , [111 U. S. 352](#) .

We are therefore of the opinion that the cause of action is plainly and fully set forth in the complaint, and that the judgment of the court below cannot be sustained on any ground presented by the record.

The judgment of the circuit court is therefore reversed and the cause remanded to that court for such further proceedings as are consistent with this opinion. So ordered.

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