

**Washington Vs. Oregon**

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**Court :** US Supreme Court

**Decided On :** May-24-1909

**Appeal No. :** 214 U.S. 205

**Appellant :** Washington

**Respondent :** Oregon

**Judgement :**

Washington v. Oregon - 214 U.S. 205 (1909)

U.S. Supreme Court Washington v. Oregon, 214 U.S. 205 (1909)

**Washington v. Oregon**

**No. 3, Original**

**Petition filed March 8, 1909**

**Decided May 24, 1909**

**214 U.S. 205**

*ON PETITION FOR REHEARING*

**SYLLABUS**

*Washington v. Oregon*, [211 U. S. 127](#) , reaffirmed on rehearing.

Although the volume of water and depth of a channel have constantly diminished, if it all results from process of accretion, or, as in this case, possibly from jetties constructed by governmental authority, that channel still remains the boundary line, the precise line of separation being the varying center thereof.

The settlement of boundaries is generally attended with difficulties, and it is wise for adjacent states to adjust their boundaries by boundary commissions and agreements, as has been done with the consent of Congress in several instances.

The facts, which involve the boundary between the States of Washington and Oregon as the same was determined by this Court in this action, [211 U. S. 211](#) U.S. 127, are stated in the opinion.

The State of Washington filed a petition for a rehearing herein, upon the following points:

I. The Court erred in finding and holding that the present ship channel at the entrance to the Columbia River was the old south channel.

II. The Court erred in finding and holding that the former north channel still subsisted to the northward of Sand Island, and that the boundary between the States of Washington and Oregon was to the northward of said Sand Island.

III. The Court erred in not finding and holding that the present single channel at the entrance to the mouth of the Columbia River was as much the former north channel of the entrance to said river as it was the former south channel, and in not giving effect as a matter of law to the said combined single channel as the boundary between the two states.

IV. The Court erred in finding and holding that the Columbia

River inside the entrance was not divided by islands and in finding and holding that the testimony failed to show anything calling for consideration in respect to the ownership of the said islands.

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MR. JUSTICE BREWER delivered the opinion of the Court.

This case was decided on November 16, 1908, substantially in favor of the State of Oregon. [211 U. S. 211](#) U.S. 127. On February 17 of this year, a petition for rehearing was presented by the State of Washington. On examination of that petition, we entered an order directing that the parties have leave to file briefs upon the questions. They have done so, and we have reexamined the case with great care.

There are practically two matters presented: one, whether the boundary near the mouth of the Columbia River was and is the channel north of Sand island. We held that it was, and with that conclusion we are still satisfied. It is unnecessary to restate the reasons therefor. We may, however, refer to [Missouri v. Kentucky](#), 11 Wall. 395, as much in point. That was a controversy between those two states as to the title of Wolf Island. The treaty between France, Spain, and England in February, 1763, stipulated that the middle of the Mississippi should be the boundary between the British and French territories on the continent of North America. This was recognized by the treaty of peace with Great Britain in 1783, and different treaties since then. The boundaries of Missouri when she was admitted into the Union as a state in 1820 were fixed on this basis. Kentucky had succeeded in 1792 to the right and possession of Virginia, which, by virtue of the treaties referred to, extended to the middle of the bed of the Mississippi. The main channel of the Mississippi had been, up to at least 1820, west of the island. There was testimony that, since then it had changed to the east side. Nevertheless the Court held that the island remained still a part of Kentucky, saying (p. [78 U. S. 401](#) ):

"It follows therefore that, if Wolf island in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it, for the channel which the

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river abandoned remains, as before, the boundary between the states, and the island does not, in consequence of this action of the water, change its owner."

So whatever changes have come in the north channel, and although the volume of water and the depth of that channel have been constantly diminishing, yet, as all resulted from processes of accretion, or, perhaps, also of late years, from the jetties constructed by Congress at the mouth of the river, the boundary is still that channel, the precise line of separation being the varying center of that channel.

*Jefferis v. East Omaha Land Co.*, [134 U. S. 178](#) ; *Nebraska v. Iowa*, [143 U. S. 359](#) ; *Iowa v. Illinois*, [147 U. S. 1](#) ; *Missouri v. Nebraska*, [196 U. S. 23](#) ; *Louisiana v. Mississippi*, [202 U. S. 1](#) .

The other question arises in this way. The act admitting Oregon, after naming as the commencement of the boundary "a point due west and opposite the middle of the north ship channel of the Columbia River," adds

"thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof to a point near Fort Walla-Walla."

With reference to this, we said:

"The testimony fails to show anything calling for consideration in respect to the last clause in the quotation from the boundary of Oregon. The channel is not divided by islands."

Now it is alleged that there is set forth in the bill of complaint, and admitted in the answer, that a controversy has arisen as to the boundary lines, and that both of

said states claim and assume to exercise jurisdiction over numerous islands and sands in said Columbia River, sixteen of which are enumerated by name.

While sixteen islands and sands are mentioned, yet, in the brief filed by the plaintiff on the application for a rehearing, it is stated that outside of Sand Island, the title to which is, as shown in the former opinion, settled by the decision of the first question, only two, Desdemona Sands and Snag Island, can be called islands, the remainder being entirely submerged and only visible at low tide. These two therefore are all that can come within the definition in the boundary.

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That speaks of "the middle channel of said river," and counsel contend that there is no pretense of three channels, and therefor the language should properly be construed as middle of the main channel of said river, and we are inclined to think that that is the true construction. But it must be remembered that the boundary in the first instance passes around the north of Sand Island, in what was known as the north channel, and it does not strike any channel which deserves to be called the main channel until it has passed to the eastward of Sand Island. While the testimony is not satisfactory as to the point at the time of the admission of the State of Oregon at which this north channel, after passing Sand Island, touched any other channel, we are of the opinion that it must have been at a point east and north of Desdemona Sands. Of course, in considering this matter, we assume that the contention of the State of Washington is correct -- that Desdemona Sands could have then properly been termed an island.

With reference to Snag Island, the question is a difficult one. We agree with counsel that the term "widest channel" does not mean the broadest expanse of water. There must be, in the first instance, a channel -- that is, a flow of water deep enough to be used, and in fact used, by vessels in passing up and down the river; but it does not mean the deepest channel, but simply the widest expanse of water which can reasonably be called a channel. Now, close to Snag Island there appear several channels, the principal ones being Woody Island channel and

Cordell channel, both used at different times by vessels navigating the river. The Cordell channel runs to the north of Snag Island, the Woody channel to the south, while the boundary claimed by the State of Oregon runs in a channel far to the north of both Woody Island and Cordell channels.

Further, it appears that in December, 1877, the State of Oregon conveyed Snag Island, in consideration of the sum of \$143.75, to J. W. and V. Cook. While, of course, this is not conclusive, yet, taken in connection with the fact that the

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State of Washington has never attempted to interfere with the jurisdiction of the State of Oregon over Snag Island, and the doubt that hangs about the position and depths and width of the various channels in the vicinity at the time of the admission of the State of Oregon, we hold that that island is within its territorial limits.

It must be borne in mind that an inquiry of this kind is attended with much difficulty. Here is a river of great width, three miles or so at certain places, whose bed is largely of sand and whose channels have been naturally affected by the flow of the water, and also of late years by the jetties constructed by the government in order to facilitate navigation. Congress, evidently recognizing the difficulty which attended the location of the exact boundaries, provided that the States of Washington and Oregon should have concurrent "jurisdiction in civil and criminal cases upon the Columbia River." Yet this provision does not determine the boundaries between the two states, and has proved insufficient to settle the disputes between them as to things done upon the Columbia River. *Nielsen v. Oregon*, [212 U. S. 315](#) .

We may be pardoned if, in closing this opinion, we refer to the following:

"Joint Resolution to Enable the states of Mississippi and Arkansas to Agree upon a Boundary Line and to Determine the Jurisdiction of Crimes Committed on the Mississippi River and Adjacent Territory."

" *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of the Congress of the United States is hereby given to the States of Mississippi and Arkansas to enter into such agreement or compact as they may deem desirable or necessary, not in conflict with the Constitution of the United States, or any law thereof, to fix the boundary line between said states, where the Mississippi River now, or formerly, formed the said boundary line, and to cede respectively, each to the other, such

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tracts or parcels of the territory of each state as may have become separated from the main body thereof by changes in the course or channel of the Mississippi River, and also to adjudge and settle the jurisdiction to be exercised by said states, respectively, over offenses arising out of the violation of the laws of said states upon the waters of the Mississippi River."

"Approved January 26, 1909."

Similar ones have passed Congress in reference to the boundaries between Mississippi and Louisiana and Tennessee and Arkansas. We submit to the States of Washington and Oregon whether it will not be wise for them to pursue the same course, and, with the consent of Congress, through the aid of commissioners, adjust, as far as possible, the present appropriate boundaries between the two states, and their respective jurisdiction.

The petition for rehearing is

*Denied.*