

Scott Vs. Lattig

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SooperKanoon Citation : sooperkanoon.com/91657

Court : US Supreme Court

Decided On : Feb-03-1913

Appeal No. : 227 U.S. 229

Appellant : Scott

Respondent : Lattig

Judgement :

Scott v. Lattig - 227 U.S. 229 (1913)

U.S. Supreme Court Scott v. Lattig, 227 U.S. 229 (1913)

Scott v. Lattig

No. 86

Argued December 13, 1912

Decided February 3, 1913

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ERROR TO THE SUPREME COURT

OF THE STATE OF IDAHO

SYLLABUS

An error in omitting an island in a navigable stream does not divest the United States of the title or interpose any obstacle to surveying it at a later time.

Purchasers of fractional interests of subdivisions on the bank of a navigable stream do not acquire title to an island on the other side of the channel merely because the island was omitted from the survey.

Lands underlying navigable waters within the several states belong to the respective states in virtue of their sovereignty, subject to the paramount power of Congress to control navigation between the states and with foreign powers.

Each new state, upon its admission to the Union, becomes endowed with the same rights and powers in regard to sovereignty over lands under navigable waters as the older state.

An island within the public domain in a navigable stream and actually in existence at the time of the survey of the banks of the stream, and also in existence when the state within which it was situated is admitted to the Union, remains property of the United States, and, even though omitted from the survey, it does not become part of the fractional subdivisions on the opposite bank of the stream, and so *held* as to an island in Snake River, Idaho. *United States v. Mission Rock Co.*, [189 U. S. 391](#) , followed; *Whitaker v. McBride*, [197 U. S. 510](#) , distinguished.

17 Idaho 506 reversed.

The facts, which involve the title to an island in a navigable river and whether it remained public land after the survey, are stated in the opinion.

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This was a suit in the district court of Canyon County, Idaho, to quiet the title to Poole Island in the Snake River. The plaintiff, Lattig, claimed the northern part by reason of his ownership of lands on the east bank of the river, and rested his claim to the southern part upon adverse possession. One of the defendants, Scott, claimed the entire island under the homestead law of the United States, and the other defendant, Green, claimed the southern part by reason of his ownership of lands on the east bank of the river adjoining those of Lattig. Following a trial of the issues, a decree was entered sustaining Lattig's claim to the northern part and Green's to the southern, and quieting their titles against the claim of Scott. The supreme court of the state affirmed the decree, 17 Idaho 506, and the case was then brought here.

The material facts are as follows: Snake River is a navigable stream, and, at the place in question, is the boundary between the States of Oregon and Idaho. It flows northward past Poole Island in two channels, one on either side, and has a fall of 6 feet from one end of the island to the

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other. The channel on the western or Oregon side is about 1,000 feet wide, and the one on the eastern or Idaho side is approximately 300 feet. The island is on the Idaho side of the thread of the stream, is over a mile in length, is from 500 to 1,200 feet in width, and has an area of 138.15 acres. It has well defined banks extending from 3 to 5 feet above high water, is mostly covered with a growth of wild grass, sage brush, and small timber, bears undoubted evidence of permanency and of having been there many years, and concededly was in the same condition as now in 1880, which was several years before Idaho was admitted into the Union, and before the lands on the east bank of the river passed into private ownership. Those lands were surveyed in 1868, and the field notes and plat of the survey showed that the bank on that side of the river was meandered in the usual way, and that the sections and subdivisions bordering thereon were fractional. The island was not mentioned in the field notes or plat. Lattig and Green severally own the fractional subdivisions on the east bank opposite the island under United States patents issued in 1894 and 1895, which

describe them as containing 73.30 and 98.75 acres, respectively, "according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General." The northern part of the island, which is opposite the lands of Lattig, contains 54.75 acres, and the southern part, which is opposite the lands of Green, contains 83.40 acres. Scott settled upon the island, as unsurveyed public land, in the early part of 1904, with the purpose of acquiring the title under the homestead law of the United States (see Act May 14, 1880, 21 Stat. 140, c. 89, 3), and has ever since resided on and occupied the island and improved and cultivated portions of it. In 1906, it was surveyed as public land by direction of the Commissioner of the General Land Office, and after this survey was approved and the plat

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filed, Scott tendered, in the regular way at the proper land office, an application to enter the island as a homestead in virtue of his prior settlement, and the application was duly accepted. It is said in the brief in his behalf that, after the trial in the district court, his homestead claim was carried to completion and a patent was issued to him; but, as this is not shown on the record, it may be passed without other notice.

As it is manifest that the island, if in existence at the time of the survey in 1868, was then public land of the United States, and also that, if it continued to be public land in 1904, Scott initiated and acquired a valid claim to it under the homestead law, we will come at once to the reasons advanced for holding, as did the state court, that it ceased to be public land before 1904 -- viz., its omission from the survey of 1868, the admission of Idaho as a state in 1890, and the disposal of the lands on the east bank of the river in 1894 and 1895.

In making the survey of 1868, it was the duty of the surveyor, if the island was there at the time, to ascertain its exact location, to meander its exterior boundary, and to enter both in the field notes (Manual of Surveying Instructions of 1855, pp. 12-14; Act of May 30, 1862, 12 Stat. 409, c. 86), and therefore the absence of such an entry, as also of any representation of the island on the plat constructed

from the field notes, naturally suggests that the island may not then have been in existence. But this suggestion is effectually refuted by the size, elevation, and appearance of the island, the character and extent of the vegetation thereon, and the conceded fact that, in 1880, only twelve years after the survey, it was in the same condition as now. That it was there at the time of the survey seems certain, although that is not so important as its existence when Idaho became a state. Of course, the error in omitting it from the survey did not divest the United States of the title, or interpose any obstacle to surveying

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it at a later time. Neither was the error calculated to induce purchasers of the fractional subdivisions on the east bank to believe that, by paying for the 73.30 and 98.75 acres in those tracts, they would get, respectively, 54.75 and 83.40 acres more on the island on the other side of the 300-foot channel. *Horne v. Smith*, [159 U. S. 40](#) ; *Niles v. Cedar Point Club*, [175 U. S. 300](#) , [175 U. S. 306](#)

Coming to the effect to be given to the admission of Idaho as a state and to the disposal of the fractional subdivisions on the east bank, it is well to repeat that Snake River is a navigable stream, for there is an important difference between navigable and nonnavigable waters in such a connection. Thus, Rev.Stat. 2476, which is but a continuation of early statutes on the subject (Acts May 18, 1796, 1 Stat. 464, c. 29; March 3, 1803, 2 Stat. 229, c. 27, 17), declares:

"All navigable rivers within the territory occupied by the public lands shall remain and be deemed public highways, and in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both,"

and of this provision it was said in [Railroad Company v. Schurmeir](#), 7 Wall. 272, [74 U. S. 288](#) ,

"the Court does not hesitate to decide that Congress, in making a distinction between streams navigable and those not navigable, intended to provide that the

common law rules of riparian ownership should apply to lands bordering on the latter, but that the title to lands bordering on navigable streams should stop at the stream, and that all such streams should be deemed to be and remain public highways."

Besides, it was settled long ago by this Court, upon a consideration of the relative rights and powers of the federal and state governments under the Constitution, that lands underlying navigable waters within the several states belong to the respective states in virtue of their sovereignty, and may be used and disposed of as they may direct, subject always to the rights

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of the public in such waters and to the paramount power of Congress to control their navigation so far as may be necessary for the regulation of commerce among the states and with foreign nations, and that each new state, upon its admission to the Union, becomes endowed with the same rights and powers in this regard as the older ones. [*County of St. Clair v. Lovington*](#), 23 Wall. 46, [90 U. S. 68](#) ; *Barney v. Keokuk*, [94 U. S. 324](#) , [94 U. S. 338](#) ; *Illinois Central Railroad Co. Illinois*, [146 U. S. 387](#) , [146 U. S. 434](#) -437; *Shively v. Bowlby*, [152 U. S. 1](#) , [152 U. S. 48](#) -50, [152 U. S. 58](#) ; *McGilvra v. Ross*, [215 U. S. 70](#) .

Bearing in mind, then, that Snake River is a navigable stream, it is apparent first that, on the admission of Idaho to statehood, the ownership of the bed of the river on the Idaho side of the thread of the stream -- the thread being the true boundary of the state -- passed from the United States to the state, subject to the limitations just indicated, and second that the subsequent disposal by the former of the fractional subdivisions on the east bank carried with it no right to the bed of the river, save as the law of Idaho may have attached such a right to private riparian ownership. This is illustrated by the statement in *Hardin v. Shedd*, [190 U. S. 508](#) , [190 U. S. 519](#) .

"When land is conveyed by the United States, bounded on a nonnavigable lake belonging to it, the grounds for the decision must be quite different from the

considerations affecting a conveyance of land bounded on navigable water. In the latter case, the land under the water does not belong to the United States, but has passed to the state by its admission to the Union. . . . When land under navigable water passes to the riparian proprietor, along with the grant of the shore by the United States, it does not pass by force of the grant alone, because the United States does not own it, but it passes by force of the declaration of the state which does own it that it is attached to the shore."

United States v. Chandler-Dunbar Water Power Co., [209 U. S. 447](#) , [209 U. S. 451](#) , is to the same effect.

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But the island, which we have seen was in existence when Idaho became a state, was not part of the bed of the stream or land under the water, and therefore its ownership did not pass to the state, or come within the disposing influence of its laws. On the contrary, although surrounded by the waters of the river and widely separated from the shore, it was fast dry land, and therefore remained the property of the United States and subject to disposal under its laws, as did the island which was in controversy in *Mission Rock Co. v. United States*, 109 F. 763, 769-770, and *United States v. Mission Rock Co.*, [189 U. S. 391](#) .

We think the cases relied upon by the defendants in error do not make for a contrary conclusion. [Railroad Company v. Schurmeir](#), 7 Wall. 288, expressly recognizes "that proprietors of lands bordering on navigable rivers, under titles derived from the United States, hold only to the stream." In *Grand Rapids & Indiana Railroad Co. v. Butler*, [159 U. S. 87](#) , the evidence left it uncertain whether the so-called island was more than "a low sandbar, covered a good part of the year with water," at the time of the survey of the adjacent lands, which was in the year of the state's admission to the Union, and the court said:

"We have no doubt upon the evidence that the circumstances were such at the time of the survey as naturally induced the surveyor to decline to survey this particular spot as an island. There is nothing to indicate mistake or fraud."

United States v. Chandler-Dunbar Water Power Co., [209 U. S. 447](#) , [209 U. S. 451](#) , is sufficiently distinguished by the following excerpt from the opinion:

"The islands are little more than rocks rising very slightly above the level of the water, and contain, respectively, a small fraction of an acre and a little more than an acre. They were unsurveyed, and of no apparent value. We cannot think that these provisions excepted such islands from the admitted transfer to the state of the bed of the streams surrounding them."

And *Whitaker v. McBride*, [197 U. S. 510](#) , which

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related to a small island, in a nonnavigable river, which the Land Department of the United States had expressly refused to survey, requires no other notice than to quote the following from the opinion:

"It must also be noticed that the government is not a party to this litigation, and nothing we have said is to be construed as a determination of the power of the government to order a survey of this island, or of the rights which would result in case it did make such survey. . . . Our conclusion, therefore, is that, by the law of Nebraska as interpreted by its highest court, the riparian proprietors are the owners of the bed of a stream to the center of the channel; that the government, as original proprietor, has the right to survey and sell any lands, including islands in a river or other body of water; that, if it omits to survey an island in a stream and refuses, when its attention is called to the matter, to make any survey thereof, no citizen can overrule the action of the department, assume that the island ought to have been surveyed, and proceed to occupy it for the purposes of homestead or preemption entry. In such a case, the rights of riparian proprietors are to be preferred to the claims of the settler."

For the reasons given, the decree is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed.

