

Moss Vs. Ramey

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Court : US Supreme Court

Decided On : Jan-10-1916

Appeal No. : 239 U.S. 538

Appellant : Moss

Respondent : Ramey

Judgement :

Moss v. Ramey - 239 U.S. 538 (1916)

U.S. Supreme Court Moss v. Ramey, 239 U.S. 538 (1916)

Moss v. Ramey

No. 61

Argued December 9, 1915

Decided January 10, 1916

239 U.S. 538

ERROR TO THE SUPREME COURT

OF THE STATE OF IDAHO

SYLLABUS

The inference naturally arising from the silence of the field notes and plat that there was no island at the time of the survey, or if any, only one of inconsiderable area and value, is refutable, and in this case the evidence does refute such inference and demonstrates the existence of the island in its present condition at the time of the survey.

An error of the surveyor in failing to extend a survey over an island in a river does not make it any the less a part of the public domain.

Fast dry land, which is neither a part of the bed of a river nor land under water, being part of the public domain within the Territory of Idaho, did not pass to the state on admission to the Union, but remained public land as before.

Page 239 U. S. 539

Patents to lots of land abutting on a river do not include actual islands of fast dry land and of stable foundation lying between the lot and the thread of the stream. *Whitaker v. McBride*, [197 U. S. 510](#) , distinguished.

An appellate court of a state may, without violating the Fourteenth Amendment, correct its interlocutory decision upon a first appeal when the same case with the same parties again comes before it, and whether this may be done in a particular case is a local question upon which the decision of the highest court of the state is controlling here.

25 Idaho 1 affirmed.

The facts, which involve the title under patents of the United States to an unsurveyed island in Snake River between the States of Oregon and Idaho are stated in the opinion.

Page 239 U. S. 544

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

This is a suit to quiet the title to an unsurveyed island in the Snake River, a navigable stream, the thread of which at that place is the dividing line between the States of Oregon and Idaho. The island lies between the main channel and the bank on the Idaho side, and is separated from the latter by a lesser channel from 100 to 300 feet in width, which carries a considerable part of the waters of the river, save when it is at its lower stages. The plaintiffs hold patents from the United States, issued in 1890 and 1892, for certain lots on the Idaho side, opposite the island, and claim it under these patents, while the defendant insists that it remains public land, and that he has a possessory right to it, acquired by settling thereon in 1894, and subsequently improving and cultivating it.

Page 239 U. S. 545

The island contains about 120 acres, has banks rising abruptly above the water, is of stable formation, has a natural growth of grass and of trees suitable for firewood, and evidently has been in its present condition since long before the adjacent lands on the Idaho side were surveyed, which was in 1868. The field notes and plat represented the survey as extending to the river, but made no mention of the island. They also represented the lots or fractional tracts immediately opposite the island as containing 110.40 acres. The patents under which the plaintiffs claim described the lots by giving the numbers assigned and the acreage accredited to them on the plat, and then saying, "according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General." The trial court concluded that the island remained unsurveyed public land, and that the plaintiffs' lands extended only to the river, and rendered judgment against the plaintiffs. They appealed, and the supreme court of the state held, one member dissenting, that the patents passed the title not only to the lots as shown on the plat, but also to all islands lying between them and the thread of the stream. The judgment was accordingly reversed, and a new trial ordered to determine whether the plaintiffs had lost title to the island through adverse possession. 14 Idaho 598. Upon the new trial, judgment was given for the plaintiffs and the defendant appealed. The supreme court, in deference to our

intermediate decision in *Scott v. Lattig*, [227 U. S. 229](#) , then recalled its decision upon the first appeal, reversed the judgment rendered upon the second trial, and remanded the cause with a direction to dismiss it. 25 Idaho 1. The plaintiffs bring the case here.

While the inference naturally arising from the silence of the field notes and plat is that the island was not there at the time of the survey, or, if there, was a mere sand bar or of inconsiderable area and value, what is shown and

Page 239 U. S. 546

conceded respecting its stable formation, elevation, size, and appearance completely refutes this inference, and demonstrates that the island was in its present condition at the time of the survey and when Idaho became a state, which was twenty-two years later.

Thus, the facts bearing on the status of the island and the operation of the patents are essentially the same as in *Scott v. Lattig*, and, in view of what was there held, it suffices to say the error of the surveyor in failing to extend the survey over the island did not make it any the less a part of the public domain. It was fast, dry land, and neither a part of the bed of the river nor land under water, and therefore did not pass to the State of Idaho on her admission into the Union, but remained public land as before. The descriptive terms in the patents embraced the lots abutting on the river, as shown on the plat, but not this island lying between the lots and the thread of the stream. *Chapman & Dewey Lumber Co. v. St. Francis Levee District*, [232 U. S. 186](#) ; *Gauthier v. Morrison*, [232 U. S. 452](#) ; *Producers Oil Co. v. Hanzen*, [238 U. S. 325](#) . The claim that the island passed under the patents is therefore ill founded. The case of *Whitaker v. McBride*, [197 U. S. 510](#) , upon which the plaintiffs rely, is distinguishable in that what was there claimed to be an island contained only 22 acres and was not shown to be of stable formation, and the Land Department had repeatedly refused to treat it as public land.

It is contended that the decision upon the first appeal became the law of the case, and that, by recalling that decision when considering the second appeal, the court

infringed upon the due process of law clause of the Fourteenth Amendment. The contention must fail. There is nothing in that or any other clause of the Fourteenth Amendment which prevents a state from permitting an appellate court to alter or correct its interlocutory decision upon a first appeal when the same case, with the same

Page 239 U. S. 547

parties, comes before it again, and whether this is permitted is a question of local law, upon which the decision of the highest court of the state is controlling here. *King v. West Virginia*, [216 U. S. 92](#) , [216 U. S. 100](#) ; *John v. Paullin*, [231 U. S. 583](#) .

It also is contended that, under the due process of law clause of such amendment, the court was not at liberty, upon the second appeal, to change its first decision, because, after the case was remanded for a new trial, the defendant acquiesced in that decision by an amendment to his answer completely eliminating from the case all controversy respecting the status of the island and the operation of the patents. This contention is without any real basis in the record. The original answer is not before us, but the amended one is, and it, in addition to otherwise traversing the plaintiffs' allegation of ownership, expressly denies that they or either of them "have any right, title, or interest whatever in any portion" of the island. And, examining the evidence taken on the second trial, we find that the defendant was then still insisting that the island was public, and not private, land. It is idle therefore to claim that the point involved in the first decision was completely eliminated from the case between the two appeals. Whether, if the record were otherwise, it could be said that there was an abuse of due process need not be considered.

Judgment affirmed.