

SOUTH SHORE LUMBER CO. v. C. C. THOMPSON LUMBER CO.

(Circuit Court of Appeals, Seventh Circuit. June 6, 1899.)

No. 559.

BOUNDARIES—RIPARIAN OWNERS ON COVE OR BAY—FRONTAGE ON LINE OF NAVIGABLE WATER.

Under the rule that the frontage of a riparian owner on the line of navigable water within a small bay or cove shall bear the same ratio to his shore frontage as the entire length of the line of navigable water within the cove bears to its shore line, a court cannot declare the boundary between two adjoining owners on the line of navigable water as a matter of law, where the evidence as to the limits of the cove is conflicting; and in such case there is sufficient uncertainty, so that the boundary may be fixed by the agreement or acquiescence of the parties.

In Error to the Circuit Court of the United States for the Western District of Wisconsin.

W. M. Tompkins, for plaintiff in error.

C. A. Lamoreux and H. H. Hayden, for defendant in error.

Before WOODS, JENKINS, and GROSSCUP, Circuit Judges.

WOODS, Circuit Judge. The plaintiff in error is the plaintiff in the action. The complaint shows that the parties own severally adjacent lands, on which they operate sawmills, the land of each fronting upon Chequamegon Bay, and that for use in connection with its land and mill each has erected docks and piers extending to the line of navigable water. It is charged "that the defendant's docks and structures encroach on the water frontage of the plaintiff," and the question for determination at the trial was of the proper location of the common boundary from the water's edge to the line of navigability. The trial was by jury, and, on the verdict rendered, judgment was given for the defendant.

Error is assigned upon the refusal of each of the following requests for special instructions:

"(1) The cove or bay in which the properties of the parties are situated is the one bounded by the lines A-B and C-D on the map marked 'Plaintiff's Ex. X.' (2) The evidence shows that the riparian boundary line between the properties passes over the docks of the defendant at points on line F-Q in plaintiff's Ex. X. (3) The plaintiff is entitled to a verdict in its favor, the only question for the jury being what amount of damages plaintiff shall recover. (4) There is no such uncertainty as to the boundary line between the dock properties as to raise a question which can be settled by agreement or acquiescence."

The first and second requests, it is evident, were in effect the same as the third. It is agreed that the rule for fixing boundary lines in a small bay or cove, as declared in *Inhabitants of Deerfield v. Arms*, 17 Pick. 41, and approved in *Jones v. Johnston*, 18 How. 150, *Johnston v. Jones*, 1 Black, 209, and *Land Co. v. Bigelow*, 84 Wis. 157, 54 N. W. 496, is:

"First, determine the outside boundaries of the cove or headlands. Run out lines from these headlands at equal angles to the shore to the line of navigable waters. Between these headlands draw a line upon the general course of the navigable waters. Then apportion this line of navigable water to the shore

line in the same proportion that the navigable water line bears to the shore line."

The evidence touching the limits of the cove in question is not undisputed, and the court could not rightfully have withdrawn the question from the jury. It follows, necessarily, that the true location of the disputed line was a proper subject of negotiation and agreement between the parties or their grantors, and the court did not err in refusing the fourth request. The judgment below is affirmed.

GROSSCUP, Circuit Judge, by reason of sickness, did not share in the final consideration of this case.

TENNENT-STIBLING SHOE CO. v. ROPER.

(Circuit Court of Appeals, Fifth Circuit. May 23, 1899.)

No. 743.

1. SUNDAY CONTRACT—VALIDITY AS TO THIRD PARTIES—EFFECT OF RATIFICATION.

A debtor cannot defeat the collection of a valid debt by an assignee, on the ground that it was sold and assigned to him on Sunday, in violation of the laws of the state, where the transfer was subsequently ratified by the assignor, and became binding between the parties to it; and such ratification renders it valid from the date of the actual assignment for the purpose of an attachment thereon procured by the assignee on that day.

2. JURISDICTION OF FEDERAL COURTS—AMOUNT IN CONTROVERSY.

Where an action in a federal court is based on several accounts, exhibited with the declaration, the amount of the accounts in the aggregate is the amount in dispute; and, when it exceeds \$2,000, the court is not deprived of jurisdiction, though the defendant successfully attacks the validity of the transfer of one of the accounts to the plaintiff, reducing the amount remaining below the jurisdictional limit.

In Error to the Circuit Court of the United States for the Northern District of Mississippi.

Rice T. Fant, for plaintiff in error.

James Stone and C. L. Siveley, for defendant in error:

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges.

SHELBY, Circuit Judge. 1. This is a suit for \$2,336.64, begun by attachment by the Tennent-Stribling Shoe Company, a corporation chartered under the laws of Missouri, against W. E. Roper, a citizen of Mississippi. Of this sum \$920.90 is an account which the plaintiff in error holds against the defendant in error for goods sold to him. The remainder of the sum sued for is composed of accounts which were held against the defendant in error by citizens of states, or by corporations organized and chartered in states, of which neither the plaintiff in error nor the defendant in error was a citizen. The assignee of such claims, if in the aggregate they reach the jurisdictional amount, can sue on them in the United States courts. Chase v. Roller-Mills Co., 56 Fed. 625; Bowden v. Burnham, 8 C. C. A. 248, 59 Fed. 752; Bergman v. Inman, 91 Fed.