62 Mich. 626
Supreme Court of Michigan.

WEBBER
v.
PERE MARQUETTE **BOOM** CO.

1886.

Error to Mason.

West Headnotes (8)

[1] **Water Law**
Private ownership in general

The title of the riparian owner extends to the middle line of a navigable inland lake.

10 Cases that cite this headnote

[2] **Water Law**
Constitutional and statutory provisions

The rights of riparian owners are nowhere mentioned in the Ordinance of 1787, or in the acts admitting Michigan into the Union; the same being left to be settled according to state law.

5 Cases that cite this headnote

[3] **Public Lands**
Errors and omissions

In order to give jurisdiction to the commissioner of the land office under Act Cong. May 30, 1862, to order a survey of such islands as were omitted in the general survey of the adjacent lands, it must appear that there are such omitted islands, and that the land has not been previously conveyed by the United States.

Cases that cite this headnote

[4] **Public Lands**
Property included

A federal survey was made in 1883, of a portion of a section of land covered by water, but not navigable for vessels, where, except in well-defined channels, vegetation consisting of wild rice, grass, and rushes grew up in the summer season through the water, but the whole tract was covered at all seasons with water from several inches to several feet in depth, underneath which was a deposit of mud. Held, that the territory covered by the survey was not an island, and the United States parted with its title thereto when it conveyed the lots bordering on the body of water.

9 Cases that cite this headnote

[5] **Public Lands**
Presumptions as to issuance and validity

United States patents are in general unassailable in an action at law. They not only operate to pass the title, but carry with them a conclusive presumption that all requirements preliminary to their issue have been complied with.

Cases that cite this headnote

[6] **Public Lands**
Conclusiveness

In each action involving conflicting claims to land, each claimant basing his title on government grant, defendant cannot say that plaintiff's patent from government was void for excess; that being a matter between the government and the patentee in which third parties are not concerned.

2 Cases that cite this headnote

[7] **Public Lands**
Conclusiveness

Though patents for lands granted by the United States carry with them a conclusive presumption that all requirements preliminary to their issue have been complied with, where the department has jurisdiction to execute them, they may be impeached collaterally in any action by showing that the department had no jurisdiction to dispose of the lands.

1 Cases that cite this headnote

[8] **Ejectment**
Sufficiency of title in general

Plaintiff must recover, if at all, on the strength of his own title, and not because of the weakness or want of title in defendant.

2 Cases that cite this headnote

Attorneys and Law Firms

****469** ***627** Wisner & Draper, for plaintiff and appellant, Wm. L. **Webber**.

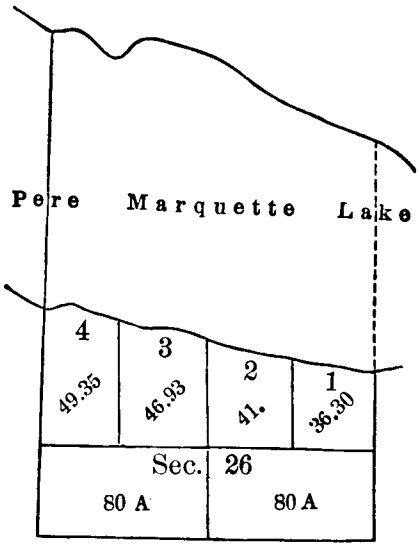
***628** Ramsdell & Benedict, for defendant, **Pere** Marquette **Boom** Co.

Opinion

***630** CHAMPLIN, J.

In 1838 the government of the United States caused to be surveyed a portion of its public land in ***631** Michigan, and to be subdivided into sections fractional town 18 N., range 18 W. This survey was made by Sylvester Sibley, a deputy surveyor, between July 16 and December 28, 1838. His field-notes of section 26 in this town show that the section as surveyed by him was fractional; that starting from the corner of sections 25, 26, 35, and 36, and running north, between 25 and 26, 37 chains and 44 links, he struck the shore of the **Pere** Marquette lake; and that at 40 chains, where, by his instructions, he should have set the quarter section corner, he was in the lake. They also show tbat the section line between sections 26 and 27 ran north 46 chains and 84 links to the south side of the lake, and that the remainder of the mile was in the lake, and that the section corners of 22, 23, 26, and 27 were in the lake, as also was the line between sections 23 and 26. From these field-notes the land upon section 26 was platted into two 80-acre parcels on the south, and the balance lying between these parcels and the lake was divided into four lots 20 chains in width on the south, and extending to the lake, numbered 1, 2, 3, and 4. Sections 23 and 24 were surveyed also as fractional, and having the lake for their southern boundary. **Pere** Marquette lake is a widening of the **Pere** Marquette river, which flows from the interior of the state, and discharges, through a narrow channel, into Lake Michigan a short distance from **Pere** Marquette lake. The right bank of the **Pere** Marquette river, and extending through sections 24 and 23, is meandered. The left shore, through section 26, was not meandered by the government surveyor.

****470** Upon the map in the surveyor general's office the territory between these fractional lots is represented as water, and as a part of the **Pere** Marquette lake. Below is a copy of the map in the surveyor general's office. A portion of section 26 is the open water of **Pere** Marquette lake. That portion in controversy in this suit is not navigable for vessels, and, except in well-defined channels, ***632** vegetation, consisting of wild rice, wild grass, and rushes, in the summer season, grows up through the water. The whole tract is, however, covered with water in all seasons, at all times, from several inches to several feet in depth, and underneath this water is a deposit of mud. In the channel spoken of there is a perceptible current flowing towards the clear waters of the lake, and outside of these channels there is no current perceptible. These channels are not confined in or defined by any banks or shorelines of earth, but merely by the growth of vegetation appearing above the water in which it grows.



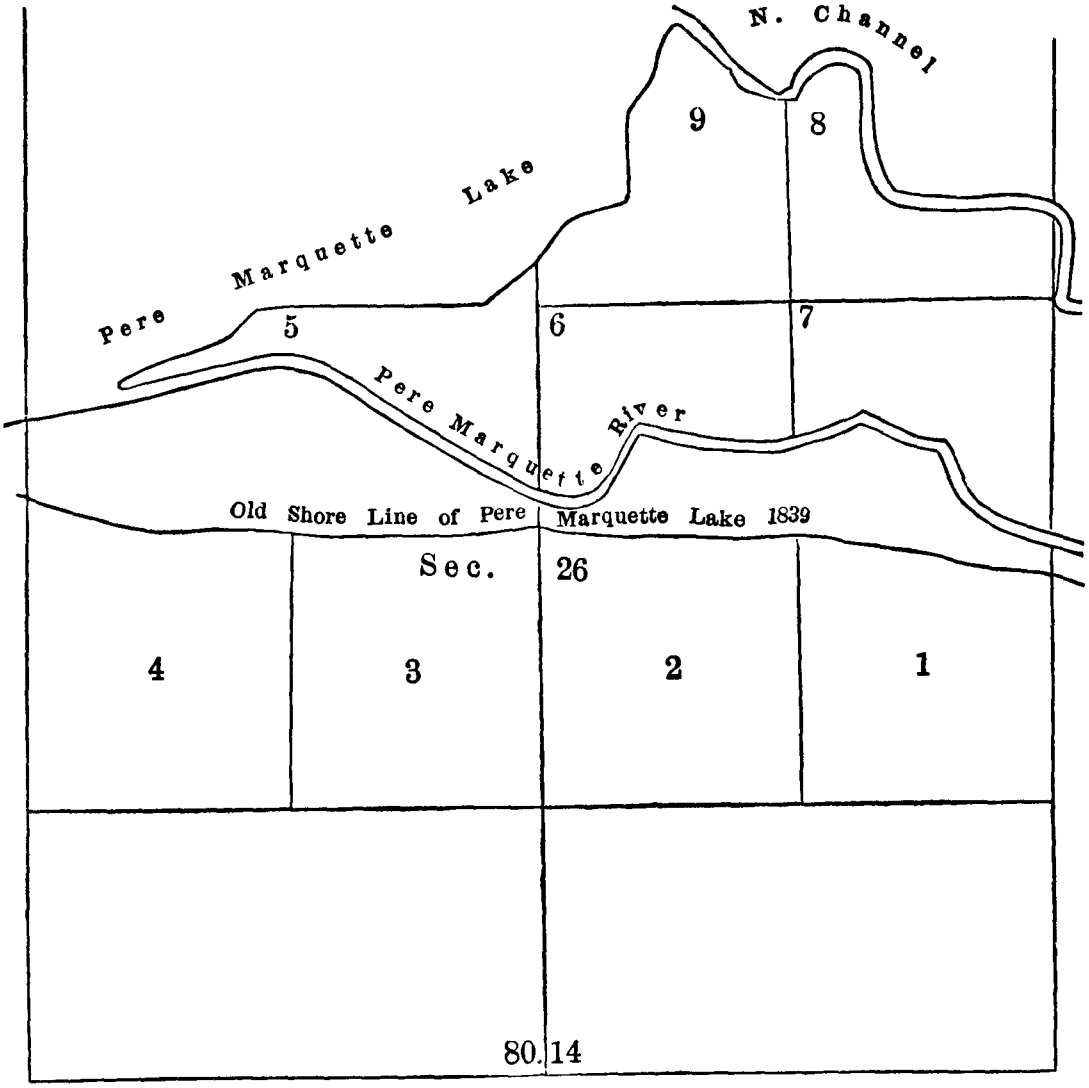
No land has ever been seen above the water within the territory described in the plaintiff's declaration in this case. It is not susceptible of being drained or reclaimed, except by diking around the territory so as to exclude the waters of the lake, and pumping out the water and mud. This has been the character and condition of the premises in dispute from 1838 to the present time.

In 1850 the United States conveyed by patent to George Farnsworth lots 1, 2, 3, and 4 of section 26, lots 3 and 4 of section 23, and lot 1 of section 24, town 18 N., range 18 W.; being the marginal fractional ***633** lots to the north and north-east, south and south-west, of the premises in suit.

The title to these marginal fractional lots came by mesne conveyances to the defendant, their last deed bearing date January 2, 1873. The defendant is an incorporated company under the statutes of the state of Michigan, and has used the area in controversy in **booming**, sorting, and rafting logs under its franchise granted by the state.

The plaintiff in this suit brings this action of ejectment to dispossess defendants from the occupation of a portion of section 26, claimed by it in virtue of its riparian proprietorship of lots surveyed by the United States in 1838, and sold to Farnsworth as above stated. The premises claimed by plaintiff are described in his declaration as "lots five, six, seven, and nine of section 26, in township eighteen north, range eighteen west, which premises plaintiff claims in fee; also all the lands lying between the center of the **Pere** Marquette river and the south side of lots five, six, and seven of section twenty-seven, in township eighteen north, range eighteen west, which plaintiff ****471** claims in fee as riparian owner; also all that part of land covered by the waters of the **Pere** Marquette lake, so called, between a line running west parallel with the north line of section twenty-six, in town eighteen north, range eighteen west, to a point north of the west end of lot five, in said section, thence south to the west end of lot five, being the land covered by the waters of said lake west and north of and adjacent to lots five and nine of said section, which land so covered by water as aforesaid plaintiff claims in fee as riparian owner thereof."

To sustain this declaration on the trial in the court below, he introduced in evidence a certified copy of a map or diagram of the premises in question, certified to by the commissioner of the general land-office at Washington, a copy of which is the following:



A patent from the United States to the plaintiff for lots 5 and 6 in section 26, township 18 N., range 18 W., dated September 3, 1884; a patent from the United States to Jonathan B. Salsbury, conveying lots 7, 8, and 9, in section 26 aforesaid; a deed from Jonathan B. Salsbury to William L. **Webber**, ***634** trustee, dated September 25, 1884, conveying the same lots 7, 8, and 9.

The patent to plaintiff of date September 3, 1884, was based upon what is known as "Valentine scrip," issued under an act of congress approved April 5, 1872, entitled "An act for the relief of Thomas B. Valentine." The act provides for the issuing of scrip to Valentine and his legal representatives, in legal subdivisions, which scrip shall entitle the holder to "patents for an equal ****472** quantity of the unoccupied and unappropriated lands of the United States not mineral." It is claimed by defendant that the patent to plaintiff is void for excess; that the act authorizing the location of the scrip only authorized it to be laid upon legal subdivisions. The scrip in this case was made to cover two government descriptions or subdivisions of land the total of which exceeded 40 acres. We do not consider this question open to defendant. If the land belonged to the government, and was subject to sale by it, the question raised is one exclusively between the government and the patentee, in which third parties are in no way concerned.

The defendant is admitted to be in possession, and the ***635** plaintiff must recover, if at all, upon the strength of his own title. He produced patents from the United States based upon a survey made by the deputy United States surveyor under instructions from the commissioner of the general land-office bearing date August 7, 1883. The field-notes of the survey have not been introduced in evidence, and there is nothing to indicate any reason why a survey was made at so recent date, unless an inference may be drawn from the plat or diagram introduced in evidence, which describes the diagram as a "plat of an island in sec. 26, T. 18 N., R. 18 W., Michigan."

Under a somewhat liberal construction of the tenth section of an act of congress approved May 30, 1862, entitled "An act to reduce the expenses of the survey and sale of the public lands in the United States," it has been the practice for the commissioner of the general land-office, upon proper application and deposit of the required moneys, to pay the expenses of the survey and other expenses, to order a survey of such islands as were omitted when the surveys were extended over the adjacent lands, and, when such surveys are made, then the lands embraced therein become subject to the same laws and regulations that other public lands are. To give the commissioner jurisdiction to act two facts must exist: (1) There must have been an island which was omitted from the surveys when the adjacent territory was surveyed; (2) the land must not have been previously conveyed by the United States.

The evidence returned in this record shows conclusively, and without contradiction, that no island upon section 26 was omitted from the survey made by the United States in 1838; that no island existed or now exists where the plat offered in evidence by the plaintiff represents that there is an island. An "island" is a body of land surrounded by water. The premises described in plaintiff's declaration and in his patents is a body of land covered by water. To call this submerged fen an "island" is a palpable misnomer. ***636** There existed no authority for the commissioner of the general land-office to order a survey of this body of water on the hypothesis that it was a part of the public domain which had been omitted from the government survey. From the character of the premises in dispute, as being water instead of land, we are of opinion that the United States parted with its title when it conveyed the lots to Farnsworth bordering upon this body of water. It is the settled rule in this state that the title of the riparian owner extends to the middle line of the lake or stream of the inland waters. Lorman v. Benson, 8 Mich. 18; Ryan v. Brown, 18 Mich. 196; Rice v. Ruddiman, 10 Mich. 125; Watson v. Peters, 26 Mich. 508; Richardson v. Prentiss, 48 Mich. 88; S.C. 11 N.W.Rep. 819; Bay City Gas-light Co. v. Industrial Works, 28 Mich. 182; Maxwell v. Bay City Bridge Co., 41 Mich. 466; S.C. 2 N.W.Rep. 639; **Pere** Marquette **Boom** Co. v. Adams, 44 Mich. 403; S.C. 6 N.W.Rep. 857; Backus v. Detroit, 49 Mich. 110; S.C. 13 N.W.Rep. 380; Fletcher v. Thunder Bay R. **Boom** Co., 51 Mich. 277; S.C. 16 N.W.Rep. 645.

This has become a rule of property in this state, and the supreme court recognizes the right of each state to determine the doctrine for themselves. Barney v. Keokuk, 94 U.S. 324. Plaintiff recognizes this as the established doctrine. Two counts in his declaration are based upon riparian ownership ****473** consequent upon his ownership of the adjacent lands. Upon both of these jurisdictional points we are of opinion that the patents upon which plaintiff relies for title are void. The objection to them reaches beyond the action of the commissioner of the general land-office, and goes to the existence of a subject upon which he was competent to act.

Patents issued by the United States conveying its lands are in general unassailable in an action at law. They not only operate to pass the title, but they carry with them a conclusive

presumption that all requirements preliminary to their issue have been complied with. This principle was laid down with great clearness and force by Mr. Justice FIELD in the case of Smelting Co. v. Kemp, 104 U.S. 636, in which he also notes the exception to the rule, as follows: ***637** "Of course, when we speak of the conclusive presumptions attending a patent for lands, we assume that it was issued in a case where the department had jurisdiction to act and execute it; that is to say, in a case where the lands belonged to the United States, and provision had been made by law for their sale. If they were never public property, or had previously been disposed of, or if congress had made no provision for their sale, or had reserved them, the department would have no jurisdiction to transfer them; and its attempted conveyance of them would be inoperative and void, no matter with what seeming regularity the forms of the law may have been observed. The action of the department would in that event be like that of any other special tribunal not having jurisdiction of the case which it had assumed to decide." The learned judge then proceeds to show that these views have been entertained by the supreme court of the United States from the decision in case of Polk's Lessee v. Wendal, reported in 9 Cranch, 87, to the present time. As a conclusion, on page 646 he says: "On the other hand, a patent may be collaterally impeached in any action, and its operation as a conveyance defeated, by showing that the department had no jurisdiction to dispose of the lands; that is, that the law did not provide for selling them, or that they had been reserved from sale, or dedicated to special purposes, or had been previously transferred to others."

The evidence in this case shows that the United States had, previously to issuing the patents to plaintiff, transferred its title to Farnsworth by conveying to him the lots bordering on the shore, and that such Farnsworth patents conveyed the territory in question as river or lake bed, according to the principles recognized in this state as applicable to riparian proprietors.

The argument of the plaintiff, based upon the ordinance of 1787 for the government of the Northwest territory, and the act of congress admitting Michigan as a state in the Union, together with the ordinance of July 25, 1836, adopted by the legislature of Michigan, has been considered. We think the propositions advanced by him are fully met and ***638** answered in the opinions of the court in the cases of Pollard v. Hagan, 3 How. 212, and St. Louis v. Myers, 113 U.S. 566; S.C. 5 Sup.Ct.Rep. 640. In the latter case Mr. Chief Justice WAITE said: "We are unable to discover that any federal right was denied the city by the decision that has been rendered. The act of congress providing for the admission of Missouri into the Union,-act of March 6, 1820, c. 22, (3 St. 545,)-and which declares that the Mississippi river shall be 'a common highway, and forever free,' has been referred to in the argument here, but the rights of riparian owners are nowhere mentioned in that act. They are left to be settled according to the principles of state law." The same may be said of the ordinance of 1787, and the acts admitting Michigan into the Union. Applying the principles of state law to the case under consideration, we are of opinion that the judgment of the circuit court should be affirmed; and it is so ordered.

(The other justices concurred.)

Parallel Citations

30 N.W. 469