

SUPREME COURT OF THE UNITED STATES

**United States v. Southern Pacific Railroad Co.; Southern Pacific  
Railroad Co. v. United States**

223 U.S. 565 (1912) · No. Nos. 128, 129 · Decided February 26, 1912

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OPINION

HOLMES, J.

223 U.S. 565 (1912) UNITED STATES v. SOUTHERN PACIFIC RAILROAD COMPANY. SOUTHERN PACIFIC RAILROAD COMPANY v. UNITED STATES. Nos. 128, 129. Supreme Court of United States. Argued January 26, 1912. Decided February 26, 1912. APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT. \*566 The Solicitor General for the United States. Mr. Maxwell Evarts for appellees in No. 128 and appellants in No. 129. \*569 MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill brought by the United States to quiet title and cancel patents, and for an accounting, as to lands lying within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the act of July 27, 1866, c. 278, § 18, 14 Stat. 292, known as the Main Line Grant, and within the primary limits of the grant made to the Atlantic and Pacific Railroad Company by § 3 of the same act.

The Atlantic and Pacific road forfeited its grant, (act of July 6, 1886, c. 637, 24 Stat. 123), and thereafter the Southern Pacific selected the parcels in question as indemnity under its Main Line Grant. The rights of the Southern Pacific under this grant were not subordinated to those of the Atlantic and Pacific under the same statute, as they were by its branch line grant of 1871, considered in our last decision, but in case of conflict each road took half within the conflicting place limits.

Southern Pacific Railroad Co. v. United States, 183 U.S. 519. The special grounds for the decision between the same parties in 168 U.S. 1, followed in the case preceding this, do not exist here. Therefore the Circuit Court and the Circuit Court of Appeals held that the state of the lands at the time of selection determined the right, with an accidental exception that we shall explain.

152 Fed. Rep. 303. 167 Fed. Rep. 510. 93 C.C.A. 146. Both parties appeal; the United States from the \*570 decision on the main point, the Southern Pacific from what concerns the excepted lands. The Government argues that as the lands selected lay within the primary limits of the Atlantic and Pacific they cannot have been contemplated as possibly falling into the indemnity lands of the other road.

It refers to an intimation in *Southern Pacific Railroad Company v. United States*, 189 U.S. 447, 452, made with regard to the branch line grant and to lands within the place limits of the Southern Pacific but for the paramount right of the Texas Pacific, that as the indemnity grant was 'not including the reserved numbers' 'it might be argued' that those words excluded the secondary claim to the same lands by way of indemnity after a forfeiture of the Texas Pacific grant.

It suggests that *Ryan v. Railroad Company*, 99 U.S. 382, relied on for the ground of decision below, concerned land which the United States was claiming at the time of the indemnity grant and which it ultimately acquired, and that its authority should be limited to such a case. But we are of opinion that these arguments ought not to prevail. An indemnity grant, like the residuary clause in a will, contemplates the uncertain and looks to the future.

What a railroad is to be indemnified for may be fixed as of the moment of the grant, but what it may elect when its right to indemnity is determined depends on the state of the lands selected at the moment of choice. Of course the railroad is limited in choosing by the terms of the indemnity grant, but the so-called grant is rather to be described as a power.

Ordinarily no color of title is gained until the power is exercised. When it is exercised in satisfaction of a meritorious claim which the Government created upon valuable consideration and which it must be taken to have intended to satisfy (so far as it may be satisfied within the territorial limits laid down), it seems to us that lands within those limits should not be excluded simply \*571 because in a different event they would have been subject to a paramount claim.

It seems to us, in short, that *Ryan v. Railroad Company*, supra, should be taken to establish a general principle and should not be limited to its special facts. As to the suggestion in 189 U.S. 447, 452, the words 'not including the reserved numbers' refer primarily at least to the numbers reserved from any part of the grant by the terms of the act, and the suggestion was made only as to a claim of indemnity from lands in and adjoining a strip to which the title under the primary grant failed.

Whether there was anything in it in any aspect we need not consider now. It certainly cannot affect this case. A more delicate question is presented by the appeal of the Southern Pacific. It is this: A part of the lands in controversy were not only within the main line indemnity limits of the Southern Pacific and the primary limits of the Atlantic and Pacific, but also within the indemnity limits of the Southern Pacific branch line grant.

It is agreed that they were embraced in the decree against the right of the Southern Pacific under its branch line grant in 168 U.S. 1, and the argument is that the matter is *res judicata*, on the ground that a decree or judgment is binding as to all *media concludendi*, and that the former decree established the right of the United States to this land. *Dowell v. Applegate*, 152 U.S. 327; *United States v. California and Oregon Land Co.*, 192 U.S. 355, 358.

But the selections in this case were made after the decree in 168 U.S. 1, and if the matter were at large it would seem a strong thing to hold an adjudication conclusive not only as to existing titles under the grant in controversy, but as to merely possible sources of title in the future under a different and distinct grant.

We shall not discuss that question, however, or consider just how far the decisions have gone. The Solicitor General candidly agreed that the Government should not and would not rely upon this \*572 ground, if it had taken a position inconsistent with it in the earlier case, and it seems to us plain that it did so and expressly deprecated any reference in that case to the rights under the Main Line Grant.

It appears that the bill in 168 U.S. 1, was brought or at least tried as a bill to quiet title against claims of the Southern Pacific under the branch line grant, and that during the litigation on that question there was pending another bill to quiet title under the Main Line Grant, being the one before this court in 183 U.S. 519. It is said, and we do not understand it to be disputed, that in oral argument and printed brief before the Circuit Court of Appeals the counsel for the Government repeated that title under the Main Line Grant was not involved, and that if that question ever arose there would be pleadings and proof upon it.

The court in its decision, 168 U.S. 1, 29, stated the claim of the Southern Pacific to be under the act of 1871 (the branch line grant). Again, in the case between the same parties in 183 U.S. 519, 533, the court said that it was not adjudged in the former cases that the Southern Pacific had no title to any real estate by virtue of the act of 1866; and although it also said that of course the decrees were conclusive as to the title to the property involved in them, still in view of the conduct and disposition of the cause as to the branch line grant, if for no other reason, we think that it would be inequitable for the United States now to rely upon the decree in that cause as conclusive upon the parties in this.

It follows that as the present decision was in favor of the United States with regard to the last-mentioned lands it must be reversed, (No. 129), and that otherwise (No. 128) it stands affirmed. Decree reversed.