December Term 1863.

The United States for the use of Washington Aqueduct vs The Great Falls Manufacturing Company

Caveat to the Resurvey on the Resurvey on Conns Island.

The United States by J. Brewer its Counsel prays an appeal from the decision of the Commissioner of the Land office in the above case and assigns the following reasons therefor to Wit

1st The The Land sought to be patented is covered by the Waters of the Potomac River and the bed of said river and the Water flowing over the same, and is a portion or part of the fee publicum and therefore it is not in the power of the State to grant the same to individuals or private Companies for private use or speculation or for any other than public purposes

2d Because it would be in derogation of rights already conferred upon the Potomac Company and all rights conferred upon the Chesapeake and Ohio Canal Company,

3d Because the State of Maryland by her act of 1853 Ch 179 granted to the United States, the bed of the river as well as the right of way, and also the use of the Water for purposes which have been declared constitutional by the Court of Appeals to Wit, The Washington Aqueduct subject to rights acquired by the Chesapeake and Ohio Canal Company under its Charter and from the Potomac Company and therefore it is incompetent forever the State to issue a patent which would necessarily conflict with such grant.

4th Because the grant or patent for any portion of the bed of the River would confer no substantial rights and its only effect would be to tempt the grantee into a conflict with the United States or to interfere with the public right of using the Water for domestic purposes navigation and fishing which the State can neither destroy or impair,

5th Because the dam of the Washington Aqueduct proposed to be constructed under the grant to the United States by act of 1853 Ch 179 has been located and owns the land covered by this Certificate in fee and destroys the consequently which according to the rules of the Land office is fatal,

6th Because the Land of Maryland having reserved to the Public the Water flowing over any land granted by patent, inasmuch therefore as and as nearly and the land sought to be patented in this Certificate is covered by the waters of the Potomac River the right of the public cannot be presumed except by a denial of the patent or if granted that patent should expressly upon its face reserve the water.

7th Because inasmuch as the United States has the right to select as against the state water the site of an Aqueduct dam at or near the great Falls. and the site now selected or which may be selected hereafter can be changed if found unsuitable and as other quakes until the site selected shall be satisfactory in every respect therefore no patent ought to be granted which would conflict with such right,

8th Because the Map and Certificate filed in this case do not disclose what portion of said land sought to be patented are covered with Water and what are not covered with water.

August 31st 1860. Appeal granted

W L W Seabrook
Comr of the Land Office,

Land Office of Maryland

I hereby certify that the aforegoing is a true Copy of the Record of proceedings in the case of the United States for the use of the Washington Aqueduct vs The Great

December Term 1863.

Falls Manufacturing Company, Caveat vs The Resurvey on the Resurvey on Conns Island,

(Seal) In testimony whereof I hereunto set my hand and affixed the Seal of the Land office of Maryland this 17 day of October 1860.

W L W Seabrook
Comr of the Land office,

And now come into the Court of Appeals here as well the said United States for the use of the Washington Aqueduct by Nicholas Brewer Jr and Oliver Miller Spencer their Attorneys as the said Great Falls Manufacturing Company by A B Hagner by its Attorney and thereupon on motion of the said Great Falls Manufacturing Company by its Attorney aforesaid it is ordered by the Court here that the United States for the use of the Washington Aqueduct assign the errors in the Record of proceedings aforesaid or in the giving the Decree aforesaid so as aforesaid sought before the Court of Appeals here for correcting the errors supposed to be therein or Judgment by the Court of Appeals here will be entered against them in default thereof and the said United States for the use of the Washington Aqueduct by their Attorneys aforesaid say that in the Record of proceedings aforesaid and also in the giving of the Decree aforesaid there is manifest error in this to Wit, that by the Record aforesaid it appears that the Judgment aforesaid in the cause aforesaid given was given for the said Great Falls Manufacturing Company against the said United States for the use of the Washington Aqueduct whereas the law of the Land that decree ought to have been given for the said United States for the use of the Washington Aqueduct against the said Great Falls Manufacturing Company therefore in that there is Manifest error and they pray that the Decree aforesaid for that error and others being in the Record of Proceedings aforesaid may be reversed annulled and held entirely as void, and that they the said United States for the use of the Washington Aqueduct may be restored to all things which they have lost by reason of the said Decree and that the said Great Falls Manufacturing Company may reform to the errors aforesaid and so forth, and thereupon it is ordered by the Court of Appeals here that the said Great Falls Manufacturing Company join in the errors by the said United States for the use of the Washington Aqueduct above assigned in the Record of proceedings aforesaid or Decree by the Court of Appeals here will be rendered against it in default thereof, and the said Great Falls Manufacturing Company by its Attorney aforesaid says there is no error in the Record of proceedings aforesaid nor in the giving of the Decree aforesaid and it prays that the Court of Appeals here will proceed to the examination as and of the Record of proceedings aforesaid, as of the matters aforesaid by the said United States for the use of the Washington Aqueduct above for error assigned and that the said Decree may in all things be affirmed and so forth, thereupon further process of law upon the premises between the parties aforesaid by virtue of an act of Assembly in such cases made and provided continued before the Court of Appeals here until the first Monday in June next the same day is given to the said parties there then to hear the Decree of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in June being the third day of the said month in the year of our Lord 1861 came again into the Court of Appeals here the parties aforesaid by their Attorneys aforesaid! But because the Court of Appeals here are not yet advised what Decree to give of and upon the premises, this cause was