

No. 13359

Supreme Court of Illinois

Miller

vs.

Beeler et al

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SUPREME COURT, JANUARY TERM, 1860.

ANDREW MILLER, }
vs. } Deft's. Brief of points and Authorities.
JACOB BEELER, *et al.* }

The defendants in error submit the following points and authorities.

It is contended that Miller, by his own showing had no title to the land on the north side of the railroad.

He derives his title by his own proofs, as follows: The E. $\frac{1}{2}$, N. E. $\frac{1}{4}$, 5, 8, 5, he purchased from James Thrall, Nov. 13th, 1854. The W. $\frac{1}{2}$, N. E. $\frac{1}{4}$, 5, 8, 5, he purchased from James W. Andrews, Oct. 21, 1854, who purchased it from Daniel Boyd, Oct. 14, 1853.

On the 23d May, 1853, Boyd conveyed to the railroad, 70 feet in width, as follows: Commencing at the N. W. corner of the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, Sec. 5, 8, 5, and running E. on the township line 80 rods, thence S. 70 feet, thence W. 80 rods, thence N. 70 feet to beginning.

On the 23d May, 1853, Thrall conveyed to the railroad, 75 feet in width, as follows: Commencing at the N. E. corner of the N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$, 5, 8, 5, running W. on the township line 80 rods, thence S. 75 feet, thence E. 80 rods, thence 75 feet to the place of beginning.

In the deeds to Miller, the lands are described as being the E. $\frac{1}{2}$ & W. $\frac{1}{2}$, N. E. $\frac{1}{4}$, 5, 8, 5, *except 75 feet across or off of the N. end of said tracts heretofore sold and deeded to the Terre Haute and Alton Railroad Co.* This is precisely as if the land had been described as the N. E. $\frac{1}{4}$, 5, 8, 5, with the T. H. & A. R. R., for its northern boundary, or as all of the N. E. $\frac{1}{4}$, 5, 8, 5, south of the T. H. & A. R. R. The effect of the description was to make the railroad a permanent visible boundary of the land on the north and the testimony of Standring, and the other witnesses proposed to be introduced by Miller, tended or was intended to show that notwithstanding the railroad was fixed in the deeds, as Miller's northern boundary, yet that he was entitled to 19 rods, by virtue of those very deeds, north of the railroad.

It is admitted, expressly that if the railroad forms Miller's northern boundary, that the defendants own the land to the north of and adjoining the railroad. So that the tendency of the evidence of Standring and the witnesses proposed to be introduced by Miller, was to prove title in him to land which by his own deeds and agreement belonged to defendants.

Definite boundaries given in a deed will limit the generality previously used, which if unexplained, would have included a greater quantity. *Allen vs Allen*, 14 Maine R. 387, 9, 90. *Thorndyke vs Richards*, 13 Maine R. 430. *Cook vs Babcock*, 7 Cushing R. 526.

Visible monuments or boundaries will control courses, distances or quantities. *Frost vs Spaulding*, 19 Pick. R. 445. *Monwick vs Wright, et al*, 18 Wend. R. 107.

BILLINGS & GILLESPIE.

Att'ys. for Def'ts. in Error.

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Peeler

ad

Miller

Brief

13358

Filed June 18/61

J. Ireland

Clerk

Filed Jan 19. 60

W. H. Hume
cl

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Buler

ad

Miller

Brief

Filed June 18-61

L. Leland

Clark S. C.

Filed Jan 19. 60

Wm. H. H. H.

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