

## Statement of the Case.

present writ would be to make a new writ and not to amend the present one, and would necessitate a new bond and citation.

But even if the amendment be within the discretion of the court it should not be granted.

PER CURIAM. (January 6, 1890): The motion to rescind the judgment of dismissal, entered November 4, 1889; to restore the cause to the docket; and to amend the writ of error herein by inserting therein, as plaintiffs in error, the names of Henry A. Willard, John W. Thompson, Samuel Norment and J. H. Baxter is

*Granted and case returned to the docket.*

*Mr. Nathaniel Wilson* for plaintiff in error.

*Mr. Arthur A. Birney* and *Mr. Charles C. Cole* for defendant in error.

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IRWIN v. SAN FRANCISCO SAVINGS UNION.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF CALIFORNIA.

No. 181. Submitted January 23, 1890. — Decided February 3, 1890.

*Wright v. Roseberry*, 121 U. S. 488, affirmed and applied to this case.

THE United States, being the real party interested as plaintiffs in error, by their counsel filed the following statement as a brief for the plaintiff in error:

“This is an action of ejectment, brought in the Superior Court of Solano County, California, and afterwards removed into the United States Circuit Court, to recover a large body of swamp and overflowed lands contiguous to the mainland of Mare Island, upon which island the United States have a navy-yard, and have erected extensive buildings, etc.

“The plaintiff in error, the defendant below, was the officer

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in command of the said navy-yard at the time the suit was brought, and had no other interest in the controversy.

“The case was tried without a jury, under a stipulation in writing, and judgment rendered for the plaintiffs, to the effect that they were entitled to the possession of the lands in controversy.

“This writ of error raises but one question.

“The plaintiffs claimed title to the swamp and overflowed lands in question, under the State of California, and introduced in evidence a patent from the State to one John W. Pearson, from whom they derived title.

“This evidence was objected to by the defendant on the ground: ‘That a patent issued by the State to any individual for swamp or overflowed lands does not convey title to the lands therein described, unless it be shown that the same lands have been patented by the United States to the State, or listed to the State by the Land Department of the United States. That it has not been shown by competent evidence that it has been determined by the proper authority of the Land Department of the United States that the lands described in the patent, or any part thereof, are swamp or overflowed lands within the meaning of the act of Congress approved September 28, 1850, commonly known as the Arkansas land act.’

“The objection was overruled and the patent read to the jury, whereupon the defendant excepted.

“The plaintiffs then introduced other evidence, parol and documentary, for the purpose of showing that the land sued for answered to the description of swamp and overflowed lands, and the defendant moved the court to strike out and exclude all said evidence, including the patent, but the court denied the motion, and thereupon the defendant excepted.

“The opinion of the eminent Circuit Justice upon the questions raised by the bill of exceptions, appears to be sustained by the subsequent opinion of this court in *Wright v. Roseberry*, 121 U. S. 488.

“The case is, therefore, submitted without further observation.”

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PER CURIAM. It is conceded by counsel for plaintiff in error that this case is governed by *Wright v. Roseberry*, 121 U. S. 488, and the judgment is, therefore, upon the authority of that case, *Affirmed.*

*Mr. Assistant Attorney General Mauray* for plaintiff in error.

*Mr. George A. Nourse* for defendants in error.

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 DAVENPORT *v.* PARIS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 268. Submitted April 8, 1890. — Decided April 14, 1890.

*Glenn v. Fant*, 134 U. S. 398; *Raimond v. Terrebonne Parish*, 132 U. S. 192; *Andes v. Stauson*, 130 U. S. 435; and *Bond v. Dustin*, 112 U. S. 604, affirmed and applied to the stipulation filed in this case by counsel, the jury being waived.

THIS was an action to recover on bonds and coupons issued by the defendant, a municipal corporation, in aid of the construction of a railroad. The record contained the following stipulation "as to facts, etc." being signed by the counsel:

"It is stipulated in the matter of *Charles Davenport v. The Town of Paris*, in assumpsit, now pending in the U. S. Circuit Court for the Southern District of Illinois, that the instruments sued on, being bonds numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 23, 24, 25, 31, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80, with coupons now attached, which purport to be the bonds of the town of Paris, were signed, respectively, by Henry Van Sellar and James A. Dittoe on the dates of said instruments, and that the said Henry Van Sellar was on that date supervisor of said town of Paris, and that the said James A. Dittoe was on said date the town clerk of said town of Paris.