LITCHFIELD *v.* RAILROAD COMPANY.

Where in an action (under the laws of Iowa) to recover land—the plaintiff averring that he claims and is entitled to the land, the defendant denying such right of possession but setting up no title in himself—there has been a reversal in this court and a mandate "to enter judgment for the defendant below," an entry by the court below that the defendant "hath *right* to the lands claimed in the declaration" is erroneous. The judgment should have been that the plaintiff hath no title. Reversal and mandate accordingly.

ERROR to the Circuit Court for Iowa.

Mr. Litchfield, for the plaintiff in error; Mr. Grant, contra.

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

The record shows this state of facts: Litchfield, the plaintiff in error, brought an action to recover the land described in his declaration, averring that he claimed and was entitled to possession. The defendant, the Railroad Company, denied the allegation of his right of possession. It set up no title in itself. The case went to trial upon the issue so made, and a judgment was rendered in favor of the plaintiff. The Railroad Company brought the case into this court by a writ of error. The judgment was reversed, and a mandate was sent to the court whence the cause came, commanding it "to enter judgment for the defendant below." That court accordingly entered judgment as follows:

"It is therefore ordered and adjudged, that the plaintiff has no title to the lands in dispute, and that the plaintiff pay all costs taxed at $——, and that execution issue therefor."

This was done at the October Term, 1861, of that court.

At the same term, the court, on the motion of Litchfield, set aside the judgment so entered, and granted him a new trial. At the October Term, 1863, on his motion, the suit was dismissed, and a judgment was rendered against him for costs. At the December Term, 1863, of this court, a writ of mandamus was issued, whereby the court below was com-

manded to vacate the order granting a new trial, and to enter a judgment in favor of the Railroad Company, according to the mandate sent down upon the reversal of the judgment. The Circuit Court, at the October Term, 1864, did accordingly vacate the order granting a new trial. The entry, after doing this, proceeds as follows:

"And it is further considered and adjudged, that the said defendant, the said Dubuque and Pacific Railroad Company, *hath right to the lands claimed in the declaration*—that is to say, section one (1) in township eighty-eight north, in range twenty-nine (29) west of the fifth principal meridian, and lying in the northern division of the State of Iowa, and to the possession thereof, and that the said defendant recover of the plaintiff the costs in this cause accrued, taxed at $——, and have execution therefor."

Litchfield excepts to this judgment, and insists—

That the right of the Railroad Company to the land in controversy was never in issue, and never decided;

That the second judgment, in so far as it determines that the company had such right, is erroneous, and unwarranted by the mandate and by the writ of mandamus from this court;

And that it should have been like the first judgment, that the plaintiff had no title to the land, &c.

We think these objections well taken, and that the judgment entered pursuant to the mandamus should have been like the prior one, simply in favor of the defendant upon the issue joined and for the costs. This proceeding is the proper one to correct the error complained of.* There can be no doubt of the power of the court to vacate the order of dismissal, and to reinstate the case, independently of the order contained in the writ of mandamus.† If there could otherwise be any doubt upon the subject, the command of the writ is conclusive as to the proceedings had in conformity to it.

* Martin *v.* Hunter's Lessee, 1 Wheaton, 354.

† Ex parte Bradstreet, 7 Peters, 648; Litch *v.* Martin, 10 Western Law Journal, 495; Atkins *v.* Chilson, 11 Metcalf, 112.

If, since the commencement of this suit, the plaintiff has acquired a title to the land, as he insists, that title can be asserted only in a new action.* After the decision by this court, the court below had no power but to enter a judgment according to the mandate, and to carry that judgment into execution. This was the end of the case.†

The judgment before us is REVERSED. The cause will be remanded to the Circuit Court, with directions to enter a judgment

IN CONFORMITY TO THIS OPINION.

RAILROAD COMPANY *v.* SCHURMEIR.

1. The meander-lines run in surveying fractional portions of the public lands bordering upon navigable rivers, are run, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction, and which is to be paid for by the purchaser.
2. Congress, in providing, as it does, in one or more acts relating to the survey and sale of public lands bordering upon rivers—that navigable rivers, within the territory to be surveyed, should be deemed to be public highways, and that where the opposite banks of any stream, not navigable, should belong to different persons, the stream and the bed thereof should become common to both—meant to enact that the common law rules of riparian ownership should apply in the latter case, but that the title to lands bordering on navigable streams should stop at the stream, and not come to the *medium filum*.
3. But such riparian proprietors have the same right to construct suitable landings and wharves, for the convenience of commerce and navigation, as riparian proprietors on navigable waters, affected by the ebb and flow of the tide.
4. A government grant of land in Minnesota (9.28 acres), bounded on one side by the Mississippi, was *held* to include a parcel (2.78 acres) four feet lower than the main body, and which, at very low water, was separated from it by a slough or channel twenty-eight feet wide, through which no water flowed, but in which water remained in pools; where, at medium water, it flowed through the depression, making an island of the parcel; and where, at high water, the parcel was submerged; the whole place

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* McCool *v.* Smith, 1 Black, 459.

† Ex parte Dubuque and Pacific Railroad Co., 1 Wallace, 73.