

MCDERMOTT VS. MATHIS, AS SHERIFF, ETC.

Appeal from Chicot Circuit Court in Chancery.

Hon. John. C. Murray, Circuit Judge.

Garland & Randolph,

Harrison & Hooker, for the appellant.

S. H. Hempstead for the appellee.

Mr. Justice Compton delivered the opinion of the Court.

The only question in this case, not decided in *McGehee vs. Mathis*, at the present term, is whether the lands of the appellant, are such as would be benefited by the construction of levees, within the meaning of the act of 7th January, 1857.

The act provides that there shall be levied and collected, a tax on all alluvial lands "that would be benefited by levees."

The listing of the lands for taxation by the levee inspectors, raises the presumption that they are such as would be benefited by levee work, and this presumption must prevail if not rebutted by other competent testimony in the cause.

The evidence agreed upon by the parties, and relied on to

overturn the presumption thus raised, is, that the lands of the appellant "are not subject to overflow from the Mississippi river, nor protected by levees." This we think is not sufficient. For instance, a tract of land, though not subject itself to overflow, may nevertheless be so situate in the vicinity of other lands, which are, as to prevent the proprietor from conveniently getting to it, or from it, when the water is high. In such case it could hardly be contended, that the land would not be benefited by the construction of a levee.

It might be difficult to law down with precision, any general rule which would be applicable to all cases—nor is it necessary in the case before us, that we should attempt to do so. We think it manifest, however, that the legislature did not intend to restrict the term "benefited," to protection from actual overflow, in its application to each particular tract of land lying within the overflowed district.

Let the decree of the Court below be affirmed with costs.

Absent, Mr. Justice Rector.

Note.—The same questions were involved in the following cases, which were, also, affirmed:

Montgomery vs. Mathis, as Sheriff, etc.	
Jackson & Co. vs.	same.
Wilson vs.	same.
C. C. McDermott vs.	same.