

of academic theory from the point of view that the specification of the contents of benefit was difficult and the degree of the legal benefit infringement was influenced by chance. The current decision by the Supreme Court recognized the perspective of the former theory. However, we add that some legislative measure from the standpoint of the relief of the victims is expected in the future in order to relieve the damage to third parties that is caused by the exercise of public power by policemen.

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## 2. Law of Property and Obligations

### Ownership of the land under the surface of the sea.

Decision by the Third Petty Bench of the Supreme Court on December 16, 1986. Case No. (*gyo tsu*) 147 of 1980. A case demanding revocation of a registration of lost land. 1221 *Hanrei Jihō* 3; 629 *Hanrei Taimuzu* 100; 1148 *Kinyū Hōmu Jihō* 41.

#### [Facts]

The land in dispute, part of a tideland submerging at high tide and appearing at low tide which is located in the coast of the Bay of Tabaru, had been entered in the land register with the classification of a quagmire and fifty persons, X<sub>1</sub> et al. (plaintiffs, *koso* respondents, *jokoku* respondents), had had their shares in the joint ownership of the land through the registration.

Originally the tideland in question was a tideland for which A was granted permission to develop a reclaimed rice field by Tokugawa Shogunate in the Edo era and was granted a title-deed in the Meiji era. Afterwards, it was registered as a quagmire in the name of A. Nevertheless, it had been transferred through

many hands until the registration of the joint ownership by X<sub>1</sub> et al. without being reclaimed.

However, with a progress of the development project of Higashi Mikawa Coastal Industrial Park, reclamation of this tideland was proposed in order to secure a site for the project and some of the joint owners of the land in question applied for a registration of lost land (Land Registration Act, Article 81.8). A registrar, making a survey of the land on the spot and ascertaining that the land was lost, had it entered in the register, fixing “submergence on an unidentified date” as grounds of registration. Thereupon, X<sub>1</sub> et al. brought an action demanding revocation of the new registration.

The courts of first and second instances gave judgments for X<sub>1</sub> et al.

### *[Opinions of the Court]*

The Supreme Court reversed the original judgment and dismissed the claim of X<sub>1</sub> et al., holding as follows:

“In the socially accepted idea, the sea is separated from the land by a line of the verge of the water at the highest tide. And, the sea is what is called public property for common use which has been appropriated in its natural state to the use by general public from ancient times, and therefore it is subject to direct control and management by the State under the public law, which does not admit of exclusive control by a particular person. Thus, it is reasonable to assume that as long as the sea remains as such, it is not equivalent to land which is an object of ownership.”

“However, with the exception of the depths of the sea to which man’s control will by no means extend, it would be inappropriate to assume that, from the very nature of it, the sea naturally cannot be an object of ownership in the private law, and that the State cannot take measures such as administrative acts to partition off a certain area of the surface of the sea and thereby enable exclusive control to prevail over the area in order that the area may be vested in a private individual upon termi-

nation of public use of it. Whether the State does so or not is wholly a matter of legislative policy, and if the State takes such measures, the partitioned area may be understood to correspond to land which is an object of ownership.”

“Judging from the findings of the original court, it is clear that the land in dispute has been remaining part of the sea from ancient times though not continuously submerged. Therefore, whether or not the land in dispute is equivalent to land as an object of ownership depends on whether or not the State had ever in the past taken measures to partition off the land in question, discriminating it from the rest of the surface of the sea, in order that it might be vested in a private individual.”

“The grant of the permission to develop a reclaimed rice field by Tokugawa Shogunate and the issuance of the title-deed in the current case cannot be considered tantamount to such measures. Therefore, it cannot be assumed that the land in dispute had acquired the nature of land which made it an object of ownership.”

*[Comment]*

The current decision is noteworthy in that it is the first by the Supreme Court that expressed its general opinion on whether or not private ownership might be created in land under the surface of the sea.

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