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Wilson Vs. Mason

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SooperKanoon Citation : sooperkanoon.com/78252

Court : US Supreme Court

Decided On : 1801

Appeal No. : 5 U.S. 45

Appellant : Wilson

Respondent : Mason

Judgement :

Wilson v. Mason - 5 U.S. 45 (1801)
U.S. Supreme Court Wilson v. Mason, 5 U.S. 1 Cranch 45 45 (1801)

Wilson v. Mason

5 U.S. (1 Cranch) 45

ERROR TO THE DISTRICT

COURT OF KENTUCKY

SYLLABUS

The jurisdiction of the courts of the United States extends, by the Constitution, to cases where a caveat had been entered according to the laws of Virginia existing before the erection of the part of her territory, into the State of Kentucky, in which

the lands in controversy were situated, on which caveat and judgment had been entered, although by the laws of Virginia the judgment was declared to be final, and the compact between Virginia and Kentucky stipulated that rights acquired under Virginia should be decided according to the laws existing at the time the compact was entered into.

When by a statute a particular form of proceeding is prescribed, a court will not consent to substitute an equivalent act for that required by the law.

By the laws of Kentucky, a particular method for taking up or appropriating lands was required, and unless an entry in the form and manner designated by those laws was made, surveys of the lands gave no title, however notorious they might be, and although such surveys were known to the subsequent locator at the time he made his survey in strict conformity with the requirements of the law.

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These cases were brought before the Court by writs of error to the District Court of Kentucky, the parties having previously, under the provisions of the laws of that state, sought to establish their title to the lands in question by cross-caveats, upon which judgment had been entered. By the laws of Virginia, before that part of her territory which afterwards became the separate State of Kentucky, and by the laws of Kentucky, a particular form of entering and taking up waste lands was designated, and a mode for investigating and deciding upon titles claimed to have been acquired under those laws was directed. The parties in this case asserted a compliance with those laws.

The facts and provisions of the land laws upon which the rights of the parties were claimed to depend are fully stated in the opinion of the Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is a writ of error to a judgment of the Court of the United States for the District of Kentucky, rendered on a caveat, and is governed by the land laws of Virginia.

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In the year 1779, the legislature of that commonwealth opened a land office and offered for sale, with some reservations, so much of that tract of country lying within its boundaries southeast of the River Ohio as was then unappropriated, a part of which now constitutes the State of Kentucky.

Every person who would pay at the rate of forty pounds for one hundred acres into the treasury of the state became entitled to such quantity of waste and unappropriated land as was at that rate equivalent to the money paid, for which a certificate was given to the register of the land office, whose duty it was, on receipt thereof, to issue a warrant for the quantity of land purchased, authorizing any surveyor, qualified according to law, to lay off and survey the same. A warrant might also be issued on certain other rights.

A chief surveyor was appointed for each county, whose duty it was to nominate a sufficient number of deputies for the business of his county, and the law proceeded to direct that

"Every person having a land warrant founded on any of the before mentioned rights and being desirous of locating the same on any particular waste and unappropriated lands shall lodge such warrant with the chief surveyor of the county wherein the said lands or the greater part of them lie, who shall give a receipt for the same if required. The party shall direct the location thereof so specially and precisely as that others may be enabled with certainty to locate other warrants on the adjacent residuum, which location shall bear date on the day on which it shall be made and shall be entered by the surveyor in a book to be kept for that purpose, in which there shall be left no blank leaves or spaces between the different entries."

George Mason was one of the earliest purchasers under this law.

On 29 April, 1780, he made the following entries:

"29 April 1780. George Mason enters 8,400 acres of land to begin on Panther Creek on the east side

thereof, opposite to a beech on the west side, about four miles above the mouth of the west fork, and to run up and down the said creek and eastwardly for quantity."

"29 April 1780. George Mason enters 8,300 acres, to begin at the upper corner of his 8,400-acre entry, and to run up the creek on the east side and back for quantity."

Panther Creek pursues a general westwardly course from its source till it empties into Green River.

The creek forks something more than twelve miles and one quarter of a mile in a straight line above its mouth, and one of those forks, the direction of which towards its source is northwardly, has, from the beginning of the year 1780, been generally termed the west fork, and the other has been termed Panther Creek.

On 27 October, 1780, Mr. Mason made the following entry with the same surveyor:

"27 October, 1780. George Mason desires to make his entry of 8,400 acres more special on Panther Creek, *viz.,* to begin four miles above the forks of Panther Creek where it mouths into Green River on the east side, running up and back for quantity."

In the months of September and October, 1783, these two entries of 8,400 and 8,300 acres were surveyed by James Hord, one of the deputy surveyors of the County of Jefferson, which surveys, as was the custom, were made conformably to the instructions given by Mr. Mason's agent.

The survey of the entry of 8,400 acres is supposed to conform to the explanation or amendment of that entry made in October, 1780. It begins four miles above the

mouth of Panther Creek and something more than eight miles below its forks.

The survey of the 8,300 acre entry adjoins the survey of 8,400 acres on the upper side, and the plat was shown by the surveyor, before he would return it, to the then agent

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of Mr. Mason who, after its supposed variance from the entry was suggested to him, approved it and directed it to be returned to the office.

These surveys were returned in the course of the fall of 1783.

The supposed variance between the survey and location of the 8,300 acres was afterwards, about 12 September, 1784, pointed out by the surveyor to a subsequent agent of Mr. Mason who also approved of the manner in which the surveys were made, and returned them to the land office.

On 9 April, 1783, George Wilson enters with the surveyor of Jefferson County 40,926 acres of land on Panther Creek, so as entirely to include George Mason's survey of 8,300 acres.

This entry, though in the name of George Wilson, was made by John Handley, a deputy surveyor for Jefferson County, for his own benefit and that of Christopher Greenup, as well as for the benefit of George Wilson, and at the time of making the entry, full knowledge of the previous survey made of the same land for George Mason had been obtained by the said Handley, who had seen the surveys in the office and had communicated this information to his two partners in the entry.

In the month of March, 1784, George Wilson entered in the Supreme Court of the District of Kentucky a caveat to prevent a grant from issuing on George Mason's survey of 8,300 acres, because the survey was made contrary to location, and because the entry was vague, he claiming the same, or so much thereof as interferes with his entry made on Treasury warrants for 40,926 acres, on 9 April, 1783.

Pending the caveat, George Mason departed this life and the suit was revived against Richard Mason, devisee of the said George, at whose petition it was removed into the Court of the United States held for the District of Kentucky.

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A cross-caveat was entered in the same court on the part of Richard Mason to prevent the issuing a patent to George Wilson, and these causes coming on to be heard, it was agreed that the judgment rendered in the caveat Wilson v. Mason should be also entered in the case of Mason v. Wilson.

In June term, 1800, the opinion of the Court for the District of Kentucky was given that the defendant Mason had the better right, and it was ordered that the caveat entered by Wilson should be dismissed.

To this judgment the plaintiff Wilson has obtained a writ of error, and the principal question now to be decided by this Court is which of the parties has the better right?

But before entering on the question, it may be necessary to notice a preliminary point made by the counsel for the defendant in error. He contends that in a caveat the decision of the district court is final, and that the cause cannot be carried before a superior tribunal.

To maintain this proposition, he relies on an act of the Legislature of Virginia making the judgments of the district courts of the state final in cases of caveat, and on the compact between Virginia and Kentucky which stipulates that rights acquired under the Commonwealth of Virginia shall be decided according to the then existing laws.

This argument would not appear to be well founded had Virginia and Kentucky even been for every purpose independent nations, because the compact must be considered as providing for the preservation of titles, not of the tribunals which should decide on those titles. But when their situation in regard to the United States is contemplated, the Court cannot perceive how a doubt could have existed

respecting this point. The Constitution of the United States, to which the parties to this compact had assented, gave jurisdiction to the federal courts in controversies between citizens of different states. The same Constitution vested in this Court an appellate jurisdiction in all cases where original jurisdiction was given to the

inferior courts, with only "such exceptions and under such regulations as the Congress shall make." Congress, in pursuance of the Constitution, has passed a law on the subject in which the appellate jurisdiction of this Court is described in general terms so as to comprehend this case; nor is there in that law any exception or regulation which would exclude the case of a caveat from its general provisions. If, then, the compact between Virginia and Kentucky was even susceptible of the construction contended for, that construction could only be maintained on the principle that the legislatures of any two states might, by agreement between themselves, annul the Constitution of the United States.

The jurisdiction of the Court being perfectly clear, it remains to inquire which of the parties has the better right.

The title of Mason, being eldest, is of course the best if it be not in itself defective.

In the caveat of the plaintiff in error, two defects in the title of the defendant are assigned.

1. That his entry is vague.

2. That he has surveyed contrary to his location.

The first was abandoned in argument, and does not appear to the Court to have been maintainable.

The second shall now be considered.

To support the allegation that the survey has been made contrary to the location, the entry and the survey are produced.

The entry calls for a beginning on the upper corner of George Mason's entry of 8,400 acres. To ascertain this spot, reference must be had to the entry called for. That is to begin on Panther Creek, on the east side thereof, opposite to a beech on the west side, about four miles above the mouth of the west fork, and to run up and down the said creek and eastwardly for quantity.

The branch of Panther Creek, which was at the date of the entry generally denominated the "west fork," is something more than twelve miles and one quarter of a mile above its mouth. The entry of 8,400 acres is to begin four miles above the west fork, and the land in controversy ought to be placed above that entry. Yet it is surveyed below the west fork.

To obviate this difficulty, the counsel for the defendant in error produces and relies upon the entry of 27 October, 1780.

That entry is in these words:

"George Mason desires to make his entry of 8,400 acres more special on Panther Creek, *viz.,* to begin four miles above the forks of Panther Creek, where it mouths into Green River, on the east side, running up and back for quantity."

This entry is contended to be not a removal, but an explanation of that which had been made on 29 April, 1780, and being merely an explanation, the survey of the land in controversy, beginning at the upper corner of the survey of the 8,400-acre tract, conforms to its original location and is consequently free from the exception made to it.

If this position be true, the entry of 27 October, 1780, must describe the same land with that which is described, though which less certainty, by the entry of 29 April in the same year.

But the entry of 29 April calls for a beginning four miles above the mouth of the west fork of Panther Creek, which fork is more than twelve miles in a straight line

above the mouth of the creek, and the subsequent entry begins four miles above the forks of Panther Creek where it mouths into Green River. The west fork of Panther Creek and the mouth of the same creek where it empties into the river are perfectly distinct and separate places, and were so understood at the time this location was made.

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It is, however, contended that in the extensive wilderness offered for sale, accuracy of description was not to be expected, and the point of union between a creek and river might well be mistaken for the forks of a creek.

This would not be very probable in any case, but it totally inadmissible in this, because names of places which they were generally understood to possess have been used by the person locating for Mr. Mason, and as there are no other controlling boundaries referred to, they must be understood as designating the watercourses which were commonly described by those names, and which any person inclined to locate the adjacent residuum would necessarily suppose to have been referred to by them.

But if the location of October explains without removing that of April, then the original entry might without such explanation have been there surveyed, and could not have been properly surveyed four miles above the west fork.

This would scarcely have been attempted.

Indeed, the counsel for the appellee, in admitting that an entry made on the land in controversy, subsequent to Mason's entry, but before his survey, would have been good seems to have disclosed an opinion that the original entry did not comprehend the land in question, and that not the entry but the survey is to be relied on as the foundation of his title.

To the Court it appears perfectly clear that the entry of 27 October was a removal, and not an explanation of that of 29 April.

It has not been contended that the removal of the 8,400 acre entry has also removed that of 8,300 acres.

The title of Mason then, if good, must be shown to be so by establishing that a survey without an entry is a sufficient foundation for a title.

With a view to discover whether this question has been settled in Kentucky, all the adjudications contained in the

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book of reports furnished by the counsel for the plaintiff in error have been examined. It is not perceived either that the question has been directly determined or that any principles have been settled which govern it.

This case then is of the first impression.

The act of the Virginia Legislature must be expounded according to the opinion this Court may entertain of its import, without deriving any aid from the decisions of the state tribunals.

In 1779, Virginia opened a land office for the sale of an extensive unsettled and almost unexplored country, the motives for which are stated in the preamble of the statute to have been "to encourage the migration of foreigners, promote population, increase the annual revenue, and create a fund for discharging the public debt."

Any person whatever might become a purchaser of any portion of these lands by paying into the treasury of the commonwealth the purchase money required by law. By doing so he became entitled to a warrant authorizing any survey or to lay off for him in one or more surveys the quantity of land purchased. It was apparently contemplated by the law that the number of purchasers would immediately become very considerable. The condition of these purchasers in this stage of the contract ought to be distinctly understood. They had acquired a right each to appropriate to himself so much of the vacant land belonging to the commonwealth as he had purchased, but no right either in common or severally to

the whole or any particular part of the country until such right should be acquired by further measures.

This was at the same time the situation of a great number of persons, and a prior was in no respect more eligibly circumstanced than a subsequent purchaser except in the single case of both applying precisely at the same time for the purpose of appropriating each to himself the same land. Had the purchaser of the first warrant been negligent enough to hold it up until the whole land was appropriated, the title of every subsequent purchaser would have been good against him, and he would have been

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without remedy. The original purchase of a warrant then creating only a general claim which gave of itself only in a single case priority of right to the prior purchaser, it became indispensably necessary to prescribe a mode by which this general title should be satisfied by the appropriation of a particular tract of land.

This mode seems to have been prescribed by that part of the act which says that

"every person having a land warrant and being desirous of locating the same on any particular waste and unappropriated lands shall lodge such warrant with the surveyor of the county wherein the lands or the greater part of them lie. . . . The party shall direct the location thereof so specially and precisely that others may be enabled with certainty to locate other warrants on the adjacent residuum, which location shall bear date the day on which it shall be made and shall be entered by the surveyor in a book to be kept for that purpose."

This mode of appropriation pointed out by the law as that which must be used by any person desirous of locating a warrant on any particular waste and unappropriated land, requires that the location shall be given to the surveyor with the warrant in order to be entered in a book kept for that purpose, which is denominated the book of entries.

It is apparent throughout the whole act that the legislature never contemplated a survey as being in itself an appropriation of land, or supposed that one would be ever made if not founded on a previous entry.

Some few of the many passages which are found in various parts of the law will be selected to evince this position.

The surveyor is forbidden to admit the entry of any warrant on Treasury rights except preemption warrants in his books before the first day of May next succeeding the passage of the act. But the prohibition does not extend to a survey, and yet this would have been equally necessary if land could have been appropriated by a survey without a previous location.

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It is declared that no entry or location shall be admitted for certain lands which are described in the act and intended to be reserved, but there is no declaration that they shall not be surveyed. This omission manifests an opinion that they could not be appropriated by survey alone.

In prescribing the duty of a surveyor, the law enjoins him to proceed with all practicable dispatch to survey all lands entered into his office, and many rules are given to regulate the surveying of entries; but there is not a syllable in the act which contemplates or makes a single provision for surveys not founded on a prior entry made in the book of entries.

The mode of appropriation then which the law designates has not been pursued, but it is contended that another course has been adopted which equally produces all the objects designed to be effected by the location in the book of entries, and which therefore ought to be received as a sufficient substitute for an entry.

The Legislature of Virginia, when bringing her lands into the market, had undoubtedly a right to prescribe the terms on which she would sell, and the mode to be pursued by purchasers for the purpose of particularizing the general title acquired by obtaining a land warrant. The Court is by no means satisfied of its

power to substitute any equivalent act for that required by the law.

The case of *Blackwell v. Harper,* reported in 2 Atkyns 93, has been cited to show the authority of a court to dispense with part of a statute directing the mode of proceeding to be observed by a person who claims title under such statute.

That case arose under an act of Parliament which directs that

"Any person who shall invent or design, engrave, &c.;, any historical or other print or prints shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate and printed on every such print or prints. "

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The plaintiff had engraved certain medicinal plants, a work deemed within the act, and had brought a bill to establish her right to the sole property in them and to restrain the defendant from copying and engraving them, upon the penalties within the act of Parliament.

It was objected that the day of publication from which the term was to commence had not been engraved, and so the act had not been complied with, and consequently the property had not vested.

Lord Hardwicke was of opinion that the property vested although the day of publication was not engraved, and that the words directing the day of publication to be engraved on each print were only necessary to make the penalties incur, not to give the title.

"Here,' said his Lordship, 'the clause which vests the property is distinct."

This opinion, however, was given with great doubt, and only an injunction was granted without costs and without an order for an account.

The case of *Blackwell v. Harper* has, at the bar, been denied to be law. However this may be, it is certainly essentially variant from that before the Court.

The opinion of Lord Hardwicke was not that where any circumstance was required by a statute in order to vest a title, other equivalent acts might be received as a substitute; but that the particular statute on which the case depended did not require the omitted circumstance, since the property was vested by a distinct clause.

By a reference to the words themselves it will be perceived that the expression of the act of Parliament is such as might perhaps warrant this opinion. The property is completely vested before the direction concerning the date of the publication is given, and Lord Hardwicke supposes it to be a question on which judges would differ whether the subsequent words were merely directory or descriptive. A perfect property in the specific thing was supposed by that judge to have been given by other words, and on that idea his decree is declared to have been formed.

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But in the case under consideration, no property in the specific thing is supposed to have been given by other words. No title to it is created by any other part of the act. The purchase of the land warrant gave a power to appropriate, but was no appropriation, and the mode pointed out by the legislature would seem to the court to be that which can alone give title to the particular lands.

But if this opinion should even be too strict, if an act entirely equivalent to an entry could be received as a substitute for one, a survey does not appear to be such an act, nor does it seem to have been so considered by the legislature.

From the circumstances under which the act for establishing the land office was passed, as well as from the expressions of that act, it is apparent that the entry was intended to give complete notice to other purchasers that the land located was already appropriated. The mode of giving this notice it was certainly proper to

prescribe. By doing so, the numerous doubts and questions concerning the sufficiency of notice, which would inevitably arise from leaving that important fact to the discretion of individuals in the first instance, and then to the discretion of courts to be exercised many years after all the lands should be located, would be in a considerable degree obviated.

It was doubtless an important object to obviate them.

The regulations, therefore, respecting entries are all calculated to make them as notorious as possible. Not so of surveys.

The entries and surveys are to be kept in separate books. Why so if a survey amounted to an entry?

The entry must be dated when made by the locator; but the time of recording a survey may appear or not, at the discretion of the surveyor, and a subsequent survey may be recorded before one of prior date.

There are to be no blanks in the book of entries, and this regulation is well calculated for the prevention of

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frauds in the origin of titles. It does not apply to the book of surveys.

The book of entries is open to the inspection of every person. The book of surveys cannot be looked into but at the discretion of the surveyor.

If a prior entry be alleged, the person affected thereby has a right to demand a copy thereof; but no copy of a survey can be given to any other than the proprietor until twelve months after it shall have been made.

From the whole act, a legislative intention to make an entry, and an entry only, the foundation of title to any particular tract of land is strongly to be inferred, and if even an equivalent act could be received, a survey does not appear to be such an act. In this particular case it is true that complete notice was obtained by it, but

titles must rest on general principles, and in the general, a survey would not, without something more than the law requires, be notice. The law therefore cannot contemplate a survey as of equal operation with an entry.

A question has been made at the bar whether a caveat is in the nature of an equitable action, and on the supposition that it is of that nature, the counsel for the defendant in error has insisted that Wilson, having express notice of Mason's survey, was unable to acquire title to the land appropriated by that survey.

This would be true if the survey gave to Mason any title either in law or equity. But if a survey without an entry was no appropriation -- if it gave no title -- then notice of the survey could not create a title.

The doctrine of notice is well established. He who acquires a legal title having notice of the prior equity of another becomes a trustee for that other to the extent of his equity. But if he has no equity, then there is nothing for which the purchaser of the legal estate can be a trustee.

A point in the case still remains which appears more doubtful, and concerning which very considerable difficulties have been felt.

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Although Mason's survey may give him no title, it is questioned whether Wilson can maintain a caveat against it.

The caveat is a remedy given to prevent a patent from issuing in certain cases where the directions of the law have been violated to the injury of the commonwealth, or where some other person hath a better right. The case before the Court is that of a better right. The terms in which this remedy is accorded to the person who would avail himself of it for the purpose of asserting his own title are

"or if any person shall obtain a survey of lands, to which another hath by law a better right, the person having such better right may in like manner enter a caveat.

. . ."

Considerable doubts were entertained whether the word "hath," in the description of the character by whom a caveat might be maintained, did not absolutely require that the better right should exist at the time the survey should be obtained. This construction, to which some of the Court were at first greatly inclined, would have involved considerable inconvenience and would have defeated what is deemed the essential object for which the remedy was given.

It has been already stated to be the opinion of the Court that a survey not founded on an entry is a void act, and constitutes no title whatever. Consequently the land so surveyed remains vacant and liable to be appropriated by any person holding a land warrant. It is difficult to conceive that a remedy, designed to enable an individual who has made his entry in conformity with the law to prevent another from obtaining a grant for the land he has entered, should be withheld from any person whose entry entitles him to the land he has located. It is not less difficult to impute to the legislature an intention to protect a survey to which the law denies all power of appropriating the land it comprehends, or an intention of carrying such survey into grant, while another has legally appropriated to himself the land thus to be granted. It would be difficult to state a case to which the principle that a remedy should be so extended as to meet the mischief would apply more forcibly than to this. If, however, the

terms of the law had been explicit, those terms must have controlled the subject. But the expression of the act is not "if any person shall obtain a survey to which another at the time such survey may be obtained shall have by law a better right, the person having such better right may enter a caveat," &c.; The words of the law are not thus express. They are "if any person shall obtain a survey of land to which another hath by law a better right." The word "hath," in its most strict and rigid sense, would refer neither to the time of making the survey nor or of entering the caveat, but to the present moment when the word is used, and would require that the better right should exist at the time of the passage of the act. This construction

would be universally rejected as absurd, and all would expect the court to understand the words more liberally and to expound them so as to give some effect to the legislative will. Some latitude of construction then must be used, some words additional to those used by the legislature must be understood, and this being apparent, the Court perceives no sufficient motive for extending the remedy to rights existing when the survey shall be made and denying it to those which are equally valid and which exist when the caveat may be entered.

The caveat entered by Wilson is therefore maintainable under the land law of Virginia, since his title had accrued when it was entered.

The Court is of opinion that the District Court of Kentucky has erred in deciding that the defendant in error hath the better right, and that their judgment ought to be reversed and annulled. In pursuance of this opinion I am directed to deliver the following judgment.

JUDGMENT OF THE COURT. Whereupon it is considered by the Court that the plaintiff Wilson hath by law the better right to the land in controversy, and that the judgment of the Court of the United States for the District of Kentucky be reversed and annulled, and that the register of the land office in Kentucky do issue a grant to the said Wilson upon his survey of 30,000 acres of land registered in the said office, according to the metes and bounds thereof, and

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that the said plaintiff do also recover his costs expended in this Court and in the said district court, all which is ordered to be certified to the said district court, and to the said register of the land office accordingly.

In the case of *Mason v. Wilson,* the judgment of the Court was that the defendant Wilson hath by law the better right to the land in controversy, and that the judgment of the Court of the United States for the District of Kentucky be reversed and annulled, and that the said caveat be dismissed, and that the defendant Wilson recover his costs, &c.;

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