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Skillern's Executors Vs. May's Executors

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Court : US Supreme Court

Decided On : 1810

Appeal No. : 10 U.S. 267

Appellant : Skillern's Executors

Respondent : May's Executors

Judgement :

Skillern's Executors v. May's Executors - 10 U.S. 267 (1810)
U.S. Supreme Court Skillern's Executors v. May's Executors, 10 U.S. 6 Cranch 267 267 (1810)

Skillern's Executors v. May's Executors

10 U.S. (6 Cranch) 267

ON CERTIFICATE OF DIVISION OF OPINION AMONG THE JUDGES

OF THE CIRCUIT COURT FOR THE DISTRICT OF KENTUCKY

SYLLABUS

It is too late to question the jurisdiction of the circuit court after the cause has been sent back by the mandate.

The former decree of the court below had been reversed in this Court, and the cause

"remanded for further proceedings to be had therein, in order that an equal and just partition of the 2,500 acres of land, mentioned in the assignment of 6 March, 1785, be made between the legal representatives of the said George Skillern and the said John May."

Vide ante, 8 U. S. 8 U.S. 137.

The cause being before the court below upon the mandate, the question occurred which is stated in the following certificate, *viz.,*

"In this case, a final decree had been pronounced, and by writ of error removed to the Supreme Court, which reversed the decree, and after the cause was sent back to this court it was discovered to be a cause not within the jurisdiction of the Court, but a question arose whether it can now be dismissed for want of jurisdiction after the Supreme Court had acted thereon. The opinion of the judges of this court being opposed on this question, it is ordered that the same be adjourned to the Supreme Court for its decision. . . ."

This Court, after consideration, directed the following opinion to be certified to the court below:

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"It appearing that the merits of this cause had been finally decided in this Court and that its mandate required only the execution of its decree, it is the opinion of this Court that the circuit court is bound to carry that decree into execution, although the jurisdiction of that court be not alleged in the pleadings."

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