

Grant Vs. Mckee

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 248

Appellant : Grant

Respondent : Mckee

Judgement :

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26 U.S. (1 Pet.) 248

ERROR TO THE COURT OF THE UNITED STATES FOR THE

SEVENTH CIRCUIT AND THE DISTRICT OF KENTUCKY

SYLLABUS

The Court will not take jurisdiction of a case where, although the whole property claimed by the lessor of the plaintiff in error under a patent, and which was recovered in ejectment exceeded \$2,000, the title to a lot of ground, part of the

whole tract, which was of less value than \$500, was only involved in the case before the court.

Mr. Wickliffe moved to dismiss this cause, which was brought by a writ of error from the Circuit Court of the District of Kentucky, on the ground that the property in controversy was not of the value of two thousand dollars; although the whole property owned by the lessor of the plaintiff in error was under a patent, and which was recovered in the ejectment, is one thousand acres, yet the title to a lot in the Town of Falmouth of less value than \$500, held under the patent, is only involved in this case, and can only be affected by the decision of this Court.

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 Seventh Circuit and the District of Kentucky awarding restitution of lot No. 108, in the Town of Falmouth to the defendants in error, who had been turned out of possession by virtue of a writ of *habere facias possessionem* issued on a judgment in ejectment, in favor of the plaintiff in error.

Previous to the institution of the suit, the Town of Falmouth had been laid out in pursuance of an act of assembly, and lot No. 108 had been sold and conveyed to George Hendricks. The law establishing the Town of Falmouth directed that the lots should be sold subject to the condition of making certain improvements thereon within seven years, on failure to do which the trustees are empowered to enter on any lot not improved and sell it again. These improvements were not made on lot No. 108.

The defendant in error moves to quash the writ of error because the matter in controversy is not of the value of \$2,000. The motion is resisted because the whole property which was recovered in the ejectment may be considered as involved in this motion, since each tenant may move separately for an award of restitution on the supposition that the regularity of the proceedings under the law by which the town

was established and the lots sold may be examined; on this motion, the plaintiff in error has brought that subject into view and has discussed it fully. But the Court is of opinion that the question of title cannot be considered on this writ of error. The Town of Falmouth was separated from the tract out of which it was taken, and this lot was sold before the suit was instituted; neither the trustees of the town nor the proprietors of the lot were parties to that ejection. The motion to award restitution therefore involved nothing further than the lot to which the party prayed to be restored, and as that is not of the value of \$2,000, the Court has no jurisdiction. The writ of error is to be

Dismissed.

Writ of error dismissed for want of jurisdiction, it not appearing that the value of the premises in this suit is \$2,000.

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