

McArthur Vs. Porter's Lessee

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 626

Appellant : McArthur

Respondent : Porter's Lessee

Judgement :

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McArthur v. Porter's Lessee

26 U.S. (1 Pet.) 626

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF OHIO

SYLLABUS

A special verdict was found by the jury upon which judgment was to be entered according as the opinion of the court might be upon the construction of a certain deed, which deed was referred to and made part of the special finding of the jury,

but was not contained in the record thereof. A deed formed a part of a bill of exceptions taken to the opinion of the court upon a motion for new trial, which bill of exceptions, with the said deed, was contained in the record. The Court cannot judicially know that this is the same deed which is referred to in the verdict of the jury or what are the other evidences of title connected with it.

This case came up by writ of error to the Circuit Court of the District of Ohio, and was argued by Mr. Baldwin for the plaintiff in error and by Mr. Ewing, for the defendant in error. The cause was remanded to the circuit court in consequence of a defect in the record, and no opinion having been given by the court upon the points presented and discussed by the counsel, they are omitted.

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

This was an ejectment in the Court for the Seventh Circuit and District of Ohio in which the jury found a verdict in the following words:

"We the jury find the defendant guilty of the trespass and ejectment in the declaration mentioned, and assess the plaintiff's damages to six cents, which verdict is thus rendered, subject to the opinion of the court on the question reserved by consent of parties as to so much of the land in controversy as is contained in the deed of the Sheriff of Ross County to the said defendant, bearing date the ___ day of _____, 1802, and upon that part of the land included in said deed. If the opinion of the court on the question so reserved by consent shall be with the plaintiff, that the said deed is not valid to pass the land therein described, then we the jury finds the defendant guilty of the trespass and ejectment in the declaration mentioned accordingly for that part also, and if the opinion of the court thereon shall be in favor of the defendant that said deed, with the other evidences exhibited as part of said title, is valid to pass the fee to the defendant, then the jury finds the defendant not guilty of the trespass and ejectment in the said declaration mentioned as to that part of the lands and premises in controversy."

This conditional verdict is for the plaintiff or defendant

according to the opinion of the court on the validity of a deed, with the other evidences exhibited as part of said title. But this deed and these other evidences of title are not exhibited to the Court in such manner as to enable us to notice them. A deed does indeed form a part of a bill of exception taken to the opinion of the court on a motion subsequently made for a new trial. But the court cannot know judicially that this is the same deed which is referred to in the verdict, or what are the other evidences of title which are connected with it. The verdict is too imperfect to enable the court to render judgment on it.

The judgment of the circuit court is therefore reversed and the cause remanded to the circuit court with directions to set aside the verdict and to award a venire facias de novo.

This cause came on, &c., in consideration whereof it is the opinion of this Court that the judgment of the said circuit court in this cause is erroneous because the verdict is imperfect. It is therefore considered and adjudged by this Court that the said judgment be and the same is hereby reversed and annulled. And it is further ordered that this cause be remanded to the said circuit court with directions to award a *venire facias de novo*.