

Chirac Vs. Reinecker

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Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 613

Appellant : Chirac

Respondent : Reinecker

Judgement :

Chirac v. Reinecker - 27 U.S. 613 (1829)

U.S. Supreme Court Chirac v. Reinecker, 27 U.S. 2 Pet. 613 613 (1829)

Chirac v. Reinecker

27 U.S. (2 Pet.) 613

ERROR TO THE CIRCUIT

COURT OF MARYLAND

SYLLABUS

After the plaintiff's had proved by a surveyor that most of the lines and streets in "Howard's Late Addition to Baltimore Town" had been run by him as the same were marked in a particular plot upon which was the lot of ground for which the

ejectment was brought, they gave the plot so authenticated in evidence. This was contained in a volume in which were also other plots. The defendant then offered in evidence another plot in the same volume, but gave no evidence to authenticate it, claiming to use the same in evidence, as it was authenticated in the same volume in which was that exhibited by the plaintiffs. It was held that the whole volume was not in evidence, and if the defendant meant to use any plot in the same, it was his duty to establish it by competent proof of its particular authenticity.

Evidence to establish heirship and pedigree had been obtained under a commission issued for that purpose to France in an action of ejectment in which the plaintiffs had recovered the lots of ground for which this suit was instituted. In the course of that trial, a bill of exceptions was tendered by the plaintiffs and sealed by the court, in which the evidence contained in the commission was inserted. The commission and the testimony obtained under it were afterwards lost. In an action for mesne profits brought by the plaintiffs in the ejectment, against the landlord of the defendant in the suit, who had employed counsel to oppose the claims of the plaintiffs, but who was not a party to the suit on the record, it was held that the testimony, as copied into the bill of exceptions, was legal and competent evidence of pedigree.

It is well known that in cases of pedigree the rules of law have relaxed in respect to evidence to an extent far beyond what has been applied to other cases. This relaxation is founded on principles of public convenience and necessity.

Where A. was the real landlord of the premises in controversy in an ejectment and employed counsel to defend the suit, but was not a party defendant on the record, the record of the recovery in the ejectment, when offered in evidence in an action of trespass for mesne profits against B., is not conclusive evidence of title in the plaintiffs, but is *prima facie* evidence thereof and is evidence of the plaintiffs' possession; but B. may controvert the title of the plaintiffs. As to third persons, strangers to the suit, the record is evidence to show possession of the property in the plaintiffs.

When the court was asked to instruct the jury upon a particular point if it believed from the evidence certain facts, and there was not the slightest evidence from which the jury had a right to believe the existence of any such facts, the Court ought not to have given such instructions, since they were calculated to mislead them, and raise a mere speculative question.

By the law of descent of Maryland, a person claiming as heir must prove himself heir of the person last seized of the estate, and if an intestate leaves a brother of the whole blood who survived him and died without issue, and without having ever been actually seized of the estate, the estate will descend to the half-blood of the person so seized.

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An action of trespass for mesne profits was instituted by the plaintiffs in error in the Circuit Court of the United States for the Maryland District, Anthony Taurin Chirac and others against the defendant in error upon the recovery of certain real estate in the City of Baltimore by the judgment of this Court at February term 1817. [15 U. S. 2](#) Wheat. 259. The ground lies in a section of Baltimore called "Howard's Late Addition to Baltimore Town," and is part of the lot designated in that addition by the number 802. The parties, plaintiffs in this action, were the same with those in the ejectment, with the addition of the husband of Maria Bonfils Desportes, one of the plaintiffs with whom he has since intermarried.

The defendant in the ejectment was John Charles Francis Chirac. This action was brought against the defendant in error on the ground that he was in fact the real defendant in that suit, he having taken on himself the defense, employed counsel, and being the real party in interest, as he had been the receiver of the rents and profits of the estate during the whole period for which they were claimed by the plaintiffs in this action.

After a trial of this case in the Circuit Court of Maryland, it was removed by the plaintiffs by writ of error to this Court, and at February term, 1826, the court decided, among other points which were presented by the record,

"That the action for mesne profits may be maintained against him who was the landlord in fact, who received the rents and profits and resisted the recovery in the ejectment suit, although he was not a party to that suit and did not take upon himself the defense thereof upon the record, but another did as landlord."

Also that

"A recovery in ejectment is conclusive evidence in an action for mesne profits against the tenant in possession, but not in relation to third persons. But when the action is brought against the landlord in fact, the record in the ejectment suit is admissible to show the possession of the plaintiff connected with his title, although it is not conclusive upon the defendant in the same manner as if he had been a party on the record. "

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At the trial of this case in the circuit court in December, 1827, after the same had been returned to that court under the mandate of this Court, the plaintiffs gave evidence to show that the defendant in error was, before the institution of the ejectment, the claimant and actual landlord of the property, and had continued such until the recovery of the same, and that he had employed counsel and had sustained the defense by his funds exclusively. They also proved that the property had been conveyed to him by the defendant in the ejectment. The evidence of title exhibited by the plaintiffs showed the property to be in John Baptist Chirac, as whose heirs the plaintiffs claimed and recovered the same in the ejectment, and in order to show the location of the ground, the plaintiffs exhibited in evidence to the jury the public plot of *"Howard's Late Addition to Baltimore Town,"* by which it appeared that the lot embraced part of a street called Walnut Street, which, the plaintiffs further proved by the city records, had been shut up and the ground included in it divided between the owners of lots bounding upon it.

The plaintiffs then offered in evidence the record of the proceedings, judgment, and writ of possession in the ejectment, but the defendant objected to the reading of the same, except to show the possession of the property of the plaintiffs

mentioned in the record. The court admitted the parts of the record as *prima facie* evidence of title in the plaintiffs, and permitted them to be read in evidence as such proof of title.

The defendant then offered to exhibit in evidence a plot from the volume of plots in which was that already mentioned, of "Howard's late addition" to show that the whole of Walnut Street was out of the limits of "Howard's Late Addition," and that the parties under whom John B. Chirac claimed, and John B. Chirac, had no title to a certain portion of the ground recovered in the ejectment. The plaintiffs objected to the use of the plot in evidence and for that purpose. The court allowed the testimony, and the plaintiffs excepted.

The plaintiffs then read in evidence certain depositions taken under a commission issued in this cause to France,

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showing the kindred of John Baptist Chirac and the marriage of Maria Bonfils, and also offered evidence by Mrs. Lafolloniere of the death, before John B. Chirac, of Gabriel Chirac, the only brother or relation in that degree of the whole blood of John Baptist Chirac. And they then proved that the original depositions taken in the ejectment cause were lost, and therefore, in order to show the pedigree of the plaintiffs' family, offered to read in evidence the bill of exceptions, which embodies these depositions, contained in the record and proceedings of the recovery in ejectment; but the court, upon the defendant objecting, refused to allow it to be so read in evidence, and the plaintiffs excepted.

After this evidence was given and the testimony was closed on both sides, (none having been offered on the part of the defendant except that stated in the first exception on the point of location) the plaintiffs offered in evidence the record of recovery in the ejectment as conclusive evidence of the right and title of the plaintiffs to the premises, against John Charles Francis Chirac, and against the defendant holding under that title -- but the court refused to admit the evidence so offered. The plaintiffs excepted.

The plaintiffs then prayed the court to instruct the jury that if the jury believed the evidence given, the plaintiffs had shown a sufficient title to the premises in the declaration to entitle them at law to maintain this action against the defendant. The court refused to give this instruction -- and the plaintiffs took a further exception.

The defendant then prayed the court as follows:

1. That if from the evidence the jury believed that John B. Chirac, who died seized of the premises in the declaration mentioned, had any brother or brothers, sister or sisters, of the whole blood, or their descendants, who survived the said John B. Chirac the younger, then the plaintiffs are not entitled to recover.

2. That if the jury believe that the said John B. Chirac the elder had by his second wife another son beside the said John B. Chirac the intestate, then it is incumbent upon the plaintiffs to show, before they can entitle themselves to

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recover, that such son died before the said John B. Chirac the intestate, without lawful issue.

3. That if the jury believe that the said John B. Chirac the elder had by his first wife a daughter who married a certain Samuel Bonfils, by whom she had a son named John Baptist Bonfils, who married Ann Coton, who had a daughter named Maria Bonfils, who married Desportes, one of the plaintiffs, then it is incumbent upon the plaintiffs, before they can entitle themselves to recover, to show the death of the great grandfather, grandmother, and father before the impetration of the original writ in this cause, and that the plaintiffs have offered no evidence of these facts.

All these prayers of the defendant were granted by the court, and the plaintiffs excepted to all of them, and they prosecuted this writ of error.

MR. JUSTICE STORY delivered the opinion of the Court.

The original suit was an action for mesne profits, brought by the plaintiffs in error against Reinecker, and is the same cause which came before this Court and is

reported in [24 U. S. 11](#) Wheaton. 280. The cause now comes again before this Court upon certain bills of exceptions taken by the plaintiffs in error at the new trial had under the mandate issued upon the former judgment of reversal.

Without going at large into the facts as they came formerly before us, it is sufficient to state that the action is for taking the mesne profits of a certain parcel of land lying in a part of Baltimore called "Howard's Late Addition to Baltimore Town," and is designated as lot No. 802 in that addition. Before the commencement of this suit, a recovery of the same premises was had in ejectment by the same plaintiffs (the husband of one of them being now added as

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a party) as lessors against one John C. F. Chirac, who was admitted upon his prayer as landlord to defend the premises. The record of that recovery was offered in evidence at the former trial against Reinecker and rejected by the court, and that rejection constituted one of the grounds of the reversal.

At the new trial after the introduction of certain evidence, which will be hereafter stated, the plaintiffs offered the same record in evidence, including the execution of the writ of possession, and other proceedings in the same cause; to the admissibility of which, as evidence of the plaintiffs' possession, the defendant's counsel did not object, but did object to it as evidence of the plaintiffs' title to the property. The court, however, admitted the record as *prima facie* evidence of the plaintiffs' title, and thereupon the defendant filed an exception, which, however, is not now before this Court.

The evidence alluded to consisted of the testimony of witnesses to establish the facts that Reinecker had received, as landlord, the rents of the premises during the period sued for; that he exercised the rights of ownership over the same; that he was, at the time of the ejectment brought, the real landlord, and had notice of the suit, employed counsel to defend it, and was, in fact, the substantial litigant party, and that he derived his title to the premises under the defendant in ejectment, John C. F. Chirac, by intermediate conveyances executed before the ejectment.

The evidence further established a strict deduction of title by mesne conveyances of the lot in question, down to John Baptist Chirac (the intestate), under whom the plaintiffs claimed the same as heirs.

The plaintiffs then proved by a surveyor that he had surveyed most of the lines and streets in Howard's Late Addition to Baltimore Town in 1782, according to the official plot and location thereon in the mayor's office (which plot was also then given in evidence by the plaintiffs to the jury); that he had run the lines of Lun's lot according to the patent or certificate thereof, and that the premises described

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in the plaintiffs' declaration and in the writ of possession were in Lun's lot, and also within the said addition, and were known as lot 802 &c.;

The plaintiffs, after having given in evidence the plot aforesaid, upon which was located lot No. 802 and Walnut Street, then gave in evidence, from the original book of entry and record in the mayor's office, certain proceedings condemning Walnut Street to be shut up and ordering that each person interested by having lots in the street be entitled to one-half of such street on each side, &c.;

The defendant then offered in evidence another plot in the same volume of city plots, being a plot of Howard's Addition to Baltimore in 1766, in order to show that the whole of Walnut Street was contained within such last mentioned addition, already read in evidence, to the admission of which the plaintiffs objected, but the court overruled the objection and permitted the plot to go to the jury.

The admission of this evidence constitutes the first exception of the plaintiffs. It is in the first place said that it was not proper evidence against the plaintiffs, after the recovery in ejectment, even if the plot in question had been duly authenticated. But at all events it is contended that it is not *per se* evidence, merely from the fact that it is found in a volume of city plots, which contained the general plot already in evidence, and which had been specially authenticated by the surveyor. We are of opinion that this last objection is well founded. The book itself had not been authenticated as a book of public plots regularly made, but a single plot only in the

volume had been authenticated. The whole volume, therefore, was not in evidence, and if the defendant meant to use any other plot, it was his duty to establish it as evidence, by competent proofs of its particular authenticity.

The other objection assigned for rejection of it admits of more doubt. It is said that the effect of this evidence would be to establish that John B. Chirac (the intestate) had no title to a certain portion of the land recovered in the ejectment. Unless the defendant was absolutely concluded by the judgment in that suit, he was certainly at liberty to dispute any part of that title. And if it were material for the

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plaintiffs to prove the actual location of the lot 802, and Walnut Street, in Howard's Late Addition in 1782, no reason occurs to us why the defendant was not at liberty to disprove the fact by showing that Walnut Street was in Howard's former addition in 1766. It is merely evidence to rebut other parol evidence of the plaintiffs as to the location.

The plaintiffs then further read in evidence the depositions of certain witnesses in France, taken under a commission to establish their pedigree. The testimony was to this effect: that J. B. Chirac, the father of the intestate, had three wives; that by his second wife he had two sons; the intestate, and one Gabriel B. R. Chirac; that the intestate died in 1799; that his brother Gabriel left France, and went to the islands. One of the witnesses said he died in the islands. Another witness stated that before 1797 she resided in St. Domingo and lived on a plantation near that of J. B. Chirac (the intestate); that she heard in St. Domingo that his brother came to the intestate's residence there, and it was publicly reported in the neighborhood that the said brother had died; that she heard this at the house of a friend where the intestate visited, and heard it very often, and that it was generally stated as a fact; that she never saw the brother, and never heard that he was married, and never heard of him as being alive since the report of his death; that she is no relation of the family, and never was at the intestate's house while he was at St. Domingo, and did not know or believe that there were any ladies living there when the brother died.

The plaintiffs then offered to prove that the original commission for taking the testimony issued in the said ejectment cause, with the depositions taken under the same, were lost, and then offered to read to the jury the bill of exceptions contained in the record aforesaid in order to show the pedigree of the plaintiffs' family. But the court refused to allow the same to be read in evidence to the jury. This refusal constitutes the second exception of the plaintiffs. The bill of exceptions so rejected was taken by the plaintiffs, and did not refer to any depositions; but it stated that the plaintiffs gave in evidence to the jury, that the intestate was a

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native of France; that the lessors of the plaintiffs (naming them) were the brothers and sisters, and grand niece, &c.;, of the intestate, &c.;

"and that neither the father nor mother, nor any brother or sister of the whole blood of the said intestate, nor their issue or descendants, were living at the time of his death."

Upon consideration, we are of opinion that under the circumstances of this case, the evidence was admissible for the purpose of establishing the pedigree of the plaintiffs' family, and this is the only view in which it was presented to the court. It is well known that in cases of pedigree, the rules of law have been relaxed in respect to evidence, to an extent far beyond what has been applied to other cases. This relaxation is founded upon principles of public convenience and necessity. In a case between the parties to the suit, in which this bill of exceptions was taken, the evidence would have been conclusive. Although Reinecker was not the defendant in that suit, yet he was the real landlord and party in interest, and conducted the suit, and the evidence of the facts so proved as to pedigree ought under such circumstances, we think, to be admitted as *prima facie* evidence against him. He had the means of contesting those facts, and if he did not avail himself of those means, it may fairly be presumed that he yielded to the sufficiency of the proofs.

This was the whole evidence in the cause, and it being closed on both sides, the plaintiffs offered the same record of the recovery in the ejectment cause as conclusive evidence of their right and title to the premises against J. C. F. Chirac (the defendant therein), and against the defendant Reinecker holding under that title, which the court refused to admit. This refusal constitutes the third exception of the plaintiffs. The plaintiffs then prayed the court to instruct the jury that if it believed the evidence, the plaintiffs have shown a sufficient title to the premises in the declaration, to entitle them in law to maintain their action against the defendant, which the court refused to give. And this refusal constitutes the fourth exception of the plaintiffs. There was a fifth exception, but it is unnecessary to refer to it because it is a mere repetition (apparently by mistake) of the fourth.

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Before proceeding to consider these exceptions, it may be proper to say a few words explanatory of that part of the former decision of this Court as it stands reported in [24 U. S. 11](#) Wheat. 280. The record of the ejectment suit had been rejected by the court below as any evidence against Reinecker, although it was offered, in connection with other evidence, to establish that Reinecker, although not a party on the record, was the real landlord, and had received the rents and profits, and had notice of the suit, and had employed counsel to defend it, and resisted the recovery. In the opinion of the court upon this point it was stated that, in general, a recovery in ejectment, like other judgments, binds only parties and privies. It is conclusive evidence in an action for mesne profits against the tenant in possession, or other defendant on record. But in relation to *third persons*, the judgment is not conclusive, and if they are sued in an action for mesne profits, they may controvert the plaintiff's title at large. In such a suit (that is to say, against *third persons*), the record of the ejectment is not evidence to establish the plaintiff's title, but is admissible to show the possession of the plaintiff.

This proposition has been supposed at the bar to indicate an opinion that in the case then before the court, with reference to all the circumstances of notice, and rating of the rents, &c., by Reinecker, the record was only evidence of the

possession and not of the title of the plaintiffs. Such was not the understanding of the court. The proposition was asserted as to *third persons* generally, who were strangers to the suit. Even as to such persons, it was asserted that the record was admissible to show the possession of the plaintiff. The particular circumstances of Reinecker's case, as connecting him with the parties, were not, in that part of the opinion, in the view of the court. In the subsequent commentary of the court on the case of *Hunter v. Britts*, 3 Campbell 455, a doubt was intimated, whether a mere notice, *in pais*, to the landlord, who was not a party to the record, was conclusive upon him, but not the slightest doubt was intimated that it was *prima facie* evidence of title, as well as of possession, against him, under such circumstances. The point whether the record in the

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ejectment suit was not *prima facie* evidence of title in the plaintiffs, as against a person standing in the predicament of Reinecker, was not decided at that time, and was not necessary to the decision.

Upon consideration of the question presented by the third exception above mentioned, we retain the opinion that the record in the ejectment suit was not conclusive evidence upon persons not parties to the record, but we are also of opinion that it was *prima facie* evidence of the plaintiffs' title and possession against Reinecker under the circumstances adduced in evidence. He had full notice of the suit, and had the fullest means to defend it. The parties upon the record were his agents or tenants, and he in effect though not in form, took upon himself the defense of the suit. The case is stronger than that of *Hunter v. Britts* and fairly within the reach of the principle decided by it. There was then no error in the court in refusing to give this instruction.

The fourth exception can be sustained only upon the ground that there was no fact in the cause upon which there was any doubtful or contradictory evidence. If there was any such evidence, it would have been improper for the court to withdraw the question of its credibility from the jury. And if the evidence was merely of a presumptive nature, it was not for the court to decide as a point of law how much it

ought to weigh with the jury. It was properly its province to draw the conclusions of fact arising from such presumptions. It might have believed the evidence but at the same time not have been satisfied that it justified it in inferring from it other facts not positively proved.

The real difficulty in the case arises from the peculiar structure of the prayer of the plaintiffs and the introduction of parol evidence at the trial by them to fortify what had been already declared by the court to be *prima facie* evidence, record evidence of title.

If the court had been asked to instruct the jury that the evidence of the plaintiffs, if believed by the jury, was competent in point of law, from which it might infer all the necessary facts to maintain the action, unless it was rebutted on the part of the defendant, it would have been

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unobjectionable. It would have left the matters of fact for the just consideration of the jury upon the *prima facie* evidence of the plaintiffs. But the difficulty is that a matter of fact of vital consequence to the plaintiffs was whether Gabriel B. R. Chirac, the brother of the whole blood of the intestate, was dead without leaving lawful issue upon the death of the intestate. The plaintiffs very unnecessarily introduced parol evidence on this subject after the court had ruled that there the ejectment was *prima facie* evidence of their title. The parol evidence did not particularly establish the death of Gabriel (for the bill of exceptions had been rejected as evidence), although it was exceedingly strong as presumptive proof, and as such it was the province of the jury to pass upon it. The court was right, therefore, in refusing the prayer of the plaintiffs because it trenched upon the proper province of the jury by requiring the court to assume a fact which was not absolutely proved, but was matter of inference and presumption upon the whole testimony.

The defendant afterwards prayed the court to instruct the jury as follows:

1. That if from the evidence the jury believed that J. B. Chirac, who died seized of the premises in the declaration mentioned, had any *brother* or *brothers*, *sister* or *sisters* of the whole blood or their descendants, who survived the said J. B. Chirac the younger, then the plaintiffs are not entitled to recover.

2. That if the jury believed that the said John B. Chirac the elder had by his second wife another son besides the said son J. B. Chirac, the intestate, then it is incumbent upon the plaintiffs to show, before they can entitle themselves to recover, that such son died before the said intestate without lawful issue.

3. That if the jury believed that the said John B. Chirac the elder had by his first wife a daughter who married a certain Samuel Bonfils, by whom she had a son named John Baptist Bonfils, who married Ann Coton, who had a daughter named Maria Bonfils, who married Desportes, one of the plaintiffs, it is incumbent upon the plaintiffs before they can entitle themselves to recover, to show the death of the great grandfather, grandmother, and father before the impetration of the original writ in this cause, *and that the plaintiffs have offered no evidence of these facts.* The court gave the

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instructions so prayed for, and the plaintiffs filed their exception thereto.

The first instruction is open to two objections. It asks the court to instruct the jury that if from the evidence it believed (among other things) that the intestate had any *sister* or *sisters* of the whole blood or their descendants who survived him, &c.;, the plaintiffs were not entitled to recover. Now there was not the slightest evidence from which the jury had a right to believe the existence of any such sister or sisters, and without such evidence, the court ought not to have given the instruction, since it was calculated to mislead them and to raise a mere speculative question.

But a still more decisive reason against it is that by the law of descent of Maryland, a person claiming as heir must prove himself heir of the person last actually seized of the estate, and if the intestate had left a brother of the whole blood who survived

him and died without issue and without ever having been actually seized of the estate, the plaintiffs would still have been entitled to recover as heirs of the half-blood of the person last seized.

The second instruction was rightly given. It was not sufficient for the plaintiffs to show that Gabriel was dead, but that he died without lawful issue, for otherwise such issue were entitled to recover. The *onus probandi* was upon them to establish every fact necessary to their own heirship, and it cannot admit of doubt that this was necessary. The same rule is laid down in 3 Starkie on Evidence 1099, and is supported by the case of *Richards v. Richards*, there cited from Mr. Ford's MSS. also by *Doe v. Griffin*, 15 East 293.

The third instruction assumes to decide a question of fact upon which we think there was evidence before the jury. The record of the recovery in the ejectment suit was *prima facie* evidence of the plaintiffs' title, and the depositions in the cause and the structure of the interrogatories and answers presupposed the death of the great grandfather, grandmother, and father of the intestate. There was error then in the court in giving this instruction.

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Upon the whole, the judgment must be

Reversed and the cause remanded with directions to award a venire facias de novo.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland and was argued by counsel, on consideration whereof this Court is of opinion that the said circuit court erred in admitting the plot offered in evidence by the defendant's counsel as stated in the plaintiffs' first bill of exceptions, and also erred in refusing to admit as evidence the bill of exceptions stated in the plaintiffs' second bill of exceptions. And the said circuit court also erred in granting the instructions firstly and thirdly prayed for by the defendants as stated in the plaintiffs' sixth bill of exceptions. Whereupon it is

considered, ordered, and adjudged by this Court that, for the errors aforesaid the judgment of the said circuit court in this cause be and the same is hereby reversed and annulled, and that the said cause be and the same is hereby remanded to the said circuit court with directions to award a *venire facias de novo*.

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