

Mcarthur Vs. Porter

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Court : US Supreme Court

Decided On : 1832

Appeal No. : 31 U.S. 205

Appellant : Mcarthur

Respondent : Porter

Judgement :

McArthur v. Porter - 31 U.S. 205 (1832)

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McArthur v. Porter

31 U.S. (6 Pet.) 205

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

In an ejectment for a tract of land, the declaration described the same by specific metes and bounds. The jury found a verdict for the plaintiff, stating the defendant to be guilty of the trespass in the declaration mentioned, and "that the plaintiff do

recover of the defendant the land described as follows," describing the same and referring to a diagram and report of a survey of the land in controversy, which was in evidence.

This verdict was for but a part of the land claimed in the plaintiff's declaration. The circuit court, on motion of the plaintiff's counsel, instructed the jury to find a general verdict, saying that the plaintiff could take possession at his peril, and the jury found according to the instructions of the court. *Held* that the jury was right in its original verdict, and the instruction of the court that it should find a general verdict, the plaintiff having established a title only to part of the land, was erroneous.

The real question before the Court is whether the defendant, upon proof of a title to part of the premises described in the declaration of ejectment, is by law entitled to a general verdict for the whole of the premises sued for. That the action of ejectment is a fictitious action and is moulded by courts to subserve the purposes of justice in a manner peculiar to itself is admitted, but the professed object is to try the titles of the parties, and the jury is bound to pass upon those titles as they are established by the evidence before it. It therefore does no more than its duty when it finds a verdict for the plaintiff according to the extent and limits of his title as it is proved by the evidence. It is equally its right so to do since it is comprehended in the issue submitted to its decision. If, therefore, it finds by the verdict according to the truth of the case that the plaintiff has title to part only of the premises in the declaration, and describes it by metes and bounds, and that so far the defendant is guilty, and as to the residue finds the issue for the defendants, such a verdict, in point of law, seems to be unexceptionable, and if so, the judgment following the verdict ought to conform to it, and if it should be a general judgment for the whole premises demanded in the declaration, it would be erroneous. Such, upon principle and the analogies of the common law, would be the result, and the authorities clearly establish the doctrine, and it is confirmed as a matter of practice by the best text writers on the subject.

The case agreed by the counsel for the plaintiffs in error and for the defendants in this Court was as follows:

"This was an action of ejectment which came up on a writ of error to the Circuit Court of the United States for the District of Ohio. One of the questions in dispute on the trial of the cause below was the boundary line between the lands of the plaintiff and defendant. Surveys had been made of the premises

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in dispute according to the pretensions of each party. These surveys, with the explanatory depositions taken on the ground, were placed on file and used in evidence on the trial. The jury, instead of a verdict according to the claim of either party, found an intermediate line. Their verdict was in these words, *viz.*, "

" We the jury do find the defendant guilty of the trespass in the plaintiff's declaration mentioned, and do assess the plaintiff's damages to one cent, and that the plaintiff do recover of the defendant the land described as follows, *viz.*, beginning at the stone planted in Spencer's Orchard, designated on Looker's Map (referring to the survey given in evidence), by the letter B., thence running in a northwesterly direction to a point in Dock's line, one hundred and twenty-four poles eastwardly on Dock's line, from the point marked D. on Looker's Map, a hickory and dogwood; thence westwardly with Dock's line one hundred and twenty-four poles to the hickory and dogwood aforesaid; thence running in a southwestwardly direction with Taliaferro's line to the place of beginning."

"By reference to Looker's map or survey on file, the boundary here marked out by the jury was capable of being reduced to certainty. The counsel for the plaintiff below objected against the verdict's being recorded and moved the court to instruct the jury to find a general verdict of guilty for the plaintiff. The court so instructed the jury, saying 'the plaintiff would take possession at his peril.' The jury accordingly found a general verdict for plaintiff. To this instruction and opinion of the court the defendant excepted, and brought this writ of error to reverse the judgment. "

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MR. JUSTICE STORY delivered the opinion of the Court.

The original action was an ejectment brought by the defendant in error against the plaintiff in error, and the declaration (which contains several counts) describes the land demanded by specific metes and bounds. At the trial, the jury found a verdict in the following terms.

"We, the jury, find the defendant guilty of the trespass in the plaintiff's declaration

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mentioned, and do assess the plaintiff's damages to one cent, and that the plaintiff do recover of the defendant the land described as follows, *viz.*, beginning at the stone planted in Spencer's Orchard designated on Looker's Map (referring to the diagram and report of the survey in court) by the letter B.; thence running in a northwesterly direction to a point in Dock's line, one hundred and twenty-four poles; eastwardly on Dock's line from the point marked D. on Looker's Map, a hickory and dogwood, thence westwardly with Dock's line one hundred and twenty-four poles to the hickory and dogwood aforesaid; thence running in a southwesterly direction to Taliaferro's line to the place of beginning."

The counsel for the plaintiff then moved the court to instruct the jury to find a general verdict, and thereupon the court did instruct the jury to find a general verdict, saying that the plaintiff would take possession at his peril, which general verdict was found by the jury accordingly, and to this instruction the defendant excepted. Other exceptions were taken in the progress of the trial, but they have been abandoned at the argument, and the only question presented for our consideration is upon the instruction already mentioned.

From the survey ordered by the court, as well as from the other proceedings and evidence in the cause, it abundantly appears that the case was one of conflicting titles, and the controversy was principally as to boundaries. The verdict of the jury, as originally found, was for part only of the land sued for in the ejectment, fixing upon an intermediate line of boundary different from that asserted by either party. It was therefore equivalent to a verdict finding a part of the tract of land sued for in favor of the plaintiff and the residue in favor of the defendant. In other words, that

the defendant was guilty of the ejectment as to a part, and not guilty as to the residue of the land described in the declaration.

The real question, then, before the Court is whether the plaintiff, upon the proof of a title to a part of the premises sued for in the ejectment, is by law entitled to a general verdict for the whole of the premises sued for. That the action of ejectment is a fictitious action and is moulded by courts to subserve the purposes of justice in a manner peculiar to itself is admitted, but its professed object is to try the titles of the parties

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and the jury is bound to pass upon those titles as they are established by the evidence before it. It therefore does no more than its duty when it finds a verdict for the plaintiff according to the extent and limits of his title as it is proved by the evidence. It is equally its right so to do, since it is comprehended in the issue submitted to their decision. If, therefore, it find by its verdict according to the truth of the case that the plaintiff has title to part only of the premises in the declaration, and describes it by metes and bounds, and that so far the defendant is guilty, and as to the residue, finds the issue for the defendant, such a verdict in point of law would seem to be unexceptionable, and if so, the judgment following that verdict ought to conform to it, and if it should be a general judgment for the whole premises demanded in the declaration, it would be erroneous. Such, upon principle and the analogies of the common law, would be the just result, and the authorities clearly establish the doctrine, and it is confirmed as a matter of practice by the best text writers on the subject. Adams on Ejectment 294. Runnington on Ejectment 432. Bac.Abridg. Ejectment, F. G. Thus in *Mason v. Fox*, Cro.Jac. 631, where in an ejectment the jury found the defendant guilty as to part of the premises in the declaration and not guilty as to the residue, all the judges were of opinion that the judgment ought to conform to the verdict, for it was consequent upon the verdict, but that an entry of a general or variant judgment was not a misprision of the clerk, and amendable even after error brought. In *Denn d. Burgess v. Purvis*, 1 Burr. 326, the plaintiff sued for a moiety of a certain parcel of land, and had a verdict for one-third part of the premises, and the question was

whether in such a case the plaintiff could recover for a less undivided part than he sued for. The court held that she could, and that she was entitled to a judgment for the one-third. Lord Mansfield on that occasion said the rule undoubtedly is that the plaintiff must recover according to his title. Here she demanded half, and she appears entitled to a third, and so much she ought to recover; so if you demand forty acres, you may certainly recover twenty acres; every day's experience proves this. And he added that the case of *Abbott v. Skinner*, 1 Sid. 229, was directly in point. In 2 Roll. Abridg. tit. Trial, 704,

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pl. 22, there is a case where an ejectment was brought of a messuage, and it appeared in evidence and was so found by the verdict that only a small part of the messuage was built by encroachment on the lessor's land, not the residue. And the plaintiff had judgment for the parcel accordingly. *Taylor v. Wilbore*, Cro.Eliz. 768. These authorities (and the American authorities cited at the bar are to the same effect) demonstrate that the plaintiff is entitled to recover only according to his title, and that if he shows a title to part only, he is entitled to have a verdict and judgment for that part, and no more. If this be the true state of the law, then the jury was right in its original verdict, and the instruction of the court that it should find a general verdict (the plaintiff having established a title to only a part of the land) was erroneous.

But it has been argued that such a general verdict under such circumstances is a matter of mere practice, and involves no inconvenience or repugnancy to the general principles of law, because the plaintiff must still at his peril take possession under his executor upon a general judgment on such verdict, according to his title. That the whole proceedings in ejectment are founded in fictions, and the court will in a summary manner restrain the plaintiff if he takes possession for more than his title, so that no injustice can be done the defendant. And certain authorities have been relied upon in support of these suggestions. But in what manner can the court, in a case circumstanced like the present, interfere with the plaintiff in taking possession. If the special finding of the jury in the case of interfering titles on a question of boundary, which may and indeed usually does

involve a comparison of the conflicting testimony of witnesses and other parol evidence, is to be set aside and disregarded, there is nothing upon the record to guide the plaintiff in regard to the extent of his title in taking possession, and he must be at liberty to take possession according to his own view of the extent of his title; nor can the court have in such a case any certain means to interfere upon a summary application to redress any supposed excess of the plaintiff, for that would be in matters of fact to usurp the functions of a jury and to re-try the cause upon its facts and merits without their assistance. It might be different in a case where the plaintiff's title, as he proved it at the trial, was

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upon his own showing, less than the lands of which he had taken possession, for that would involve no examination or decision upon conflicting matters of fact, and after all, what could this be but an attempt, indirectly to do that justice between the parties which the original verdict sought to do directly, and in a manner entirely conformable to law?

As to the authorities relied on to sustain the practice of entering a general verdict, they do not in our opinion justify the doctrine for which they are cited. The language cited from Adams on Ejectment (p. 297) has been misunderstood. It does not mean that where the plaintiff obtains a verdict for a part of the premises only, he is entitled to a general judgment for the whole premises sued for, for that would be inconsistent with what the author has said in a preceding page (p. 294), [[Footnote 1](#)] but only that the same form of entering the judgment for the parcel recovered is adopted as in cases where the whole is recovered, as for example if the plaintiff declares for forty acres in it, and he recovers only twenty acres, his judgment must be for the twenty acres, and it is at his peril that he takes out execution for no more than he has proved title to, since otherwise his execution would be bad, as not conforming to the judgment. [[Footnote 2](#)] The case of *Cottingham v. King*, 1 Burr 621, was the case of a writ of error from Ireland, and the only question was whether the declaration, which was for five thousand messuages, five thousand cottages, &c.;, a quarter of land, &c.;, was not void for uncertainty, a general verdict having been given for the plaintiff. One objection was

that the declaration was too uncertain to enable the sheriff to deliver possession, to which Lord Mansfield replied that in this fictitious action the plaintiff is to show the sheriff, and is to take possession at his peril of only what he was entitled to. If he takes more than he has recovered and shown title to, the court will in a summary way set it right. Now it is plain that his lordship was here addressing himself to a case where the declaration was general and the verdict was general for the whole premises, and not to a case where there was a verdict for a specified parcel only of the premises. In the case

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put, the judgment would be general and the execution would conform to it, and therefore if the plaintiff took possession beyond his own title established at the trial, the court might interfere in a summary manner to prevent such a general recovery from working injustice. The same doctrine was afterwards held in *Conner v. West*, 5 Burr 2672. But neither of these cases has any tendency to show that upon proof of title to part of the premises, the plaintiff is entitled as a matter of right to a general verdict and judgment for the whole premises in the declaration. Such a point was never argued nor considered by the court.

The case of *Knouns v. Lawall, Lessee of Grayson*, cited from 2 Bibb 236, approaches nearer to the present. Without meaning to express any opinion as to the correctness or incorrectness of the decision in that case, it is sufficient to say that it is distinguishable from the case now before us. In that case the court held the special finding of the jury void for uncertainty and rejected it as surplusage, and then considered the finding of the jury as a general verdict for the plaintiff, upon which he might properly have a general judgment. No such objection occurs against the special finding in the present case, and we may decide it without touching the authority of that decision.

Upon the whole our opinion is that the instruction of the circuit court was erroneous. It was not a mere matter of practice, but one involving essential rights of the defendant.

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

[[Footnote 1](#)]

See *also* Adams Eject. App. No. 34, where the form of a judgment for a parcel is given, and a judgment for the defendant for the residue.

[[Footnote 2](#)]

See Far. & Denn., 1 Burr. 362, 366.

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