

Smith Vs. Lanning

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Court : US Supreme Court

Decided On : 1836

Appeal No. : 35 U.S. 366

Appellant : Smith

Respondent : Lanning

Judgement :

Smith v. Lanning - 35 U.S. 366 (1836)

U.S. Supreme Court Smith v. Lanning, 35 U.S. 10 Pet. 366 366 (1836)

Smith v. Lanning

35 U.S. (10 Pet.) 366

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF PENNSYLVANIA

SYLLABUS

A question whether a plaintiff in ejectment shall be permitted to enlarge the term in the demise in an action of ejectment is one within the discretion of the court to which a motion for the purpose is submitted, and cannot be certified to the

Supreme Court, if the judges of the circuit court are decided in opinion on the motion under the provisions of the Act of Congress of 29 April, 1802.

At April session, 1814, an action of ejectment was commenced by the plaintiff in the Circuit Court of Pennsylvania, and after various preparatory proceedings, on 15 October 1821, a jury having been empanelled; by agreement of the opposite parties, the term laid in the declaration was enlarged to seventeen years, and on 17 October, 1821, the jury found a verdict for the plaintiff, against Vaughan and others, on which judgment *nisi* was entered. At October session, 1826, a *scire facias* to revive the original judgment against Vaughan and others was issued, and after various pleas and demurrers, on 9 June, 1830, judgment was given for the plaintiff.

To April session, 1834, of the same court, a writ of alias *scire facias*, issued at the suit of the same plaintiff, again to revive the original judgment against John Vaughan, Calvin Cone, Timothy Stevens, Oliver Stevens, Joseph Stevens and John Secor, and all other terre tenants, was returned "made known."

"And upon the plaintiff's motion for leave to enlarge the term, and to issue a writ of *habere facias* possessionem, questions having occurred before the said circuit court, upon which the opinions of the judges were opposed, to-wit, whether leave should be granted to the plaintiff to enlarge the term, and to issue the said writ; the points upon which the disagreement happened were, during the same term, upon the plaintiff's request, thus stated under the direction of the said judges, and certified under the seal of the said court to the Supreme Court at their next session, to be held hereafter, in order that it may by that court be finally decided; the said direction of the judges, being accompanied with this opinion, that this is a collateral

Page 35 U. S. 367

motion to amend, depending on the discretion of the court under all the circumstances of the case, as they appear of record, or are disclosed by affidavits, and, in their opinion, does not come within the provisions of the act of 1802 (vol. 3,

Laws United States 482); but as the counsel of the plaintiff think otherwise, and are desirous of taking the opinion of the Supreme Court on the subject; the objection to certifying the point of difference will be reserved for their consideration, and the clerk was directed to make out the certificate accordingly."

The clerk of the circuit court, on 7 January, 1825, sent up the following certificate, with the record.

"I certify the foregoing to be a true statement of the points upon which the opinions of the judges of the Circuit Court of the United States for the District of Pennsylvania, in the third circuit, were opposed. Stated under the direction of the said judges."

Mr. Ingersoll moved to dismiss the cause, on the ground that the points certified from the circuit court did not come within the provisions of the Act of Congress of 29 April, 1802.

The Court ordered it to be certified to the circuit court as the opinion of the Court that it cannot take cognizance of the question certified, the cause being one resting entirely in the discretion of the circuit court, and therefore clearly not within the Act of Congress of 29 April, 1802.

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