

North Vs. Mcdonald

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Court : US Supreme Court

Decided On : 1879

Appeal No. : 154 U.S. 649

Appellant : North

Respondent : Mcdonald

Judgement :

NORTH v. MCDONALD - 154 U.S. 649 (1879)

U.S. Supreme Court NORTH v. MCDONALD, 154 U.S. 649 (1879)

154 U.S. 649

ORLANDO NORTH et al.

v.

WILLIAM Mc DONALD et al.

No. 41.

November 10, 1879

C. W. Bramel and W. W. Corlett, for plaintiffs in error.

Edward P. Johnson, for defendants in error.

Mr. Chief Justice WAITE delivered the opinion of the court.

The plaintiffs below evidently intended to bring this action under section 5129 of the Revised Statutes, but the averments in their petition are only sufficient to make a case under section 5046. While the court would certainly have been justified in leaving the question of fraud to the jury upon the evidence as it stood, we think, if a judgment had been rendered against the defendants, it might with propriety have been set aside, as being contrary to what had been proven. For this reason, although it might have been more in accordance with correct practice not to take the case from the jury, we will not disturb the judgment. No request was made for leave to amend the petition, and we must consider the case here as made by the pleadings, and not as the parties may have intended to make it.

The judgment is affirmed.

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