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New Jersey Court of Errors and Appeals.

JOHN MOORE WHITE,
vs.
JOHN DEN ex dem,
AARON D. WOODRUFF,
and others.

In Ejectment for land in Gloucester.
Error to the Supreme Court.

This ejectment was brought by John ex dem Aaron D. Woodruff, and others, to recover lands in the possession of John Moore White, mentioned in the declaration and consent rule. The defendant pleaded not guilty, and entered into the consent rule hereto annexed. The case was tried at the Gloucester Circuit, in the Term of May, in the year of our Lord one thousand eight hundred and fifty-two, before his honor, Justice Potts.

On the trial, the following bill of exceptions was taken and sealed:

BILL OF EXCEPTIONS.

Be it remembered, that on the fourth day of May, A. D., one thousand eight hundred and fifty-two, at a Circuit Court holden at Woodbury, in and for the county of Gloucester, before the honorable Stacy G. Potts, one of the Justices of the Supreme Court of Judicature of the state of New Jersey, the said cause came on to be tried, upon the issue joined between the parties, (*pro ut* the same,) and before a jury empanelled and sworn to try the same. The defendant having confessed lease, entry, ouster, and possession, according to the stipulation of the consent rule, exchanged between the parties in this case, (*pro ut* the same,) the lessor of the plaintiff thereupon, in support of issue on their part, called

Joseph Fithian, who being duly sworn, said—I knew Aaron Decou Woodruff, in his life-time; he died in the fall of 1824; he left one son and three daughters. Dr. Aaron D. Woodruff, born in 1818; Sarah W., (wife of Isaac C. Jones) born in 1820; Elizabeth M. Woodruff, born in 1822, and Anna M. Richards, (wife of George Richards,) born in 1824. The father's residence was in this town at the time.

And being cross-examined, said—I cannot from my own knowledge give the month.

Robert Roe, duly affirmed, said—I knew Decou Woodruff in his life-time; I rented of him the lot adjoining Mrs. Roe, in 1824; I put it in potatoes; I took it to the shares and delivered his part to him; I have seen Mr. Woodruff's cow frequently turned in the lot, previously to my having the lot; I cannot say for how many years; I was away a good deal.

And being cross-examined, said—Mr. Woodruff lived in the house adjoining the Surrogate's office; I lived opposite the lot; I

only planted up to the fence; there was a fence between the lot and defendant's garden.

Joseph Franklin, being duly affirmed, said—I knew Decou Woodruff in his life-time; he used to pasture the lot between Mrs. Roe and Judge White; I think he did so from the time I first knew it as the Woodruff lot, until Robert Roe farmed it in potatoes, in 1824; my impression is, that Mr. Woodruff died while the troops were in Trenton to receive Lafayette, which was in September, 1824; I lived opposite for two years before, 10 and he used it generally as a pasture lot.

Cross-examined, said—There was a barn-yard fence at the lower end of lot; there was a fence next the garden, I think just this side of the hedge; I can recollect the lot ever since 1819, and I think the fence was then there.

John C. Smallwood, being duly affirmed, (deed by John Moore White to Aaron D. Woodruff, dated 29th August, 1818, being shown witness,) said—I know Robert Pearson's hand-writing. The name, Robert Pearson, signed as witness, is in the proper hand-writing of Robert Pearson. The name John Moore White 20 is in the proper hand-writing of defendant.

(Instrument purporting to be an agreement, dated 6th November, 1818, being shown witness,) said—The John Moore White signed to the paper, is the proper hand-writing of the defendant.

The lessors of the plaintiff then offered and read in evidence said deed (*pro ut* the same,) and also a deed of release by John Moore White to A. D. Woodruff, duly proved, endorsed on deed, dated August 29, 1818, (*pro ut* said release); also agreement dated 6th November, 1818, (*pro ut* same.)

Plaintiff rested.

30 The defendant thereupon, in support of the issue on his part, called

Aaron D. Woodruff, who being duly sworn, said—I have seen deed offered in evidence; I have seen another deed between same parties of same date; I have it not; I don't know where it is; I remember it was spoken of on Saturday; I think I have seen it in the possession of Mr. Browning; I have not seen any thing signed by my father relating to it; I have seen a letter to the bank signed by my father.

Francis Collins, sworn, said—I have known the lot between 40 Mr. White and Mrs. Roe's more than thirty-eight years; I have worked for Mr. White off and on ever since; the hedge and fence same place as now, between you and lot; the fence at lower end same place as now; you always worked in the garden up to the fence; I don't remember any body pasturing cows on the lot.

Cross-examined, said—I think the judge said he had bought the lot about three years after I first came.

Mrs. Harriet Armstrong, being duly sworn, said—The hedge was planted about 1816; the fence stood on this side of the hedge; it stood there until since your (Judge White's) present marriage; Mrs. Woodruff was married in December, 1816; I recollect the hedge before she was married.

Richard Wells, sworn, said—I have known grounds around your (Judge White's) house since 1829; the hedge is same as then; fence same until thrown down within a few years; the ground north of fence and hedge has always been used and occupied as part of garden; I recollect fence from end of garden out to the lane, near the barn; that always has remained the same.

Cross-examined, said—I was married in 1827; that was my first knowledge of the grounds; I don't recollect that lot out to the commons.

John C. Smallwood, re-called by defendant, said—I have partially surveyed the lot; there is old fence at the rear of the lot, old posts there now standing near the barn; distance from street 5.14 chains to where fence ran across lot. (Agreement being shown witness, dated 29th August, 1818, said)—I am acquainted with hand-writing of Mr. Woodruff; signature is in his hand-writing, so body of article, at bottom part is in your hand-writing.

Defendant thereupon offered and read in evidence said agreement (*pro ut* the same.)

Defendant rested.

Lessors of plaintiff offered and read in evidence deed conveyance from John Moore White and wife to A. D. Woodruff, dated 29th August, 1818, (proved by John C. Smallwood, recalled for that purpose) *pro ut* the same.

A. D. Woodruff, re-called by plaintiff, said—I recollect a conversation some years since with Judge White; I think in 1840; he met me in Arch street, told me there was a lot in Woodbury which he had sold my father, and had not given a deed for it; wanted to buy it back; offered my mother, I think $400, which she declined to take; told me as near as I can recollect that my father had paid $200 for it.

Cross-examined, said—Conversation with my mother, in Spruce street; I do not remember the words; I drew the conclusion that the lot had been paid for; there was no intimation to the contrary.

Michael C. Fisher, duly affirmed, said—I had a conversation with Judge White, eighteen years since, in relation to this lot; as to pasturing cow in lot; he said I might turn in, for if heirs of Woodruff were to claim it the creditors of Woodruff would come and take it.

Plaintiff rested.

OPINION OF JUDGE POTTS.

In the second place it is insisted that as to the small lot, the plaintiffs are precluded from a recovery, on the ground that it is not embraced in the description of the land mentioned in the consent rule in this cause.

The consent rule describes the land as "a lot of land on the westerly side of the Main street, in the village of Woodbury, *about* forty-five feet in width by about five chains twenty-five links in depth, adjoining lands of Nancy W. Roe, and others, situate in the township of Deptford, &c."

10 Waiving the question, which it is unnecessary here to decide, how far a particular description of the premises by metes and bounds, courses and distances, and exact quantity would be conclusive upon the plaintiff's right of recovery for any thing outside of such description, I am of opinion, and instruct you accordingly, that *the description given is sufficient to entitle the plaintiff to recover the premises* in the deed mentioned, if in other respect they have satisfied you of their right to do so.

All that you have to consider therefore, is; whether the plaintiffs have made out, in the first place, a good and valid title to the 20 lot in question in their ancestor, Aaron Decou Woodruff.

2. Whether they are shown to be his heirs at law.

3. Whether the defendant had, at any time during the life of A. D. W., a possession of any part of the said lot which he held *adversely* to the said Woodruff.

The defendant, by his counsel, thereupon excepted to so much of the said charge, whereby the Judge instructed the jury, that the description given (in the consent rules, under which the defendant confessed lease, ouster and possession of the premises, for which, as owner, he, the defendant, intended to defend) was suffi- 30 cient to entitle the lessors of the plaintiff to recover the premises in the deed mentioned, to wit: the deed first offered in evidence on the part of the lessors, (*pro ut* said deed) if in other respects they had satisfied the jury of their right to do so; the defendants' counsel, on the contrary, insisted that the lessors of the plaintiff could not recover, under the issue joined in this case, any part of the premises contained and described in said deed, except so much of the said premises as were specified in the said consent rule, and that the said judge ought to have charged the said jury accordingly, and having reduced the said exception to writing, 40 the said counsel prayed that this his bill of exceptions may be sealed, and it is sealed accordingly. STACY G. POTTS.

COPY OF CONSENT RULE.

It is ordered by the consent of the attorneys of both parties, that John Moore White be made defendant in the stead of the

now defendant, Richard Fen, and do forthwith appear, at the suit of the plaintiff, and receive a declaration in an action of trespass and ejectment for the premises in question, which said premises the said John Moore White hereby admits to be, or consist of a lot of land on the westerly side of the Main street, in the village of Woodbury, about forty-five feet in width by about five chains and twenty-five links in depth, adjoining lands of Nancy W. Roe, and others, situate at the township of Deptford, in the said county of Gloucester, and now in the possession and occupation of said John Moore White, for which he intends, as owner thereof, to de- 10 fend this action of trespass and ejectment; and it is further ordered, by the like consent, that the said John Moore White do forthwith plead thereto not guilty, and upon the trial of the issue, confess lease, entry, and ouster, and that the said John Moore White was at time of the service of the said declaration in possession of the premises hereinbefore mentioned, and specified, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant, Richard Fen, by default; and if, upon the trial of the said issue, the said John More White shall not confess lease, entry, and ouster, and such possession as afore- 20 said, whereby the plaintiff shall not be able further to prosecute his suit herein against the said John Moore White, then no costs shall be allowed for no further prosecuting the same; but the said John Moore White shall pay the costs to the plaintiff, in that case to be taxed; and it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said John Moore White, or if it shall happen that the plaintiff shall not further prosecute his said suit, for any other cause than for not confessing lease, entry, and ouster, and such possession as aforesaid, then the lessor of the plaintiff shall pay to the said John Moore White costs, 30 in that case to be adjudged.

A. Browning,
Attorney for plaintiff.

Gloucester, to wit:—And the said John Moore White, in his own proper person, comes and defends the force and injury when, &c., and says that he is not guilty of the trespass and ejectment above laid to his charge, in manner and form as the said John Den hath above thereof complained against him, and of this he puts himself upon the country, and the said John Den doth so likewise. 40

John Moore White, *per se.*

Upon the coming in of the postea, judgment was rendered for the plaintiff, and a writ of error issued to the Supreme Court by the defendant, returnable to the Term of November, A. D., 1853.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Afterwards, to wit:—In the Term of November, in the year of our Lord one thousand eight hundred and fifty-two, before the Court of Errors and Appeals in the last resort, comes the said John Moore White, by William Halsted, his Attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid given, was given for the said John Den against the said John Moore White; whereas, by the law of the land the said judgment ought to have been given for the said John Moore White against the said John Den.

There is error also in this, to wit: that it appears by the record aforesaid and the bill of exceptions thereto annexed, that the Circuit Court admitted illegal evidence, that is to say, admitted the plaintiff to offer evidence in regard to other premises than those described in the consent rule.

And there is error also in this, to wit: that it appears by the record aforesaid, and by the bill of exceptions thereto annexed, that the Circuit Court admitted illegal evidence.

And there is error in this, to wit: that it appears by the record aforesaid and the bill of exceptions thereto annexed, that the Circuit Court rejected legal evidence.

And the said John Moore White prays that the judgment aforesaid, for the errors aforesaid, and other errors in the proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that he may be restored to all things he has lost by reason of that judgment.

WM. HALSTED,
Attorney and counsel with plaintiff in error.