

Case No. 2,452.

CARROLL v. DOWSON.

{5 Cranch, C. C. 514.}¹

Circuit Court, District of Columbia.

Nov. Term, 1838.

CONVEYANCE BY GRANTOR OUT OF POSSESSION.

A sale made by a trustee under a decree of the court will not pass the title of land in the actual adverse possession of a third person at the time of the decree.

At law.

Ejectment [by Richard Roe ex dem. Daniel Carroll, and of the Bank of Washington against Alfred R. Dowson] for lot No. 9, in the square No. 687, in the city of Washington. The plaintiff claimed under a demise from the Bank of Washington, and also from Daniel Carroll, of Duddington. The plaintiff gave in evidence, 1. A certificate of the original division of the square between the public and Mr. Carroll, by which the lot No. 9 was allotted to him. 2. A decree of this court, in the cause of G. Coombe v. D. Carroll, of D., for a sale of the lot, and a sale by the trustee to the Bank of Washington. The defendant showed that he was, at that time, in actual possession of the lot, holding it adversely to Mr. Carroll, who has received the whole purchase money due by the defendant for the lot. There had been no notice to Dawson to quit.

Mr. Marbury, for plaintiff.

Mr. Jones, for defendant.

THE COURT (nem. con.) was of opinion, that as the defendant held an actual adverse possession at the time of the decree for a transfer of the legal title from Mr. Carroll to the Bank of Washington, neither the demise by Mr. Carroll, nor that by the bank was a valid demise. The plaintiff became nonsuit.

¹ [Reported by Hon. William Cranch, Chief Judge.]