Case No. 3,506.CURTISS v. GEORGETOWN & A. TURNPIKE CO.
{2 Cranch, C. C. 81.}[1]

Circuit Court, District of Columbia. Nov. Term, 1813.

GENERAL ISSUE IN ACTION OF DEBT—EVIDENCE OF FRAUD OR IRREGULARITY.

In an action of debt founded upon an injunction, taken under the charter of the Georgetown & Alexandria Turnpike Company, of the 3d of March, 1809, the defendant, upon the plea of nil debet, may give evidence of fraud, or partiality, or irregularity on the part of the jurors who took the inquest. But the jurors themselves cannot be examined as witnesses of each other's conduct. It is necessary that all the jurors sworn should agree to the inquest.

Debt for $3,000, the damages assessed by an inquisition taken under the act of congress of the 3d of March, 1809 (2 Stat. 539), incorporating "The President, Directors, and Company of the Georgetown and Alexandria Turnpike Road." This inquisition had been quashed by the circuit court, but their decision was reversed by the supreme court of the United States, because the circuit court had no jurisdiction of that matter.

6 Cranch [10 U. S.] 233. At the last term the defendants demurred to the declaration in the present case, because it contained no profert of the inquisition, nor prout patet per recordum.

But THE COURT overruled the demurrer, and adjudged nil debet to be a good plea; under which plea the defendants now offered evidence of partiality, fraud, and misconduct on the part of jurors upon the inquest.

To this E. J. Lee and Mr. Swann, for the plaintiff, objected that these are facts of which the plaintiff cannot be supposed to be conusant, or to be prepared to controvert. The plea of nil debet does not deny the validity of the inquisition.

THE COURT, however, (THRUSTON, Circuit Judge, absent) permitted the evidence to be given.

The defendants then offered Mr. Threlkeld, one of the inquest, as a witness to prove the improper conduct of the other jurors. But THE COURT refused, on the ground of the general policy of refusing to hear the mutual recriminations of jurors.

Mr. Key, for the defendant, then objected that the inquisition should have been assented to by all the jurors who were sworn. Whereas, although it was signed by all who were sworn (16), it was agreed to by 12 only.

E. J. Lee, contra. The act cannot mean that the whole 24 should agree. It says there shall be not less than 12; from which it is to be inferred that if twelve agree, it is sufficient. The supreme court said that if the inquisition had been found by 11 jurors it would have been void; implying that if 12 had agreed it would have been good.

THE COURT stopped Mr. Key from reply, and instructed the jury that the inquisition was not sufficient in law to support the plaintiff's action; it appearing on the face of the inquisition, and by parol testimony, that all the jurors sworn did not agree thereto, although all signed it.

The plaintiff took a bill of exceptions, but did not prosecute a writ of error.

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