GORMAN v. MARSTELLER.

Case No. 5,629.

{2 Cranch, C. C. 311.}[1]

Circuit Court, District of Columbia. May Term, 1822.

TRESPASS QUARE CLAUSUM FREGIT—DIFFERENT STATES—PROOF OF ENTRY.

1. In trespass quare clausum fregit, the plaintiff must prove a trespass in the county in which the suit is brought.
2. If the close lie partly in Virginia, and partly in the District of Columbia, the injury done in the Virginia part may be given in evidence under the alia enormia.
3. An entry into the District part with intent to do injury in the other part of the close, is unlawful, although without such intent, it would have been lawful.

Trespass quare clausum fregit. The close was called Spring Garden, the greater part of which was in Virginia, and the remainder in the county of Alexandria, in the District of Columbia. The entry upon the District part, was with intent to do an injury in the Virginia part; and without such intent, the entry would not have been a trespass.

THE COURT (THRUSTON, Circuit Judge, absent,) at November term, 1821, instructed the jury, 1ST. That the plaintiff must prove a trespass in the county of Alexandria, in the District of Columbia.

2d. (CRANCH, Chief Judge, strongly doubting.) That the injuries done on the Virginia side of the line might be given in evidence under the alia enormia; and

3d. That an entry on the District part of the close, with intent to do the injury on the other part, was a trespass.

See Pope v. Davies, 2 Camp. 266; Bulwer's Case, 7 Coke, pp. la, 49; Doulson v. Matthews, 4 Term R. 503; Mostyn v. Fabrigas, Cowp. 164; Alves v. Hodgson, 7 Term R. 241.

Verdict for the plaintiff, $100.

A motion for a new trial, upon a suggestion of misdirection of the jury by the court, as to the admission of evidence of injuries done in Virginia under alia enormia, (those injuries being of themselves substantial causes of action in Virginia,) was argued at November term, 1821, by Mr. Mason, for defendant {Samuel A. Marsteller}, and Mr. Wise, for plaintiff {John B. Gorman}, and continued to May term, 1822, for consideration, when it was argued again before a full court, by Mr. Mason and Mr. Hewitt, for defendant, and Mr. Wise and Mr. Fendall, for plaintiff, when the new trial was refused.

CRANCH, Chief Judge, still doubting.

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