

Case No. 8,072.

LANNING V. CASE ET AL.

{4 Wash. C. C. 169.}¹

Circuit Court, Pennsylvania.²

Oct Term, 1821.

EVIDENCE—PARTY TO SUIT—HEARSAY—REPORT OF SURVEYOR.

1. What a witness has heard two settlers say as to one having sold his right to another, is but hearsay, and cannot be given in evidence.
2. How far, and to prove what facts, the report of the surveyor under an order of court to survey and plot the land in dispute, may be given in evidence.
3. If there be two or more defendants in ejectment, and no evidence be given of the possession of one of them, the jury may find a verdict for him at the bar; and he may be examined by the other defendants.

[This was an action in ejectment brought by Lanning against Case and others to recover land claimed by the plaintiff under land warrants.]

In this case it was ruled: (1) That the explanatory notes of the surveyor appointed under the order of this court to retrace and plot the lines of the land in dispute, were evidence, only so far as they related to the lines and marks on the ground, and other matters intended to explain his own work; but not to prove the possession of any of the defendants. For all other purposes the surveyor must be examined as a witness as in ordinary cases. (2) That if there be no evidence whatever to prove possession in one of the defendants in ejectment, the jury may find a verdict in his favour at the bar; so as to authorise the other defendants to examine him as a witness.

[For other ejectment cases brought by the same plaintiff against other defendants, see Cases Nos. 8,073, 8,074, 8,076.]

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

² [District not given.]