

# CASES

ARGUED AND DETERMINED

IN THE

## UNITED STATES CIRCUIT COURTS OF APPEALS AND THE CIRCUIT AND DISTRICT COURTS.

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CHISHOLM et al. v. RADFORD BRICK CO.

(Circuit Court of Appeals, Seventh Circuit. January 7, 1895.)

No. 190.

APPEAL—REVIEW—OBJECTIONS NOT RAISED BELOW.

The point that the evidence does not support the verdict cannot be raised for the first time on appeal.

Error to the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

Assumpsit by the Radford Brick Company against Samuel S. Chisholm, James A. Boyd, and Bruce C. White. Plaintiff obtained judgment. Defendants bring error.

Jesse Cox, for plaintiffs in error.

Willits, Robbins & Case, for defendant in error.

Before WOODS and JENKINS, Circuit Judges, and BUNN, District Judge.

WOODS, Circuit Judge. The plaintiffs in error, citizens of Illinois, composing the firm of Chisholm, Boyd & White, sold, by contract in writing, to the defendant in error, a corporation of Virginia, a brick press, which by the sixth clause of the contract they agreed to take back, and to refund the price, in case it failed to make good merchantable pressed brick from the clay of the Radford Brick Company, provided the clay were furnished to the press in proper condition and quantity, and the bricks made were properly burned. The suit was brought upon this clause of the agreement and judgment rendered in favor of the plaintiff, the defendant in error, for \$5,000, the price of the press. The first and chief contention of the plaintiff in error is that in certain particulars there was no evidence to support the verdict; but no step was taken at the trial to raise that question, and there was in fact no lack of evidence to justify the submission of the case to the jury. Error has been assigned upon various rulings of

the court in respect to the admission of evidence, and upon the instructions given to the jury, but the questions are unimportant, involving nothing novel in principle or in the application of the rules of evidence which could justify a particular statement. There is no error in the record, and the judgment is affirmed.

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HEBERT v. BROWN et al.

(Circuit Court, D. Minnesota, Fifth Division. January 7, 1895.)

PUBLIC LANDS—TITLE.

L. made application for a pre-emption entry, and some months later gave a mortgage on the land covered thereby. Six months thereafter he relinquished his pre-emption claim, and immediately filed a homestead entry on the same land. *Held*, that the mortgage was extinguished by the relinquishment, and did not attach to the homestead entry.

This was a suit by Louis Hebert against Cyrus E. Brown and others to quiet title to certain lands. The cause was heard on the pleadings and proofs.

R. R. Briggs, for complainant.

Gilfillan, Belden & Willard, for defendant John M. Watts.

NELSON, District Judge. This is an action brought by complainant, a citizen of the state of Wisconsin, against defendants Brown, Hedderly, and Watts, citizens of the state of Minnesota, and Pasqual Leveque, a citizen of the state of Maine, to quiet title to a certain 160 acres in the county of Itasca, state of Minnesota, and to restrain the three defendants first named from cutting and removing the timber therefrom. None of the defendants except Watts make answer to the bill. On March 10, 1884, Pasqual Leveque filed a declaratory statement for a pre-emption of the land in controversy, under the United States land laws, and submitted his final proofs for cash entry before the register and receiver of the Duluth land office, July 1, 1884. A special agent of the government appeared at that time to cross-examine the witnesses introduced to sustain the entry, and upon the proof submitted the register and receiver made a divided report. The former in his report to the commissioner of the general land office, dated December 12, 1884, refused to recommend an approval, in which action the receiver, in a supplemental report, acquiesced, at the same time stating that he had some information which, in his opinion, justified a rehearing; and on February 13, 1885, the same was ordered by the commissioner. On the 6th day of April, 1885, Leveque filed a voluntary relinquishment in writing to the United States of his right and claim under his pre-emption declaratory statement, stating that he could not produce the receipt given him at the time, as it was not in his possession; and on the same day he filed his application, under section 2289, Rev. St. U. S., for a homestead entry of the very same land, made the necessary affidavit, paid the compensation required by law, and received a receipt for the same. When the rehearing was had, May 18, 1885,