

REPORTS

R. Fletcher

OF

C A S E S

ARGUED AND DETERMINED

IN THE

3381
SUPREME COURT OF JUDICATURE,

AND IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS

AND

THE CORRECTION OF ERRORS

IN THE

STATE OF NEW-YORK.

BY WILLIAM JOHNSON,

Counsellor at Law.

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1808.



CASES
ARGUED AND DETERMINED
IN THE
SUPREME COURT OF JUDICATURE
OF THE
STATE OF NEW-YORK,
IN AUGUST TERM, IN THE THIRTY-SECOND YEAR
OF OUR INDEPENDENCE.

During the last vacation, WILLIAM W. VAN NESS, Esquire, Counsellor at Law, was appointed one of the Judges of this Court, in the place of Mr. Justice LIVINGSTON, resigned, and on the first day of this term, he appeared and took his seat on the Bench. Mr. Justice TOMPKINS, having been elected Governor of the State, resigned his seat in this Court.

ALBANY,
August, 1807.

Jackson
v.
Williams.

Jackson *ex dem.* Tibbits and others against Williams.

THIS was an action of ejectment for land in *Pittstown*, in the county of *Rensselaer*. The cause was tried at the *May Circuit*, in 1806, before Mr. Chief Justice *Kent*.

The declaration contained three counts, on three demises: 1st. By *George Tibbits*: 2d. By the sons of *Barnardus Bradt*, and his daughter *Elizabeth*, and her husband *John L. Bradt*: 3d. By the heirs and legal representatives of *Volkert P. Douw*, the heir of *Petrus*, who was the heir of *Jonas Douw*.

At the trial, the following facts appeared. Letters patent issued in 1688, to four patentees for *Hosick patent*. Two of the patentees died before any partition was made. On the 18th of *October*, 1706, the two surviving patentees conveyed one undivided fourth part to *Johannes Van Vech-*

The survey and map of *Hosick patent*, made by *John R. Bleecker*, in *May*, 1754, and the location of lot No. 48, made on the partition of the said patent, are correct, and describe the true bounds thereof. A subsequent survey of lot 48, made by the direction of the then owner, was not held conclusive against the subsequent owner.

zel Shepherd testified, that he made a survey of lot 48, in 1784, for *Volkert P. Douw*, who was then owner of it, at the request of his tenant, *John Rice, jun.* that he made the survey without directions from *Douw*, and subdivided lot 48, into several small lots, and delivered a map of his survey, and subdivision to *Douw*, who paid him for it; that he gave no explanation, either on his map, or to *Douw*, of the manner of his survey, and his mode of location; that according to his survey, the premises were not included in lot 48; that the lines of the lot, as laid down on *Bleecker's* map, comprehend about 25 acres in possession of the defendant, and *Van Alen's* includes a greater portion; that in 1789, he ran a *compromise line* between the patent of *Mersereau* and *Shepherd*, and the lot east of 48, in *Hosick* patent, but *Douw* had nothing to do with this *compromise line*; that when he surveyed in 1784, he had not seen *Bleecker's* map, nor did he know any thing of *Bleecker's* lines; and he has since been convinced that his survey was erroneous, and that it did not extend lot 48, as far south as it ought to be.

The defendant then produced a lease from *Douw* to *Asahel Starte*, dated 28th *January*, 1785, for lot No. 13, in the subdivision of lot 48, and which lot 13, was laid out on his map, as bounding on the line which he then ran for the south line of lot 48; in the lease, lot No. 13 is described as being bounded by the south line of the original lot No. 48.

Israel Shepherd testified, that about 16 years ago, he heard *Douw*, and *Shepherd*, the patentee, converse about compromising a certain suit, then depending, in which they were interested; that *Douw* being asked about a line run by *Hazel Shepherd*, observed that he should make no difficulty on the subject. The witness did not hear the commencement of the conversation, nor any thing said about *Bleecker's* lines.

The jury found a verdict for the plaintiff, subject to the opinion of the court, on a case containing the above facts, with liberty for either party to turn the case into a special

ALBANY,
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ALBANY,
August, 1807.

Lansing
v.
Gaine &
Ten Eyck.

verdict. The case was argued in *February* term by *Van Vechten*, for the plaintiff, and *Foot*, for the defendant. *Van Vechten* cited *Jackson and others v. Bradt*, 2 *Caines*, 169. and *Jackson v. Dennis*, 2 *Caines*, 177.

Per Curiam. The title of the lessors of the plaintiff, was fully made out upon the trial. According to *Bleecker's* map and survey, which has heretofore received the sanction of this court, the premises in question are included within lot No. 48. The defence set up, was, that the line to which the defendant claims, had been established by *Volkert P. Douw*, the former proprietor of lot 48, and that the lessors of the plaintiff, are now concluded by his acts from contesting that line. But the facts in the case are not sufficient to support that inference, or to prove that *Douw* had done any act, or given any assent which ought to have concluded him from asserting his right.*

Judgment for the plaintiff.