

Opinion of the Court.

KERR & Others *v.* SOUTH PARK COMMISSIONERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

Argued January 21, 1886.—Decided March 29, 1886.

The subject-matter in controversy in this suit is disposed of by the decree rendered below and affirmed in the suit between the same parties *ante* 379.

The case is stated in the opinion of the court.

Mr. Edward S. Isham for appellants.

Mr. Melville W. Fuller for appellees.

Mr. JUSTICE MATTHEWS delivered the opinion of the court.

The subject-matter in litigation in this cause is embraced in the decree between the same parties just affirmed, which settles the whole controversy between them.

In the present suit, the bill of complaint was filed by the South Park Commissioners, who, in pursuance of negotiations with Kerr, had advanced certain sums of money to enable the latter to protect his title to a part of the lands taken for the purposes of the park, and, as security for the same, took an assignment of certain encumbrances by way of mortgage or deed of trust upon the premises, but in fact intending that the money so advanced should be treated as a payment on account of the value of the lands of Kerr taken by them for public uses. Notwithstanding that, the present suit was pressed to a decree for the foreclosure of the lands covered by the deed of trust, and a strict foreclosure in substance was decreed, by directing that, unless the representatives of Kerr repaid to the complainants the amount of their advances, the trustee holding the legal title to the premises in controversy should convey them to the complainants on payment of a further small sum of \$3454.17. The present appeal is from this decree.

In the cause just disposed of, the same advances made by the South Park Commissioners are allowed to them in the decree as credits on account of payment of the value of the whole

Statement of Facts.

tract of one hundred and eleven acres, which, of course, is inconsistent with the decree now complained of. That decree is accordingly

Reversed, and the cause is remanded for further proceedings in conformity with equity and justice and not inconsistent with this opinion.

FULKERSON & Others v. HOLMES & Others.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

Argued March 11, 1886.—Decided March 22, 1886.

In ejectment, after proving a patent of the premises from the State of Virginia to S. Y. in 1787, the plaintiff offered in evidence a duly recorded deed from S. C. Y., his son and sole heir, to J. H., dated in 1819, proved the handwriting of the magistrate who took the acknowledgment of it and the signature of a witness who had been dead over fifty years, and showed that the patent and deed were found among the papers of J. H. after his death in 1834. *Held*, That the deed was admissible in evidence as an ancient document without further proof.

An ancient deed reciting the death, intestate, of a former owner of lands conveyed by it, and that the grantor in the deed was his only son and heir in whom title to the lands vested on his death, and conveying the lands to a person under whom the plaintiff in an action of ejectment claimed, is admissible in evidence at the trial of that action, after the lapse of over sixty years, in order to prove the pedigree of the son.

The proof in this case fails to show that the lands in controversy had become forfeited to the State of Virginia for non-listing for taxation or for non-payment of taxes, at the time when the patents were issued under which the defendants claim title.

This was an action of ejectment. The defendants in error were the plaintiffs in the Circuit Court, and were the heirs at law of John Holmes, deceased. They brought the action in August, 1871, to recover a tract of three thousand acres of land in Lee County, in the State of Virginia. The defendants pleaded the general issue. The case was tried by a jury, and there was a verdict for the plaintiffs, on which the court