

Marshall *v.* Ladd.

be vacated, and the order now directed will be certified to the Circuit Court for the District of Louisiana. See 8 Wall. 292.

Mr. P. Phillips for the motion. *Mr. T. J. Durant* opposing.

THE STATE OF VIRGINIA, PETITIONER.

ORIGINAL.

No. 11. Original. December Term, 1868.—Decided February 15, 1869.

The court withholds its decision on this motion for a writ of prohibition, until the certificate of division of opinion on the allowance of the writs of *habeas corpus* complained of can be filed, and a hearing had thereon.

THIS was a petition for a writ of prohibition. The case is stated in the opinion.

Mr. Chief Justice Chase delivered the opinion of the court.

The Chief Justice, who holds by allotment the Circuit Court for the District of Virginia, has informed the court that before the pending motion for prohibition was made, he signified to the district judge his dissent from the opinion expressed by him in favor of the allowance of the writs of *habeas corpus* complained of in the petition; and that he has advised the district judge now holding the Circuit Court, to direct that this division of opinion in respect to the motion for the writ now pending in the case of Peter Phillips, be certified to this court.

There is nothing in the provisional order, staying further proceedings by the district judge, which can be properly construed as prohibiting this course; and it is expected that the certificate will be filed at an early day.

On the first Friday thereafter the court will hear argument upon it; and in the meantime the decision of this court on the motion for a writ of prohibition, pending, will be withheld.

The clerk will advise counsel accordingly, and will certify this direction to the district judge for the District of Virginia.

Mr. J. H. Bradley and *Mr. James Lyons* for petitioner.

MARSHALL *v.* LADD.

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 78. December Term, 1868.—Decided February 15, 1869.

The legal title must prevail in ejectment; and neither party can set up facts which go to show that equitably the other party is the rightful owner of the property.