

Barnes v. Williams.

respecting the mode of designating the said slaves so to be delivered to the United States, whether the same should be made by lot, or upon proof on the part of the Spanish claimant, it is ordered to be certified to the said circuit court of Georgia, that in executing the said mandate, the Africans to be delivered must be designated by proof made to the satisfaction of that court.

WILLIAMS, Plaintiff in error, v. The PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES, Defendants in error.

Error to joint judgment.

Where there is a joint judgment against several defendants, and one only sues out the writ of error, without joining the others, it is irregular; but if the others refuse to join in it, *quære?* whether the plaintiff may not have summons and severance?¹

March 8th, 1826. In this case, in which *Wright* was for the *plain- [415
tiff in error, and *Webster*, for the defendants:—

MARSHALL, Ch. J., stated, that the writ of error must be dismissed, it having issued irregularly. The judgment in the circuit court of Ohio was a joint judgment, upon a joint action for money lent, against three defendants; and the writ of error was sued out by one of the defendants, in his own name only, without joining the others. The court was of opinion, that the writ of error ought to have been in the name of the three; and if the others should refuse to join in it, that it would deserve consideration, whether the present plaintiff might not have summons and severance.

Writ of error dismissed.

BARNES and others v. WILLIAMS.

Special verdict.

Where, in a special verdict, the essential facts are not distinctly found by the jury, although there is sufficient evidence to establish them, this court will not render a judgment upon such an imperfect special verdict, but will remand the cause to the court below, with directions to award a *venire facias de novo*.¹

February 6th, 1826. This case was argued by *Wickliffe* and **Talbot*, for the plaintiffs; and by *White* and *Isaacks*, for the [416
defendant.

MARSHALL, Chief Justice, stated, that, upon inspecting the record, it had been discovered, that the special verdict found in the case was too imperfect to enable the court to render a judgment upon it. The claim of the plaintiffs being founded upon a bequest of certain slaves, it was essential to a recovery at law, that the assent of the executor to the legacy should be proved. Although, in the opinion of the court, there was sufficient evidence in the special verdict from which the jury might have found the fact, yet they have not found it, and the court could not, upon a special verdict,

¹ *Wilson v. Life and Fire Ins. Co.*, 12 Pet. 140; *Wend.* 621; *Thompson v. Valarino*, 3 Den. Todd v. Daniel, 16 Id. 521; *Fotteral v. Floyd*, 179.
6 S. & R. 315. See *Fenner v. Bettner*, 22 ² *McArthur v. Porter*, 1 Pet. 626.