

*DUNCAN McARTHUR, Plaintiff in error, v. WESLEY S. PORTER's Lessee.

Special verdict.

A special verdict was found by the jury, upon which judgment was to be entered, according as the opinion of the court might be upon the construction of a certain deed, which deed was referred to, and made part of the special finding of the jury, but was not contained in the record thereof; a deed formed a part of a bill of exceptions taken to the opinion of the court, upon a motion for a new trial; which bill of exceptions, with the said deed, was contained in the record; the court cannot judicially know that this is the same deed which is referred to in the verdict of the jury, or what are the other evidences of title connected with it.

THIS case came up by writ of error to the Circuit Court of the District of Ohio, and was argued by *Baldwin*, for the plaintiff in error; and by *Ewing*, for the defendant in error. The cause was remanded to the circuit court, in consequence of a defect in the record, and no opinion having been given by the court upon the points presented and discussed by the counsel, they are omitted.

MARSHALL, Ch. J., delivered the opinion of the court:—This was an ejectionment in the court for the seventh circuit and district of Ohio, in which the jury found a verdict in the following words:

“We, the jury, find the defendant guilty of the trespass and ejectionment, in the declaration mentioned, and assess the plaintiff's damages to six cents, which verdict is thus rendered, subject to the opinion of the court on the question reserved by consent of parties, as to so much of the land in controversy, as is contained in the deed of the sheriff of Ross county, to the said defendant, bearing date the — day of — 1802, and upon that part of the land included in said deed. If the opinion of the court, on the question so reserved by consent, shall be with the plaintiff, that the said deed is not valid to pass the land therein described, then we, the jury, find the defendant guilty of the trespass and ejectionment in the declaration mentioned, accordingly, for that part also; and if the opinion of the court thereon shall be in favor of the defendant, that said deed, with the other evidences exhibited as part of said title, is valid to pass the fee to the defendant; then the jury find the defendant not guilty of the trespass and ejectionment in the said declaration mentioned, as to that part of the lands and premises in controversy.”

This conditional verdict is for the plaintiff, or defendant *accord-
*627] ing to the opinion of the court on the validity of a deed, with the other evidences exhibited as part of said title. But this deed and these other evidences of title are not exhibited to the court, in such manner as to enable us to notice them. A deed does, indeed, form a part of a bill of exception taken to the opinion of the court, on a motion subsequently made for a new trial. But the court cannot know, judicially, that this is the same deed which is referred to in the verdict, or what are the other evidences of title which are connected with it. The verdict is too imperfect to enable the court to render judgment on it.

The judgment of the circuit court is, therefore, reversed, and the cause remanded to the circuit court, with directions to set aside the verdict, and to award a *venire facias de novo*.

Anderson v. Clark.

THIS cause came on, &c. : On consideration whereof, it is the opinion of this court, that the judgment of the said circuit court in this cause is erroneous, because the verdict is imperfect. It is, therefore, considered and adjudged by this court, that the said judgment be and the same is hereby reversed and annulled. And it is further ordered, that this cause be remanded to the said circuit court with directions to award a *venire facias de novo*.

*618] *JAMES JACKSON, *ex dem.* LACY ANDERSON, *v.* JOHN CLARK and ROBERT ELLISON.

Land-law of Ohio.

Construction of the act of congress, passed March 2d, 1807, entitled, "an act to extend the time for locating Virginia military-warrants, for returning surveys thereon to the office of the secretary of the department of war, and appropriating lands for the use of schools, in the Virginia military reservation, in lieu of those heretofore appropriated." p. 634.

The reservation made by the law of Virginia of 1783, ceding to congress the territory northwest of the river Ohio, is not a reservation of the whole tract of country between the river Scioto and Little Miami; it is a reservation of only so much of it, as may be necessary to make up the deficiency of good lands in the country set apart for the officers and soldiers of the Virginia line, on the continental establishment, on the south-east side of the Ohio; the residue of the lands are ceded to the United States, as a common fund for those states, who were or might become members of the Union, to be disposed of for that purpose. p. 635.

Although the military rights constituted the primary claim upon the trust, that claim was, according to the intention of the parties, so to be satisfied, as still to keep in view the interests of the Union, which were also a vital object of the trust; this was only to be effected, by prescribing the time in which the lands to be appropriated by these claimants should be separated from the general mass, so as to enable the government to apply the residue to the general purposes of the trust. p. 635.

If the right existed in congress to prescribe a time within which military warrants should be located, the right to annex conditions to its extension, follows, as a necessary consequence. p. 635.

If it be conceded, that the proviso in the act of 2d March 1807, was not intended for the protection of surveys which were in themselves absolutely void; it must be admitted, that it was intended, to protect those which were defective, and which might be avoided for irregularity; if this effect be denied to the proviso, it becomes itself a nullity. p. 635.

Lands surveyed are, under the law, as completely withdrawn from the common mass, as lands patented; it cannot be said, that the prohibition, that "no location shall be made on tracts of land for which patents had previously been issued, or which had been previously surveyed," was intended only for valid and regular surveys; they did not require legislative aid. The clause was introduced for the protection of defective entries and surveys, which might be defeated by entries made in quiet times. p. 638.

ERROR to the Circuit Court of the United States for the district of Ohio. The plaintiff brought an action of ejectment, in the circuit court of Ohio, to recover a tract of land, situate in Adams county, in the Virginia military district, and state of Ohio.

On the trial of the cause, a bill of exceptions was tendered by the plaintiff, to the opinion of the court upon the admissibility of certain testimony which was offered by the plaintiff, and which was rejected by the court.

¹ See *Lindsey v. Miller*, 6 Pet. 666; *Galloway v. Finley*, 7 Id. 264; *McArthur v. Dun*, 7 How 262.