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consider the company bound to enter into such agreements with the owners of the adjacent land, the whole extent of the canal, and liable to be called upon to alter and enlarge the same, at the pleasure of such owners; would be imposing an expense and limitation upon their chartered rights, which ought not to be adopted, without the most explicit and unequivocal provision in their charter. And which, we are very clearly of opinion, is not imposed upon the company in the present case. The decree of the court below is accordingly affirmed.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

\*214] \*The Lessee of AMOS BINNEY, Plaintiff in error, v. The CHESAPEAKE AND OHIO CANAL COMPANY.

*Ejectment.*

The declaration in ejectment was dated on the 22d day of May 1831, and the judgment was rendered on the 14th of January 1832; the plaintiff in ejectment counted on a demise made by Amos Binney, on the 1st day of January 1828; his title, as shown in the abstract, commenced on the 17th of May 1828, which was subsequent to the demise on which the plaintiff counted. Though the demise is a fiction, the plaintiff must count on one, which, if real, would support his action.

The counsel for the defendants insisted, that, if the cause could not be decided on its supposed real merits, it ought to be remanded to the circuit court, for the purpose of receiving such modifications as will bring before this court those questions of law on which the rights of the parties depend. Where error exists in the proceedings of the circuit court, which will justify a reversal of its judgment, this court may send back the cause, with such instructions as the justice of the case may require; but if, in point of law, the judgment ought to be affirmed, it is the duty of this court to affirm it; this court cannot, with propriety, reverse a decision which conforms to law, and remand a cause for futher proceedings.

ERROR to the Circuit Court of the district of Columbia, and county of Washington.

An action of ejectment was commenced in the circuit court, by agreement, on the 14th day of January 1832. The declaration counted on a demise from the lessor of the plaintiff, dated the 1st of January 1828, for the term of fifteen years. The declaration was afterwards amended, by adding, "a demise from John K. Smith, and a demise from the heirs of Amos Cloud (their names to be left in blank, or considered as properly instituted in the record), and another from John Way." The following agreement, signed by the counsel for the plaintiff, was also filed in the circuit court.

"The plaintiff's title depends on the title papers herewith shown to the court, the due authentication of which is admitted: viz., the patents for Amsterdam and White Haven, and the several mesne conveyances, decrees, &c., from the patentees down to the plaintiffs; and it is admitted, that the plaintiff's lessor, J. K. Smith, was in possession, in June 1812, when the condemnation hereinafter mentioned was made of the \*land comprised

\*215] within said condemnation, and that it is a part of the said two tracts

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of land. It is admitted, that the Potomac Company, in the year 1793, condemned certain lands, as appears by their said inquisition and condemnation, and plat hereto annexed, for their canal and locks through the aforesaid tracts of land, and other adjacent tracts as noted on said plat. And it is admitted, that, on the 23d of June 1812, an inquisition was held, and condemnation had by said company, as appears by the papers hereto annexed ; and it is admitted, that the location of the land, so last condemned, and the new locks erected thereon, and the old locks erected on the land condemned as aforesaid, in 1793, is truly shown by a plat thereof, made out by Thomas F. Percell and William Bussard, hereto annexed. And it is further admitted, that the Potomac Company, after said respective condemnations, entered upon the lands so condemned, and erected thereon the locks as shown in the said plat, and continued in possession, until transferred to the defendants, the Chesapeake and Ohio Canal Company, which latter company have continued in possession ever since. Upon which case agreed, it is submitted to the court to say : 1st. Whether the plaintiff has shown title ? and 2d. Whether the condemnation of 1812 aforesaid, divested the plaintiff's title, and gave a valid title to the Potomac Company ? It is agreed, that all the papers, plats, &c., mentioned and referred to in the foregoing case agreed, may be omitted in the record of this case, and may be used in the supreme court, as if contained in the record."

The circuit court gave judgment for the defendants, and the plaintiffs prosecuted this writ of error.

The case was argued by *Key* and *Jones*, for the plaintiff in error ; and by *Coxe* and *Swann*, for the defendants.

The court gave no opinion upon the general questions discussed by the counsel in the cause ; the only points decided were upon the demise in the declaration, and on the application of the counsel of the plaintiffs in error, if the cause could not be decided on its supposed real merits, to remand it to the circuit court, "that the pleadings should receive such \*modifications, as will bring before the court those questions of law, on which the rights of the parties depend." [\*216]

*Swann* and *Coxe*, for the defendants in error.—The suit was brought in January 1832, and the demise is laid in the declaration, on the 1st of January 1828. The lessor of the plaintiff, Amos Binney, acquired his title in May 1828 ; the other lessors had no title ; by the plaintiff's own showing, they had parted with their title, long before the demises in the declaration. The plaintiff must recover on his own title, and that title as shown in the declaration, and in the process. The title must have existed at the time the suit was commenced, and must exist at the time of the trial of the cause. Adams on Ejectment ; 5 Har. & Johns. 173 ; 3 Ibid. 13.

*Jones* and *Key*, for the plaintiff in error.—The objection to the demise should have been made at some previous stage of the cause. Runnington on Ejectment 213 ; Adams 288 ; Laws of Maryland of 1785. The objection of the defendants in error to the demise, ought not to operate to produce an affirmance of the judgment of the circuit court. If the plaintiff in error has merits, the court, by remanding the case, so that the pleadings may be

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modified, will afford to the parties an opportunity to have the real questions in the case fully adjudged.

MARSHALL, Ch. J., delivered the opinion of the court.—This was an action of ejectment, brought by the lessee of Amos Binney, in the court of the United States for the district of Columbia, sitting in the county of Washington. It was agreed by the parties, that the declaration should be amended, by adding a demise from J. K. Smith, one from the heirs of Amos Cloud, and one from John Way. This amended declaration, however, does not appear in the record, and was not filed in the circuit court. The following statement is made, as forming a case agreed :

The plaintiff's title depends on the title papers herewith shown to the court ; the due authentication of which is admitted, \*viz., the patents <sup>\*217]</sup> for Amsterdam and White Haven, and the several mesne conveyances, decrees, &c., from the patentees down to the plaintiffs ; and it is admitted, that the plaintiff's lessor, J. K. Smith, was in possession in June 1812, when the condemnation hereinafter mentioned was made of the land comprised within said condemnation, and that it is a part of the said two tracts of land. It is admitted, that the Potomac Company, in the year 1793, condemned certain lands, as appears by their said inquisition and condemnation and plat hereto annexed, for their canal and locks through the aforesaid tracts of land, and other adjacent tracts, as noted on said plat. And it is admitted, that on the 23d of June 1812, an inquisition was held, and condemnation had by said company, as appears by the papers hereto annexed ; and it is admitted, that the location of the land so last condemned, and the new locks erected thereon, and the old locks erected on the land condemned, as aforesaid, in 1793, is truly shown by a plat thereof made out by Thomas F. Percell and William Bussard, hereto annexed. And it is further admitted, that the Potomac Company, after said respective condemnation, entered upon the lands so condemned, and erected thereon the locks as shown in the said plat, and continued in possession until transferred to these defendants, the Chesapeake and Ohio Canal Company ; which said company have continued in possession ever since. Upon which case agreed, it is submitted to the court to say, first, whether the plaintiff has shown title ? and second, whether the condemnation of 1812 aforesaid divested the plaintiff's title and gave a valid title to the Potomac Company ? It is agreed, that all the papers mentioned and referred to in the aforesaid case agreed, may be omitted in the record of this case, and may be used in the supreme court as if contained in the record.

The circuit court decided both points in favor of the defendants ; and the plaintiffs have brought the cause before this court by writ of error.

The abstract laid before the court by consent of parties, does not show a regular title in the plaintiff ; and the case does not, we think, find a possible <sup>\*218]</sup> session of twenty years, anterior to the \*inquisition, which would constitute a title in ejectment. It presents evidence from which a jury might be justified in finding possession ; evidence from which possession may be inferred, but the court cannot infer it.

The counsel for the plaintiffs in error contend, that the Chesapeake and Ohio Canal Company, who claim their title under the inquest, have admitted it, and are not now at liberty to controvert it. On the influence of the

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inquest in this cause, some contrariety of opinion prevails among the judges; but the defendants in error have made a preliminary question, which, if decided in their favor, will terminate the present suit. The declaration in ejectment is dated on the 22d of May 1831, and the judgment was rendered on the 14th of January 1832. The plaintiff in ejectment counts on a demise made by Amos Binney, on the 1st day of January 1828; his title, as shown in the abstract, commenced on the 17th of May 1828, which is subsequent to the demise on which the plaintiff counts. Though the demise is a fiction, the plaintiff must count on one, which, if real, would support his action.

We find in the record an entry that the declaration is amended, by adding a demise from J. K. Smith, one from the heirs of Amos Cloud, and another from John Way. These counts, however, do not appear, and the court would feel great difficulty in framing them. If this difficulty could be overcome, the abstract shows that J. K. Smith conveyed all his title on the 17th of May 1828, before this action was commenced. It also shows that the title of Amos Cloud's heirs was conveyed from them by deeds bearing date in 1816 and 1819. Had these additional counts been filed, neither of the lessors possessed any title, when this ejectment was brought, or when it was tried. The case, therefore, could not have been aided by counts on demises from them.

The counsel for the defendants have insisted, that if the cause cannot be decided on its supposed real merits, it ought to be remanded to the circuit court, for the purpose of receiving such modifications as will bring before this court those \*questions of law on which the rights of the parties depend. Where error exists in the proceedings of the circuit court, [ \*219 which will justify a reversal of its judgment, this court may send back the cause, with such instructions as the justice of the case may require. But if, in point of law, the judgment ought to be affirmed, it is the duty of this court to affirm it. (6 Cranch 268.) We cannot, with propriety, reverse a decision which conforms to law, and remand a cause for further proceedings. The judgment of the circuit court is affirmed, with costs.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court be and the same is hereby affirmed, with costs.

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\*JAMES McCUTCHEON and others, Appellants, *v.* JAMES MARSHALL [ \*220 and others.

*Slavery.*

Patrick McCUTCHEON, of Tennessee, died in 1810, having previously made his last will and testament; by which will, among other things, he bequeathed to his wife Hannah, during her natural life, all his slaves, and provided, that they, naming them, should, at the death of his wife, be liberated from slavery, and be for ever and entirely set free; except those that were not of age, or should not have arrived at the age of twenty-one years at the death of his wife; and those were to be subject to the control of his brother and brother-in-law, until they were of age, at which period they were to be set free; as to Rose, one of the slaves, the testator declared, that she and her children, after the death of his wife, should be liberated from slavery, and for