

STENNETT, SURV. *vs.* SCOTT & HERRICK.

Declaration in ejectment, no plea filed, cause submitted to a jury and verdict for defendants—Held that the verdict was a nullity, and the judgment of the court, in pursuance of it, erroneous, as it had neither the law or a valid verdict for its foundation.

The defendants having failed to plead, admitted the facts contained in the declaration, and the court should have given judgment against them for the premises, and directed a jury to be empanelled for the purpose of assessing damages.

*Writ of Error to the Circuit Court of Crawford County.*

EJECTMENT, by James Stennett and Jesse Busheyhead against William C. Scott, in the Crawford circuit court. At the return term (Sept. 1843) Scott moved the court to make Isam Herrick a party on the ground that he claimed title through him: which was done. After several continuances, the cause was tried at an adjourned term in July, 1844, before Brown, judge.

It does not appear from the transcript that any plea was filed by defendants. The record states: "now on this day came the parties, and thereupon came a jury of good and lawful men, to-wit, &c. who being duly elected, empanelled and sworn to say the truth in the premises, upon their oaths do say that the said defendants are *not guilty*. It is therefore considered by the court" &c.—then follows the judgment:

Pending the trial the plaintiffs excepted to decisions of the court in reference to the admissibility of evidence offered by defendants, and instructions to the jury. Busheyhead died, and Stennett brought error.

CUMMINS & W. WALKER, for plaintiff, and PIKE & BALDWIN, contra—but their briefs are omitted because they are upon the merits of the case—the failure of defendants below to file a plea not being assigned for error.

OLDHAM, J. not sitting.

CONWAY B, J. This was an action of ejectment instituted in the Crawford circuit court for the recovery of a house and lot in the town of Van Buren. The case was tried at an adjourned term of the court held in July 1844. The finding of the jury and the judgment of the court were for the defendants. The plaintiffs have brought the case here by writ of error.

We have examined the record diligently and no plea whatever appears to have been filed by the defendants. In a disputed case a verdict is simply the answer of a jury to the court on the issues of fact committed to their examination. A judgment is the conclusion that flows from the law and the verdict of the jury. There was no issue in this case, and consequently the jury had nothing legally committed to them to try, and their verdict for the defendants was a mere nullity, and the judgment of the court in pursuance of it was entirely erroneous, as it had neither the law nor a valid verdict for its foundation.

The defendants having failed to plead, admitted the facts contained in the declaration, and the court should have given judgment

against them for the premises and directed a jury to be empanelled for the purpose of assessing the damages sustained by the plaintiffs. *Rev. St. 446, sec. 15, and 630 sec's 77, 81.* The judgment is therefore reversed and the case remanded with instructions to the circuit court of Crawford county to allow defendants leave to plead if they desire to do so.

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