Hughes's Lessee vs. Howard.

1810. June.

Hughes vs Howard.

Appeal from *Baltimore* County Court. *Ejectment* for a tract of land called *Gist's Inspection*, lying in *Baltimore* county, containing 400 acres. Defence was taken on warrant, and plots were made, by which it appeared that the plaintiff located *Gist's Inspection*, as beginning at I on the plots, which was not counterlocated nor denied by the defendant, but admitted by him to be the place of beginning of *Gist's Inspection*.

1. At the trial in October 1806, the jury by their *verdict* say, "that they find the bounded red oak tree, mentioned in the grant of *Lun's Lot*, to have stood at figure 9 in the plots, and the said tract of land to run thence, what is called, in the defendant's table of courses on the plots, the thirty-eight perches N $25\frac{1}{2}°$ W, and 100 perches N $70\frac{1}{2}°$ W lines, according to their several courses and distances in the grant of *Lun's Lot*, with four degrees of variation; and the jury find the beginning of *Gist's Inspection* to be at figure 9 in the plots, and to run thence course and distance according to the grant of *Gist's Inspection*, with an allowance of two degrees for variation. And the jury find for the plaintiff all the land lying within *Gist's Inspection*, according to the location thereof made by the jury, which is not covered by their location of *Lun's Lot*. *Motion* by the plaintiff to set aside the verdict—1. Because it is against evidence. 2. Because it is against the admissions of the plaintiff and defendant on record. The plaintiff afterwards, at the next term, withdrew his motion, and prayed the court to enter judgment on the verdict; but the court refused to enter a judgment on the verdict. Motion was then made by the plaintiff for a *venire de novo*; and the verdict was set aside, and a *venire de novo* awarded.

2. The defendant, at the second trial in March 1807, having located on the plots the land called *Lun's Lot*, as located and returned by certain commissioners on the 2d of August 1782, and on the present plots made the W N W 100 perches line of the said location terminate in lot

The jury are concluded, by the admissions of the parties as located upon the plots in an action of ejectment, but if they disregard the admissions of the parties, and find the beginning of the tract of land, for which the ejectment is brought, at a different place, the rest of the finding of the jury is predicated upon that mistake, and the court have no power to change the verdict.

If the verdict of a jury is insufficient or contrary to the admissions of the parties, the court have the power of granting a new trial, or ordering a *venire*.

The jury are to decide on the variation of the compass, and to make such an allowance as corresponds with the proof.

The jury, in fixing the variation of the compass, are not confined to any certain rules, but are governed by the circumstances existing in the case.

The jury in some cases have refused to make any allowance for variation, in others they have allowed at the rate of one degree for every 20 years, and in others they have been influenced by ancient runnings and proof of possessions.

Where a verdict is given, and the plaintiff moves for judgment thereon, which is refused by the court on the ground of the insufficiency of the verdict, and the plaintiff then moves for and obtains a *venire facias de novo*, and a new trial is had, and the second verdict is for the defendant, the plaintiff, on writ of error, cannot take advantage of any error of the court below, in not entering judgment on the first verdict. He has relinquished all advantage he might have been entitled to by acquiescing in the opinion of the court below. *Per Chase, Ch. J.*

Where there is a location on the plots in the cause, by either of the parties, of a tract of land, deed, plot, &c. and there is no counterlocation by the adverse party, such location is admitted.

No evidence can be given of the location of a deed, plot, &c which does not correspond with it.

Where the defendant produced and read certain proceedings, which were variant from the location made on the plots by him, without objection being made to the legality of the evidence, it cannot render the same legally admissible when offered by the plaintiff.