SUPREME COURT

OF

PENNSYLVANIA.

January Term 1792.

Bradley's Lessee *versus* Agnes Bradley.

EJECTMENT tried in *Dauphin* county. The lands in question were once, incontestably, the lands of the defendant; for, the plaintiff claimed under her. The plaintiff set up an immediate title by the will of *Samuel Bradley*, deceased (the husband of the defendant) who devised the premises to him, the contents of the will being proved by the person who drew it; but in order to prove a title in the devisor, parol evidence was, also, given, that the defendant had previously conveyed to him *in fee*. To rebut this evidence, proof was produced, that the conveyance in fee was executed, merely for the purpose of making the devisor a plaintiff in partition; and that, immediately afterwards, that conveyance was destroyed; and a deed (which was exhibited) made to him *for life*. The principal question agitated in Court was, whether the deed for life, was genuine, or forged? But when the jury withdrew, two of them testified to their brethren, that, although the defendant had bought the land; yet, the bonds, which she gave for the purchase money, were unpaid, when she intermarried with the testator, and that the testator had been obliged to discharge them. On this representation, several of the jury, who were before in favour of the defendant's title, concurred in finding a verdict for the the plaintiff: and a motion was made for a new trial, on the following grounds.

1st. That the verdict was against evidence, and the opinion of the Court.

2d. That the jury had misbehaved, by hearing testimony, which was not delivered in open Court.

3d. That evidence was allowed to be given of the contents of a deed, and of a will, without previous notice to the defendant to produce it.

On

On arguing the motion for a new trial, *Ingersoll*, for the defendant, produced the depositions of two of the jurors, setting forth, that, after the jury had withdrawn, two other jurors had affirmed certain matters of fact, which (though the facts were denied at the time) had induced the deponents to find a verdict for the plaintiff: and, also, the depositions of two witnesses, contradicting the facts, that had been so affirmed. *Lewis*, for the plaintiff, produced the depositions of six of the jurors, explaining their conduct, and averring, that the whole twelve were of opinion, that another deed, conveying the premises in fee, had been executed. 1792.

After commenting on the evidence, upon the first and second grounds of exception to the verdict, *Ingersoll* cited the following authorities upon the *second* ground to show, that the evidence of the misconduct of the jurors was admissible: *Cro. E.* 189. *Moore*, 599. 2 *Morg. Ess.* 25. 1 *Stra.* 644. *Salk.* 647. and the following authorities upon the *third* ground to show, that parol evidence of the contents of a deed can only be admitted, after notice to produce the deed itself. 2 *T. Rep.* 43. 201. 4 *Burr.* 2489. He, also, urged that it was a cause of value; and, in every aspect, merited reconsideration. 1 *Dall.* 234. 12 *Vin. Abr.* 336. 47. 12 *Mod.* 347, 8. *Doug.* 118. 123.

For the plaintiff, *Lewis* observed, that the verdict was given on a question of fact, after a full hearing, in a case, in which a recovery is not conclusive; and that the principle which influenced Courts to interfere with the province of juries, by setting aside a verdict, did not apply to such a case. He investigated the evidence on the trial; and insisted, that it was not necessary for the plaintiff to produce the deed in fee, but only to establish that it once existed, for, no subsequent destruction of it, could revest the estate in the grantor; that whatever difference of opinion might exist, on other points, the jury were unanimously of opinion, that such a deed was executed; and it was immaterial to the issue, on the question of title, whether the defendant had paid the purchase money, or not. As to the parol evidence of the will, the copy of one will was produced, and the scrivener, who drew the other, besides testifying what passed on the occasion, when the defendant was present, exhibited the original rough notes of the draft. If this evidence was admissible, it was conclusive; for, she knew of the devise to the plaintiff in fee, and she acquiesced in it. It was admissible, without notice to produce the will; because, it was not offered to establish a title under the will, but to prove co-temporaneous conversations and actions of the parties, from which the fact of an existing conveyance, in fee, to the testator, might be inferred. The general rule, however, is conceded, that in order to introduce parol evidence of the contents of a deed, its existence and loss must be proved; or proof must be given that it was in the possession of the opposite party, who refused

1792. after reasonable notice to produce it. But the evidence, in the present case, was not offered to prove the contents of a deed in the defendant's *possession;* but the contents of a deed, which she had actually *destroyed.* The reason of the rule ceasing, the rule itself must cease. The only remaining topic for remark, respects the misconduct of the jurors; upon which there is an essential variance in the evidence. But, it is enough to say, that if the jury did misbehave, the proof of the fact, in order to affect themselves, or their verdict, must proceed from another quarter: it cannot be received on their own depositions. 1 *T. Rep.* 11.

Ingersoll, in reply. The motion for a new trial is as proper, and as much countenanced, in ejectments, as in any other suits. 4 *Burr.* 2221. If a deed, given for a special purpose, is afterwards cancelled, and a subsequent deed is accepted by the grantee for a less estate, the destruction of the first deed will operate as a revestment. Whether the deed in fee was given for a special purpose, constitutes the great inquiry in the present cause; and the establishment of the fact will be decisive one way, or the other. Nothing can fairly be inferred, from the supposed acquiescence of the defendant in the devise; for, the devise does not specify the land in question; but includes it, if it is included, in a general sweeping clause, disposing of all his real and personal estate. The rule, as to giving the contents of deeds in evidence, is not susceptible of the qualifications suggested for the plaintiff; nor was there any idea at the trial, that the deed was destroyed, though it was said to be secreted. As to the mode of proving the misconduct of a jury, it must be conceded, that the Courts have varied in their opinions and practice. How far jurors should be permitted to accuse themselves of a high misdemeanor, is a doubt. Yet, in 3 *T. Rep.* a witness, who had received a bribe, was permitted to prove the act of corrupting him against the defendant; because, the necessity of the case required it. A similar necessity seems to furnish the same law, in cases like the present. In *Cowperthwaite* v. *Jones,* the jury settled the damages by a mesne form, taken from a calculation of the several sums, which the jurors, individually, set down; and, on a motion for a new trial, the affidavits of the jurors, proving the fact, were read, and considered by the Court. That the matters stated, were immaterial to the issue, cannot surely avail the plaintiff; when it is recollected, that they had a decisive effect against the defendant; and that they were false.

After advisement, the COURT were clearly of opinion, that a new trial ought to be granted.

Rule for a new trial absolute.