Lacey, Richard D v Sulian, Alexander H. 1849 Marion CO 161/12

19

Unlawful detainer

State of Missouri
(1.) County of Marion } In the Hannibal Court of Common Pleas: June Term 1848.

At a term of the Hannibal Court of Common Pleas, began and held at the court house at the City of Hannibal in the County of Marion and State of Missouri, on the first Monday (it being the fifth day) of June in the year of our Lord one thousand eight hundred and forty eight, when present the Honorable Thomas Vanswearingen, Judge of said Court.

Be it remembered that heretofore, to wit, on the second day of April in the year first aforesaid there was filed in the office of the Clerk of the Court aforesaid a transcript from the office of James T. McCollough Esqr. one of the Justices of the Peace in and for the County aforesaid, which said transcript reads as follows-

"No 135" "February 1847"

"Alexander H. Julian } Unlawful detainer
vs } February 15th 1847.
Richard D. Lacy } Alexander H. Julian by his attorneys makes complaint against Richard D. Lacy of unlawful detainer Feb. 16th 1847. Issued summons to the Constable of Mason Township in Marion County, returnable on the twenty seventh day of February 1847 at ten of the clock in the forenoon. Issued precept for Jury at the same time returnable on the same day. February 27th A.D. 1847. Summons returned duly executed. Precept returned executed on Wm Doom, J. M. Davis, T. E. Brittingham, John Dunlap, Danl McBride, Danl Houck, Henry Sneider, John Roberts, Joseph Williams, A. B. Webb, Thomas Patterson, and Jesse Pearce. Jury empannelled and sworn according to law, and after hearing the evidence the Jury on the same day returned their verdict in writing

signed by their foreman as follows, to wit, "We the Jury
(2) find the defendant guilty in manner and form as charged
in the complaint" "A. B. Webb foreman"

*Justices costs $2.30 } Whereupon defendant prayed an
Const. Balthrop, do 2.00 } appeal to the Circuit Court and
Const. Lane do 25 } entered into a recognizance in the
sum of one hundred dollars with Carty Wells as security, and filed the affidavit of the said Carty Wells.
Appeal allowed —

State of Missouri }
County of Marion } To wit

The foregoing is a true copy and transcript of all the entries and proceedings on my docket in the above entitled cause. Given under my hand this 1st day of March A.D. 1847. Jas. T. McCollough Justice"

The Summons, referred to in the foregoing transcript, and filed in the office of the clerk aforesaid, at the time of filing said transcript, is in the words and figures following, to wit — "The State of Missouri To the Constable of Mason Township of the County of Marion, Greeting:

You are hereby commanded to summon Richard D. Lacy of the County of Marion, to appear before the undersigned, Justice of the Peace within and for said County at his office in the City of Hannibal, in the same county, on the twenty seventh day of February at the hour of ten of the clock in the forenoon of that day, then and there to answer and defend against the complaint of Alexander H. Julian of unlawful detainer made by the said Richard D. Lacy, upon the lands of the said Alexander H. Julian, as by the complaint of the said Alexander H. Julian hereto annexed will more fully appear, and have you then and there this writ, with the return of your proceedings thereon. Given under my hand this 16th day of February A.D. 1847.

James T. McCollough Justice of the Peace."

The complaint referred to in the summons aforesaid,

* Whereupon it is considered that the said plaintiff have judgment for the restitution of the premises so found by the verdict of the jury as aforesaid to have been unlawfully detained, and also that plaintiff recover his costs.

and filed in the office of the clerk aforesaid, at the
(3.) time of the filing of said transcript and summons,
reads as follows, to wit; "State of Missouri, County
of Marion - In Mason Township before Sal. T. McCullough
Esq. J. P. - Alexander H. Julian vs Richard D. Lacy -

Alexander H. Julian by his attorneys complains
and says - that heretofore towit on the 3rd day of
April in the year of our Lord eighteen hundred and
forty six at the County of Marion and State of Missouri
he the said Julian was lawfully possessed of a certain lot
or parcel of land lying and being in the City of Han=
nibal and County and State aforesaid known and described
by the plat or plan of said City as lot number Two
in Block number Seventeen; and being so thereof
lawfully possessed the defendant Richard D. Lacy on the same
day towit on the 3rd day of April A.D. 1846 wrongfully and
without force by dissesien obtained possession of the above
described premises and still forcibly and unlawfully de=
tains the same and continues in possession thereof and
refuses and neglects to quit such possession notwith=
standing a demand in writing for the deliverance
of such possession was made of the said defendant
by the complainant and by his attorney on the 11th day
of Feb A.D. 1847. Wherefore the said complainant says
that he the defendant is guilty of an unlawful detainer in
this towit, that he unlawfully and by force detains pos=
session of the said lot or parcel of land contrary to
law and to the form of the Statute in such cases made
and provided. - Alexander H. Julian by his attorneys

Richmond, Broaddus & Hautzinz"

And at the time of the filing of the transcript, sum=
mons and complaint aforesaid, there was also filed in
the office of the Clerk aforesaid, a certain transcript
and motion from the office of the Clerk of the Marion Circuit Court,
which said transcript reads as follows, towit -

"State of Missouri } In the Circuit Court March
(4.) County of Marion } Term 1847. March 17th

Be it remembered that heretofore towit on the 17th day of March A.D. 1847 at a Circuit Court continued and held at the Court house in the Town of Palmyra within and for the said County of Marion before the Honorable Ezra Hunt Judge of the said Circuit Court the following amongst other proceedings were had towit:

Alexander Julian Pltff } Appeal
vs
R. D. Lacy Deft }

At this day come the parties by their Attorneys whereupon the motion of the appellee to dismiss the appeal herein for want of Jurisdiction is sustained and the appeal dismissed accordingly and the papers remanded to the Justice of the Peace.

I, John P. Rutter clerk of the circuit court within and for the said County of Marion certify that the foregoing order is truly copied from the records of said court as now remaining of record in my said office.

In testimony whereof I hereto set my hand and affix my official seal. Done at office at Palmyra in the county and State aforesaid this the 22nd day of March A.D. 1847.

(L.S.)

John P. Rutter Clk
By his deputy Benj. F. Hayden

And the said motion reads as follows, to wit:

"Alexander H. Julian } In the Marion Circuit Court
vs } on appeal.
John D. Lacy } March Term 1847.

The appellee moves the Court to dismiss the appeal in this case and to affirm the judgment of the Justice of the peace for the following reasons viz - 1st Because the appellant did not file such a transcript of the proceedings before the Justice as is required by Law.

2nd. The transcript of the proceedings before the Justice was not filed in time — 3d. The original affidavit, recognizance
(5.) & other original papers used before the Justice have not been filed by the appellant as is required by law.
4th None of the papers in this cause were filed in due time.
5th This Court has no Jurisdiction of the case.

Richmond, Broaddus & Hawkins
for Appellee "

And afterwards, to wit, on the 14th day of June A.D. 1847, it being during the June Term of the Court first aforesaid, began and held as first aforesaid, at the place and before the Judge first mentioned, on the first Monday in June in the year of our Lord one thousand eight hundred and forty seven, the following, amongst other proceedings were had to wit:

"Alexander H. Julian vs Appeal Richard D. Lacy } At this day comes the plaintiff by his attorney, and moves the Court to dismiss the appeal taken in this cause."

The motion last above referred to reads as follows, to wit:

"Alexander H. Julian vs R. D. Lacy — Hannibal Court of Common Pleas on appeal June Term 1847.

The appellee moves the Court to dismiss the appeal in the above entitled cause and to affirm the Judgment of the Justice of the Peace for the following reasons to wit: 1st Because the original affidavit and recognizance have not been filed by the appellant as is required by law.
2nd Because the appeal was not taken to this Court as is required by law. Richmond, Broaddus & Hawkins
Atty "

And afterwards, to wit on the said fourteenth day of June in the year last aforesaid, it being during the continuance of the term last aforesaid of the Court first aforesaid, began and held at the place and before the Judge first aforesaid, on the said first Monday in June A.D. 1847, the

following proceedings were had, to wit:

(6.) "Alexander H. Julian vs. Appeal Richard D. Lacy } At this day comes the defendant by counsel and suggests to the Court that the Justice of the Peace, James T. McCollough Esqr. before whom this cause was tried, had failed to transmit to this court, a bond and the affidavit required by law, with the papers in this cause; Whereupon it is ordered that the said Justice have in this Court on tomorrow a proper bond and affidavit to be filed herein"

Afterwards, to wit, on the fifteenth day of June in the year last aforesaid, it being during the June Term of the Court first aforesaid, began and held on the first Monday in June in the year last aforesaid, at the place and before the Judge first aforesaid, the following proceedings were had, to wit:

"Alexander H. Julian vs. Appeal Richard D. Lacy } At this day come the parties by their attorneys, and the Justice of the Peace, James T. McCollough Esqr. before whom this cause was tried, comes into Court and files an appeal bond and affidavit in this cause - and after argument of counsel on the motion to dismiss the appeal taken herein, it is considered by the court that said motion be overruled."

† And afterwards, to wit, on the Sixteenth day of June in the year last aforesaid, it being during the term last aforesaid of the said Hannibal Court of Common Pleas, began and held on the first monday in June in the year last aforesaid, at the place and before the Judge first aforesaid, the following proceedings were had, to wit:

"Alexander H. Julian vs. Appeal Richard D. Lacy } Now at this day it is ordered that this cause be continued to the next term of this Court."

And afterwards, to wit, on the second day of November, it being during the continuance of the November term of the Hannibal Court of Common Pleas, began and held at the Court

house in the City of Hannibal in the County of Marion and State of Missouri, on the first monday in November in the
(7:) year of our Lord one thousand eight hundred and forty seven, before the Honorable Thomas Vanswearingen, Judge of said Court of Common Pleas, the following proceedings were had, to wit:
"Alexander H. Julian vs Appeal Richard D. Lacy } And now at this day comes the plaintiff by his attorney, and files his motion to dismiss the appeal taken herein by the said defendant."

The motion last above referred to, reads as follows, to wit:

"Alexander H. Julian vs R. D. Lacy — Hannibal Court Com. Pleas on Appeal — November Term 1847.

The appellee moves the Court to dismiss the appeal in the above entitled cause for the following reasons, to wit:

1st Because no sufficient recognizance has been filed by the appellant.

2nd Because the affidavit and recognizance were not filed before or with the Justice in the time required by law.

3d. Because no appeal has been taken to this Court in the time and manner required by law.

4th Because there is not on file any such bond as is required by law in such cases.

5th Because the defendant did not in the time prescribed by law ask of the Justice of the Peace for an appeal to the "Hannibal Court of Common Pleas."

6th Because the transcript of the record and proceedings before the Justice together with the original affidavit recognizance and other original papers in the cause were not filed in this Court.

7th Because the bond filed is insufficient in law.

8th Because the recognizance was not approved and attested by the Justice.

9th - The transcript of the Justice shows that the appeal was not taken to this Court."

And afterwards, to wit, on the third day of November
(8) in the year last aforesaid, it being during the November term
of the said Hannibal Court of Common Pleas, began and held
at the place and time and before the Judge as last afore=
said, the following proceedings were had, to wit;

"Alexander H. Julian vs Richard D. Lacy } Appeal } At this day come the parties by counsel, and the motion to dismiss the appeal taken herein, coming on to be heard, and being argued by counsel, and the court being sufficiently advised in the premises, consider that said motion be overruled — And thereupon the plaintiff files his motion to affirm the judgment rendered herein by the court below."

The motion last above named, reads as follows, to wit:
"Alexander H. Julian vs Rich. D. Lacy — The plaintiff Alexander H. Julian moves the Court to affirm the judg=ment of the Justice in this cause — Because the ap=pellant has failed to file in proper time a certified transcript of the record and proceedings before the Justice with the original affidavit recognizance and other original papers in the cause — the same not being filed on or before the return day of the appeal —

I

And afterwards, to wit, on the fourth day of November in the year last aforesaid it being during the November term of the Court first aforesaid, began and held at the place and time, and before the Judge as last aforesaid, the following proceedings were had, to wit:

"Alexander H. Julian vs Richard D. Lacy } Appeal } And now at this day comes the plaintiff by counsel and files his motion to affirm the judgment of the court below." —

~~, now at the plaintiff pay~~
the costs of such continuance."

And afterwards, to wit, on the thirteenth day of November in the year last aforesaid, and during the continuance

of the term last aforesaid of the said Hannibal Court of Common Pleas began and held at the place and time and before
(9.) the Judge last aforesaid, the following proceedings were had, to wit:
"Alexander H. Julian } At this day comes the plaintiff by
vs } Appeal } his attorneys and files his two bills
Richard D. Lacy } of exceptions herein".
Which said bills of exceptions read as follows, to wit —
"Alexander H. Julian } Forcible Detainer
vs } on appeal from Justice
Richard D. Lacy } Hannibal Court of Common Pleas.
November Term 1847.

Be it remembered that on this the second day of November 1847 Alexander H. Julian by his attorney makes and files a motion to dismiss the appeal in the above entitled cause for nine reasons set forth in the said motion as follows:
Alexander H. Julian vs R. D. Lacy - Hannibal Court Com. Pleas - on appeal - November Term 1847 — The appellee moves the Court to dismiss the appeal in the above entitled cause for the following reasons, to wit —
1st. Because no sufficient recognizance has been filed by the appellant.
2nd. Because the affidavit and recognizance were not filed before or with the Justice in the time required by law.
3d. Because no appeal has been taken to this Court in the time and manner required by law.
4th. Because there is not on file any such bond as is required by law in such cases.
5th Because the defendant did not in the time prescribed by law ask of the Justice of the Peace for an appeal to the "Hannibal Court of Common Pleas."
6th. Because the transcript of the record and proceedings before the Justice together with the original affidavit, recognizance and other original papers in the cause were not filed in this Court.
7th. Because the bond filed is insufficient in law.

8th. Because the recognizance was not approved and attested
10. by the Justice.
9th. The transcript of the Justice shows that the appeal was not taken to this court. – which motion on the day of argument being had thereon was overruled by the court to which decision and judgment of the court overruling the said motion the plaintiff or appellee by his counsel excepts and prays that this his bill of exceptions may be signed and sealed by the Court and made a part of the record which is done accordingly.

Thomas Vanswearingen (Seal)

Judge of the Hannibal Court of Common Pleas."

"Alexander H. Julian } Forcible Detainer
vs } On appeal from Justice
Richard D. Lacy } Hannibal Court of Common Pleas.
November Term 1847.

Be it remembered that on this the 3d day of November 1847 Alexander H. Julian by his attorney makes and files a motion to affirm the judgement of the Justice which motion is in the words and figures following, to wit: Alexander H. Julian vs Richd. D. Lacy – The plaintiff Alexander H. Julian moves the court to affirm the judgment of the Justice in this cause – Because the appellant has failed to file in proper time a certified transcript of the records and proceedings before the Justice with the original affidavit, recognizance and other original papers in the cause – the same not being filed on or before the return day of the appeal –

Hawkins & Broaddus & Richmond.

which motion afterwards to wit, on the day of argument being had thereon was overruled by the court to which decision and judgment overruling said motion the plaintiff or appellee by his counsel excepts and prays that this his bill of exceptions may be signed and sealed by the court and made a part of the record which

is done accordingly. — Thomas Vanswearingen (Seal)

Judge of the Hannibal Court of Common Pleas."

(11) And afterwards, to wit, on the nineteenth day of June in the year of our Lord one thousand eight hundred and forty eight, it being during the June term of the Hannibal Court of Common Pleas, began and held as first aforesaid at the place and time and before the Judge first aforesaid, the following proceedings were had, to wit:

"Alexander H. Julian } At this day come the parties
vs } Appeal } by counsel and the issue being
Richard D. Lacy } joined, to try which come the jurors of a jury into court; and thereupon by agreement of the parties the jurors aforesaid are discharged."

And afterwards, to wit, on the twentieth day of June in the year last aforesaid, it being during the term first aforesaid of the said Hannibal Court of Common Pleas, began and held as first aforesaid, at the place and time and before the Judge first aforesaid, the following proceedings were had, to wit:

"A. H. Julian } Now at this day come the parties by their
vs } Appeal. } attorneys and the defendant moves the Court
R. D. Lacy } to suppress the depositions heretofore filed herein by the plaintiff."

The motion last above mentioned, reads as follows, to wit:

"Lacy } Forcible Entry & detainer
ads } Hannibal Court Com. Pleas. June Term 1848
Julian } The deft by his attorney moves the Court to suppress the deposition of Mathew Fife taken in this cause for the following reasons —

1st Because said deposition was taken before the Recorder of the City of Hannibal an officer not authorised by law to take or certify depositions.

2nd Because the officer who took, reduced to writing and certified said deposition is and then was one of the counsel for the pltff in this suit.

3rd The said deposition was not taken at the time or place specified

in the notice.

(12) 4th The certificate of the recorder is defective in not shewing within what hours the deposition was taken.

Wells & Dryden for the deft.

And afterwards, to wit, on the said twentieth day of June in the year last aforesaid, it being during the term first aforesaid, of the said Hannibal Court of Common Pleas, began and held as first aforesaid, before the Judge, and at the place and time first aforesaid, the following proceedings were had, to wit;

"Alexander H. Julian vs. Appeal Richard D. Lacy } At this day come the parties by their attorneys and on motion of the plaintiff lieve is given the Recorder to amend his certificate attached to the transcript, from his docket, filed herein."

And afterwards, to wit, on the day and year last aforesaid, and during the term first aforesaid of the said Hannibal Court of Common Pleas, began and held at the time and place, and before the Judge first aforesaid, the following proceedings were had, to wit:-

"Alexander H. Julian vs. Appeal Richard D. Lacy } And at this day come the parties by their attorneys, and, after argument of counsel on the motion to suppress depositions, it is considered by the Court that the said motion be overruled; and the issue in this cause being joined, to try which come the jurors of a jury, to wit, Samuel A. Arthur, Franklin Severing, William T. Kendall, James M. Goodwin, Jamison F. Hawkins, John R. Smith, David T. Jackson, James Bridgeford, Charles W. Severing, William R. Collins, Robert Newcomb, and Edward A. Lockwood, twelve good and lawful men duly elected, tried and sworn; and after hearing the evidence in the cause, and the argument of counsel, retire to their room to consider of their verdict; and the jurors of the jury aforesaid upon their oaths aforesaid return into court the following verdict, to wit: "We the jury find

for the defendant." "Cha. W. Levering, foreman." Whereupon, It is considered by the court that the said plaintiff take nothing
(13.) by his, and that the said defendant, Richard D. Lacy recover of the said plaintiff, Alexander H. Julian, his costs and charges by him about his defence in this behalf expended, and that he have his writ of execution therefor."

And afterwards, to wit; on the twenty third day of June in the year last aforesaid, and during the continuance of the term first aforesaid, of the said Hannibal Court of Common Pleas, began and held as first aforesaid, at the time and place and before the Judge first aforesaid, the following proceedings were had, to wit:

"Alexander H. Julian vs. Appeal Richard D. Lacy } At this day comes the plaintiff by his attorney and files his motion in arrest of Judgment herein."

"Alexander H. Julian vs. Appeal Richard D. Lacy } And at this day comes the plaintiff by counsel and files his motion for a new trial herein."

And afterwards, to wit, on the twenty eighth day of June in the year last aforesaid, it being during the continuance of the term first aforesaid, began and held as first aforesaid, at the place and time and before the Judge first aforesaid; the following proceedings were had, to wit:

"Alexander H. Julian vs. Appeal Richard D. Lacy } And at this day comes the plaintiff by his attorneys and files his motion in arrest of Judgment, which said motion is by the Court overruled."

"Alexander H. Julian vs. Appeal Richard D. Lacy } At this day comes the plaintiff by his attorney and moves the Court for a new trial herein, which said motion is by the Court overruled."

"A. H. Julian vs. Appeal R. D. Lacy } And at this day comes the plaintiff by his attorney and files his bill of exceptions herein."

Which said bill of exceptions reads as follows, to wit:

(14.) "Alexander H. Julian

vs } Hannibal Court of Common Pleas.

Richard D. Lacy } June Term A.D. 1848.

Be it remembered that on the trial of the above entitled cause the said plaintiff introduced as a witness in his behalf, Thomas L. Anderson Esq. who being duly sworn testified as follows, "Several years ago a claim or claims due to Alexander Julian and others was placed in my hands, as an attorney at law for collection. I sold the property in question under an execution obtained on said claim or claims as I now recollect, and I became the purchaser thereof, and afterwards conveyed said property to one of my clients, said Alexander H. Julian and took possession of it by renting it out for the benefit of my clients the said Alexander H. Julian and others. I received rent from some of the tenants which I applied to the payment of costs and fees in part. Some two or three years ago I surrendered my agency in said property to Matthew Fife of Hannibal, who showed or told me he had received a letter from Alexander H. Julian in which he the said Julian requested him the said Fife to act as his agent for the said property in controversy — Mr. Haines who lived in Hannibal acted for me while I rented out the property.

The plaintiff then offered a deposition of Matthew Fife in the words and figures following, to wit (X) "Deposition of witness produced, sworn and examined at the law office of Lakeman & Sunderland in the City of Hannibal in the County of Marion and State of Missouri before me Lew L. Hawkins Recorder of the City of Hannibal, in a certain cause now pending in the Hannibal Court of Common Pleas, in the said City of Hannibal, between A. H. Julian plaintiff and Richard D. Lacy defendant, on the part of the plaintiff —

Matthew Fife of lawful age being produced, sworn and examined on the part of the plaintiff deposeth and says.

Quest. by Pltf. "Were you the agent for A. H. Julian, and if so for what purpose?"

Ans. I was his agent, and still so consider myself. My agency was for the purpose of attending to certain property of his, collecting the rents and attending to the repairs, which property is known as lot numbered Two (2) in Block numbered Seventeen (17) in the City of Hannibal & State of Missouri

(15)

Quest. by Deft. What did you do in relation to same lot. who has possession of it now. and how did he obtain possession of it, so far as you know?

Ans. Sometime in the early part of the year A.D. 1846, I received from Mr. Julian the letter herewith filed, dated Dec 20th A.D. 1845, requesting me to act agent for this property above spoken of. I went immediately to examine the condition of the property, and found it tenanted by two or three small families, and in a condition that need repairs. In order to have these repairs made I notified the tenants verbally to leave at a certain time. They did not leave at the time. I permitted them to stay a little longer on their representing to me the difficulty of getting houses at that time of the year, and their saying that some members of their families were sick. about that time I heard that Mr. Lamar had a claim on this property and had placed a tenant in it. On receiving the letter above referred to I went to the house to ascertain who was then acting as agent for Mr. Julian, and learned that Mr. Haines was his agent. I went to Mr. Haines an shewed him this letter. He said the letter was correct, that he was acting for Mr. Anderson of Palmyra, who was the agent of Mr. Julian, and that, from that time, he would give up his agency to me. It was then that I gave to the tenants the verbal notice above spoken of. Soon after I learned that Mr. Lamar claimed the property. I was told he placed a tenant in it. On visiting the premises, and from other sources, I learned that my tenants had left, without giving me any notice of the fact, and Mr. Lamar had placed a tenant upon the premises; I learned from source or an other that this tenant was Mr. Lacy. He was in possession before and at the time this suit was commenced before the justice; I did not make any repairs

Objected to by deft.

Objected to by deft.

for the reason that from the character of the tenants, I did
(4.) not deem it necessary. I think I found a man by the name
of Hayden in possession.

Quest. by Pltff. Have you, or have you not since that time received from and written letters to Mr. Julian?

Ans. I have written to and received several from him.

Quest. by Pltff. Have you or not received letters in answer to those directed by you to Mr. Julian in relation to this business?

Ans. I have directed several letters to Mr. Julian in relation to this business and received answers to them.

Thursday Nov. 11th A.D. 1847. 3 O'clock P.M. The taking of this deposition is continued until tomorrow (Nov. 12th A.D. 1847) on account of the sickness of the witness M. Fife

L. L. Hawkins, Recorder C.H.

Friday Nov. 12th A.D. 1847. 2 O'clock P.M. Both parties being present the taking of the deposition of the witness M. Fife is continued as follows. L. L. Hawkins, Recorder C.H.

Quest. by Pltff. Do you or not recognize the letters herewith filed and dated the one Dec. 16th 1846. and the other July 15th 1847 as portions of your correspondence with Mr. Julian?

Ans. I do.

Quest. by Pltff. When did you commence your agency of the property above spoken of?

Ans. About the 1st of January 1846.

Quest. by Pltff. Was or was not the taking possession of this property by Mr Lacy done with your consent?

Ans. It was not done either with my knowledge or consent.

Quest. by Pltff. In acting in your capacity as agent for Mr. Julian, had you or had you not recived rent for this property.

Ans. I had from one tenant, Mr. Hayden I think.

Quest. by Pltff. About what time did Mr. Lacy get possession of this property?

Ans. I think about the spring of 1846.

Pltff writing of Julian acquired from the letters herewith filed

and marked exhibits (A) (B.) and (C) and appended to this
(17.) deposition, and before alluded to, that said letters are in
the hand writing of the plaintiff A. H. Julian.
Ans I believe them to be as they were received by me through the Post
office in a regular correspondence with him.
I hereby make the letters marked exhibits (A) (B) & (C) part
of this my deposition

Cross examined by Defendant.

Quest Did you ever have the key to the house alluded to?
Ans I never had.
Quest. Did you give to any of the tenants a written lease?
Ans. I did not.
Quest. Was your authority to act as agent for this property derived solely
from the letters filed & marked (A) (B) & (C)?
Ans. I considered it as being partly derived from the consent of the
sub-agent Mr. Haines. After his consent I acted under the
authority of these letters.
Quest Have you any personal acquaintance with the pltff?
Ans I have not. I have never had a personal interview with
him upon this business.
Quest Did you assume to act as agent for the plaintiff under the
letter of date Dec. 20th 1845?
Ans I did.
Quest At what time, and what amount of money did Mr. Hayden pay you?
Ans. Early in the year 1846, and the sum I think was $2.75. It was
before he left the house
Quest. For whom did you receive that money?
Ans I received the money for A. H. Julian, and placed it to his
credit upon the books
Quest How many letters have you rec.d from Mr. Julian in relation
to this property
Ans I think only three, all of which are filed with this deposition
Quest Can you name the tenants whom you found in the house?
Ans I can only name one with certainty - Beverly Hayden, I think
another was named Bartholamew.

Quest (18.) Have all your letters to Mr. Julian in relation to this business been answered?

Ans I think they have, but I am not certain.

and further this deponent saith not.

(signed) Matthew Fife

State of Missouri
County of Marion } ss.
City of Hannibal

I, Lew L. Hawkins Recorder of said City of Hannibal, do hereby certify that in pursuance of the notice hereto annexed, marked (D.) and made a part hereof, I caused Matthew Fife on the 11th day of November 1848 to be and appear before me at the law office of Lakeman & Sunderland (by consent of parties) in said City of Hannibal, and then and there the said Matthew Fife was by me duly sworn to testify the truth, the whole truth and nothing but the truth in a certain cause now pending in the Hannibal Court of Common Pleas in the said City of Hannibal wherein Alexander H. Julian is plaintiff and Richard D. Lacy is defendant. That said Matthew Fife was then and there examined as a witness on the part of the said plaintiff; that his said examination was reduced to writing in my presence, and that the same was subscribed by the said Mathew Fife, and that the annexed exhibits marks (A) (B) and (C) were produced by said witness before me, and proved and are the same exhibits referred to in the testimony of the witness. Given under my hand & seal this 11th day of November AD. 1847.

(signed) L. L. Hawkins (Seal)
Recorder of the City of Hannibal

Insert at this cll. (X) To Richard D. Lacy Esq. Take notice that on next Thursday the 11th day of November between the hours of 8 Oclock A.M. & 5 Oclock P.M. at the office of the Recorder of the City of Hannibal in the County of Marion & State of Missouri we will take the deposition of Mathew Fife and others to be read in a cause now pending in the Hannibal Court of Common Pleas on appeal

from a Justice of the Peace, wherein Richard D. Lacy is appellant and Alexander H. Julian is Appellee.

(19) (signed) Richmond & Broaddus, Attys for Julian.

Executed this ~~within~~ notice by delivering a copy of the same to the within named Richard D. Lacy done in Marion County Mo. Nov. 6th 1847. (signed) Wm B. Phillips Shff Marion Co.

By Deputy W. B. King —

the defendant objected to the reading of certain portions of said deposition - the said portions being marked on the margin of said deposition "Objected to". the Court sustained said objection and refused to permit said parts so objected to to be read but permitted the residue of the deposition to be read - to the decision of the Court in sustaining said objections and in refusing to permit said portions to be read the plff by his counsel excepted.

The plaintiff then offered to read to the Jury the following letters exhibits to said deposition of Fife, (to wit)

Phila Dec 20. 1845

Mr Fife

Dear Sir we have taken the liberty of enclosing to you a deed for a house & lot in your place, conveyed to A. H. Julian by Mr L. Anderson & wife, the deed does not appear to have been recorded which we suppose is necessary we would be glad that you would examine it and see if it is sufficient, it appears to us to be not very full, if it is deficient Mr A will execute another, we understand from Mr R. Mewell who was in your place a short time since, and while there had the pleasure of seeing and spoke to you in refference to the property, and wished you to take charge of it, which we would be much pleased if you would do, collect the rent and have any necessary repairs that it may require made so as to make it tenantable We understand from Mr Mewell that there has been a claim made to the property lately by some person from Ky we hope Mr Anderson will have the title fully

examined Mr A. has had charge of the property for
(2.) some years, we have never received any rent from it as
yet Mr Newell says it rents for 100$ per annum he should
be pleased to hear from you in relation to it when conve=
nient, and what you think it is worth and whether it
could be disposed of, if the title proves good and the deed
sufficient please have it recorded and forwd it to us by
some of your merchants visiting the City next Spring.
Yours with much respect. A. H. Julian
for E. M'Kee Admrt.

Phila Dec. 16. 1846.

Mr. Matthew Fife

Dear Sir, I wrote you on the 21. of June in ref=
erence to the property you have charge of belonging to me situ=
ated in your place, and which there has been a claim set up
for, and we wished you to have resisted by all lawful means, which
I hope you will be able to do successfully, I enclosed a copy of
a letter recd from Thos L. Anderson by our former counsel, which
I hope you have recd., we have never recd one dolls of rent since
the property has been in charge of Mr Anderson, we have repeatedly
written him for a statement of his acct, annexed we send you
the one received from him, it may be of some service to you in
prosecuting the case it might be well to have one atty to examine
it, I am very sorry you have had so much trouble with the
property already, but hope you will still attend to our interest
& charge whatever you think is right, I should be pleased to
hear from you what has been done in the case, if it is
necessary I can send you his letter.

Yours Very Respectfully
A. H. Julian

Phila July 15. 1847.

Mr. Matthew Fife

Dear Sir, in your favor of the first of March
last you stated that there had been a decision, in the case
Julian vs Lacy in reference to the house & lot, you have

charge of in Hannibal, which was given in our favor,
(21) but there would be an appeal to a higher court for its decision - We feel anxious to hear the result, if you have time we should be much pleased to receive a line from you, stating how the matter now stands, in reference to a good title: We would be glad if you would dispose of the property whenever there can be a good title made, and at a fair price, would it not be well to have the house Insured? your reply will much oblige your obt. Svt.

A. H. Julian

to which the deft. objected and which objection the court sustained and refused to permit said letters to be read - to the decision and opinion of the court in refusing to permit said letters to be read the plff. by his counsel excepted - The plff. then introduced Beverly Hayden as a witness who testified "I occupied a part of the house in controversy a little more than two years ago - I think I rented it at first from Mr. Brady - Dr. Fife afterwards informed me he was agent for the property for some person in the east and I held under him and paid him some rent; Before I left the house Dr. Lamar & the deft. came there and asked me by what right I was in possession I told them I rented from Dr. Fife - they then asked me how Fife pretended to claim - I told them that Fife pretended to be agent for some body East - Lamar remarked that he had a better right to the property than Fife or the person for whom he was agent - Lamar (Lacy being present during all this conversation) told me if I would go out of the house and let Lacy come in that he Lamar would pay what rents I owed to Fife - Lacy told Lamar that he would stand up to any agreement made with me - I told them that I was about to leave the house any hour as my month had expired and I had another house rented, I had stayed a day or so over my month by Fifes permission, I went out and Lacy took possession of the house immediately moving into part of it and nailing up the doors and windows of

the other part. I dont know whether they paid my rents as
(22.) they agreed or not.

It was admitted that a written notice in conformity to the statute in such cases made and provided had been given by the plaintiff to the defendant to surrender possession of the property as set forth in the petition which notice was accidentally burned up in the Justices office - admitted also that Lacy the defendant had been in possession of the property ever since the time spoken of by the witness Bayden - also that the deponent Fife lived now in the city of Philadelphia Pennsylvania and that he had previously lived in Hannibal and that the plaintiff lived in Philadelphia.

And this was all the evidence given in the cause on either side. The defendant then by his counsel moved the Court to instruct the Jury as follows:

1st Unless the evidence proves that the plaintiff Julian was in actual possession by himself or his agent of the premises at the time of the defendants entry he cannot recover.

2nd That if Bayden the tenant at the time of the alleged trespass was in possession by authority of Dr. Fife - & Fife acted without authority as agent of Julian, he Julian cannot recover.

3rd There is no evidence before the Jury tending to shew that Julian was in possession either by himself or his agent at the time of the alleged trespass.

4th The evidence of Mr. Anderson his agency having ceased before the entry is irrelavant and must be disregarded by the Jury altogether.

5th The evidence of Dr. Fife taken in connection with the letters read in evidence, does not tend to shew the possession of the plaintiff & must therefore be disregarded.

6th So much of the deposition of Dr. Fife as relates to his agency for the plaintiff - and much as relates to his acting as the plaintiffs agent are excluded from the consideration of the Jury -

to the giving of which instructions the plaintiff by his
(23.) counsel objected but the court overruled the objections and
gave the instructions above set out to which action of the
court in overruling said objections and giving said instruc=
tions on behalf of the defendant the plaintiff by his couns=
el excepted. And afterwards to wit on Friday the
23d day of June 1848 the plaintiff filed his motion in arrest
of Judgment in writing in the words and figures following towit:

Alexander H. Julian. } In the Hannibal court of Common
vs } Pleas.
Richd. D. Lacy } And now on this day comes the plain=
tiff by his attys and moves the Court to arrest the Judgment
in this cause because 1st The verdict of the jury is illegal
and informal. 2nd The Court gave improper instructions
to the Jury — Hawkins, Broaddus and Richmond.

And on the same day filed his motion in writing for a new
trial in the words and figures following towit:

Alexander H. Julian } In the Hannibal Court of Common
vs } Pleas.
Richard D. Lacy } And now on this day comes the
pltff by his attys and moves the Court to set aside and
annul the verdict rendered in this cause and grant him
a new trial, — because — 1st The court gave instructions to the
Jury at the instance of the defendant which instructions
were erroneous — 2nd The Court erred in excluding from the
consideration of the Jury the testimony of Thomas L. Anderson —
and also in excluding the deposition of Mathew Fife —
3d — Other proceedings by the defendant on the trial were
erroneous and illegal — 4th The verdict of the Jury was
against the law and evidence in the case — 5th The verdict
was not authorised by law and the evidence introduced.

Hawkins & Broaddus for Plaintiff.

Which said motions in arrest of Judgment and for a new
trial were on the 28th day of the said month of June
overruled by the Court to which Judgement and action

of the Court in overruling said two motions the plaintiff
(24) by his counsel objected and excepted; And the plaintiff
asks that this his bill of exceptions may be signed and
sealed by the Court and made part of the record which
is done accordingly

Thomas Vanswearingen (Seal)"

Insert at this mark above clk

The affidavit and appeal bond referred to as having been
filed herein read as follows, to wit:

"Alexander H. Julian } In the Hannibal Court of Com-
Richard } vs } mon Pleas. June Term 1847.
Richard D. Lacy } On appeal from Justice M'Cullough.

Carty Wells agent for the defendant states on
his oath that the application for the appeal in this case
was not made for the purpose of vexation or delay but
because the affiant believed at the time the appeal was
prayed for that the appellant was injured by the judg-
ment of the Justice - and he says that he still so be-
lieves, and that the appeal is not now prosecuted for the
purpose of vexation or delay but for the cause aforesaid.

"Sworn to & subscribed in open } Carty Wells."
court, June 15. 1847.
C. D. Bourne, clk. }

"We the undersigned Richard D. Lacy and Carty Wells
acknowledge ourselves indebted to Alexander H. Julian
in the sum of one hundred dollars to be void upon this
condition - Whereas said Richard D. Lacy has appealed from
the judgement of James T. M'Cullough a Justice of the
Peace in Mason Township in the County of Marion in
an action between said Alexander H. Julian plaintiff
and said Richard D. Lacy defendant; Now if on such
appeal the judgment of the Justice be affirmed, or if on
the trial anew in the Hannibal Court of common Pleas, judg-
ment be given against the appellant and he shall satisfy
such judgment, or if his appeal be dismissed and he shall
pay the judgment of the Justice together with the costs of

the appeal the recognizance shall be void"-

(25.) "June 15th 1847." "Richard D. Lacy"

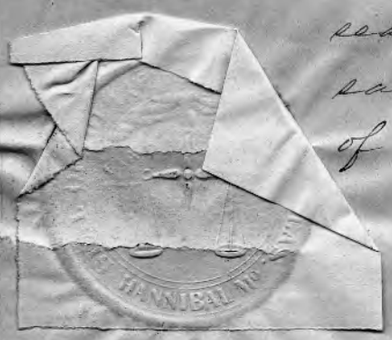
"Teste" "Carty Wells"

"C. D. Bourne"-

State of Missouri }
County of Marion } ss: I, Charles D. Bourne, Clerk of the Hannibal Court of Common Pleas at the City of Hannibal in the said County of Marion, do certify, that the above and foregoing twenty four pages contain a true and perfect transcript of the record and proceedings had in said court, in the cause therein specified, as fully as the same remain on record and on file in my office-

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at office in the said City of Hannibal the 29th day of September A.D. 1849.

Charles D. Bourne-



6.

(19) March T. 1850

Alexander H. Julian

vs } Error.

Richard D. Lacey.

Filed Oct 4. 1849

H. D. Bowen Clk

Marion C. P.

Alexander H Julian vs Richd D Lacey } Error to the Hannibal Court of Common Pleas. March Term 1860 –

Plaintiffs assignment of Errors

The Plaintiff Julian says that the said Court of Common Pleas erred in this cause as follows

1st – In overruling the motion made by the plaintiff to dismiss the appeal.

2nd In refusing to affirm the Judgment of the justice on the motion of the plaintiff.

3d The Court erred in all the instructions given to the Jury on behalf of the Defendant.

4th In deciding against the ~~admission~~ admission in evidence of the letters accompanying the deposition of Mathew Fife.

5 In overruling the motions in ~~arrest~~ arrest of Judgment and for a new trial.

6 In sustaining the objections made by Defendant to parts of Fifes Deposition.

7 – In instructing the Jury to disregard the evidence of Anderson and Fife.

Richmond, Harrison & Hawkins
for Appellant

A H Julian
vs
R D Lacey

Plaintiffs assignment
of Errors

Filed March 25. 1850
W. B. Starke clk

Julian
v. } Appeal from the Hannibal
Lacey. } Court of Common Pleas.

This suit was originally instituted before a justice of the Peace, where the plaintiff had judgment. As to the steps subsequently adopted, whereby it got into the Court of Common Pleas, and as to the various motions which were there made to dismiss it, it will perhaps best suffice, in the divided opinions of the members of this Court, to state, that as a majority of the bench are disinclined to technically question the jurisdiction which was assumed, no separate opinions upon that point will be here presented.

The action was founded upon the third section of the Statute concerning forcible entry and detainer, and was instituted to recover the possession of a house and lot in the City of Hannibal. The bill of exceptions shews that the plaintiff first introduced Thomas L. Anderson, Esquire, who testified that as attorney for Julian & others, he had obtained a judgment and execution in their favour, sold under it the property in question, purchased it himself, and after conveying it to Julian, ~~who was one of his~~ took possession of it for him, by renting it out for his benefit and that of other clients. That he received rent from some of the tenants, which he applied in part to the

payment of costs and fees; and that some two or three years previous to the time he was testifying, (and of course before the disseisin and detainer complained of) he surrendered his agency of said property to Matthew Fife, of Hannibal, who shewed, or told him he had received, a letter from Julian, in which he had been requested to act as his agent for the property in ~~question~~ controversy. ~~the witness~~ Mr Anderson further and lastly testified, that he had exercised his agency over the property in question through a Mr Haines, of Hannibal.

The plaintiff then offered to read a deposition from Fife, the person to whom Anderson testified, as above, that he had surrendered his agency in the property; and as Fifes testimony, relative to his agency ~~and~~ or action concerning the property in suit was excluded by the Court, it becomes necessary in order to a proper understanding of the grounds upon which we place our disconcurrence with the judge below, to state somewhat in detail the ~~grounds or~~ authority upon which he assumed to act as the agent of the plaintiff.

By the testimony of Anderson, which was unobjected to at the time it was given, and which would seem, moreover, to be entirely competent for the purpose of establishing such a mere possession as he claims to have held for Julian and others, it is seen that he transferred that possession or agency ~~at the~~ at least at the supposed instance of Julian, to

the deponent Fife. Fife, thereby, if really acting under Julian's authority, became invested eo instanti, and of course in regular continuation, with all the authority which up to that period had been possessed by Anderson, and that seems to have been sufficiently possessory to enable him to collect the rents and apply them to the benefit of the plaintiff and other clients. The letters, moreover, which the deposition establishes ~~as having~~ to have passed between himself & the plaintiff, sufficiently recognise, or confirming the previous possession or agency of Anderson; and these letters, ~~written~~ sworn to have been received in the usual course of the business of such an agency, and bearing the name of Julian, ~~by~~ a person whose identity (as we have seen) ~~they~~ was previously sufficiently established, were unquestionably competent (without other proof of the hand-writing) to put the defendant to a rebuttal of the prima facie authority they conferred upon the new agent.

Whether any understanding existed between Julian and the other clients of Anderson, as to their respective equities or interests in the property, ~~here sued~~ the possession of which is here sued for, it is deemed unnecessary to here enquire — the sole question being, as it seems to us, whether the testimony of Anderson established in Julian, through himself, the possession of the property in question, and whether this agency was surrendered to one who was really the succeeding agent of ~~the~~ the plaintiff. These positions we think it was competent for the plaintiff to make out in the manner he

attempted, namely, through the testimony of Anderson and Fife, and the letters purporting to be written by Julian, the plaintiff. The refusal of the Court to recognise such testimony being the substance of all the errors complained of, it is deemed unnecessary to remark upon the instructions which were given and refused, as they will of course be conformed, in the next trial, to the opinion herein rendered respecting the testimony.

The judgment is therefore reversed and the cause remanded.

James H. Birch.

Concurred in

W. B. Napton

Julian v Lacy

Opinion by Judge Birch

Filed April 8th 1857.
W. B. Stark clk

59

Alexander H. Julian } In the Supreme Court
vs } March Term AD 1850.
Richard D. Lacy }

This was a suit brought under the third Section of the Statute of Forcible Entry and Detainer. The suit was commenced on the 15th day of February 1847. The plaintiff in his petition alleged that on the 3d day of April 1846. he, the said plaintiff was possessed of the property in controversy, a lot of ground in the City of Hannibal, and being so lawfully possessed thereof, the defendant on that day wrongfully and without force, by disseisin obtained possession of said premises, and still unlawfully forcibly and detains the same and continues in possession thereof; refuses and neglects to quit such possession notwithstanding a demand in writing for the deliverance of such possession was made of the Defendant by the Complainant on the 11th day of February AD 1847.
On the trial, on the 27th day of February 1847 the Jury found a verdict in favor of the plaintiff; that the Defendant was guilty in manner & form as charged in the Complaint. The Defendant appealed to the Marion Circuit Court; gave bond &c.
In the Circuit Court, the appellee (the plaintiff) moved to dismiss the appeal on the ground of want of jurisdiction. This motion was sustained and the appeal dismissed. The transcript of this proceeding in the Circuit Court, together with the transcript of the Justice were filed with the Clerk of the Hannibal Court of Common Pleas on the 2d day of April AD 1847. The case came up in the Hannibal Court of Common Pleas at the Jan

Term (1847) of that Court. The appellee moved to dismiss the appeal and affirm the judgment of the justice because the original affidavit and recognizance had not been filed, and because an appeal was not taken in this court as was required by law. Afterwards at the same term, upon the suggestion of the appellant, the Court ordered the justice file on ~~tomorrow~~ the next day a proper bond & affidavit in this cause. This order of the Court was complied with by the justice, and the motion to dismiss was overruled. The case was then continued to the next (November) Term of the Court. ~~At case then continued to the~~. At the November Term a motion was made by Julian to dismiss the appeal he said it was not properly taken and no bond or affidavit filed as required by law, and in fact no appeal at all asked for by the original defendant to the proper Court. This motion was overruled and the action of the Court thereon excepted to. Afterwards at the same term Julian moved the Court to affirm the judgment of the justice which motion was overruled, and the overruling of the same excepted to. The cause was ~~finally~~ continued till the June Term 1848 at which time it was tried before a jury and a verdict rendered for the defendant Sorey. Motions for a new trial and in arrest were filed in due ~~time~~ time. On the ground of improper action of the Court in ~~says~~ instructing the jury to disregard certain evidence given ~~by~~ on behalf of plaintiff and because the various motions to dismiss were overruled

These motions were overruled and exceptions taken. Bill of exceptions shows that the plaintiffs introduced first J L Anderson Esq - He stated that some time previous he bought the property in question - had the deed made to himself and afterwards made ~~a de~~ a conveyance of the same property to plaintiff - he afterwards acted as agent and rented out the property per Julian and others - his agency continued till it was surrendered to Mathew Fife who showed him a letter from Julian - this was two or three years ago. *

The deposition of Fife was then read which showed that said Fife rented out the property for a short time per Julian and received rent thereon. But he soon found on visiting the premises that the tenants whom he ~~permitted~~ placed on the premises had left and defendant was in - he knew not how defendant got in - defendant is still in possession of the premises. ~~His~~ His (Fifes) tenants had left before their time had expired. He speaks at large of the particulars which the deposition will show. Fife proved his agency per Julian by certain letters 3 in number which are made part of his deposition he proves the hand writing of Julian from the fact of having correspondence with him on this business - he had written to and received letters from him - certain parts of the deposition of Fife were objected to and the objection sustained by the Court and exceptions taken - The reading of the letters above named

* Some of Anderson's testimony was objected to before it was given in

was also presented by the Judgment of the Court and exceptions taken.
Beverly Waden another witness proved that the Defendant Lacy came into possession of the premises by getting Wm Hayden first to go out and promising to pay all his unpaid rent if he would go out and let him Lacy in - It was ~~admitted~~ admitted that a written notice had been given in conformity to the Statute.
The Court on Motion instructed the Jury in effect that no evidence had been offered to sustain the plaintiffs case - That the evidence of Tipe and Anderson was not legal and should be disregarded - That there was no evidence before the Jury tending to shew that Lukian was in possession either by himself or agent.
These Instructions were excepted to.

The Complaint was filed in the first place before James J McCullough a justice of the peace for Mason Township in the County of Marion

Julian vs Lacey

Statement of the Case by Appellant

A H Julian
vs
R D Lacey

Error to the Hannibal Court of Common Pleas March Term 1850

Points and authorities.

1- This cause being tried originally before a justice of the peace in Mason township in Marion County, no appeal could be taken to the circuit Court. See the act establishing the Hannibal Court of Common Pleas Approved March 27th 1845 Local & private acts 1845- page 66. also amended act of 1847- ses acts p 25

2- No appeal was taken in the time or manner required by law to the Hannibal Court of Common Pleas. The pretended appeal should have been dismissed. Adams vs Wilson &c 10th Mo: Rep: 341-2 The mistake in taking the appeal to the wrong court cannot assist the party who made the mistake.

3- The testimony of Anderson tended plainly to show the manner in which Fife took possession of the premises, and that in so doing he acted for Julian. It shows also that Julian was in possession of the property less than 3 years before Lacey's entry and so far is certainly competent, not only to show the plaintiffs possession, but ~~to make out~~ in connection with Haydens testimony to make out fully the plaintiffs case without Fifes deposition: "Warren vs Ritten & Ritten" 11th Mo: Rep: 354-5-7. Andersons testimony as to his conveyance to Julian was not objected to when given it could not afterwards be excluded. The instructions excluding Andersons testimony was illegal

4- The 1st 2nd and 3d instructions given on behalf of deft are calculated to mislead the Jury, and are in direct conflict with the principles settled in the case of Warren vs Ritten ~~&c~~ above alluded to.

5 Fifes agency is fully shown by the letters which make part of his deposition, and he is ~~qu~~ a competent witness

to prove the hand writing of Julian as he has corresponded with him and several letters on business have passed between them. Tipe's ~~known~~ knowledge of Julian's hand writing acquired by inspection of the last letter is sufficient to enable him to ~~testimony~~ testify as to the hand writing of the two other letters. Julians identity as the ~~writer~~ writer is sufficiently proved by all the circumstances and the testimony of Anderson. See Greenleaps Evidence 1st Vol Sections 576. 577 and citations. So the 5th and 6th instructions given to the Jury were erroneous.

7 It was immaterial whether Julian had possession wholly for his own use, or ~~for~~ partly for the use of others. If he had the legal possession in his own right this was sufficient to make the entry of Lacey a disseisin as to him. It could not avail Lacey that some obligations of trust existed between Julian and a stranger.

Richmond, Harrison & Hawkins
for Appellant

Julian vs Lacey
Error to
Hannibal Court of Common Pleas

Plaintiff's points and authorities.

Alexander H Julian Supreme Court
vs Error to Hannibal Mo
Com. Pleas
Richard D Lacy Mar 7 1850

Statement of the case by Glover Campbell attorney for ~~deft~~ appellee

Feby 15. 1847 Julian sued Lacy for an unlawful detainer before justice of the peace Mason township Marion County Mo. The said Lacy was convicted and judgment of restitution awarded.

The defendant appealed from the judgement of the justice and the papers in the cause were filed in the first instance in the Circuit Court of Marion county

That court on motion of Julian dismissed the cause for want of jurisdiction; and remanded it to the justice.

The appeal was then lodged in the court of Common Pleas Hannibal: and there it was finally disposed of.

On the cause ~~being~~ coming up

in the Com Pleas the plaintiff filed the following motion.

"The appellee moves to dismiss the appeal and affirm the judgement because — 1st the original affidavit and recognizance have not been filed as required by law 2nd. Because the appeal was not taken to the Court" This motion was made Mar T 1847.

June T 1847 The same motion was filed in same words: and during the term the atty Lucy suggested that the Justice who tried the cause had not sent up the appeal bond and affidavit as required by law and a rule was made on him to do so.

Nov T 1847, Talman made another motion to dismiss — for these causes,

1 — no appeal taken in due time to the "Court of Com Pleas"
2 The affidavit & bond not filed with Justice in legal time
3 No appeal was taken to the "Com Pleas"
4 Not on file any such bond as law requires
5 Lucy did not in legal time

ask an appeal to "Com Pleas"
6th. original papers and transcript were not filed in the "Com Pleas"
7 The bond filed insufficient in law
8 The bond was not approved and attested by the justice
9 The transcript shows appeal was not taken to "this court"

Afterwards at page 8 the record shows us "the motion" was argued and overruled.

Julian then made a motion to of form the judgement of the justice. for the following reasons.
1st no transcript filed in time
2 no original papers filed

Afterwards, the pltff filed another motion to affirm the judgement which unfortunately seems not to have been copied into the record.

Julian took an exception to action of the court overruling the motion to dismiss and affirm.
Record page 10.

Julian moved to suppress the deposition of Fife a witness for Lacy, which was overruled and

no exception taken.

June 7 1848 The cause was tried in the "Com Pleas" by a jury and the deft Lacy had verdict and judgement

The evidence was as follows
Thos L Anderson testified he purchased the property in dispute under execution and conveyed it to Julian. He also took possession by renting it for Julians benefit and others. Hains and Fife afterwards acted as the agents of "Julian & others"

Matthew Fife. Stated that he had acted as agent, but he never was in possession. Soon after his agency commenced the tenants whom he found in at first left and Lacy got in how he does not show Hayden who was a tenant on the lot when his agency commenced paid Fife $2.75 for Julian. Certain parts of Fifes deposition being hearsay ~~was~~ were objected to by deft and excluded by the Court.

Julian offered to read to the jury three of his own letters to Fife which on motion the court excluded.

The plaintiff next introduced one Hayden who had been a tenant of the property in dispute. He had rented of one Brady. Fife afterwards told him he was agent for some one east and Hayden held under him and paid him rent. Lacy and Lamar came to the house and offered to pay Hayden to leave. Hayden said he was going to leave anyhow and did leave and Lacy went in: dont know if Lamar paid anything or not. A legal notice had been served on Lacy in writing demanding possession of Julian.

The deft moved the Court to instruct.

1st Unless the plaintiff was in actual possession at Lacys entry he can not recover

2nd If Hayden at the time of the alledged trespass was in possession by authority of Fife and Fife acted without authority of Julian pltff can not recover.

3rd. There is no evidence tending to show Julian was in possession at the alledged trespass by any agent.

4 That Andrews evidence was irrelevant and should be disregarded

5. The evidence of Fife does not tend to prove possession in plaintiff and must be disregarded

6 The evidence of Fife in relation to his agency & acts therein ~~are~~ is excluded

The defendant objected to the giving these instructions; but the court gave and pleff excepted.

The ~~plaintiff~~ Defendant had a verdict; and the plaintiff moved in arrest, and for new trial which motions were overruled and the plaintiffs excepted.

Points & Authorities by Glover & Campbell for deft.

The defendants in error insist the court committed no error and the Judgement must be affirmed. It is necessary the plaintiff should show himself to have been in actual possession to maintain this action. But here was no evidence of any possession ever in the plaintiff. 7 Mo R 50. H 113 H 290 6 Mo R 346 8 Mo R 277. 11 Mo R 600. a constructive possession has not been regarded as sufficient in law to support the action 6 J. J. Marsh 346

Julian
vs For. Detainer.
Lacy

Deft's Brief by
Glover atty