Lyon, James
Lyon, Anna Maria
vs
Page, Daniel D
Vanderventer, Peter
Lindell, Peter
Wash, Robert
" , Eliza
Taylor, Clay
" , Edmond
" , William

1854

St. Louis Co

345/16

57½/15

Ryland
aff against Page
R&R against Towne

Simoneau, Chas died & had land in Commonfield belonging to St. Louis
son inherited then died & mother (wife) got it → conveyed to Towne, Paschal

def. School commissioners
T → Moore erroneously conveyed

State of Missouri } ss.
County of St. Louis } Be it Remembered that heretofore to wit: on the twenty seventh day of July eighteen hundred and fifty two, there was filed in the office of the Clerk of the Circuit Court within and for the county aforesaid, a Petition which is in the words and figures following to wit:

Petition

State of Missouri - County of St. Louis. ss.
In the St. Louis Circuit Court - November Term 1852
James M. Lyon and Anna Maria, his wife Plaintiffs
vs.
Daniel D. Page, Peter L. Vandeventer, Peter Lindell, Robert Wash, and Eliza, his wife, Clay Taylor, Edmonia Taylor, Paschal Laurie, Julia N. Moore, and William Milburn, William Glasgow, jr, and William C. Taylor, School commissioners of fractional section No. 16. T. 45. N. R. 7. E. defendants.

Plaintiffs state that one Charles Simoneau who died several years ago in the the county aforesaid intestate owned and cultivated a lot or parcel of ground containing forty arpents described as one arpent in front by a depth of forty arpents situated in the Grand Prairie common fields adjacent to and belonging to the then village of St. Louis, and being a common field lot - bounded on the north by a common field lot of one Francis Marechell, and on the south by a common field lot of one Francis Moreau - and was owned and cultivated by said Charles Simoneau at and prior to the 20th of December 1803, and was by said act of 1812 confirmed to the said Charles Simoneau or his legal representatives. That said Charles Simoneau died before said Act was

passed, leaving as his heirs his wife Marie Simoneau and his only child Charles Simoneau who became entitled to said tract of land and were the confirmees thereof under said act. That the said Charles Simoneau, jr. died without issue leaving his mother the said Marie his sole heir, and previous to his death conveyed to his said mother said tract of land by deed dated Aug. 11th 1806, of record in Book A. page 343. in the St. Louis Recorder's office. Plaintiffs cannot produce the original but file herewith an authenticated copy thereof marked Exhibit A. The said Marie Simoneau conveyed the same land to Paschal Saurie by deed dated July 20th 1838, which has been duly recorded and is herewith filed marked Exhibit B. Plaintiffs further state that the said Charles Simoneau, Sr. never owned any other lot or tract of land in said Grand Prairie commun fields, west of the east line of said common fields than the lot herein described. That the said Paschal Saurie who acquired the same as aforesaid sold it to Robert M. and Alexander Moore both now de=ceased, but erroneously conveyed by a wrong de=scription with general warranty deed, which is herewith filed marked Exhibit C. Plaintiffs state that the land conveyed was never the pro=perty of the said Simoneau or of the said Saurie as acquired of them, but that the land in con=troversy was the land sold to the said Moores and intended to have been conveyed, which the said Saurie has since admitted. Plaintiffs are therefore entitled to a conveyance from the said Saurie for said land

Plaintiffs further state that the said Alexander

3 Moore died intestate leaving as his heirs, his mother Elizabeth N. Moore, his brother Robert N. Moore, his sister Elizabeth Hull and his niece Julia N. Moore, That said Elizabeth N. Moore died devising her interest in said land to Robert N. Moore and Elizabeth Hull, wife of Joseph S. Hull, a copy of which said will is herewith filed marked Exhibit (D.)

That said Robert N. Moore died devising all his interest in said land to his wife Anna Maria, now the wife of said plaintiff James M. Lyon, a copy of which said will is herewith filed marked Exhibit (E) That said Joseph S. Hull and wife conveyed their interest in said land to the plaintiff James M. Lyon, by deed dated March 29th 1852, of record in book E. No. 6. page 272. herewith filed marked Exhibit (F.) whereby the said plaintiffs are entitled to the whole of said tract except one eighth thereof which belongs to the said Julia N. Moore.

Plaintiffs further state that the defendants Robert Wash and Eliza, his wife, Clay Taylor & Edmania Taylor either by themselves or their tenants are in posession of a part of said tract on the west end. That the defendant Peter Lindell is in posession of a part next east of them and that the defen=dants Daniel D. Page & Peter L. Vandeventer are in posession of the remainder of said tract, and are unlawfully withholding from the plaintiffs said land. That said defendants School commissioners as aforesaid are pretending unjustly to claim a part on the east end thereof. Plaintiff files herewith a plat of said land marked Exhibit (G.)

Plaintiffs state that they have an equitable right to

said described tract of land and pray judgment of the Court that the defendant Paschal Fauvie shall convey the same to the plaintiffs by deed in fee simple, or such judgment as shall invest them with the legal title to the same; and such other judgment against him as shall be proper under the circumstances.

Plaintiffs pray judgment against the defendants for the possession of said tract of land and damages, rents and profits, and all such other relief and judgment as they are entitled to from the premises P. C. Morehead, for Plffs.

James M. Lyon Plaintiff makes oath and says he believes the above petition and the matters as therein stated are true. James M. Lyon

Subscribed and sworn to before me this twenty sixth day of July 1852 M. S. Cerré, clerk,

Summons County of St. Louis ss.

The State of Missouri

To the Sheriff of St. Louis county - Greeting

We command you to summon Daniel D. Page. Peter L. Vandeventer, Peter Sindell, Robert Wash & Eliza his wife, Clay Taylor, Edmania Taylor, Paschal Fauvie, Julia N. Moore, and William Milburn, William Glasgow, jr. and William C. Taylor, school commissioners of fractional section No. 16, T. 45. N. R. 7. E. to appear before the Judge of our Circuit Court, on the first day of the next term thereof, to be held in the city of St. Louis within and for the county of St. Louis on the third Monday of November next then and there to answer the complaint of James M. Lyon and Anna Maria Lyon his wife, as set forth in the annexed petition and have you then there this

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writ.

Seal Witness Michael S. Cerre, Clerk of said Court, with the seal thereof hereto affixed at office, in the city of St. Louis, this 27th day of July in the year of our Lord eighteen hundred and fifty Two. M. S. Cerre, clerk.

Shff's Return Executed this writ in the county of St. Louis on the 3rd day of August 1852, by delivering to William C. Taylor a copy of the same and also a copy of the petition- further executed this writ in the county of St. Louis on the 4th day of August 1852, by leaving a copy of the same at the residence of Daniel D. Page, with a white member of his family over the age of fifteen years- further executed this writ in the county of St. Louis on the 10th day of August 1852. by leaving a copy of the same at the usual place of abode of William Glasgow with a white member of his family over fifteen years of age. and also on the same day delivered to Eliza Wash a copy of the same and by offering to read the petition to her which she refused to hear; and also by leaving on the same day (10th) at the usual place of abode of Robert Wash and Clay Taylor a copy of the same for each of them with a white member of the family over the age of fifteen years. Other defts not found, Augt 12, 1852.

Henry B. Bell Shff.

By J. R. Brannan Dep. Shff.

Executed this writ further in the county of St. Louis on the first day of Sept. 1852, by delivering a copy of this writ to Peter Lindell & by offering to read the within petition to him which he refused to hear, & on the 15th of September 1852, by

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delivering a copy of the within writ to Peter L. Vandeventer & William Milburn & by offering to read the within petition which they refused to hear, & also on the 16th of Oct, 1852 by delivering a copy of the within writ to Paschal Jamie & by offering to read the within petition to him, which he refused to hear also on the 27th day of October 1852, by delivering a copy of the within writ to Edmania Saylor & by offering to read the within petition to her which she refused to hear. Julia M. Moore not found in my county Jno. M. Winer Shff.

By Jas. Molair Deputy.

And afterwards to wit: at the November Term 1852, of said Court, on the 22d day of November the following proceedings were had, to wit:

Time to answer extended

James M. Lyon
vs.
Daniel D. Page, et al } The time for answering herein is extended thirty days.

And afterwards to wit: at the term last aforesaid of said Court, on the 9th day of December 1852, the following Demurrers, were filed herein, to wit:

Demurrer by Page.

The defendant Daniel D. Page, demurs to the petition because it does not state facts sufficient to constitute a cause of action in this:

1. Upon the plaintiffs own showing he is not entitled to the possession of the premises.
2. The petition is multifarious in joining defendants with entirely different & distinct interests.
3. It does not state with particularity what judgment is sought against this defendant.

Haight & Shepley for defts.

Demurrer by Milburn, Glasgow & Saylor.

William Milburn, William Glasgow, jr, and William C. Saylor, defendants demur to the petition, and say that

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The petition does not state facts sufficient to constitute a cause of action in this.

1st. The petition does not show that these defendants are in possession of any part of the premises sued for, nor what part of the premises they claim, nor in fact that they claim any part of it.

2. The petition is multifarious in joining defendants whose interests if any are entirely different & distinct

3. The petition does not shew what particular judg=ment is wanted against each of the parties having several interests.

4. The petition shows that the plaintiffs are not entitled to the possession of the premises sued for, the title being by his own showing in Paschal Jamie

E. & B. Bates.
R. M. Field } for defts.

Demurrer by Vandeventer et al.

Demurrer by Peter L. Vandeventer, Peter Sindell, Robert Wash and wife, Clay Taylor, Edmonia Taylor, Julia N. Moore.

These defendants demur to the plaintiffs petition & say that it does not state facts sufficient to constitute a cause of action in this:

1st. The petition shows the plaintiffs are not entitled to possession of the premises.

2d. It is multifarious, in joining defendants who have different & distinct interests.

3d. It does not show what judgment is sought against each several party.

4th. It shows no ground for any judgment whatever against Julia N. Moore.

5th. It does not show why Julia N. Moore is made a defendant & not a plaintiff.

Tremon & Reber, W. L. Williams, T. T. Gantt.
Haight & Shepley, E. & B. Bates, Field.

And afterwards, to wit: at the November term, 1852, of said Court, on the 28th day of January 1853. the following further proceedings were had, herein:

Demurrers Sustained

"The Court having duly heard and considered the demurrers of said defendants to the petition of said plaintiffs, and being thereof fully advised doth order the same to be sustained."

And afterwards, To-wit: at the November term, 1852 of said Court, on the 4th day of March. 1853. the following further proceedings were had, to-wit:

Default as to Faurie.

"Now at this day come said plaintiffs by their attorney, but said defendant Paschal Faurie, although duly summoned and called comes not but makes default, wherefore, on motion of said plaintiffs it is ordered by the Court that their petition be taken against said defendant as confessed."

And afterwards, to wit: at the April term 1854 of said Court, on the 6th day of June, the following further proceedings were had herein, to wit:

Judgment on Demurrers.

"This cause being called for trial, and the plaintiffs having failed to amend their petition, notwithstanding the judgment upon the Demurrers herein, the Court proceeds to enter final judgment upon said demurrers. The Court having duly heard and considered the Demurrers of said defendants to plaintiffs petition, and being thereof fully advised, doth order that said Demurrers be sustained and that the plaintiffs take nothing by their said suit in this behalf, and that the defendants go hence without day, and recover of said plaintiffs, their costs and charges in this behalf expended, and that execution issue therefor; and the judgment against the said Paschal Faurie, having been taken irregularly the same is set aside, and thereupon the Court

doth dismiss this cause, and orders the costs to be paid by said plaintiffs, and that execution issue therefor also.

And afterwards, to wit: at the term last aforesaid of said Court, on the 9th day of June, the following motion for a new trial was filed

Motion for New Trial

"Plaintiffs come and pray the Court to grant a new trial in this cause for the following reasons:
1st. The Court erred in sustaining the demurrer filed in said cause.
2. The Court erred in setting aside the judgment by default against the defendant Sawie.
3. The Court erred in dismissing the petition of the plaintiffs. Morehead atty.

And afterwards to wit: at the term last aforesaid of said Court, on the 20th day of June, the following further proceedings were had:

Motion for New Trial overruled

"The Court having duly heard and considered the motion of said plaintiffs for a new trial and being thereof fully advised doth order that said motion be overruled."

And afterwards to wit: on the 27th day of September, 1854. the following application for an appeal was filed:

Application for appeal

"James M. Lyon the above plaintiff comes and in vacation asks the clerk to grant an appeal in the above case, and also supersedeas.
Sept. 27th 1854. James M. Lyon

"On the above application an appeal is granted to the plaintiff in the above cause to the Supreme Court. Wm. F. Hammond, Clk."
Sept. 27th 1854.

Appeal Bond.

"Know all Men by these presents that we James M. Lyon, as principal, and Paul Pasquier as.

Surety are held and firmly bound unto Daniel D. Page, P. L. Vandeventer, Paschal Sawie &c, in the Sum of one hundred dollars for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents Sealed with our seals and dated at St. Louis this 27th day of September A. D. 1854.

The Condition of the above obligation is such that whereas James M. Lyon & wife have appeal-ed from the judgment rendered against them and in favor of Daniel D. Page, P. L. Vandeventer &c. in the St. Louis Circuit Court for costs.

Now if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Circuit Court to give; and shall, if the judgment or any part thereof be affir-med, comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void; otherwise it shall remain in full force and effect.

James M. Lyon {Seal}
Paul Pasquier {Seal}

Approved.
Wm. T. Hammond, Clk.

St. Louis Circuit Court in Vacation

Be it Remembered that on this 27th day of Sep-tember 1854 appeared James M. Lyon the principal and Paul Pasquier the security in the foregoing bond, and acknowledge that they executed the

same for the purposes therein expressed.
(Seal) In Witness Whereof, I hereto set my hand and affix the seal of said Court, at office in St. Louis the day and year last aforesaid
Wm. F. Hammond clerk.

State of Missouri } ss
County of St. Louis } I, William F. Hammond, clerk of the Circuit Court within and for the county aforesaid certify the foregoing to be a true and complete transcript of the record and proceedings in the case of Lyon & Wife Vs. Page, et al as fully as the same remains in my office.

In Testimony Whereof, I hereto set my hand, and affix the seal of said Court at office in the city of St. Louis this twenty seventh day of September A. D. Eighteen hundred and fifty four.
Wm. F. Hammond, clerk

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(15)

March. T. 1855

Lyon & Wife appts.

vs } Transcript

Page et al res.

Appeal Circuit Court.

Morehead atty

Filed 28th September 1854.
Wm L. Glanville
Clk

fee $5.25 Paid by Lyon

X

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(4)

James M. Lyon wife Plaintiffs
vs. } In the St Louis Circuit Court. —
Daniel D. Page. P. L. Vandeventer, Robert Wash wife Clay
Taylor, Edmonia Taylor, Paschal Tourie and William
Milburn Williams Glasgow Jr and Williams Taylor
School commissioners) & others defendants
To the above named defendants —
You are hereby notified that an appeal has been
taken in the above cause, returnable to the first day
of the next term of the Supreme Court of the State of
Missouri to be held in the City of St Louis commencing
on the third monday in October next.
St Louis Sept. 29th 1854 —

James M Lyon

Copy given by P. L. Vandeventer to defts Attorneys on 30th Sept.
1854. Attys Park Williams Shepley Bates — and a copy by Lyon to
Tourie —

James M. Lyon Sheriff

vs. [illegible] notice

D. D. Page H.

Filed 29 Septr. 1854
Wm L Glarmin
Ck

(2)

James M. Lyon & wife Appellants
vs. In Supreme Court State of Missouri Oct T. 1854
D. O. Page & others Respts.

The appellants by their Attorney assign the following errors in the above case —

1. The court erred in sustaining the demurrers filed in said case by all the depts. (except Tourie)
2. The Judgement by default against defendant Tourie was regular & the court erred in setting it aside
4. The Court Erred in dismissing Plaintiffs Petition

Morehead for Appellants

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James M. Lyon Swift

vs

D.D. Page & others

assignment of Errors

Filed 23d October 1854.
Wm L. Glanville
Ck.

(14)

J. M. Lyon & wife
vs
Daniel D. Page
& others.

In the Supreme Court
of the State of Missouri

Statement & brief for
defendant in Error.

The plaintiffs filed their petition in the Louis Circuit Court stating that they were lawfully entitled to the possession of a certain aspent Lot in the Grand Prairie common fields and that defendants had unlawfully entered into possession and held severally seperate & distinct parcels of the tract. The defendants were in number about fifteen and among others included Pascal Tourie. The petition did not allege that Pascal Tourie held possession of any portion of the land sued for, but stated that he formerly owned it and had sold it to Robert A Moore under whom plaintiffs claimed but that in making the deed to Moore Tourie had described the wrong piece of land by mistake and asking that said Tourie be decreed to execute a conveyance of the land sued for or that the Court would decree it to them

All the defendants except Pascal Tourie filed their demurrers to the petition stating therein the following causes.

1st That by the plaintiffs own showing they are not entitled to the possession of the premises sued for

2d That the petition is multifarious in joining defendants with entirely separate & distinct interests

3d That it does not state with particularity what judgment is sought against the defendants & some particular causes of applicable to distinct parties demurring

The Court sustained the demurrers and gave leave to the plaintiffs to file amended petition

Pascal Tonnie did not answer or demur and judgment by default was entered up against him, on the 4 March Term 1853 & after the demurrer had been sustained.

At the April Term 1854. the plaintiffs not having amended. the Court entered up final judgment of dismissal as to other defendants and set aside the judgment by default against Tonnie as having been improperly taken & dismissed the case

The defendants Page submits

II No such action is maintainable. As to all the defendants except Tonnie. The action is in the nature of an ejectment suit for the possession of the land but in the same petition the plaintiffs show that they have no title That will maintain an ejectment suit and seek a conveyance of the very land which they seek to recover from the other defendants

II It The petition neither shows that Towne was in possession nor that there was any privity between him & the other defendants nor that the other defendants claimed under Towne. or that they had a common source of title or that there was any connection between Towne & the other defendants as to the land sued for.

III II Considering the action simply in the light of an ejectment suit against the other defendants. and putting out of view the portion of the petition asking a conveyance from Towne. yet the demurrer was well taken,

This would present a case of a plaintiff bringing an action against several defendants for the possession of a tract of land which he alleges they hold in separate parcels in severalty

This cannot be permitted for

1st The Court would in one action then perhaps to decide as in this case, some half a dozen distinct titles

2d Each one of the defendants would be subjected to paying the costs of ~~an opposed~~ one or more expensive contests as to titles where he had no privity of interest or estate.

/

IV. The Court decided rightly in setting aside judgment by default taken against Towne and dismissing the suit. for

1st The judgment by default was taken after the demurrers were sustained

2d. The petition asked for a decree of title from Towne to plaintiffs when on its face the petition showed that at most the plaintiffs were only entitled to a decree for a certain portion

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In the Supreme Court of
the State of Missouri

J. M. Lyon

vs

Dan'l D. Page
& others

Statement & Brief for
Defts. appellees.

Shepley for
Defts

Filed 4th April 1855

(24)

Lyon and wife v Page & others

Reporter to make Statement –

The questions in this case involve the propriety of the judgment of the Court below, in dismissing the demurrer of the defendants all except Paschal Morin to the petitioners complaint. and also the setting aside of the judgment by default against Morin and the dismissing of the petition –

The petition does not set forth properly facts sufficient to maintain an action against the defendants who demurr to the same –

The petition seeks to correct an error or mistake in the description of the tract of land mentioned in the deed from Paschal Morin to Robert N. Moore and Alexander Moore – It states that one Charles Simoneau who died several years ago in St. Louis County, intestate, owned and cultivated a lot or parcel of land containing forty arpents described as one arpent front, by a depth of forty arpents, situated in the Grand Prairie Common fields, adjacent to and belonging to the then Village of St Louis

being a Common field lot, bounded on the North by a Common field lot of one Francis Marechell, on the South by a Common field lot of one Barnes Moreau; and was owned and cultivated by said Charles Simoneau at and prior to the 20th day of December 1803 and was by the Act of 1812 confirmed to said Charles Simoneau or his legal representatives - That said Charles Simoneau died before said Act was passed, leaving as his heirs his wife Marie Simoneau and his only child Charles Simoneau, who became entitled to said tract of land, and was the confirmee thereof under said Act of 1812 - That said Charles Simoneau first died without issue leaving his mother the said Marie his sole heir; and previous to his death, conveyed to his mother said tract of land by deed dated August 11. 1806 - That said Marie Simoneau conveyed the same land to Paschal Fauvie by deed dated July 28th 1838 - The petition also states, that said Charles Simoneau first never owned any other lot or tract of land in said Grand Prairie Common Field, West of the East line of said Common Field, than the lot herein described - That the said Paschal

Faurie who acquired the same as aforesaid
sold it to Robt N. and Alexander Moore
both now deceased, but erroneously con
veyed by a wrong description, by general
warranty deed, marked as an exhibit to the
petition (6) — The petition states, that the
land conveyed was never the property of
the said Simoneau or of the said Paschal
Faurie, as acquired by them, but that the
land in controversy was the land sold to the
said Moores and intended to have been
conveyed, which the said Faurie has
since admitted — petition avers that said plain
tiffs are entitled to a conveyance from
said Faurie for said land ———

The petition then states, Alexander
Moore died intestate, leaving as his heirs, his
mother, Elizabeth N. Moore, his brother Robert
N Moore, his Sister Elizabeth Hull and
his Niece Julia N. Moore — That the mother
Elizabeth N. Moore died, devising her interest
in said land to Robt N. Moore and Elizabeth
Hull wife of Joseph S. Hull — That Robert
N. Moore died, devising all his interest
in said land to his wife Anna Maria
now the wife of Plaintiff — That Joseph S.
Hull and wife conveyed their interest
in said land to the plaintiff James McLyon,

by deed, whereby the plaintiffs are entitled to the whole of said tract of land, except one eighth thereof belonging to Julia A Moore.

The petition then states, that defendants, Mark + wife, Clay Taylor and Edmonia Taylor are in possession by themselves or their tenants of part of said land, on the West end - that Peter Sendell is in possession of part next each of them; and defendants Page & Vandeventer are in possession of the remainder of said tract and are unlawfully withholding from the plaintiffs said possession -

The defendants the School Commissioners are pretending unjustly to claim a part on the East end thereof - the plaintiffs state that they have an equitable title to said described tract of land and pray judgment that Paschal Tamie shall convey the same to plaintiffs by deed in fee simple; or such judgment as shall invest them with the legal title to the same; and such other judgment against him as shall be proper under the circumstances; against the other defendants they pray judgment for possession damages, rents + profits and general relief —

this petition which I have stated substantially above, shows no cause of action against any of the parties who demurred thereto:

It does not appear by this petition that any of these defendants claim under Paschal Jamie, the maker and grantor in the deed, in which is alleged the erroneous description of the land— Even if these defendants should claim under Paschal Jamie the petition fails to allege that they had notice of such mistake; or that they were more volunteer purchasers— The judgment then of the lower Court upon the demurrer in favor of these defendants must be affirmed— and the plaintiffs having after leave given failed to amend their petition, the judgment dismissing the petition as to them is proper and must also be affirmed—

But this Court can not perceive why the Court below should suppose the judgment by default against Paschal Jamie was irregular and should be set aside— The record shows personal service of the summons

and petition in time; and it also shews the failure of the defendant Jamie to answer or demur — The judgment by default was regular; and the Court should not have set the same aside and dismissed the petition, without any appearance or motion in the part of Jamie asking for such action —

The defendants who demurred below, contend in this Court, that the judgment against Jamie was properly set aside, because it was had after the demurrer to the plaintiffs' petition had been sustained by the Court below — There is nothing in this objection — The plaintiffs may well be entitled to relief against one defendant; and yet have no sufficient statement of facts in their petition to entitle them to relief against another defendant — Or even an informal and defective statement may be considered sufficient after default to authorise the Courts to afford the relief, which might have been denied upon proper defence made.

In our opinion then, the Court below erred in setting aside the judgment by default taken in this case against Faurie without his appearance & shewing cause therefor — That judgment is reversed and cause remanded for further proceedings against Paschal Faurie if the plaintiffs see fit — And the judgment in favor of Page & the other defendants who made defence below is affirmed.

The other judges concurring

John J. Marshall

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Lyon & wife

v

Page & als

Opinion

Ryland

Filed 4 June 1855
Wm F Glanville
Ck

(5)

James M. Lyon wife Appellants
vs. } In the Supreme Court —
D. D. Page & others Respondents

Statement of the case —

It is alledged in the Petition that Charles Simoneau deceased own a lot of forty arpents in the Grand Prairie Common field, bounded on the north by Francois Marechelle and on the South by Moreau. cultivated prior to 1803. That he never owned but this lot in the Grand Prairie — Mary Simoneau his wife survived him and one son Charles Simoneau Jr. — Charles Simoneau Jr. died without issue & intestate, leaving his mother Mary Simoneau sole heir — Mary Simoneau conveyed to Paschal Lourie — Paschal Lourie sold and conveyed to R. N. Moore a lot of forty arpents a cgd of Mary Simoneau bounded on one side by Barbeau and on the other by described as the lot cultivated and owned by Charles Simoneau Sr. dec.d — Appellants hold under Moore It is alledged also that the lot conveyed by Lourie was intended to be the first mentioned lot being the only lot Simoneau owned in the Grand Prairie and an improper boundary made by mistake It is further alledged that the other defendants were in possession of the lot and pray judgement for a conveyance from Lourie of the first mentioned lot and that the other defts. be required to surrender the possession and general relief

Lourie failing to answer judgement by default was entered against him the other defts demurred. as follows —

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1. Demurrer by Deft Page —

1. That Pltffs are not by their own shewing entitled to the possession of the premises
2. The Petition is multifarious in joining defts with different and distinct interests —
3. It does not state with particularity what judgement is sought against this deft —

2d. Demurrer by Milburn H. School Comrs —

1. Petition does not shew that these defts are in possession of any part of the premises sued for, nor what part they claim, nor that they claim any part of it —
2. Petition is multifarious in joining defts whose whose interests if any are entirely different & distinct —
3. Petition does not shew what particular judgement is wanted against each of the parties having several interests
4. Petition shews that the Pltffs are not entitled to the possession of the premises sued for, the title being by his own shewing in Paschal Tourie —

3d. Demurrer by Defts Vandeventer, Lindell, Wash Swife, Clay Taylor, E. Taylor & Julia N. Moore —

1. Petition shows Pltffs are not entitled to the possession of the premises
2. It is multifarious in joining defts who have different & distinct interests —
3. It does not shew what judgement is sought against each several party.
4. It shows no ground for any judgement whatever against Julia N. Moore
5. It does not shew why Julia N. Moore is made a deft and not a Pltff

Assignment of Errors.

1. Court erred in sustaining the demurrer filed by all the defts (Except Tourie)
2. The judgement by default against Tourie is regular & the Court erred in setting it aside
3. The court erred in dismissing Plffs Petition —

It is insisted by Appellants, that they were entitled to a final judgement against Tourie,
He failed to answer. —
and there is no irregularity in the judgement by default against Tourie
Whether there was a judgement by default against Tourie or not — the Plffs were entitled to a final judgement against him as to mistake in deed see 2d Bibb p. 38. —
Plffs further insist that as this is a suit in chancery they can require the defts in possession to exhibit & litigate their claims to the possession, to prevent multiplicity of suits.
Tourie was entitled to the possession, equitably Plffs —
2. Bibb — p. 484.
1. Harrisons Chy Practice 76 & 106.
Mitford's Pleading 144 & 241.
Bartons Equity — 31. —

Morehead for Appellts

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James M. Lyon Sheriff
Appellants

vs. B Brief

D.D. Page & others
Respts

Morehead

(8)