Ming, James M vs. Dreyer, Gustavus 1856 Franklin 373/
Unkart, Edward

585/11

unlawful entry / trespass
cutting timber
Ming claims ownership (tax title)
D has patent from US
timber was for railroad ties for Crews Richard
jury verdict for D ↳ Crews pur. right to timber and cont. to trespass
Dett
affirmed
Ming was principal trespasser

State of Missouri
County of Franklin } ss Be it Remembered that heretofore to wit: on the twenty fifth day of July in the year of our Lord Eighteen Hundred and Fifty Five was filed in the office of the Clerk of the Circuit Court of said County a certain petition in trespass in the words and figures following to wit:

Petition in Trespass.

Gustavus W. Dreyer & Edward Unkart Plaintiffs
against
James M: Ming Defendant
In the Circuit Court Franklin County.

Plaintiff states that on the twenty sixth day of December 1854 at the County of Franklin and State of Missouri defendant without leave, and wrongfully entered on the South West fractional quarter of Section thirty three in Township forty four of Range one East, and the South West fractional quarter of Section thirty two in Township forty four of Range one East in the District of Land subject to sale at Saint Louis Missouri, of which the plaintiffs was then the owner, and the defendant then and there cut timber to the value of one thousand dollars, and carried it away, by which plaintiff was damaged to the amount of one thousand dollars for which they ask judgment. Gustavus W. Dreyer & Edward Unkart by Gale & King their Attornies.

Robert A. King Attorney for plaintiffs makes oath and says he believes the above petition and the matters therein as stated are true

Sworn to & subscribed before me Robt A. King.
this 25 day of July A.D. 1855.

C. S. Jeffries Clk.

Upon which petition Summons issued in the words and figures following to wit:

Summons. "The State of Missouri To the Sheriff of Franklin County Greeting: We command you to summon James M. Ming to appear before the Circuit Court of Franklin County on the first day of the next term thereof to be begun and held at the Court house in Union on the third Monday in September 1855 to answer the complaint of Edward Unkhardt and Gustavus W. Dreyer plaintiffs as set forth in their foregoing petition and have you then there this writ.

Witness my hand and seal of said Circuit at office in Union July 25-1855

(L.S.)

C. S. Jeffries Clk.

Endorsed upon said summons is the following Sheriffs return in the words and figures following to wit.

Sheriffs return. "Served this petition and writ in Franklin County Mo on the 16th day of August 1855 on James M. Ming by delivering to him a copy of the petition and writ and by reading the same in his hearing.

R. R. Jones Sheriff by Amos Maupin D. S.

Afterwards to wit at the Circuit Court begun and held at the Court House in Union on the sevententh day of September in the year of our Lord Eighteen hundred and fifty Five, on the 26th day of September A.D. 1855 the following appears of Record to wit:-

Leave given defendant to answer.

Gustavus Dreyer and Edward Unkart vs James M. Ming — Petition for trespass. Leave given defendant to answer sixty days before the next term and cause continued.

Which Answer filed on the 25th day of February 1856 is in the words and figures following to wit:

Answer of Defendant.

Dreyer & Unkart Plaintiffs
against
James M. Ming Defendant.

In the Franklin Circuit Court April Term 1856.

Defendant says, that he did not on the 26th day of April 1855, or upon any other day, at the County of Franklin State of Missouri without leave or wrongfully enter upon the SW frl qr. Sec 33 T 44 R 1 E. or the SW frl qr Sec 32 T 44 R 1E. of which plaintiffs were owners & cut timber to the value of $1000.- nor did he carry the same away from said land.- nor did he by any act damage plaintiffs in the sum of $1000, or in any amount, but says, that all of plaintiffs allegations to this effect in his petition are untrue.

Defendant also states that plaintiffs are not the owners of the SW. frl qr. of Sec. 32 T 44. R 1E.

nor of the S W frl qr. of Sec 33 T. 44. R. 1 E. but that he (the defendant) is the legal owner thereof & claims the title thereto as follors to wit: the said lands were advertised by the Register of lands on the first Monday of June 1851 according to law to pay & satisfy the taxes & penalties & the same remaining due & unpaid on the first Monday of October 1851, the Collector of Franklin County publicly exposed the said lands for sale according to law and then & there did sell the same to one Charles R. Jeffries & the said Jeffries received from the Register of lands for the State aforesaid a Patent therefor. Defendant says that all the proceedings before & at the Sale aforesaid were regular legal & strictly in accordance with the Statute in such Case made & provided & the said Jeffries for a valuable Consideration conveyed the same to defendant who is now the legal owner thereof & entitled to the possession of the same, & the plaintiffs are not the legal owners thereof nor entitled to the possession of the same. Defendant having fully answered asks to be discharged with his costs

J. Halligan Atty for Defendant.

James M. Ming defendant makes oath & says that he believes the above answer and the matters therein as stated are true.

Sworn and subscribed to this 14th March 1856. C. S. Jeffries Clk

Jas M. Ming.

Afterwards to wit at the April Term of the Circuit Court in the year of our Lord Eighteen Hundred and Fifty Six on the 8th day of April A.D. 1856 the following appears of Record to wit:

Dreyer & Unkhardt vs James M. Ming by plaintiff. | Petition for Trespass. Motion to strike out Defendants answer filed

Which motion is in the words and figures following to wit:

Motion to strike out defendants Answer

Dreyer & Unkart vs James M. Ming | In the Franklin Circuit Court April Term 1856.

Nor this day comes the plaintiffs by their attornies and move the Court to strike out the answer of the defendant in the above entitled cause for the following reasons, to wit,

1." Because there is no denial to each allegation of plaintiffs petition.

2" The new matter set up in the answer does not constitute a defence to plaintiffs cause of action.

King and Gale for plaintiffs.

Afterwards to wit, at the term aforesaid in the year aforesaid, on the 12th day of April A.D. 1856 the following appears of record to wit:

Motion overruled.

" Dreyer & Unkhardt vs James M. Ming. Petition. Motion to strike out answer of defen-

dant overruled by the Court."

At the term aforesaid, in the year aforesaid and on the date aforesaid the following appears of record, to wit:

Judgment of the Court on verdict of the Jury.

"Gustavus Dreyer & Edward Unkart vs James M. King

Petition.

Now at this day come the parties aforesaid by their attornies and thereupon come a Jury to wit: William H. Rice, Maddison Hendrick William Keatley, Benjamin Anderson, Levi Lovelace, Benjamin D. Terry, Hugh Lane, Henry Wellenkamps & William T. Thurmon, nine good and lawful men by whom the parties aforesaid agree to be tried, being duly elected tried and sworn well and truly to try the issue joined between the said parties upon their oath do say: we the jury find for the plaintiffs the sum of four hundred and fifty dollars. It is therefore considered by the Court that the said plaintiffs recover against the said defendant the aforesaid sum of four hundred and fifty dollars damages by the jury aforesaid assessed together with their costs and charges in their suit in this behalf expended and that they have thereof execution."

Afterwards to wit, at the term aforesaid, in the year aforesaid on the 15th day of April A.D. 1856 the following appears of record to wit:

"Gustavus Dreyer and Edward Unkhart vs.

James M. Ming — Petition. The defendant by his counsel moves the Court to set aside the verdict rendered in this Cause and grant him a new trial for reasons filed, which motion being seen by the Court understood, it is ordered that said motion be overruled."

Which motion is in the words and figures following to wit. "Dreyer & Unkart against James M. Ming | In Circuit Court April Term 1856.

Motion to set aside verdict and grant a new Trial

James M Ming Defendant comes and moves the Court to set aside the verdict of the Jury and grant him a new Trial in this case for the following reasons.

1st The verdict of the Jury is against the law of the Case.

2d The verdict of the Jury should have been for the Defendant.

3d The Court erred in giving the instructions given by the Court.

4th The Court erred in refusing the instructions asked for by Defendant.

Because since the trial the defendant has discovered new evidence material to his defence and by which he will shew that Plaintiffs by deed regularly executed have long since divested themselves of all right title and interest in the lands upon which the trespass was alleged to have been

committed and are not entitled to recover any damages for trespases committed on said lands.

Halligan & Stevenson Attys for Deft."

At the Term aforesaid, in the year aforesaid, on the 16th day of April A D. 1856 the following appears of record towit:

Gustavus W. Dreyer & Edward Unkart vs James M. Ming — Petition for Trespass. Bill of Exceptions filed

Which bill of Exceptions is in the words and figures following towit:

Bill of Exceptions.

Dreyer & Unkhart vs James M. Ming

Be it remembered that on the trial of this Cause the plaintiff to sustain the issue on his part gave in Evidence as follors. An United States Patent to the plaintiffs for the two tracts mentioned in the petition viz:

United States Patent to G. W. Dreyer & E. Unkart.

Certificate No 9860 } The United States of America. To all to whom these Presents shall come, Greeting: Whereas Gustavus W. Dreyer and Edward Unkart of New York, County New-York - has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at St. Louis whereby it appears that full payment has been made by the said

Gustavus W. Dreyer and Edvard Unhart according to the provisions of the Act of Congress of the 24th of April 1820, entitled "An act making further provision for the sale of the Public Lands," for the South West fractional quarter of Section thirty three, in Township forty four of Range one East in the District of Lands subject to sale at St Louis, Missouri, containing ninety two acres and eighty four hundredths of an acre according to the official plat of the survey of the said Lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Gustavus W. Dreyer and Edvard Unhart. Now Know Ye, that the United States of America, in consideration of the Premises, and in conformity with the several acts of Congress in such case made and provided, Have Given and Granted, and by these presents Do Give and Grant, unto the said Gustavus W. Dreyer and Edward Unhart and to their heirs, the said tract above described: To Have and To Hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said Gustavus W. Dreyer and Edward Unhart and to their heirs and asigns forever as tenants in common and not as joint tenants. In Testimony Whereof, I, Martin Van Buren President of the United States of America, have caused these letters to

be made Patent, and the Seal of the General Land Office to be hereunto affixed. Given under my hand at the City of Washington, the first day of October in the year of our Lord one thousand eight hundred and forty and of the Independence of the United States the Sixty fifth. Martin Van Buren. By the President: By M Van Buren p Secy.

L S

Recorded Vol 20 Page 43 &c Jas S Wilson acting Recorder of the General Land Office ad interim.

also a plat of Survey made by the County Surveyor as follows.

Plat of Survey.

The plaintiffs then called the County Surveyor of Franklin Co. who testified that recently he was called upon by the plaintiffs to Survey the two tracts in Controversy, went on to the land & found one of the established Corners of the 92 acre tract, did not chain the tract, or trace the line by compass, found this tract pretty well Cut off, thinks there was some timber cut on a tract adjoining on the North side belonging to the Defendant, and near the line, but cannot state the quantity.

Jacob Cole testified that he lives near the two tracts of land in Controversy, that the 92 acre tract was pretty well cut over, as also the 50 acre tract though the latter not cut so much as the former, there was plenty remaining on the latter tract to fence it, he knew the land well before it was cut, and thinks the timber worth per acre from $20 to $25 the timber was cut for rail road ties, that these tracts lay near the rail road and at about equal distances with mine, I cut and sold a good many ties and got 35 cents a piece for them when delivered, it is more profitable to cut timber for rail road ties than for cord wood.

The Plaintiffs further proved by several of the hands employed by Crews to cut this timber, that there was cut by them and others for Crews five or six thousand ties, that the large

tract was pretty well cut over, and about 300 or 400 ties cut on the 50 acre piece, some few were cut on the Defendants land adjoining near the line between it and the tract in Controversy, they cut the timber for, and was employed by Richard Cress, Some of the plaintiffs testified that rail road ties in the tree were worth 8 cents a piece, and others that they were worth 15 cents a piece, the plaintiffs then called Richard Cress who testified as follows.

Richard Cress testified that sometime during the winter of 1854 and 1855, knowing that Ming had a tax Claim of the land in Controversy, he went to see him about getting the privilege of cutting Rail Road ties, Ming in our conversation on the subject, told me he believed his title was good stating that the two years for Redemption had expired, having been bought by him at Collectors Sale for taxes, sometime before, and he exhibited a paper from the Sheriff, or Auditor does not recollect which, upon which he said he predicated his claim of title, He told me further that I had better see a lawyer and take his opinion of the title, that he would sell me his right in the timber, to be cut into ties for 8 cents a piece, I accordingly did take the advice of a lawyer, and went back & purchased of Ming and proceeded to cut timber, and make rail road ties,

and on a Settlement with Ming, at the Close of the Cutting fell in his debt for ties, and paid him about $420, the plaintiff then withrew his claim for trespasses on the fifty acre tract.

The Defendant then called several witnesses, who testified that rail road ties were worth in the tree about 9 cents, that one person in the neighborhood had sold for 5 cents.

This was all the evidence given in said Cause and after the evidence on each side was closed the plaintiffs asked, and the Court gave the following instructions to the Jury.

Instructions of the Court

If the Jury find from the evidence that Defendant Ming sold the timber for which the action is brought to Crews, and that Crews after such purchase proceeded to commit the trespass under the purchase from Ming they will find for the plaintiff.

If the Jury find that Ming, claiming to be the owner of the land on which the trespass was committed and as such owner sold the timber to Crews who took and carried away the same, they will find for plaintiff the value of the timber so taken by Crews.

the Defendant moved the Court to declare the Law as instruction to the Jury as follows,

Instructions of Defendant.

That if the Jury believe from the evidence that Crews purchased of Ming his right to the timber

on the land in controversy being willing to risk Mings title & that under the belief that his right was good committed the trespass complained of he alone is responsible for the trespass and not Ming and they must find for the defendant.

That the Jury in order to convict Ming of the trespass complained of must believe from the evidence, either that Ming was the actual trespasser or that Cress was his agent or that the trespass was committed by the counsel advice instigation or procurement of Ming, and unless they so believe they must find for Defendant.

That in order to establish an Agency or Co-partnership the terms of such Agency or Co-partnership must be shown.

but the Court refused to give the same and to the giving the instructions asked for by the plaintiffs and refusing those asked for by the Defendant the Defendant excepted, And afterwards the Jury having retired to their room to consider of their verdict, and after they had returned their verdict, the Defendant moved the Court for a new trial in said Cause and in support of his motion read an affidavit and a deed from the plaintiffs conveying the land in Controversy to one Andrew Janicke:

Affidavit of Defendant.

'Dreyer & Urhart vs James M. Ming
In Circuit Court April Term 1856.

James M. Ming being duly sworn on his oath states that he has discovered since the trial of the above entitled cause that on the trenty third day of April A. D. 1855 plaintiffs by a deed divested themselves of all title to the lands upon which the trespass was alleged to have been committed (a copy of which deed is here shown) that he used all diligence to prepare himself for trial and supposed he had discovered all the testimony material to him that for the first time since the trial of this cause he learned of the existence of said deed and made discovery of its existence he further states that he believes if said deed had been in evidence he would not have been found guilty of the trespass complained of. Jas M. Ming

Sworn and Subscribed to before me the Clerk of the Circuit Court 15 day of April 1856. C. S. Jeffries Clk

Deed of E. Unkart & G. W. Dreyer To A. Janicke

This Indenture, made the trenty sixth day of April in the year one thousand eight hundred and fifty five between Edward Unkart of the City, County and State of Newyork and Eliza his wife, and Gustavus W. Dreyer of the city of St. Louis in the State of Missouri and Anna Sophie his wife parties of the first part and Andrew Janicke of the city county and state of Newyork, party of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the

sum of four dollars per acre lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described tract or piece or parcel of Land that is to say. The South West fractional quarter of Section thirty two, in Township forty four of Range one East, containing fifty three acres of Land and situate in Franklin County in the State of Missouri, being same tract of land granted to the parties of the first part by government certificate 9859 which certificate is recorded in Vol 20 page 42 - together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with

the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part his heirs and assigns, forever. In Witness whereof the said parties of the first part have hereunto set theirs hands and seals the day and year first above written.
Sealed and delivered in the presence of.

James K Reed
R A Watkinson } for Unkart a wife

Edward Unkart (L.S.)
Eliza Unkart (L.S.)
Gustavus W Dreyer (L.S.)
Anna S Dreyer (L.S.)

State of New York
City and County of New York } ss Be it Remembered That on the Twenty seventh day of April Anno Domini, one thousand eight hundred and fifty five before me Bedford A. Watkinson, Commissioner for the State of Missouri appointed by the Governor, and under the Laws thereof, resident in the City of New York duly commissioned and sworn to take Acknowledgments and proof of Deeds and other writings in the State of New York, to be used or recorded in the said State of Missouri and to administer oaths and affirmations, and to take depositions in the said State of New York, to be used within the said State of Missouri appeared Edward Unkart and Eliza Unkart his wife, who are personally known to me to be the individuals

described in and who executed the annexed Instrument from Edward Unhart and wife to Andrew Yaniche. The said Edward Unhart and Eliza his wife then and there acknowledged to me that they executed the same as their free act and deed, for the purposes therein mentioned. And the said Eliza Unhart being examined by me privily and apart from her husband, and the contents and effect of the said instrument being by me first duly explained, to her did then and there acknowledge that she executed the same for the purposes therein mentioned freely and without any fear or compulsion of or from her said husband and that she was still satisfied therewith, and relinquished her dower therein

In Testimony whereof, I have hereunto set my hand, and affixed the seal of my office, on the 27th day of April in the year of our Lord one thousand eight hundred and fifty five. R. A Watkinson

Comissioner &c. 7 Nassau st.

State of Missouri }
County of St Louis } Set. Be it remembered that Gustavus W. Dreyer and Ann Sophia his wife who are personally known to the undersigned a Notary Public within & for said County to be the persons whose names are subscribed to the within deed as parties thereto this day

appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained. And the said Ann Sophia Dyer being by me made acquainted with the Contents of said deed acknowledged on a examination apart from her said husband that she executed the same and relinquishes her dower in the real Estate therein mentioned freely and without compulsion or undue influence of her said husband. In Testimony thereof I have hereunto set my hand and affixed my official seal this 5th day of June 1855

Mann Butler
Notary Public.

Filed July 24th 1855. Recorded December 5th 1855.

Deed of E. Unhart & G. W. Dreyer to A. Yaniche

This Indenture, made the twenty sixth day of April in the year one thousand eight hundred and fifty five between Edward Unhart of the City County and State of New York, and Eliza his wife and Gustavus W. Dreyer of the city of St Louis in the State of Missouri and Anna Sophia his wife parties of the first part, and Andrew Yaniche of the city, county and State of New York, party of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of four dollars per acre lawful money of the

United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, Have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described tract or piece or parcel of land that is to say. The South West fractional quarter of Section thirty three Township fourty four of Range one East containing ninety two acres and eighty four hundredths of an acre of land and situate in Franklyn county in the State of Missouri being same tract of land granted to the parties of the first part by Government Certificate Number 9860 which certificate is recorded in Vol 20 page 43.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; And also, all the estate, right title, interest, dower and right of dower property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part his heirs and assigns forever. In Witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written. Edward Unkart (Seal)

Sealed and delivered in the Eliza Unkart (Seal)

presence of James N Reed for Unkart Gustavus V Dreyer (Seal)

R. A Wathinson and wife Anna S Dreyer (Seal)

State of New-York

City and County of New York } ss Be it Remembered, That on the Twenty seventh day of April Anno Domini one thousand eight hundred and fifty five before me, Redford A Wathinson, Commissioner for the State of Missouri, appointed by the Governor, and under the Laws thereof, resident in the City of New-York, duly commissioned and sworn to take Acknowledgements and proof of Deeds and other writings in the State of New York, to be used or recorded in the said State of Missouri and to administer oaths and affirmations, and to take depositions in the said State of New York, to be used within the said State of Missouri appeared Edward Unkart and Eliza Unkart his wife, who are personally known to me to be the individuals described in and who executed the annexed Instrument, from Edward Unkart and wife to Andrew Yanicke. The said

Edward Unhart and Eliza his wife, then and there acknowledged to me that they executed the same as their free act and deed for the purposes therein mentioned. And the said Eliza Unhart being examined by me privily and apart from her husband, and the contents and effect of the said instrument being by me first duly explained, to her did then and there acknowledge that she executed the same for the purposes therein mentioned freely and without any fear or compulsion of or from her said husband and that she was still satisfied therewith and relinquished her dower therein. In Testimony thereof, I have hereunto set my hand, and affixed the seal of my office on the 27th day of April in the year of our Lord one thousand eight hundred and fifty five

R. A Watkinson

Commissioner &c 7 Nassau St.

State of Missouri
County of St Louis ss Be it remembered that Augustus F. Dreyer and Ann Sophia his wife who are personally known to the undersigned Notary Public in and for said County to be the person whose names are subscribed to the within deed as parties thereto this day appeared before me and acknowledged that they executed & delivered the same as their voluntary act and deed for the uses and purposes therein contained. And the said Ann So-

phia Dreyer being by me made acquainted with the contents of said deed acknowledged on examination apart from her said husband that she executed the same and relinquish her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand & affixed my official seal this 5th day of June 1855.

L.S. Mann Butler
Notary Public.

Filed July 24th 1855
Recorded December 5th 1855

but the Court overruled the motion and refused to grant the Defendant a new trial and he again excepted. The verdict of the Jury having been rendered in the Cause the plaintiff moved the Court to render Judgment to the Extent of $1000 for treble the amount of the verdict under the Statute but the Court overruled the motion and the plaintiffs excepted. To all which actings and doings decisions and opinions the Defendant by his Counsel objects and excepts, and herewith tenders his bill of Exceptions, which is signed, sealed and made a part of the record in said Cause.

John H. Stone (Seal)

Afterwards to wit, at the Term aforesaid in the year aforesaid on the seventeenth day of April in the year of our Lord eighteen hundred and fifty six the following appears of record to wit:

Motion to treble damages overruled.

Gustavus Dryer & Edward Unkart vs James M. Ming — Petition for Damages

The plaintiffs by their Counsel moves the Court to trible the damages in this cause heretofore assessed by the Jury trying said cause which motion being seen and by the Court understood it is ordered that said motion be overruled to the opinion of the Court in overruling said motion the Plaintiffs asked leave to except.

Which motion is in the words and figures to wit.

Motion to treble damages.

Dreyer & Unkart Plffs vs James M. Ming. Defts — In Circuit Court of Franklin County April 1856

Plaintiffs comes by their attorneys and moves the Court in the above entitled cause to Treble the damages obtained against said J. M. Ming, as required by the revised Law of 1845.

Gale & King attorneys for Plaintiffs.

And at the Term aforesaid in the year aforesaid on the 19th day of April A.D. 1856 the following appears of record to-it:

Appeal to Supreme Court granted

Gustavus & Dreyer & Edward Unkart vs James M. Ming — Petition.

Now at this day come the said Defendant by his attorney and moves the Court for an appeal to the Supreme Court in this Cause, whereupon it is ordered that said Appeal be granted and thereupon the Defendant files his bond as re-

quired by law which is approved of by the Court, it is further ordered that the Clerk of this Court send certified to the Supreme Court a true transcript of the record and proceedings had in said Cause and forming a part of the record.

Which Bond is in the words and figures following to-wit:

Bond of Ja^s M. Ming.

"Know all men by these presents that we James M. Ming as principal and E. I. Goode as security are held and firmly bound unto Gustavus V. Dreyer and Edward Unkhart in the sum of one thousand dollars for the payment of which we bind ourselves our heirs executors administrators and assigns firmly by these presents sealed with our seals and dated this 16th day of April 1856. - The Condition of this obligation is such that whereas the said James M. Ming has appealed from a judgment of the Franklin Circuit Court rendered at this April Term 1856 where in the said Dreyer & Unkhart are plaintiffs and the said Ming defendant. Now if the said Ming the appellant will pay all costs and damages which may be adjudged against him in the appellate Court and shall prosecute his said appeal without delay and shall perform such judgment as shall be given by the Supreme Court & such as the Supreme Court may direct the Circuit Court to give and if the judgment of the Circuit Court be affirmed or any part thereof - that he shall comply with the same and will pay all damages & costs that

may be awarded against him by the Supreme Court then this bond to be null & void otherwise to remain in full force & effect

Jas M. Ming (seal)
E. J. Goode (seal)

State of Missouri
County of Franklin Sr I C. S. Jeffries clerk of the Circuit Court of said County certify that the foregoing is a full transcript of the record and proceedings in the case of Gustavus W Dreyer and Edward Mikhart against James M Ming as the same remain of Record in my office —

In Testimony whereof I have hereunto set my hand and seal of said Circuit Court at office in Mun this Sixth day of September 1856 —

C. S. Jeffries ck

Index.

Petition in Trespass — — Page 1.
Summons — — " 2
Sheriffs return — — — " 2.
Leave given defendant to answer — " 3
Answer of Defendant — — " 3
Motion to strike out defendants Answer " 5.
Motion overruled — — — " 5
Judgment of the Court on verdict of the Jury " 6
Motion to set aside verdict and grant a new trial " 7.
Bill of Exceptions — — — " 8.
United States Patent to G.W Dreyer & E. Unhart " 8.
Plat of Survey — — — " 10.
Instructions of the Court — — " 13.
Instructions of Defendant — — " 13.
Affidavit of Defendant — — " 14.
Deed of E. Unhart & G. W. Dreyer to A. Yaniche " 15.
Deed of E. Unhart & G. W. Dreyer to A. Yaniche " 19
Motion to treble damages overruled — " 24.
Motion to treble damages — " 24
Appeal to Supreme Court granted — " 24.
Bond of James M. Ming — — " 25.

41

11

Act: Term. 1856

Gustavus N. Dreyer
Edward Unkart
respondents
vs.
James M. Ming
appellant

Appeal Franklin C.C.

Filed 9 September 1856.
Wm. J. Glanville
Cl'k

Dreyer & Unkart
vs. Respondents
Daniel M. Ming
Appellants

In the Supreme Court,
at St Louis.
Oct. T. 1856

And now at this day comes the said appellant by N. Holmes his attorney, and says that there is manifest error in the record and proceedings in the above entitled cause, in this, court:

First. That the court below overruled the defendants (appellants) motion for a new trial, when the same should have been sustained, and a new trial granted:

Second. That the judgment aforesaid was given for the plaintiffs, when the same should have been given for the defendant:

Wherefore he prays that the said judgment may be reversed and for nought held and esteemed and that the said appellant be fully restored to his lawful rights in the premises.

N. Holmes
Atty for Appellt.

Points in Error

Brief for Appellant

No. 41

Gustavus W. Dreyer
& Ed. Unbrant
v. Res.
Jas. M. Miny.
Appellant

Assignt of Errors.

Filed 23 Oct. 1856
W S Glaiville
Cl.

Dreyer & Burkart
vs. Res.
Ming, Appt.

In the Supreme Court.
Oct T. 1886

Brief for Appellant.

N. Holmes for Appellant:

The defendant's instructions laid down the law of the case, correctly, and should have been given, and the plaintiff's instructions should have been refused.

I. The trespass must be proved to have been committed by the defendant, or ~~that~~ by his orders, or at his instigation. The same rule prevails in civil actions for trespass, as in criminal proceedings for misdemeanors.

1 Archb. N.P. 413; 424.
2 Greenl. Ev. §621.

II. It is not a case of agency, or master and servant, but of a man standing on his own right, acting for himself, and on his own personal responsibility; and Drews, only, was liable for the trespass.

III. There was no evidence that the defendant ordered, instigated, incited, or advised, the trespass.

IV. Treble damages were rightly refused. It appeared that the defendant had probable cause to believe that the land was his own.

Emerson v. Beavans, XII Mo. 511.

Rev. Stat. 1845, Chap. 180, § 4.

Where there is an entire assessment of damages & no finding of the value of the timber, the damages will not be trebled.

Ewing v. Leaton 17 Mo. 465: affirmed, 18 Mo. 514.

No. 41

Dreyer & Unkart
v. Res.
Ming Apt.

Brief for Appellant.

Filed 28 Oct. 1857.
Wm. L. Glannin
Cl

Lovejoy & Ankat
v
James McMing

In the Supreme Court
Oct T 1856

Brief of Appellee

The Court below very properly gave the instructions asked for by plaintiff and refused those asked for by defendant -

1st Suing pretended to have title to the land upon which the trespass was committed and sold + timber on the same to Crews with the express understanding that Crews was to cut ties off of the same for a rail road and to pay Ming eight cents for every tie he should cut - This makes Ming a trespasser upon the principal

"That in trespass all are principals and those who direct + a trespass, or assent to a trespass for their benefit (either before or after the commission of the trespass) are equally liable with those who actually commit it - "

+ or contribute to

7th Missouri 175

2° One that does an unlawful act is considered as the doer of all that follows –

2° Black R 892

3° By the act of selling the plaintiff property Mining assumed control over it and by act of receiving compensation for the ties cut he virtually directed the trespass to be committed, and it is a well settled principle of law that any unlawful interference with, or assertion of control over the property of another is sufficient to subject the party to an action of trespass –

8th	Wendell	613
12th	"	39
7th	Cowen	735
10th	Mass.	125

4th The trespass resulted from the acts of Mining – Had he not sold to Crews upon his pretended title Crews would not have cut down

the title, and as the act of
Mary produced the act of
Lewis, both became jointly liable
for the trespass —

5th — The Court may properly overrule
the Motion for a new trial —

6th — A defendant in trespass cannot
defend himself by shewing title
in a third party or stranger
unless there is a privity between
the defendant and such third party —
Denny vs Gibson 2 & R Mass. 515.

7th — The affidavit accompanying the Motion
for a new trial presents no ground for
a new trial. It is simply a declaration
that plaintiff parted with their title
some time after the commission of the
trespass —

W. T. W. Bay
Atty for Appellee

No 41

In Sup Court
Oct T. 1856

Dreyer & Unkart
vs
James M Ming

Brief of Appellee

W. T. N. Bay
Atty for Appellee

Filed 28 Oct: 1856
W S Glanville
ck

Dreyer & Mhart } In the Supreme Court.
vs. Res. } Oct. T. 1856
Ming. }
Apps.

Statement.

This was an action of trespass. The petition states that the defendant, on the 26th Dec. 1854, without leave and wrongfully, entered upon the land of the plaintiffs (therein described) and cut and carried away timber to the value of $1000., and asked damages in that sum.

The answer denied the facts stated, and also, set up, for defence, that the defendant was the owner of the land.

On the trial, the plaintiffs shewed a patent for the land from the United States to them. And it appeared in evidence, that timber had been cut on the land for railroad ties by certain hands employed by one Richard Crews. And Crews testified that, during the winter of 1854-5, knowing that the defendant had some claim to the land, he went to see him about getting the privilege of cutting timber on it for ties; that the defendant told him he had a tax title to the land, that the time for redemption had expired, and he believed his title good; that he shewed him a paper from the Sheriff, or Auditor, (he did not recollect which), on which he said he predicated his claim of title: but advised witness to take the opinion of a lawyer. That defendant said he could

sell his right to the timber to be cut into ties, at 8 cents a piece; that he accordingly took the advice of a lawyer and purchased of ~~Olivy~~ the defendant and proceeded to cut the timber; and that, in settlement with him, he paid him $420. There was some further evidence as to the value and quantity of the timber cut. Plaintiff withdrew his demand as to the tract of fifty acres.

On this evidence, the Court gave the following instructions for the plaintiff, to which defendant excepted:

Instructions for Plaintiff.

1. If the jury find from the evidence that the defendant Olivy sold the timber for which the action is brought to Crews, and that Crews after such purchase proceeded to commit the trespass under the purchase from Olivy, they will find for the plaintiff.

2. If the jury find that Olivy claiming to be the owner of the land on which the trespass was committed and as such owner sold the timber to Crews, who took and carried away the same, they will find for the plaintiffs the value of the timber so taken by Crews.

Instructions refused dft.

The following instructions asked by defendant were refused, and an exception taken:

1. That if the jury believe from the

evidence that Crews purchased from Ming his right to the timber on the land in controversy, being willing to risk Ming's title, and that, under the belief that his right was good, he committed the trespass complained of, he alone is responsible for the trespass, and not Ming, and they must find for the defendant.

2. That the jury in order to convict Ming of the trespass complained of must believe from the evidence ~~that~~ either that Ming was the actual trespasser, or that Crews was his agent, or that the trespass was committed by the counsel, advice, instigation, or procurement of Ming, and unless they so believe they must find for defendant.

3. That in order to establish an agency or copartnership, the terms of such agency or copartnership must be shown.

There was a verdict & jugment for the plaintiff for $ 450. damages. The defendant moved for a new trial, and his motion was overruled, an exception taken, and a bill of exceptions filed. The bill of exceptions also shews that the plaintiff's motion for treble damages to the extent of $1000. was overruled and an exception taken. The defendant took an appeal to this court.

S. W. Holmes
Atty. for Appt.

No. 41

Dreyer & Unkart
Respondents.
v.
James M. Ming
Appellant.

Statement.

Filed 28 Oct. 1856.
Wm S Glanville
Ch

G. N. Dreyer & E. Unkart respdts } Appeal from the Franklin Circuit Court

vs.

I. M. Ming appl^t. } There is no doubt, that it is a general rule, that all persons who order or procure a trespass to be committed, and indemnify others for doing it, or incite them to do it, may be sued as principals. The defendant Ming had no right to the timber, and he could confer no right to it on another. By the act of conveying the timber of the plaintiffs, the defendant asserted a right of control over it; and in receiving the money for the ties after they had been cut he adopted the trespass as an act done for his own benefit. The principle has been frequently recognized that any unlawful interference with or assertion of control over the property of another is sufficient to subject a party to an action 8 Wen. 613 Philips vs. Hall. The defendant by undertaking to dispose of the plaintiffs property, was the moving cause of the injury sustained by the plaintiffs. This case is similar to that of ~~Wall & Wall vs Osborn~~ Wall & Wall vs Osborne 12. Wen. 39. where ~~it was held~~, ~~that~~ ~~if~~ a party sold a mill standing on the lot of his neighbour, and appointed a day for the purchaser to take it away, promising to aid him in its removal if it was necessary, & the ~~mill~~ mill was subsequently taken down & removed by the purchaser, and it was held, that the vendor was liable to an action of trespass although there was no proof of his being present, or aiding in the removal of the building. The Court said, "To render one man liable in trespass, for the acts of

others, it must appear either that they acted in concert, or that the act of the individual sought to be charged, ordinarily & naturally produced the acts of the ~~of the~~ others. In Scott vs ~~Shep~~ Shepard 2 Black Rep. 892 Chief Justice De Grey laid it down as a correct principle, that one who does an unlawful act is considered as the doer of all that follows. In the Language of Lord Ellenborough, in Leame vs Bray 3 East, 595, he is the causa causans, the prime mover of the damage to the plaintiff

In the case of Morgan vs. Varick 8 Wen. 587 it was held that a disseisee after recovering possession, may maintain trespass against the disseisor or his servants, or a stranger acquiring title from the disseisor:

The plaintiffs having a patent for the land on which the timber grew the cases of Green vs Liter 8 Cranch, ~~and~~ Cook & al vs. Foster 2 Gilman. 656, & Gale vs. Davis 7 Mo Rep 544. show that although not in the actual possession ~~of~~ & occupation ~~of the~~ of it they were entitled to maintain trespass against wrong doers.

As the case turned wholly on the point whether the sale of the timber by the defendant to Crews made him a trespasser and as the Court so instructed the jury & they ~~have~~ found accordingly, there was no error in refusing the second instruction asked by the ~~Court~~ defendant. The ~~point~~ law ~~in the~~ relative to this matter of the first instruction had been previously given to the jury

It is well settled law, that the owner of ~~land~~ property, may after he has conveyed

it away, maintain trespass for injuries done prior to the alienation. Viner. Title Trespass. page 475.

The other judges concurring the judgment will be affirmed

Wm Scott

Dreyer & Urkart
vs.
Ming

Opinion

Dreyer & Urkart
vs.
Ming.

Opinion
Scott

Filed 23 Dec. 1856
W. S. Glanville
Cl.

Filed 23 Dec. 1856.
W. S. Glanville
Cl.