Savignac, Francis vs. Garrison, Abraham 1856 St. Louis 385/1

589/16

unlawful detainer

S unlawfully obtained possession of land belonging to G

Land Court gave possession to G - (ejectment suit against Savignac, Alfred)

S removed by force - returned to premises 2 days later

S said SC of US had reversed decision for G

Scott

reversed

judgmt for S — only title G had was from Marshal - reversed by USSC

Leonard absent

1 State of Missouri County of Saint Louis ss.

Be it remembered that on the fourteenth day of October in the Year of Our Lord One thousand Eight hundred and fifty four there was filed in the office of the Clerk of the Saint Louis Land Court a "Complaint" in the words and figures following to wit:

Complaint filed

State of Missouri } "Abraham Garrison Pltff
County of St Louis } ss vs } Unlawful Detainer
Francis Savignac Deft

Complaint

Before Justice Mann Butler of St Louis.

Francis Savignac being duly sworn on his oath says that on the twelfth day of October A. D. 1854 he was summoned to appear before Mann Butler Esquire One of the Justices of the Peace for St Louis in the County aforesaid at his office in the third Ward in the City of St Louis County aforesaid on the seventeenth day of October A.D. 1854 to answer and defend against the complaint of Abraham Garrison of unlawful detainer of certain premises in his complaint mentioned and described as by a certified copy of said proceedings in said cause and complaint hereto annexed will more fully appear which copy is herewith filed. . . . . .

Said Affiant further states that he verily believes that the Complainant is not entitled to recover possession of the premises described in the Complaint. and he hereby tenders his recognizance

2 as required by law. . . . . .

Sworn to and subscribed F. Savignac
before me this 14th day of
October 1854
C. A. Manty clk

And thereupon the said Savignac enters into recognizance as required by law to wit:

"Know all Men by these Presents. That we Francis Savignac as Principal and Antonio Savignac as security both of the City and County of and State of Missouri are held and firmly bound unto Abraham Garrison in the Sum of One thousand dollars to be paid to the said Abraham Garrison his Executors Administrators and assigns to which payment well and truly to be made we do bind ourselves our heirs executors and administrators firmly by these presents. . . . . .

In Witness whereof we have hereunto set our hands and seals this Fourteenth day of October A D One thousand Eight hundred and fifty four

The Condition of the above obligation is such that Whereas the said Abraham Garrison Plff has commenced an action against the said Francis Savignac, defendant, before Mann Butler a justice of the Peace in the County of St Louis St Louis City and State of Missouri for the alledged unlawful detainer of certain premises in his complaint

3 described and whereas said Francis Savignac has this day made his affidavit according to the Statute for the purpose of removing said cause by Writ of Certiorari from said justice of the St Louis Land Court. Now if the said Defendant will not commit or suffer any waste or damage to be committed on the premises sued for and will pay all rents and profits damages and costs that may be adjudged against him and otherwise abide the judgment of the Saint Louis Land Court. then this obligation to be void otherwise to remain in full force and virtue.

Given under our hands and seals this fourteenth day of October One thousand Eight hundred and fifty four.

Approved this 14th day of October 1854

F. Savignac (Seal)
Antonio Savignac (Seal)
Charles A Mantz, Clerk,

And thereupon there issued from this Office the following writ of Certiorari to wit:

Certiorari issued to Magistrate

County of St Louis ss.
The State of Missouri.
To Mann Butler Esquire one of the justices of the peace for St Louis Township in St Louis County: Greeting

Whereas Francis Savignac

4 was summoned to appear before you to answer a certain complaint of one Abraham Garrison for unlawful detainer which said plaint is still pending before you and our Saint Louis Land Court for the County of Saint Louis being willing that the record and proceedings in the cause aforesaid should be certified unto them - therefore we command you to certify up the record and proceedings and the original papers in the Unlawful detainer aforesaid as fully as the same now remains before you by what name soever the parties aforesaid may be called to Our Saint Louis Land Court on or before the first day of the next term thereof to be held at the City of St Louis on the first Monday of March next so that our said Court may be enabled to proceed thereon and do what to them shall appear of right ought to be done and have you then and there this writ.

Witness, Charles A Manty clerk of our said Court with the seal thereunto affixed at office in the

5 the seal [illegible] of hereto [illegible] fixed at office in the [illegible] of St Louis [illegible] 16th day of Octob [illegible] D 1854.

5 City of St Louis this 16th day of Oct A.D. 1854. Charles A Mantz Clk

Shffs return And afterwards on the 16th day of Oct A D 1854 the same was returned to this office together with the following endorsement thereon: "Executed this writ (of which this a copy) in the County of St Louis October 16th 1854 by delivering to the within named justice Mann Butler the original writ with the seal thereto attached as furnished by the Clerk. Turner Maddox Shff by Thos C Frazer dep"

Transcript from Magistrates Court. filed And afterwards towit: on the 19th of Oct A D 1854 the transcript from the magistrates court was filed herein towit:

"Abraham Garrison
vs
Francis Savignac

Before Justice Butler.
Saint Louis County ss.

Transcript Abraham Garrison plaintiff in the above entitled cause complains of the said Fran-

Complaint -cis Savignac the defendant and says that heretofore towit: on the nineteenth and twentieth days of August A.D. 1854 at the County of St Louis he was lawfully possessed of a certain tract or parcel of land situated in said County known designated & described as follows towit: all that part of "Stodards addition" designated on the plat of said addition as block twelve (12) which plat is duly recorded in the Recorders office of St Louis County & which lot & block aforesaid is bounded on the east by Elliott Street on the west by Clay Street, on the north by Dayton Street & on the South by Gamble Street and being so lawfully possed thereof as aforesaid the defendant in the above entitled cause on or about the twenty third day of August A.D. 1854, wrongfully and without force, by disseisin, obtained possession of said lot or parcel of land & although the plaintiff on the 10th day of October A.D. 1854 made a demand in writing ~~upon~~ said defendant for the delivery of the

6 possession of said tract or parcel of land, yet the defend=
=ant continues in the possession thereof to the exclusion of
the plaintiff & has refused to quit said possession.....

Wherefore the plaintiff says that the defendant
is guilty of an unlawful detainer contrary to the form
of the Statute in such case made and provided.....

Krum & Harding
attys for Pltff.

Affidavit as to facts &c

D. R. Garrison, being sworn on his oath states that
he is the agent of plaintiff & that he believes the fore=
=going complaint & the matters therein stated to be true

D. R. Garrison

Subscribed and sworn to before
me this 10th day of October 1854
Mann Butler. justice of the peace

Summon

State of Missouri:
County of St. Louis: Set: and Township
of St Louis. Set. ..... The State of
Missouri: To Any Constable of the County aforesaid
Greeting: .....

You are hereby commanded to summon
Francis Savignac of the County aforesaid to appear
before the undersigned Justice of the Peace within and
for the County aforesaid at his Office in the Township
of Saint Louis on Tuesday the seventeenth day of October
1854 at the hour of Nine Oclock in the forenoon
of that day then and there to answer and defend

7 against the complaint of Abraham Garrison of an unlawful Entry and Detainer made by the said Francis Savignac upon the land of the said Abraham Garrison as by the complaint of the said Garrison 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 11th day of October 1854.

Mann Butler Justice of the Peace

Return of Constable

"Executed the within writ by reading it to Francis Savignac, done in St Louis Township Oct 12th 1854

George B. Brow
Constable

Fee 50 cts

Per Henry le Pocock D. C.

State of Missouri.

Venire facias

To any Constable of the Township of Saint Louis in the County of Saint Louis Greeting:

Whereas complaint in writing is made to the undersigned Justice of the Peace within and for the County aforesaid of a certain Unlawful Entry and Detainer made by Francis Savignac on the land of Abraham Garrison in the County aforesaid:

These are therefore to command you that you cause to come before the said Justice at his Office in the Township aforesaid on the 17th day of October 1854 at the hour of nine (9) in the morning of that day - Twelve good and lawful men

8 of the body of the County to make a jury to enquire ~~of~~ into the Unlawful Entry and Detainer aforesaid.

Given under my hand this 16th day of October 1854. . . . . .

Mann Butler
Justice of the Peace

"Executed this writ by summoning the following Jurors:

W. P. Thayer
Thomas H. Simpson
S. G. Handy
John Regan
Martin Smith
John F. Dunn
T. H. Smith
Joseph Hesser
Thomas Andrews
Robert W. Powers
John Winn
Samuel Willie

Dun in St Louis County Oct the 16th 1854.

G. B. Bma
Const

Fee $1.50

Certiorari

County of St Louis ss.
The State of Missouri.

To Mann Butler Esquire one of the justices of the Peace for Saint Louis Township in St L County Greeting:

Whereas Francis Savignac

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was summoned to appear before you to answer a certain plaint of one Abraham Garrison for Unlawful Detainer which said plaint is still pending before you and Our Saint Louis Land Court for the County of Saint Louis being willing that the record and the proceedings in the cause aforesaid should be certified unto them: Therefore we command you to certify up the record and proceedings and the original papers in the Unlawful Detainer aforesaid as fully as the same now remains before you by what name soever the parties may be called to our Saint Louis Land Court, on or before the first day of the next term thereof to be held at the City of St Louis on the first Monday of March next so that our Court may be enabled to proceed thereon and do what to them shall appear of right ought to be done and have you then there this writ.

Witness Charles A Mauntz Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St Louis this sixteenth day of October A. D. 1854

Seal of the Saint Louis Land Court

Charles A. Mauntz
Clerk of St Louis Land Court

Recd Oct 16th 1854 1/2 past 1 P. M.

T Maddox Shff

Notice of demand

To Francis Savignac.

Take notice that I hereby demand

10

of your deliverance of possession to me of that certain tract or lot of land now occupied by you & designated & known as Block (12) twelve in "Stoddards addition" in St Louis County which lot or parcel of land is bounded on the east by Elliott Street on the West by Clay Street on the North by Dayton Street and on the South by Gamble Street as will appear by the plat of said Stoddards addition - Recorded in the Recorders Office of said County

St Louis County October 10. 1854. Abraham Garrison
By D. R. Garrison
his agent.

State of Missouri County of St Louis ss.
Before Justice Butler.

Abraham Garrison
vs
Francis Savignac } In Unlawful Detainer.

Be it remembered that on the Eleventh day of October 1854 came the Plaintiff and swore out of the Office of the aforesaid Justice a writ of Unlawful Detainer which is on the same day issued to a Constable of Saint Louis Township in the County aforesaid and by him returned "Executed by reading the Same to Francis Savignac in said Township on the 12th day of October 1854 and now towit, on the sixteenth day of October 1854 being the

11

day before the one set for the trial of the said Unlawful detainer, a writ of Certiorari from the Land Court for the County aforesaid is served upon the undersigned Justice of the Peace, commanding him to certify up the record and proceedings and the original papers in the unlawful detainer aforesaid." wherefore in Obedience to said writ of Certiorari, the said record and original papers are herewith returned as the same are filed in my office:

Certificate

Certificate of Record & proceedings

I. Mann Butler a justice of the Peace within and for the County aforesaid do hereby certify that the foregoing is a complete and True Transcript of the proceedings in the above entitled cause before me, and that the papers hereto attached are all the original ones on file in my office appertaining to said cause.....

Witness my hand this 17th day of October 1854.

Mann Butler J. P.

And afterwards to wit: on the sixth day of March the same being the a judicial day of the March Term of the Saint Louis Land Court began and held at the Court House in the City of Saint Louis on the 5th day of March in the year of Our Lord One Thousand Eight hundred and fifty five Motion filed to dismiss this case in the words and figures following to wit:

Motion to dismiss

Motion

"In the Saint Louis Land Court March Term A. D. 1855. State of Missouri St Louis County ss.

12 Garrison
v
Savagnac

Defendant by attorney moves the Court to dismiss this cause because the Petition and process therein are not in compliance with the statute in such cases made and provided.

Morehead & Delafield p.d."

which motion being heard by the Court was overruled. And this cause is continued at Defendants costs. . . . . And afterwards towit: on the sixteenth day of November the same being the judicial day of the October Term began and held at the Court House in the City of Saint Louis on the 8th day of October in the year of Our Lord One Thousand Eight hundred and fifty five the defendant files his affidavit for continuance as follows towit:

Affidavit for continuance

"Abraham Garrison } Forcible Entry & Detainer.
v } St Louis Land Court
Francis Savignac } Oct T. 1855.

Affidavit

The said defendant comes and states on oath that Lawrence Beck and John Delafield are material witnesses for him in the above case. . . . . .

That a subpoena was issued and delivered to the Sheriff and returned executed for the said Delafield as will be seen by reference thereto in the Sheriffs hands. That the said Delafield left this city two or three

13 days past as this affiant has been informed for Perry County where he is employed to attend to a case profes=
=sionally as affiant is informed - he is not at this time in the city - and is not absent by the consent connivance or procurement of this affiant - The said Delafield resides in the City of St Louis and is by a profession a law=
=yer . . . . . .

Affiant further states that the said Beck is a farmer and resides in the County of Saint Charles within sixty miles distance of the city ~~of the city~~ of Saint Louis That on the tenth day of this month this affiant enclosed a subpoena to the Sheriff of Saint Charles County for the said Beck to appear in this case in this Court on the 14th of this month not knowing certainly what day to fix with certainty on account of the change by adjournment: he has not ~~absented~~ - by the consent connivance or procurement of this affiant.

Affiant expects to prove by them both that he this affiant did not enter and dispossess the Plff from said premises and all the particulars and circumstances that occurred during the time of difficulties which will probably appear on the trial of this case his ground of expectation are founded on the fact that this affiant and said witnesses were the whole of said time together at a place distant from said premises. . . . . .

There is no other witness ~~present~~ in atten=
=dance or to the knowledge of this affiant within the jurisdiction of this Court upon whose testimony he can

14 safely rely to prove the particulars facts said absent witnesses are expected to prove, if any of the other witnesses know all the facts known by said Delafield and Beck it is at this time unknown to this affiant and he believes he cannot safely go to trial without their testimony he believes he can have their testimony by the next Term of this Court. This application is not made for the purposes of vexation and delay but for the purposes of Justice.

Sworn to before me this 16th day of November 1855 F. Saginac

C. A Mantz Clk

By J. B. Walsh deputy

And thereupon it is ordered by the Court that this cause be continued at defendants Costs. . . . . .

Mch term 1856

And afterwards towit: on fourteenth judicial day of the March Term of Saint Louis Land Court began and held at the Court House in the City of Saint Louis on the twenty first day of April in the year of Our Lord One Thousand Eight Hundred and fifty six. come said parties by their attorneys and thereupon came also a jury towit: Louis Peters, John Hanson, Christian Manico, Joseph Middleton. F. J. Weatherbee, Matthew H. Fraizier J. W. Crane Jacob Blattner. W. H. Keevil, John B. F. Schmidtage C B Leigh John Martin twelve good and lawful men who being duly elected, tried and sworn well and truly to try the issues joined between the parties and a true ver-

Issue Joined

Jury

15 dict render according to the evidence, therefore the trial pro=
trial gressed and being duly ended the jury aforesaid upon their
oaths aforesaid say they find for the plaintiff and assess
verdict his damages at five hundred dollars and the monthly
value at twenty five dollars. Therefore upon the finding of
judgment the jury aforesaid it is ordered and adjudged by the Court
that the plaintiff recover of said defendant the possession
of the premises described in said plaintiffs petition in this
cause as follows towit: "A certain tract of land in the
County of Saint Louis State of Missouri known designated
and described as follows towit: All that part of "Stod=
dards addition" designated on the plat of said addition
as Block twelve (12) which plat is duly recorded in the
Recorders office of Saint Louis County and which lot and
block aforesaid is bounded on the east by Elliott Street on
the West by Clay Street on the North by Dayton Street
and on the South by Gamble Street together with the dam=
ages and monthly value of the premises aforesaid in
form aforesaid as assessed and also his costs and charges
in this behalf expended and have thereof execution. . . .

And afterwards towit on the 9th day of
May the same being ~~the~~ a judicial day of the March
Term of the Saint Louis Land Court began and held at
the Court house in the City of Saint Louis on the twenty
Mo for first day of April in the year of Our Lord One Thous=
New trial and Eight hundred and fifty six there is a "motion for
new trial filed" herein. . . . . .

Which Motion is laid over for consideration

till May 30th . . . . . .

And afterwards towit: on the 31st day of May the same being ~~the~~ a judicial day of the March Term of the Saint Louis Land Court began and held at the City of Saint Louis on the twenty first day of April in the Year of Our Lord One Thousand Eight hundred and fifty Six come said parties by their attorneys and submit ~~this cause~~ to the Court the motion for a new trial herein before filed in this cause and the Court having heard and being fully advised of and concerning the premises doth order that said motion be overruled. Appeal to Supreme Court prayed for and granted. Bond filed and approved by Court.

Overruled

And afterwards towit on the thirteenth day of June in the Year of Our Lord One Thousand Eight hundred and fifty six "A Bill of Exceptions" is filed herein in the words and figures following towit:

Bill of Exceptions filed

Bill of Exceptions

"The State of Missouri } In the St Louis Land Court
St Louis County } March Term A.D. 1856

Abraham Garrison plaintiff
against } Bill of Exceptions.
Francis Savignac defendant

Be it remembered that on the trial of this cause the plaintiff offered in evidence a duly certified copy of an execution issued from the Circuit Court of the United States for the

17 District of Missouri in favor of the plaintiff in this case on a judgment against one Alfred Savignac as follows:

Missouri District Set

Execution "The President of the United States of America:

To the Marshal of Missouri District Greeting:

Whereas on the fourth day of May in the year of Our Lord One thousand Eight hundred and fifty three at our Circuit Court of the United States in and for the Missouri District and by the judgment of said Court Abraham Garrison recovered against Alfred Savagnic a tract or parcel of land situated near the City of Saint Louis in Stoddards addition and which piece of ground is known and designated in said addition as block number 12 and is further described as follows: viz: Begining at the South West corner of said Block at the intersection of Gamble Street and Clay avenue and thence running northwardly on the eastern line of Clay avenue 251 feet six inches to Dayton Street thence Eastwardly on the southern line of Dayton Street 435 to Elliott Avenue thence Southwardly on the western line of Elliott Avenue 251 feet six inches to Gamble Street and thence to the place of begining. And the said Abraham Garrison on the same day and by the judgment of the same Court also recovered against the said Alfred Savignac the sum of two hundred

18 dollars for his damages by him sustained by reason of the trespass and ejectment in said declaration mentioned and also the sum of fifteen dollars the monthly value of the said premises together with his costs and charges by him about his suit in that behalf expended- all of which to the said Abraham Garrison were adjudged as appears to us of record- These are therefore to command you that without delay you cause the said Abraham Garrison to have the possession of the land and premises as above described and how you execute this writ you make appear to our said Circuit Court at the next term thereof to be held at the City of St Louis on the first monday of October next- You are also hereby further commanded that of the goods and chattles lands and tenements of the said Alfred Savignac in your district you cause to be made the damages and monthly damages from the said 1st day of May 1853 and costs and charges as aforesaid and that you have the same before our said Circuit Court on the said first Monday of October next, then and there to render to the said Abraham Garrison his said damages monthly damages and costs aforesaid and that you certify to our said Court how you execute this writ. Hereof fail not and have you then and there this writ. (Seal) Witness the Honorable Roger B. Taney Chief Justice of the Su-

19 preme Court of the United States this twenty ninth day of July in the year of Our Lord Eight=
=een hundred ~~fifty~~ **four** Issued at Office in St Louis with the Seal of said Court.

Ben. F. Hickman Clk

Memorands

Memo A writ of error with supercedeas was allow=
=ed in this case by the Hon R. W. Wells Dis
Judge of the United States for Missouri District
until the case could be disposed of by Supreme Court
of the United States - the plaintiff Garrison by his
atto has filed with me the mandate of Supreme Court
showing that said writ of error has been dismissed and
the case disposed of by said Court, and therefore the
foregoing writ of possession & Execution now issue -

Attest: Ben. F. Hickman Clk, let let U.S. Mo dis

Marshalls return

Marshal's return

I hereby certify that on the 19th day of August 1854
I executed the possessory part of the within writ by re=
=moving Savignac from the possession of the land
premises as described in the said writ and by deliver=
=ing the possession of the same as therein commanded
to Abraham Garrison as appears by the receipt for said
possession herewith returned and made part of this
return and signed Abraham Garrison by D. R. Gar=
=rison his agent -

Thomas S. Bryant U.S. Marshal Mo
by Robt R Wood depty

"No property found on which to satisfy the Execution-
Oct 30th 1854 St Louis Mo

Thomas S. Bryant
U.S. Marshal Mo Dis.

"Receipt"

I have this day recieved of Robt A Wood deputy Marshal of U.S. for Missouri District the possession of the house & lot of ground which the marshal of said district was directed to put me in possession of by virtue of a writ of possession ~~of by virtue of a~~ issued from the Office of Clerk of Circuit Court of United States for Missouri District in case of Abraham Garrison against Alfred Savignac.
August 19. 1854.

Abraham Garrison
by D. R. Garrison
his agent

Missouri District Set.

I. Ben. F. Hickman clerk of the Circuit Court of the United States for Missouri district, certify the foregoing to be a true copy of the writ of possession & execution, Marshal's return and receipt accompanying the same in the case of Abraham Garrison vs Alfred Savignac as the same remain on file in my Office.

In testimony whereof I hereunto

subscribe my name and affix the seal of said Court at Office in the City of St Louis, the tenth day of November, in the Year Eighteen Hundred and fifty five.

Jno. F. Hickman Clerk"

to the introduction of which as evidence defendant objected because the same was not properly proved to the Court as to ~~genuineness or~~ (genuineness) authenticity, and for irrelevance, which objections were overruled by the Court and the execution and return were read, to all which defendant then and there excepted. . . . . .

Plaintiff then introduced Charles Kick who stated that he was present when the aforesaid writ was executed. It was about 11 o'clock A.M. Mr Garrison was put in possession. was present some four or five hours acting under the United States Marshal and as his deputy. Some meat was left in the cellar part of which we thought Spoilt and we left it. Nothing else was left in the house. All the things were carried beyond the outside fence. I sent out three persons that night to guard the property. is acquainted with Savignac. Dont know the monthly value of the property. Daniel R. Garrison acted as agent of the plaintiff and recieved possession of us for plaintiff.

Charles Kicks testimony

Cross examined. Mr Moore was with

22 me, acting as deputy Marshal also. We went to the place about 11 o'clock and commenced moving about noon. Don't know what day it was. Possession of the premises was delivered to Daniel R Garrison for the plaintiff. A brother of his was present. The doors were closed before I left. Both of the Garrisons were present and acting in the matter. The execution now shown me is a copy of that under which we then acted. (The last testimony objected to by Deft overruled, admitted to the jury and deft excepted) Have seen the original. It was Francis Savignac we turned out of those premises under that execution. He is a butcher and I know him. Sometime after we got there Alfred his son came out and was present while were putting the furniture out. . . . . .

Re-Examined. Alfred and Francis his father were both put out. . . . . .

Re-Cross Examined. It stated that he did not recollect whether Alfred Savignac was in the house on that day but he was near it and inside the enclosure while we were there. . . . . .

Plaintiff then introduced as a witness. . . .

D. R Garrison testimony

Daniel R Garrison who testified as follows:

In the Year 1854 I was acting as agent for my brother Abraham. On the 9th day of August 1854. Mr Moore and Mr Kick went out to the premises with me and they acting under the

U. S. Marshal put me in possession for my brother of block numbered twelve in Stoddards addition where Francis Savignac lived. There is a two story framed house on the premises a slaughter house garden fences &c. We demanded possession of Francis Savignac who lived on the premises. He refused to give it up, saying he was not defendant in the suit for the possession. The U.S. Marshal then put him out and also put out his furniture. I then left three men there. Patterson and two others. Francis Savignac was present off and on through the day. I was there until dark. I returned next morning about nine oclock. Early the next morning I heard that Savignac's family were breaking into the house (objected to objection overruled, and deft excepted). I went there did not see Francis Savignac there that day. The first I saw of Francis Savignac on the premises was about one or two days after that. When I went to the house and found Francis Savignac's family were then in the house. The annual value of that property is about $400 or $500. I adopt as an estimate $450 per annum. - - - - - - - -

Cross Examined. I was appointed agent for my brother the plaintiff by letter of attorney in writing, specially drawn for the purpose of enabling me to attend to this property. but I have it not with me. I suppose I have left it at home. I received it some two or three years ago. perhaps

more. It contained special reference to my acting in this particular matter." . . . . . .

(Here defts counsel moved the Court to require the production of the same in open court for examination - or if not produced to exclude all witness parol evidence as to its contents tenor and effect which motion was overruled and defendant duly excepted & the evidence allowed to go to the jury) Witness then said: "Block No 12 was designated before the Stoddard addition was sold - I was specially appointed by my brother then living in Pittsburg Pa. to recieve this property from the Marshal - I dont know when, but it was long before the execution issued - One of my brothers was with me when the Marshal acted under said execution - I dont recollect the date - The plaintiff Abraham Garrison was not there. . . . . .

Christopher Patterson testimony

Plaintiff then introduced as witness Christopher Patterson who said he was present when the deputy marshal gave possession of the premises in dispute to Daniel R Garrison - Francis Savignac was there at the time - I heard the marshal ask the defendant to give up possession and remove his things He refused to do so - No one was left in the house when the things consisting of household furniture were put out - At Daniel R. Garrison's request I remained there until about 10 o'clock P.M. expecting policemen - to come - Next morning the back

door and kitchen door were opened and the things that had been put out by the marshal were moved back. Francis Savignac was not there the next morning, but his family was in the house again. I saw two men ~~[illegible]~~ were butchers. Alfred Savignac came there before the things were all moved in. This was about 6 or 7 oclock A. M. of the day following that on which the marshal put Garrison in possession. . . . . .

When the marshal went away the doors & windows & gates were all fastened. I saw one of these men leading in a horse and one of Savignac's girls was taking in the things. His family stopped all night outside of the fence. The conduct of these men was (Here defendant objected, unless it was first proved that defendant knew the men, had authorized them to act or had anything to do with their conduct. — which objection was overruled, the testimony allowed to go to the jury and to all which defendant duly excepted) threatening and violent. I argued with them and told these boys not to go in. I cant remember their language. It was not pleasing. One of them told me he would make me open the gate. . . .

Cross-Examined. I dont know of my own knowledge that the defendant Francis Savignac had anything to do with all this. but his wife and daughters were there carrying in the things again the same that had been put out the day

before.

Plaintiff then offered in evidence a paper purporting to be a written notice of a demand of possion of said property by plaintiff on defendant and of the return thereon, which is in words and figures following:

Notice to give possession

"To Francis Savignac.

Take notice that I hereby demand of you deliverance of possession to me of that certain tract or lot of land now occupied by you & designated & known as block (12) twelve in "Stoddard addition" in St Louis County which lot or parcel of land is bounded on the east by Elliott Street on the west by Clay Street on the North by Dayton Street & on the South by Gamble Street as will appear by the plat of said Stoddard addition. Recorded in the Recorders office of said County.

St Louis County October 10 1854

Executed the within notice by leaving a true copy with the within named Francis Savignac done in St Louis township this 11th day of Oct 1854 G.B. Bruce Cons by J.H. Smith

Abraham Garrison
By D. R. Garrison
his agent."

to which as evidence before the jury defendant objected unless the same were first duly proved as genuine and authentic, and that the party serving it was an officer duly qualified to act in that behalf, or that it was ever served at all which objections were overruled by the Court and

27 without other proof the same was read to the jury as evidence to all which defendant then and there duly excepted -

John Pierson's Testimony

Plaintiff then introduced as a witness John Pierson who said -

I am deputy clerk of the United States Circuit Court for the district of Missouri. From the records of that Court I find the suit of Plaintiff against Alfred Savignac began February 10 A. D. 1852 in an action of ejectment and that judgment was rendered in that case for possession against Alfred Savignac on the 4th May 1853.

Orignal record ~~not~~ ~~on file~~ U.S. Cir Ct

The plaintiff then producing the original records of the United States Circuit Court themselves in open Court & offered the said record proceedings & judgment rendered in said case as evidence as follows:

"In the Circuit Court of the United States for the district of Missouri April Term A.D. 1852

"Abraham Garrison
Plaintiff

vs

Alfred Savignac
Defendant

County of St Louis ss. - Abraham Garrison plaintiff in this suit who is a citizen of the State of Pennsylvania and therein a resident comes and

complains of Alfred Sarignac defendant in this suit who is a citizen of the State of Missouri and therein a resident of a plea of trespass in ejectment. For that whereas heretofore towit: on the twenty fifth day of November A. D. 1857 said plaintiff was entitled to the possession of that certain piece of ground situate near the city of St Louis in said County in a certain addition thereto known and designated as Stoddard addition and which piece of ground is known and designated in said addition as Block number twelve and is further described as follows towit: Beginning at the South west corner of said block at the intersection of Gamble street and Clay avenue and thence running northwardly on the Eastern line of Clay Avenue two hundred and fifty one feet and six inches to Dayton Street - thence eastwardly on the Southern line of Dayton Street four hundred and thirty five feet to Elliott Avenue, thence Southwardly on the western line of Elliott avenue two hundred and fifty one feet and six inches to Gamble Street and thence to the place of begining and which piece of ground is of the value of five thousand dollars and being so entitled to the possession thereof the defendant afterwards towit: on the first day of December A. D 1857 entered into and upon said ground and unlawfully withholds possession thereof from the plain-

tiff to his damage of two thousand dollars and therefore he sues &c

Todd & Krum p. q.

Missouri District Set.

The President of the United States to the Marshal of the Missouri district Greeting.

Seal

You are hereby commanded to summon Alfred Savignac a citizen of the State of Missouri, that he be and appear before the Honorable Circuit Court of the United States for the District of Missouri at the next term thereof to be held at the City of St Louis in and for said district on the first Monday of April next then and there to answer unto Abraham Garrison a citizen of the State of Pensylvania in a plea of trespass in ejectment, to the damage of said plaintiff two thousand dollars. Hereof fail not and have you then there this writ. Witness the Honorable Roger B. Taney chief Justice of the Supreme Court of the United States the tenth day of February A.D. 1852. Issued at office in the City of St Louis under the seal of said Court, the day and year last aforesaid.

Wm. F. Hickman Clerk.

I certify that I executed the within writ by reading the same and the declaration thereto attached

to. and within the hearing of Francis Savignac who says that he lives on the land described in the declaration and is in possession of the same. I also at his request furnished him a copy of the within writ and declaration. Thus done at St Louis No Dist this 17th day of February 1852.

Jno. W. Twichell
U. S. Marshal.

In the Circuit Court of the United States for the district of Missouri, April Term 1852.

Alfred Savignac defendant
ads
Abraham Garrison plaintiff
County of St Louis to wit.

And the said Alfred Savignac by Morrow & Morehead his attorney comes and defends the force and injury when & and says that he is not guilty of the said supposed trespass and ejectment above laid to his charge or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this the said defendant puts himself upon the Country &c.

Morrow & Morehead
attys. for deft

Circuit Court United States Missouri District
April Term 1853. May 4th 1853.

Abraham Garrison Plaintiff }
agt } Ejectment.
Alfred Savignac Defendant }

This day come again the parties by their attorneys and the jury sworn herein all appeared in Court and the evidence and arguments being closed the said jury returned the following verdict viz. We the jury find the defendant guilty in manner and form as the plaintiff in his declaration hath alleged against him, that is to say we find that the plaintiff on the 25th day of November 1851 was entitled to the possession of the following described tract or parcel of land situated near the city of St Louis in "Stoddard Addition" and which piece of ground is known and designated in said addition as Block Number 12 and is farther described as follows to wit: "Beginning at the South West corner of said block at the intersection of Gamble Street and Clay avenue and thence running Northwardly on the eastern line of Clay avenue 251 feet six inches to Dayton Street, thence eastwardly on the Southern line of Dayton Street 435 feet to Elliott Avenue, thence Southwardly on the Western line of Elliott Avenue 251 feet 6 inches to Gamble Street, and thence

to the place of begining. And we further find that the defendant unlawfully entered into and upon said premises on the first day of December 1857 and that he unlawfully witholds the said premises from the plaintiff. We further asess the plaintiffs damages for the trespass aforesaid at the sum of $200 and we find the monthly value of said premises to be the sum of $15. It is therefore now considered by the Court that the plaintiff Abraham Garrison recover against the defendant Alfred Savignac the tract or parcel of land as described by the jury in the verdict rendered herein by them. And it is further considered by the Court that the said plaintiff recover against said defendant the sum of two hundred dollars the damages as aforesaid by the jury asessed and also the sum of fifteen dollars the monthly damages also by said jury asessed together with the Costs expended in this Suit, and that he have execution therefor together with his writ of possession. - - - - - - - - - - - -

Missouri District Set.

I, Benjamin F. Hickman clerk of the Circuit Court of the United States for Missouri District do certify that foregoing three pages contain true Copies of the declaration, summons and Marshals return thereon plea of defendant and judgment of the Court in the case of Abraham Garrison against Alfred Savignac as the same remain on file and of record in my office. - In Testimony whereof I hereunto subscribe my name and affix the seal of said Court at Office in the City of St Louis this 14th day of July 1856

Ben. F. Hickman clk

29 Defendant objected thereto unless the same were first properly authenticated and proved according to law which objection was overruled and the record proceedings and judgment permitted to be read in evidence without further proof to all which defendant then and there duly excepted.—

And here the plaintiff rested his case. . . . . .

Defendant then first offered in evidence a transcript of the record of the United States Supreme Court reversing the judgment heretofore read in evidence by the plaintiff and which is in words and figures as follows:

Record U.S. Supreme Ct

"United States of America ss

The President of the United States of America:

To the Honorable the Judges of the Circuit Court of the United States for the District of Missouri Greeting:

Whereas lately in the Circuit Court of the United States for the district of Missouri before you or some of you in a cause between Abraham Garrison plaintiff and Alfred Savignac defendant the judgment of the said Circuit Court was in the following words viz:

"It is therefore now considered by the Court that the plaintiff Abraham Garrison recover against the defendant Alfred Savignac

the tract or parcel of land as described by the jury in the verdict rendered herein by them. - - -

"And it is further considered by the Court that the said plaintiff recover against said defendant the sum of two hundred dollars the damages as aforesaid by the jury assessed and also the sum of fifteen dollars the monthly damages also by said jury assessed together with the costs expended in the suit and that he have execution therefor, together with his writ of possession." . . . . .

As by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided fully and at large appears.

And whereas in the present Term of December in the Year of Our Lord One thousand eight hundred and fifty five the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by Counsel: On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be and the same is hereby reversed with costs And that the said defendant Alfred Savignac recover against the said plaintiff Abraham Garrison One hundred and fifty six dollars

and ninety five cents for his costs herein expended and have execution therefor. . . . . .

And it is further ordered that this cause be and the same is hereby remanded to the said Circuit Court with directions to award a venire facias de novo.

You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity to the judgment and opinion of this court as according to right and justice and the laws of the United States ought to be had the said writ of error notwithstanding.

Witness the Honorable Roger B Taney chief justice of said Supreme Court the first Monday of December in the year of Our Lord One thousand eight hundred and fifty five.

Costs of Defendant
Clerk $ 136.95
Attorney $ 20.00 Taxed by Wm Thos Carroll
Clerk of the Supreme Court
of the United States

Clerks Certificate

Missouri District set

I. Benjamin F. Hickman clerk of the United States Circuit Court for Missouri District do certify that the foregoing is a true copy of the mandate of the Supreme Court of the United States in the case of Abraham Garrison vs Alfred

Savignac filed with the papers in said case and now in my Office (not including the bill of items of costs in said Supreme Court which is attached to said Mandate. . . . . .

In witness whereof I hereunto subscribe my name and affix the seal of said Court at office in the city of St Louis the 6th day of May 1856

Ben. F. Hickman clerk

Judges Certificate

Missouri District Set.

I Robert W. Wells District Judge of the United States in and for Missouri District and one of the presiding Judges of the Circuit Court of the United States for said district do certify that Benjamin F. Hickman who signs the above certificate is and was at the time of signing the same the clerk of the said Circuit Court of the United States for said district of Missouri and that full faith and credit should be given to all his official acts as such.

Given under my hand at the City of Saint Louis in said district this 6th day of May A. D. 1856

R. W. Wells.

Clerks certificate

Missouri District Set.

I. Benjamin. F. Hickman clerk of the Circuit Court of the United States for Missouri District do hereby certify that Robert. M. Wells whose name is signed to the last foregoing certificate is and was at the time of signing the same district judge of the United States for Missouri District and one of the presiding judges of the Circuit Court of the United States for said District. . . .

In testimony whereof I hereunto subscribe my name and affix the seal of said Court (of which I am clerk as aforesaid) at office in the city of St Louis this sixth day of May A. D. 1856.

Ben. F. Hickman clerk.

to the reading of which Plaintiffs Counsel objected and their objection was sustained, the said record was excluded and deft then & there duly excepted thereto.

Wm Mulhall testimony

Defendant then introduced as a witness William Mulhall who stated he knew the parties in this suit. The Deft lives on Biddle street extended back of the catholic graveyard in Block 12 of Stoddards addition where he has lived since 1845 or 6 or about that time. I mean Francis Savignac. I am sure he has lived there from 1848 and I believe longer, until this time and has been the only person in possession

of the same. Was present when the deputy Marshal Mr Kick and Daniel R. Garrison went to the premises about 11 o'clock A. M and proceeded to dispossess Francis Savignac. They moved Francis Savignac's property, family, furniture and stock out of both house and yard. Francis' family consisted of himself, wife, two daughters, and two boys, Alfred Savignac was a married man and lived in Carr's addition to the City of St Louis about the corner or near it of 23d and Biddle Streets. The night of the dispossession Francis Savignac came to my house and stayed that night. He was there until we breakfasted when I left home. At the time of the eviction Daniel R Garrison and another brother of his were both present.

Cross Examined. Alfred Savignac is married. Had been some 6 or 7 months before this execution was levied. At the time of its service I think Alfred was there but recollect him being at any time inside of the fence. I went by the house repeatedly. Think I saw Francis Savignac there. I saw Frank there at the old house out of which he & his family were put the day before next morning which was Sunday Sunday morning I saw his family there but not him. When I left home Saturday morning he was at breakfast at my house.

Defendant then introduced as a wit-

35

A Savignac's testimony

-Nefs:

Alfred Savignac who testified - I recollect these occurrences in A.D. 1854 I then lived with my family at the corner of 23d and Carr Streets. I saw the family of Francis Savignac turned out of their property - from that time I did not see my father Francis Savignac for two or three days. When the deputy Marshal evicted my father he left some salt beef in the cellar of his house to the amount of about three thousand pounds. . . . . .

Cross Examined I was a butcher then. I was working for my father - I worked for him - I slaughtered for him - I was present at the eviction and knew what the marshal was doing. . . . .

Re-Examined - I am the Defendant in the suit in the U.S. Circuit Court above referred to - I have never been in possession of those premises. . . . . .

John P Ravold's testimony

Defendant then introduced as witness John P. Ravold who testified - was present at the eviction of Francis Savignac. It was done by the deputy Marshal - Capt Kick and 2 Garrison. The latter helped the Marshal - After the Marshal turned them out - he gave possession to the Garrison's. I left the place that day about 5 P.M.

Defendant then asked of witness what property of defendants was left in the premises, its character, description, quantity and value to which

plaintiffs counsel objected and thereupon the objection was sustained and defendant duly excepted thereto. . . .

Sam'l Downs testimony

Defendant then introduced as a witness Samuel Downs. I do not know that Francis Savignac was in the house the day after his eviction. I saw him elsewhere in the evening of that day. I am his next door neighbor. Am constantly attending to my work. but think I would have seen him had he been there.

And this was all the Testimony in this case. . . . . .

And thereupon defendant asked the court to give the following instructions. . . . . .

"No 2

Instructions refused

The Court instructs the jury that if they find from the evidence in this case that the defendant was in peaceable lawful possession of the premises in dispute prior to and up to the 19th day of August 1854 and that on that day the defendant was ejected from the premises by the United States Marshall, on proceedings alledged to be legal proceedings and the possession thereof delivered by said Marshall to any other person than the plaintiff himself personally, that then the Plaintiff cannot recover in this case unless it shall be shewn by the Testimony in this case that said possession was delivered to said person with the knowledge and consent of said plaintiff and that said person was spe-

Refused

37 cially authorized by the said Plaintiff as his ag=
=ent to receive said possession. . . . . .

3 The Court instructs the jury that if the defend=
=ant was in possession prior to the filing of the
suit read in this case of Abram Garrison vs Alfred
Savignac in U. S. Court and was not a defend=
=ant in said suit that the execution issued from
the United States Court in that case did not
authorize the Marshal to expel Francis the
defendant in this case from his possession and
in that case the Plff had not a legal right
to the possession of the premises. . . . . .

Refused

4 The Court instructs the jury that
if the possession of the premises in dispute were
taken from the defendant on the 19th day of Aug=
=ust 1854 by the United States Marshal and
delivered to any other person or persons than the
plaintiff and that said persons or either of them
were acting as general agents or attornies in
fact for said Plaintiff legally authorized by him
to act as such without special reference to the
possession of said premises as passing from said
United States marshall to said persons and without
special authority directions or agency to recieve said
possession and that said possession was taken
by said United States Marshal in pursuance
of an execution issued on a judgment in the
Circuit Court of the United States for the

District of Missouri in favor of said Plaintiff against said defendant and that at said time said case was depending in the Supreme Court of the United States on writ of Error and that since said time said judgment has been reversed in said Supreme Court. That then the Plaintiff in this case had not a legal right to the possession of the premises in question on or before the 23d day of August 1854 and cannot in this case recover.

Refused

5 This action is a statutory provision in derogation of the remedies at Common law and must be strictly construed. If the jury find from the evidence that every requisition of the Statute has not been fully complied with strictly by the plaintiff they must find for the defendant. . . . . .

Refused

6 Before the Plaintiff can recover in this action he must show a "legal right" to the possession of the realty in question. If the jury find from the evidence that plaintiff has failed to establish a legal right thereto they must find for the defendant. . . . . .

Refused

7 A "legal right" to the possession of realty is that which is founded on a just and rightful claim to the peaceful occupation and enjoyment thereof by an ownership therein whether the same be absolute or qualified, perpetual or limited. . . If the jury find from the evidence that the

39 plaintiff has failed to show such just and rightful claim to the peaceful enjoyment and occupation of the property in question by an ownership thereof whether absolute or qualified in perpetuity or limited at the time of the alledged dissesin they must find for the defendant". . . .

. . . . . .

which were refused and to which defendant duly excepted and plaintiff asked the Court to give the following instructions which were given:

Instructions given

1. The Court instructs the jury that unless they believe from the testimony before them in this case that the Plaintiff Abraham Garrison had been and was personally or by his agent duly authorized in actual possession of the premises in contest prior to the 20th day of August 1854. Plaintiff cannot recover in this case. . . . . .

Given

2 Garrison vs Savignac

In this cause the jury is instructed as follows:

The writ of possession read in evidence by the plaintiff commands the Marshall to put plaintiff in possession of the land described therein without reference to the persons who may be in possession at the time the writ issues. It does not tell the Marshall to put any particular

person out of possession but to put all persons out except the plaintiff who is to be put into possession. If therefore the jury believe from the evidence that the Marshall put the plaintiff or his agent into possession under said writ. of the land described in the petition and that within twenty four hours thereafter the defendant returned to the premises and intruded thereupon and still retains possession thereof against the demand of the plaintiff to be admitted thereto they must find for the plaintiff. . . . . .

If the jury find for the plaintiff they must find the value of the premises monthly and assess the damages sustained by the plaintiff by reason of the unlawful entry and detainer. . . . . .

And to which defendant duly excepted.

And the jury thereupon after deliberation rendered the following verdict: . . . . . .

Verdict

Abraham Garrison
vs
Francis Savignac

We the jury find the defendant guilty in manner and form as charged in the complaint and we further find that the complainant has sustained damage by reason

41 of the premises to the value of five hundred dol=
=lars for the whole time of one year and eight
months and also that the value of the monthly
rents and profits of the tenements described in the
petition is the sum of twenty five dollars
a month. . . . . .

G. W. Crane Foreman

And thereupon Defendant moved the Court in
due form for a new trial in words and figures
following.

"Abraham Garrison Pltff

vs } Unlawful detainer In the St Louis Land Court

Francis Savignac Deft

Mo for new trial

The said defendant
comes by his attorneys and moves the Court to
grant a new trial in this case for the following
reasons:

1st The Court erred in overruling motion to dismiss.

2d The Court erred in admitting the notice of
demand to be read in evidence without proof
of genuineness, authenticity of service. . . . . .

3d The Court erred in admitting as evidence im=
=proper testimony - irrelevant testimony and which
was illegal. . . . . .

4th The Court erred in excluding transcript of
Procedends offered by defendant. . . . . .

5th The Court erred in giving the instructions

42 asked by Plffs and in refusing that asked by defendants. . . . . .

6 Defendants instruction No 1 was given by inserting the words ("or by his agent duly author=ized") at the end of the word "personally" and erasing the word "legal" at the end of the word "actual". It should have been giv=en as asked - and herein the Court alle=ered. . . . . .

7th The Court erred in refusing instructions asked by defendant marked 2. 3. 4. 5. 6. 7.

8th The verdict is against the law and against the evidence. . . . . .

9th The judgment is against the law and the evidence. . . . . .

10th There was no legal or lawful evidence of such demand in writing as the statute in such cases requires and there was no proof according to the Law of any demand in writing of possession. . . . . .

P. C. Morehead
J. Delafield Jordan
" "

which motion was overruled to which defendant
Overruled duly excepted and he asks that this his bill of exceptions may be signed sealed and made part of the Record in this cause

43 which is accordingly hereby done.

C. B. Lord.

And thereupon the defendant enters into bond ~~in~~ according to Law towit:

Bond "Know all men by These presents That we Francis Savignac as principal and Antonie Sav=ignac as surety are held and firmly bound unto Abraham Garrison in the sum of Sixteen 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 thirty first day of May A.D. 1856
The Condition of the above Obligation is Such that whereas Francis Savignac has appealed from the judgment rendered against him and in favor of Abraham Garrison in the St Louis Land Court for the sum of Five Hundred dollars and for the sum of $25 for his mo rents together with 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 ~~they~~

44 Supreme Court may direct the St Louis Land Court to give and shall if the judgment or any part thereof be affirmed, 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.

F. Savignac (Seal)

Antoine Savignac (Seal)

Approved in open Court

C A Manty Clk

St Louis Land Court March Term 1856

Be it remembered that on this 31st day of May 1856 personally appeared Francis Savignac the principal and Antoine Savignac the Security in the foregoing bond and acknowledged that they executed the same for the purposes therein expressed.

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.

Seal of the Saint Louis Land Court Mo

Charles A. Manty Clk

45

State of Missouri } Saint Louis Land Court.
County of St Louis }

I Charles A Mantz clerk of the Saint Louis Land Court within and for the County of Saint Louis do hereby certify that the foregoing is a full and faithful transcript of the record and proceedings together with the papers on file in my Office in the case of Abraham Garrison vs Francis Savignac as the same appears of record.

In testimony whereof I hereunto set my hand and affix the seal of our said Court at Office in the city of St Louis this 12th day of July A. D. 1856.

Charles A. Mantz. clerk

45

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97 ~~67~~

(10) March Term 1857

Abraham Garrison
Plaintiff

vs

Francis Savignac
Defendant

Land Court

Krum & Harding for Pltff -
Morehead & Delafield for Deft.

Filed 3d Oct. 1856.
Wm J Glanville
Ch

Transcript - $14.90 = Pd by = P. C. Morehead

97

tr. ins 20. per deft's atty 90

Francis Savignac Appellant
vs. } In the Supreme Court October Term 1856.
Abraham Garrison Resp.t

The said Appellant comes by his Attorneys and assigns the following errors in the above case.—

1.st The Court erred in overruling defendants motion to dismiss —

2.d The Court erred in overruling defendants objections to the reading in evidence, the notice of demand, and admitting the same to be read in evidence without proof of genuineness & authenticity of service

3.d The Court erred in admitting as evidence improper irrellevant and illegal testimony.

4.th The Court erred in excluding the transcript or procedendo, offered by defendant —

5.th It was error in the Court to admit detached parts of the record from the Circuit Court of the United States for the District of Missouri, but the ~~If any part thereof~~ whole record of said case from beginning to end should have been read. (if any) —

6.th The instructions given by the Court were improper — against law and unauthorized by the evidence —

7.th The court erred in refusing the instructions asked by defendant, and his instruction No 1. should have been given as asked, and not as modified —

8.th The verdict of the Jury & the Judgment of the Court were against law & against the evidence

9.th The Court erred in overruling defendants motion for a new trial — } Morehead & Delafield for Appellant

Now comes the respondent & says that there is no error in the record proceedings & judgment of the Court below

Krum & Harding
for resp't.

Abraham Garrison
vs. Assignment of Errors —
Francis Savignac

Supreme Court, Oct. 1856

& Joinder in Error

Filed 20 Oct. 1856
Wm. L. Glanville
Cl.

Morehead & Co. for Appl't

Points & Authorities —

This is a proceeding on the 3d sec. act 1845.
Alleging wrongfully without force by disseizin
obtained and continued in possession
The summons is for unlawful entry & detainer
and it must be "by a person having the legal right
to the possession or his agents"
Here the Plaintiff had not the legal right to the
possession as his own evidence shows —
The execution was against Alfred Savignac who
was not and never had been in possession
and although this defendant was lawful owner
and in possession long before the suit was
brought against Alfred which was Feby 10. 1852
and continued in possession from 1848. till he
was thus turned out — the lawful owner. —
It may be said that the Marshall was compelled
to execute fully the process in his hands.
It might be a justification for the officer
but cannot confer upon the Plaintiff
the legal right —
It is even doubted whether power exceeded by
the Clerk would justify —
The power was only or should have been to
require the Marshall to turn out the defendant
in that suit and all persons who held
under him or came into possession after
suit was filed —
As the Plaintiff read in evidence the judgement
and execution, the whole proceedings should
have been read and the Procedendo offered
by defendants this would have shewn that
the judgement was reversed thereby nullifying
all these premature proceedings —

It is clear then that Plaintiff had not on the 10th of October 1854. when the demand in writing was made, a legal right to the possession -

Only a person who has been in possession can maintain this action. 11. M. R. 605.

The Plaintiff had never been in possession
Constructive possession is not sufficient
6. J. J. Marshall 346.
There must be a special agency for this particular case which was not shewn.
The case of 14th M. R. p. 434. is different from this case.
There the agent was the Attorney, and was specially authorized in that particular case and the possession was predicated on the possession of the second agency, which was founded on express written special instructions, the agent had received the rents, and was acknowledged by the tenants as such —

The demand in writing was improperly admitted without proof of its service & authenticity —

For these reasons it is insisted that instructions Nos 2. 3. & 6. asked by the Defendants should have been given — and instructions No 1. as asked by the Defendants, not in the form given by the Court inserting (or by his agent duly authorized
and No 2. given for the Plaintiffs was improper

Instruction No 4. was perhaps not improper on the evidence as it was. but the error in regard to that is. the refusal to admit in evidence the decision of the Supreme of the United States —

P. C. Morehead
for Appellt.

No 97.

Abraham Garrison
Respt Points
ads & authority

Francis Savignac
Appellants

Supreme Court
March Term 1857.

Morehead for Applts

2 The court instructs the Jury that if they find from the evidence in this case, that the defendant was in peaceable lawful possession of the premises in dispute prior to and up to the 19th day of August 1854. and that on that day the defendant was ejected from the premises by the United States Marshall on proceedings alledged to be legal proceedings, and the possession thereof delivered to any other person than the Plaintiff himself personally that then the Plaintiff cannot recover in this case, unless it shall be shown by the testimony in this case that said possession was delivered to said person with the knowledge and consent of said Plaintiff and that said person was specially authorized by the said Plaintiff as his agent to receive said possession

3 The court instructs the Jury that if the defendant was in possession prior to the filing of the suit read in this case of Abraham Gassion against Alfred Savignac in U.S. Court and was not a defendant in said suit, that the execution issued from the United States Court in that case did not authorize the Marshall to expell Francis the defendant in this case from his possession, and in that case the Plaintiff had not a legal right to the possession of the premises —

4 The court instructs the Jury that if the possession of the premises in dispute were taken from the defendant on the 19th day of August 1854. by the United States Marshall and delivered to any other person or persons than the Plaintiff, and that said persons or either of them were acting as general agents or Attorneys in fact for said Plaintiff legally authorized by him to act as such without special reference to the possession of said premises as passing from the United States Marshall to said persons and without special authority direction or agency to receive said possession, and that said possession was taken by said United States Marshall in pursuance of an execution issued on a judgement in the Circuit Court of the United States for the District of Missouri in favor of said Plaintiff against said defendant and that ~~[illegible]~~ (in said execution) said case was then depending in the Supreme Court of the United States on writ of Error, and that since said time said judgement has been reversed in said supreme Court That then the Plaintiff in this case had not a legal right to the possession of the premises in question on or before the 23d day of August 1854 and cannot in this case recover

No 97.

Abraham Garrison
Respt
ads } Statement of the Case

Francis Savignac
Appellant

Supreme Court
March Term 1857

Filed 6th April 1857
Wm S Glanville
Ck

Morehead for Applt.

Abraham Garrison Respt
vs } In the Supreme Court
} March Term 1857 —
Francis Savignac
Appellant

This was an action of Forcible Entry & Detainer

Plaintiff had first sued Alfred Savignac in Ejectment in the Circuit Court of the United States for possession of the lot now in controversy and in April 1853 recovered judgement. Francis Savignac the defendant in this case was in possession of the lot and owned it when said suit against Alfred Savignac was filed and long before.
Alfred Savignac by Writ of Error carried said suit in Ejectment to the Supreme Court of the United States. On motion the case was dismissed. He obtained a second writ of Error without supersedeas, which was tried and the judgement reversed.
The case came back to the circuit Court and on trial the judgement was for defendants — After the dismissal of the first writ of Error and pending the second execution issued from the U.S. Circuit Court against Alfred Savignac for possession of the lot then & now in controversy.
The Marshall ejected Francis Savignac from the possession of said lot on execution against Alfred Savignac although Francis Savignac had been in possession prior to the filing of said suit, This was on the 19th August 1854.
On the 20th August 1854. the family of Francis

Savignac were in possession of the house without the knowledge of Francis Savignac, he was not present that day but afterwards was. Abraham Garrison the Plaintiff in this suit was all the time a nonresident —

A demand of possession was made Oct 10. 1854 by Abraham Garrison by D.R. Garrison his agent

Suit was brought before Justice Butler returnable to 17th Oct 1854. and the case taken up by certiorari to the St Louis Land Court —

Plaintiff read in evidence the execution from U.S. Circuit Court and then proved, that Francis Savignac was turned out on the execution and possession delivered to D.R. Garrison agent of Abraham Garrison, the doors were closed Francis Savignac on demand refused to give up saying he was not the defendant D.R. Garrison was agent for his brother specially appointed for this case, Had not the power with him received it 2. or 3. years past — perhaps more. it had particular reference to this case was specially appointed by him to receive this property from the Marshall Don't know when, long before the execution issued — Plaintiff then read in evidence notice of demand in writing without proving authenticity or due service (which was objected to, overruled & excepted to Plaintiff then read in evidence judgement & in the U.S. Circuit Court of Abraham Garrison vs. Alfred Savignac —

Defendant then offered in evidence transcripts of Procedendo reversing judgement — which was excluded and excepted to — Defendant then proved that he owned and was in possession of the lot since 1848. That Alfred Sauvgnac lived on Biddle Street some distance from this place and never was in possession of this lot —

Then was a motion to dismiss because the petition and process were not in compliance with the Statute, overruled —

Instructions — Given —

1. The court instructs the Jury that unless they believe from the testimony before them in this case that the Plaintiff Abraham Hession had been & was personally (or by his agent duly authorized) in actual possession of the premises in contest prior to the 20th day of August 1854 Plaintiff cannot recover in this case

2 In this cause the Jury is instructed as follows. The writ of possession read in evidence by the Plaintiff Commands the Marshall to put Plaintiff in possession of the land described therein without reference to the persons who may be in possession at the time the writ issues It does not tell the Marshall to put any particular person out of possession but to put all persons out except the Plaintiff, who is to be put into possession If therefore the Jury believe from the evidence that the Marshall put the Plaintiff or his agents into possession under said writ of the land

described in the petition, and that within twenty four hours thereafter, the defendant returned to the premises and intruded thereupon and still retains possession thereof against the demand of the Plaintiff to be admitted thereto they must find for the Plaintiff

Instructions refused

6 Before the Plaintiff can recover in this action he must shew a legal right to the possession of the realty in question. If the Jury find from the evidence that the Plaintiff has failed to establish a legal right thereto they must find for the defendant —

No 97

Abraham Garrison
Respt — statement of case
add.
Francis Savignac
Appellant

Supreme Court
March Term 1857

Filed 6th April 1857
Wm J Blanvill
Cr

Moreland for Appltg

Abraham Garrison
Respondent
vs:
Francis Savignac
Appellant

Supreme Court -
March Term
1857.

Statement by Respondent

The Respondent (Garrison) on the 10th of October 1854 brought his action of Forcible Entry and Detainer under the third Section of the act concerning "Forcible Entry and Detainer", against Savignac (the Appellant) before a Justice of the Peace. -

The complaint charges that on or about the twenty-~~[illegible]~~ day of August in the year 1854, Savignac wrongfully and without force by disseisen obtained possession of the premises in question. -

The Case was carried into the St Louis Land Court by certiorari, and there tried at the March Term 1856. -

At the trial the Respondent (Garrison) proved that he was put into possession of the premises in question by the Marshall of the United States for the District of Missouri on the 19th day of August 1854, in virtue of a writ of Fieri Facias possessionem issued on a judgment recovered by him in a suit of Ejectment against one Alfred Savignac in the Circuit Court of the United States in the District of Missouri -

The plaintiff also proved that the defendant on or about the 24th day of August, 1854 went into possession of the premises wrongfully and withheld the same. To sustain the issue on his part, the Respondent (Garrison) gave in Evidence the original record and proceedings of the said suit of Garrison vs: Alfred Savignac and judgment therein in the Circuit Court of the United States and a duly certified copy of the said writ of Fieri Facias possessionem with the Marshall's return endorsed thereon —

The Appellant (Francis Savignac) objected to the

reading of said writ on the ground that the same was not duly authenticated - which objection was overruled by the Court below, and Exception duly taken - The plaintiff also proved that before suit, he demanded possession of the premises of defendant. - The Respondent then proved the value of the rent of the premises and rested.

The Appellant (Savignac) then offered in Evidence the procedendo issued by the Supreme Court of the United States in the case of Garrison vs: Alfred Savignac showing that since the service of the said writ of Fieri Facias possessionem the Judgment in said case had been reversed.

On objection said procedendo was excluded, and Exception duly taken. Defendant also offered evidence tending to show that he had occupied the premises since 1848. and until he was put out by the Marshall under the writ of Fieri Facias possessionem. -

The Court at the instance of the Plaintiff then gave to the jury, the following instruction

~~Garrison vs. Savignac~~ In this case the jury is instructed as follows:

The writ of possession read in evidence by the plaintiff, commands the Marshall to put the plaintiff in possession of the land described therein without reference to the persons who may be in possession at the time the writ issues; it does not tell the marshall to put any particular person out of possession, but to put all persons out except the plaintiff, who is to be put into possession. If, therefore, the jury believe from the evidence, that the Marshall put the plaintiff or his agent into possession, under said writ, of the land described in the petition, and that within twenty four hours thereafter, the defendant returned to the premises and intruded thereupon and still retains possession thereof against the demand of the plaintiff

to be admitted thereto, they must find for the plaintiff. —

If the jury find for the plaintiff they must find the value of the premises monthly, and assess the damages sustained by the plaintiff by reason of the unlawful entry and detainer. —

To which exception was duly taken by the Defendant.

The defendant asked the following instruction which was given:

1. The Court instructs the jury that unless they believe from the testimony before them, in this case, that the plaintiff Abraham Garrison had been or was personally or by his agent duly authorized in actual possession of the premises in contest, prior to the 20th day of August, 1854, plaintiff cannot recover in this case. -

And defendant also asked the following which were refused:

2. The Court instructs the jury that if they find from the evidence in this case that the defendant was in peaceable lawful possession of the premises in dispute prior to and up to the 19th day of August 1854 and that on that day the defendant was ejected from the premises by the United States Marshall, on proceedings alledged to be legal proceedings, and the possession thereof delivered by said marshall to any other person than the plaintiff himself personaley, then the plaintiff cannot recover in this case unless it shall be shown by the testimony in this case that said possession was delivered to said person with the knowledge and consent of the said plaintiff and that said person was specially authorized by the said plaintiff as his agent to receive said possession. -

3. The Court instructs the jury that if the

defendant was in possession prior to the filing of the suit read in this case of Abram Garrison vs. Alfred Savignac in the United States Court, and was not a defendant in said suit that the execution issued from the United States Court in that case, did not authorize the Marshall to expel Francis the defendant in this case from his possession, and in that case the plaintiff had not a legal right to the possession of the premises.-

4. The Court instructs the jury that if the possession of the premises in dispute was taken from the defendant on the 19th day of August 1854 by the United States Marshall and delivered to any other person or persons than the plaintiff, and that said persons or either of them were acting as general agents or attornies in fact for said plaintiff legally authorized by him to act as such, without special reference to the possession of said premises as passing from said United States Marshall to said persons, and without special authority, directions or agency to receive said possession, and that said possession was taken by said United States Marshall in pursuance of an execution issued on a judgment in the Circuit Court of the United States for the District of Missouri, in favor of said plaintiff, against said defendant, and that at said time said case was depending in the Supreme Court of the United States on writ of Error, and that since said time said judgment has been reversed in said Supreme Court, that then the plaintiff in this case had not a legal right to the possession of the premises in question on or before the 23d day of August, 1854 and cannot in this case, recover.-

5. This action is a statutory provision in derogation of the remedies at common law,

and must be strictly construed. If the jury find from the evidence that every requisition of the statute has not been fully complied with strictly by the plaintiff, they must find for the defendant.-

6. Before the plaintiff can recover in this action he must show a "legal right" to the possession of the realty in question. If the jury find from the evidence that the plaintiff has failed to establish a legal right thereto, they must find for the defendant.

7. A "legal right" to the possession of realty is that which is founded on a just and rightful claim to the peaceful occupation and enjoyment thereof by ownership therein, whether the same be absolute or qualified, perpetual or limited.- If the jury find from the evidence that the plaintiff has failed to show such just and rightful claim to the peaceful enjoyment and occupation of the property in question by an ownership thereof whether absolute or qualified, in perpetuity or limited at the time of the alledged disseisin they must find for the defendant.-

To the refusal of these instructions, defendant duly excepted.-

The motion of Defendant for a new trial was overruled and the case comes into this Court by appeal.-

Points of Respondent

I It does not appear that all the Evidence heard on the trial of this case in the Court below is preserved in the Record- This Court therefore will not review the ruling of the Court below in giving and refusing instructions.-

II It was incumbent on the plaintiff to show himself lawfully in possession of the premises in question before he was disseized by the wrongful act of the defendant - It was competent for him to show that he was lawfully put into possession under the writ of Fieri Facias possessionem - In order to read the writ in Evidence it was necessary to read the judgment under which it was issued - Both are competent and legal testimony.

III. It was not necessary that the plaintiff should show a written demand of defendant, for the possession of the premises before suit - The written demand read in evidence was not therefore material testimony in the case - No point was made by defendant by any instruction in regard to a previous demand of possession. -

This paper could not by any possibility affect the verdict of the jury. -

IV. To Entitle the plaintiff to recover it was necessary that he should show:

1st that he had been in the lawful possession of the premises in question - and

2d that the defendant wrongfully and without force by disseisin obtained possession of the premises -

The testimony ~~it~~ is insisted abundantly shows that the plaintiff was in lawful possession of the premises. - It is equally clear from the testimony that the defendant wrongfully by disseisin got possession -

The Instructions given by the Court put the case both as to the facts and the law fairly before the jury - there is no Error in the instructions given -
8 Mo. Rep. 276. -
14 " " 17-434. -

V. The Instructions asked by defendant, and which were refused, are not law -
No 2. seems to be based upon the idea that the plaintiff must have had possession personally - or that his agent was specially appointed to receive possession - The case in 14 Mo. Rep. 434 establishes that possession by an agent is sufficient to maintain forcible entry &c.
And the question whether the plaintiff had had possession by his agent was properly submitted to the jury by an instruction asked by plaintiff and given. -
The remaining instructions of defendant are so palpably erroneous as not to require notice -
Nos. 3. & 4. are not law as applicable to the issues and the evidence in this case. -
Nos 5, 6, & 7. are abstract propositions of law left to the decision of the jury. -

Krum & Harding
T. T. Gantt
for Respondent

No. 97

Supreme Court

March Term 1857

Abraham Garrison
Respondent

vs.

Francis Savignac
Appellant

Statement & Points
of Respondent

Filed 8th April 1857
Wm Glanville
Clk

I Delafield Prim & Morehead for appt.

Abraham Garrison Respdt. vs Francis Savignac Applt. } Appeal from the St. Louis Land Court.

It is evident, that so far as the merits of this case are concerned, they are all against the plaintiff, as the possession of whose disturbance he complains, was obtained by means of a writ of habere facias possession which issued on a judgment, which since the execution of the writ has been reversed.

The defendant in the original suit Alfred Savignac and against whom the writ of habere facias possessionem was issued, testified, that he never was in possession of the lot in controversy.

The defendant in this proceeding Francis Savignac was turned out of the possession of the lot by the Marshal, though he was no party to the suit, was not named in the writ and though he had been in the undisturbed possession of it 4 or six years prior to the bringing of the suit.

Had application been made, to the court, whence the habere facias possessionem issued we see no reason why the court would have refused to award restitution, as it would not suffer its process to be perverted to the oppression of those who were no parties to it.

It is said to be a settled rule of practice, that no tenant who was in possession anterior to the commencement of an ejectment, can be dispossessed upon a judgment and writ of possession to which he is no party. Ex parte Reynolds 1 Caine's Rep. 500. Hickman vs Dale 7 Yerger 149. McChords heirs vs McClintock's heirs 5. Lell. 305.

If the defendant Savignac had refused obedience to the process of the officer as he had a right to do it not being against him, the court under the circumstances never would have allowed a writ of attachment against him. Adams on Ejectment 310.

As the officer had no authority to dispossess the defendant, as the defendant refused submission to his authority but yielded to force, and returned to his possession so soon as the force was away, we cannot say that the plaintiff by such means acquired such a possession as would entitle him to the remedy he has adopted. It is clear, that if the officer had applied to the court for aid in dispossessing the defendant it would have been refused him, and there is no reason why the plaintiff by taking the law in his own hand should be in a better situation, that if he had appealed to the law.

We are of the opinion, that ~~the sanctioning~~ a sanction given to this proceeding, would be the means of creating a precedent, that might be productive of much injustice & oppression. Just think of it: A man has been in possession of his premises for 6 years, another wishing to obtain possession of them, will not sue the actual occupant, but brings a suit against a stranger who never was in possession of the premises, who neither knows or cares any thing about them: against such a defendant a judgment is a thing of course: a writ is afterwards sued out, and the real tenant who was no party to the proceeding and who may never have heard of it is turned out of house & home without a moments warning. The mere possession of land is frequent

ly a matter of much importance where there is to be litigation respecting its title, and by sanctioning this proceeding, an opening will be made, whereby one may obtain possession of land his title to which he was unwilling to expose in a court of justice.

The case of Higgenbotham vs Higgenbotham & Clarke 10. B. Mon. 309 in one in which the same defense to a writ of forcible entry & detainer, was set up, that has been made in this suit: The defendants did not succeed; but that was not on the ground, that ~~it~~ their defense was not properly conceived, but that the facts in evidence did not make it out. ~~the~~ Had the defense proved here, been made out, the case is an authority for saying, that it would have been a valid one.

Judge Ryland concurring the judgment will be reversed & ~~the cause dismissed~~ and a judgment for the defendant

Judge Leonard absent.

Wm Scott

97

Garrison
vs
Savignac

Opinion

Filed 11 June 1857.
Wm S. Harrison
Ck

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X

No. TERM, 18

Francis Savignac.

vs.

Abraham Garrison, Daniel Garrison Robert H. Moore. and Charles Rick. (S)

Fee of Clerk	Mantz.	$ 22.50
" " Sheriff	Maddox.	19.45
" " "	Castello.	7.65
Judge Lord.		1.00
Plaintiff Paid.		3.00
Witnesses	John P. Ravold.	1.00
"	Wm H. Cozzens.	1.00
"	Michael Ravold.	1.00
"	Cornelius Sullivan.	1.00
"	Cecile Lecompt.	1.50
		$ 59.10

STATE OF MISSOURI, } SS.
COUNTY OF ST. LOUIS.

I, CHARLES A. MANTZ, Clerk of the St. Louis Land Court, within and for said County, certify that the foregoing Fee Bill is a true copy in the aggregate, from the Fee Book in my office, and that Defendants are liable for the same.

Witness my hand, and seal of said Court, at office, in the city of St. Louis, this Thirtieth day of June A. D. 1857

59.10
8.50
.30
14.90
$82.80

Charles A. Mantz, Clerk.

No

St. Louis Land Court

1857

Francis Savignac.

vs

Abraham Garrison et. al. (2)

Amount $59.10

Defendants Liable

Filed 29 June 1857

Wm. J. Glanville Clk