Spalding, Hiloren v. Maghall, Jefferson et al 1858 Ralls 409/1

597/
058
27 Mo. 377

Spalding (plaintiff) Maghall (def)
Gray, James

built house
sold by Sheriff
he keeps the key
loans key to someone so they
can get possessions
buyers find key

Rule -

reversed & remanded
doesn't matter that they had title - for possession he
must resort to authority of law
by keeping key
"intentional & appropriate acts" to keep possession

no circuit court

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Judge of the Sixteenth Judicial Circuit *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the

Circuit Court of Ralls County in the State of Missouri

wherein Heldrey C. Spalding is plaintiff & Jefferson A. Maynall and James A Gray ——— are defendants

in a~~n action of~~ civil action manifest error hath intervened, to the great damage of said Heldrey C. Spalding as by his complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the 3d Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the 12th day of February in the year of our Lord one thousand eight hundred and fifty eight

Wm. S. Glanville,

CLERK.

$1.50
Cl'ks fee 50.

State of Missouri } ss
County of Ralls } The service of the within writ appears by the full and complete transcript of the record and proceedings in the within entitled cause hereto annexed, Witness the seal of said Court. Done at Office at New London in said County of Ralls this 13th Day of February 1858

Saml R Caldwell Clerk

Page — 1

State of Missouri }
County of Ralls } ss In the Circuit Court

Transcript Filed

Be it remembered that heretofore to wit on the 25th day of August 1856 there was filed in the office of the Clerk of said Circuit Court a transcript from a justice's Court in words and figures following to wit;

Transcript Justice Docket

Hildren C. Spalding vs. Mayhall and Gray — July 25th 1856

Hildren C. Spaulding made complaint in writing against Jefferson A. Mayhall and James Gray of Forceable entry and detainary concerning land situate in New London Ralls County. Summons issued 25th July 1856. returnable August 2. 1856. precept for jury same time, returnable same day & place Aug. 2 1856. Constable of Clay township returned summons with his endorsements, precept with 12 jurors names, plaintiff appeared with council Wm Harrison, trial continued till the 5 August 5 1856 by request of defendants. by note to me. by constable of said Township. cost adjudged to defts

for continuance as follows Precept anew 25

Justice notice to defendent 25

One witness 50.

Constable summons jurry 75

Coldwell Sheff serving notice to deft. 100

275

Aug. 5 1856. constable returned precept with his endorsements of 12 names as follows. Harman Gentry. John Stavely James Fagan Jacob (Newland. Nelson Smarr John Gregory Lafayette Boyce Luther Catren Levi Dodd Jacob Long Wm Wickersham Wm Harden in attendance jury impanel=ed and sworn according to law. evidence produced by plff. Jury returned verdict same day in writing signed by the foreman as follows. we the jury find defendant guilty in manner and form as claimed in the complaint and do further find that the complainant has sustained damages by reason of the premises to the value of one dollar and ninety cents, and also that the value of the monthly rents and profits of the said teniments is two dollars signed this 5 day of August 1856 by Jacob Newland foreman, therefore it is concidered that the said plaintiff have judgment

by default for the restitution of the premises so found by the verdict of the Jury as aforesaid to have been forcably entered and unlawfully detained and that the said plaintiff recover of the said defendant the sum of three dollars and eighty cents for his damages sustained by reason of said forceible entry and unlawful detainery, that the said plaintiff recover from said defendant, recover from said defendant, the sum of four dollars for the monthly value of the rents and profits of the said premises, until restitution shall be made, and also that the said plaintiff recover his costs as follows. Judgement for restitution,

Damages	360	360
Justices costs	270	270
Constable fees	275	275
Witnesses 2 Wm Madox Miss Miller		100

Appeal Granted

Appeal to Circuit Court demanded by defendant. affidavit and bond filed, bond signed by J.M. Gray principal Samuel Coldwell security on the 8th of August 1856. Granted. This is a true copy of my Docket. This the 12th day of

August 1856.

Wm A. McCall J. P.

Which said complaint in writing is in words and figures following to wit.

State of Missouri }
County of Ralls } ss. Before Wm McCall
} Justice Peace Ralls Co Mo.

Pltffs Petition

Heldry C. Spalding
vs
James H. Gray & }
Jefferson A Mayhall } Heldry C. Salding

comes and complains of James H. Gray & Jefferson A Mayhall defendants and says that heretofore to wit. on the 31st day of March 1856 at the County of Ralls in the state aforesaid the said Plaintiff Heldry C. Spalding was lawfully possessed of the certain premises known as the North part of Lot No. 79 in Block No 22 in the Town of New London in the County of Ralls State of Missouri on which is erected and stands a certain two story frame House, and that on the day and year aforesaid the said defendants did wrongfully and without force by discession obtain and continue in the possession of said premises, that on the 8th day of July 1856 he made a demand

in writing on said defendants for the deliver-
-ance of the possession of said premises
to him, he having the legal right to the
possession thereof, that said defendants
notwithstanding said demand neglect-
-ed & refused to quit such possession
and still refuses & neglects so to do, to
his damage ninety dollars, the complainant
says that said premises are now and
have been since said defendants so
wrongfully obtained possession thereof
worth monthly rent of six dollars
He prays Judgment of restitution and
for damages as required by law.

Harrison. Atty,

Hildry C. Spalding on his oath says that
he believes the forgoing complaint and
the matters therein as stated are true.
Subscribed and sworn
to before me this 27th day of August, 1856. } H. C. Spalding
Saml K Caldwell }

Endorsement on Petition

Upon which said petition is the following
endorsement in word and figures Iowit

Return of Service

Executed the within by reading to the within named James Gray on the 26th day of August 1856.

Wm Maddox
By his deputy James Maddox

And afterwards to wit on the 25th day of July 1856 the following summons was issued in words & figures. as follows to wit.

Summons

The State of Missouri
To the Constable of Clay Township of the County of Ralls.
Greeting,

You are hereby commanded to summon James H. Gray and Jefferson A Mayhall of the County of Ralls to appear before the undersigned justice of the peace within and for the said County at Dimmits School House Clay Township in the same County on the 2nd day of August 1856 at the hour of ten o'clock in the forenoon of that day, then and there to answer and defend, against the complaint of Hildry C. Spalding of unlawful detainer made by the said James H. Gray & Jefferson A. Mayhall upon the lands of the said Hildry C. Spalding as by the complaint of the said Hildry C. Spalding hereto annexed will more fully appear and have you then there this writ with the

return of your proceeding therein
Given under my hand this 25 day
of July 1856.

Wm A. McCall J. P.

Upon which said summons the a return is endorsed in words and figures following to wit.

Endorsement by Constable of service on Summons

Executed by reading the within to the within named James H. Gray on the 26th day of July 1856 & served on the within named Jefferson Mayhall by leaving a copy with a free white person over the age of fifteen years old at his dwelling house, on the 26 day of July 1856

Wm Meador
By his D P Jno Meador

Which said affidavit for an appeal and Bond are in words and figures following to wit

Affidavit for appeal

Heldry C. Spalding } Unlawful
against } Detainer
J A Mayhall & J. Gray }

Before Esq McCall J.P.

James Grey one of the defendants in the above entitled cause makes oath and says that he verily believes that the defendants

in the above entitled Cause are aggrieved by the judgment of the justice, and that they do not take this appeal for vexation or delay but that justice may be done.

Sworn to and subscribed before me this 8th day of August 1856 } J. H. Gray
Saml H. Caldwell Clerk }

Bond or Recognizance

We Jefferson A. Mayhall and James Grey as principals and Samuel H. Caldwell as security acknowledge ourselves indebted to Hildry C. Spaulding complainant in the sum of two hundred dollars upon this condition that whereas Jefferson A Mayhall and James Grey has appealed from the judgment of Esquire McCall a justice of the Peace in and for the County of Rails in an action of unlawful detainer between Hildry C. Spalding complainant and Jefferson A. Mayhall and James Grey Defendants now if the said Mayhall and Grey defendants as aforesaid shall prosecute their appeal with effect and without delay neith commit or suffer to be committed any waste or damages on the premises whereof restitution is adjudged and pay all rents and profits damages &

costs that may be adjudged against them and otherwise abide the judgment in the Circuit Court in said Cause then this recognizance to be void. Given under our hands and seal this 8th day of August 1856.

Jefferson A Mayhall (Seal)
attest James H Gray. (Seal)
Justice Peace Sam H Coldwell (Seal)

And afterward to wit on the 26th day of August 1856. being the regular Term of the Ralls Circuit Court begun and held at the Court house in the Town of New London before the Hon. John T. Redd, Judge of said Court, the following proceeding were had to wit

Filing Motion to Dismiss Appeal

Hildry C. Spalding Plff.
vs. } appeal
Jefferson A Mayhall & James Gray Defts

Now at this day comes the said Plaintiff and files their motion to dismiss the appeal in this cause,

Which said motion is in words and figures following to wit.

Spaulding } on appeal.
vs } Unlawful detainer Rules
Mayhall & Gray } Circuit Court. Aug. Term 1856.

Motion To Dismiss Appeal

The plaintiff moves the Court to dismiss the appeal herein Because 1st There was no motion for a new Trial before the Justice, which was overruled 2nd Because there was no recognizance filed by appellant as the law requires

Harrison for
Comp'nt

And afterwards to wit, on the 27th day of August 1856 the following ~~Motion~~ entry is found To wit,

Hildry C Spalding. Pltff.
vs } appeal
Jefferson A. Mayhall & James Gray Defts }

Motion overruled

The motion heretofore filed to dismiss the appeal in this cause is seen and concidered by the Court and overruled.

And afterwards to wit on the 28th day of August 1856. The following entry is found in words and figures following to wit.

Entry on Record

Hildry C. Spaulding Pltff } appeal
vs

Jefferson A Mayhall & James Gray Defts.

Now at this day comes the parties aforesaid by their respective attorneys On motion of said Defendants it is ordered by the Court that this cause be continued at the costs of said defendant. It is therefore considered by the Court, that the said Pltffs do have and recover against said defendants their costs and charges in this cause incured at this term of the Court and that they have execution therefore

Continuance.

And afterwards to wit on the 29th day of August 1856, the following entry is found To wit;

Hildry C. Spalding Pltff.
vs.
Jefferson A Mayhall & James Gray Deft } appeal

Motion filed to set aside judgment for costs

Now at this day comes the said defendants by their attorneys and file their motion to set aside the judgment for costs rendered in this cause —

Which said motion is in words and figures following to wit,

Spalding
vs.
Mayhall & Gray

The defendant moves the Court to set aside the continuance in above cause at the cost of defts. for the following reasons to wit:

motion to set aside judgment for costs

1st The cause was not filed in this Court until the first day of this term,

2nd said cause is not by law for trial at this term,

Southworth & Wellman
Attys,

And afterwards to wit on the 30th day of August 1856, the following entry is found to wit,

Holdsy & Spalding Plff.
vs } Appeal
Jefferson A. Mayhall & James Gray Defts

Entry of Record motion overruled & cause continued

The motion heretofore filed to set aside the judgment rendered for costs in this cause is seen and considered by the Court and overruled on motion of said Defendants this cause is continued,

And afterwards to wit on the 26th day of March 1857 it being during a regular Term of the Ralls Circuit Court begun and held at the Court house in the Town of New London Ralls Co. Mo. The Hon John J. Redd presiding. The following

entry is found To wit.

Hildry C. Spalding Pltff.
vs. Appeal
Jefferson A Mayhall & James Gray Defts

Trial jury empanneled verdict rendered

Now at this day comes the parties aforesaid by their respective attorneys and a jury being ordered come as follows To wit Wilkinson Crawford James Glasscock, Robert A. Daniel John Liter Richard M. Brashears. Wm B Norton Harrison H. Priest. John H. Crawford Nicholas D. Bradley Fielding Yager James Cox and George G. Muldrow. twelve good and lawful men of the County of Rails, who being duly elected tried and sworn, well and truely to try the issues joined between the parties herein upon their oaths find said issue in favor of said defendants. It is therefore concidered by the Court that the said Plaintiff take nothing by his writ that the said defendants go hereof without day. and that the said defendants do have and recover against said Plaintiff their costs and charges in this cause incured and that they have execution therefor.

And afterwards to wit. on the 30th day of March 1857 the following entry is found

Hildry C. Spalding Pltff
vs } Appeal
Jefferson A Mayhall & James Gray Defts

Now at this day comes the parties aforesaid by their respective attorneys, and the said Plaintiff files his motion for a new trial herein, which motion is seen and concidered by the court and overruled to which decision of the court in overruling said motion the Plaintiff excepts and tenders herein court his bill of exceptions and prays the court to allow and sign the same, which is done accordingly and ordered to be made a part of the record in this cause.

Motion filed for New Trial

Bill of Exceptions allowed

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

Hildry C Spalding
vs } Rails Circuit Court March T. 1857
Jefferson A Mayhall & James H. Gray

The Pltff moves the court to set aside the verdict of the jury rendered herein and to grant him a new trial for reason to wit. 1st the verdict of the jury is contrary to the law and the evidence 2d Because the court erred in refusing

Motion for New Trial

to instruct the Jury as asked by the Plff.
3d Because the Court erred in instructing the Jury as to the law, as asked by defendants

Harrison
for Plff.

Which said Bill of Exceptions is in the words and figures following to wit.

Bill of Exceptions

H. C. Spalding
vs
Jefferson A Mayhall
James H. Gray

Ralls Circuit Court
March Term
1857.

Be it remembered that on this day this cause came on to be herd and the Jury having herd all the evidence in the cause aduced on the part of the plaintiff, and that of defendants, at the request of the parties the Court instructed the Jury to find the facts specially, whereupon the Jury find the facts specially to be in words following to wit.

Special Verdict

Spalding Plaintiff
vs
Gray & Mayhall Defts

The Jury find the facts in this cause to be as follows,
That Plff. erected the house on the premises

in question and occupied the same up to September 17th 1855. that said premises had been purchased by Southworth and Wellman at Sheriff's sale under execution against plaintiff, that said Southworth and Wellman in August 1855 after their purchase applied to pltff. for possession & plaintiff promised to deliver to them the possession within three weeks, that shortly after the expiration of that time, pltff moved to Hannibal locking up the house and taking the key with him, that, Pltff loned the key to Mr. Farmer to get some property belonging to Farmer out of the house under an agreement that Farmer would return the key to him, that a few days afterwards Mr. Southworth procured the key from Farmer and took the possession, that Southworth & Wellman sold the premises to one Shulemire & put him in possession of the premises, that Shulemire sold to one Ellis, that Ellis by his agent Caldwell rented the to Defts and put them in the possession, that defts remained in the possession untill the institution of this suit, that on the 8th day of July 1856 plaintiff served upon defendants a demand in writing requireing defendants to deliver

possession of the premises to plaintiff on or before the 14th of July 1856. and that Defts failed & refused to deliver the possession The Jury further find the rents and profits of said premises to be of the monthly value of six dollars per month, and that damages sustained (if the court be of opinion that Plaintiff is entitled to recover under the above state of facts) is the sum of fifty one dollars.

Robert A. Daniel Foreman

Thereupon the Plaintiff asked the Court to instruct the Jury as follows,

Instructions asked by Plaintiff Refused

"The Plaintiff asks the Court to instruct the Jury that upon the facts as found by the Jury on their special verdict the Jury ought to find the defendants Guilty in manner and form as charged in Complaint.

Which said instruction the Court refused to give, To which action of the Court in refusing such instruction the plaintiff at the time excepted,

Whereupon the defendants asked the Court to give the following instruction, To wit,

Spalding
vs
Gray & Mayhall

Instruction asked by Defts.

Defts ask the Court to instruct the Jury that if they believe the facts to be as found by the Jury in the special verdict, the Jury ought to find the defendants not Guilty in manner and form as charged in the Complaint.

given

Which instruction the Court gave, to which action of the Court in giving said instruction the plaintiff at the time excepted.
Whereupon the Jury found a verdict as follows to wit

Spalding vs Mayhall &c,
We the Jury find the defendant not Guilty in manner and form as charged in the Complaint,
in the 30th day of March and during said Court. Whereupon the Plaintiff filed his motion for a new trial which motion is in words following, to wit;

Verdict

Hildy C Spalding
vs
Jefferson A Mayhall, & James H Gray

Ralls Circuit Court
March T. 1857

Motion for New Trial

The Plaintiff moves the Court to set aside the virdict of the jury rendered herein and to grant him a new Trial for reason that it

Overruled

1st The virdict of the jury is contrary to the law and the evidence.

2nd Because the Court Erred in refusing to instruct the jury as asked by the Pltff.

3d Because the Court erred in instructing the jury as to the law as asked by defendants

Harrison for Pltff.

Which motion the Court overruled. To which action of the Court in overruling said motion, and refusing him a new trial the Plaintiff at the time excepted. And the plaintiff prays that this his Bill of exceptions may be signed & sealed by the Court and made a part of the record which is done accordingly.

John T. Redd (Seal)

State of Missouri }
County of Ralls } SS. I Samuel K Caldwell Clerk of the Circuit Court in and for said County hereby certify that the annexed and foregoing pages contain a true and Correct transcript of the Record of said Court in the Case of Hillery C Spalding against Jefferson A Mayhall and James Gray, with all things pertaining thereto, as full and Complete as the same are now remining of record and on file in the Office of said Court, Witness my hand as Clerk and the seal of said Court, done at Office at New London in said County this 18th Day of 1857.

Sam K Caldwell Clerk

Bill of Costs

To Sam K Caldwell Clerk

1857. March 7	App 15. filing motion for new trial 5	,20
	Entering same 25 Submission 25	,50
	" Order overruling motion 50	,50
	" filing & entering Bill of Exceptions 50	50
	" Order allowing same 50	50
	" Copying record 3600 words 15 cts	5.40
	" Certificate & seal to same	50
	Amt due Seven 90/100 Dollars	$7.90

Attest Sam K Caldwell Clerk

Index

	Page
Transcript of Justice filed	1
Transcript	1
Appeal To circuit Court granted	2
Pltff Petition	4
Constables endorsement on Pet.	5
Summons	6
Endorsement on same. Return	7
Affidavit for Appeal	7
Appeal Bond	8
Motion filed To Dismiss Apped	9
Motion " " "	10
Cause Continued	11
Motion to set aside Judgment for cost.	11
Trial	13
Motion filed for New Trial overruled	
& Bill of exceptions allowed & signed	15
Finding of facts specially by Jury	15
Bill of Exceptions	15
Instructions asked by Pltff. ~~Refused~~	17
Same " " Defts given	18
Motion for New Trial	19
Clerks Certificate	20

21

~~3600 words~~

(12)

Oct. Term. 1858

Hildren C. Spalding

P.E.

v.

Jefferson A. Mayhall

sol.

P.E.

Rolls C. Ct.

Filed 3d Oct. 1857

Wm. S. Glanville

Ck.

Wrt. error 1.50 / notice / assigt. error / 2d notice / brief for each / slot /

Submitted / Rev. & Remanded 8 Dec. 1858 / B. p. 505-10 /

877

21

Heldry C Spalding pltff
against.
Jefferson A Maghall
& James Gray } defts

} Circuit Court of Rolls Cty Mo.

The above named defendants are hereby notified that the plaintiff in the above entitled cause has sued out his writ of error from the Supreme Court of the State of Missouri directed to the Clerk of the Circuit Court of Rolls County returnable to the next (October) term of said Supreme Court.

Heldry C Spalding
by Wm P. Harrison
his atty.

The defendants hereby acknowledge service of the above notice. this 29th of September 1857.

Willman & Southworth
attys for Defts

Spalding
v.
Mayhall & al

Notice of Writ
of Error.

Filed 3d Oct. 1857
W. S. Glanville
Clk

Heldrey C. Spalding, plff. } In the Circuit
against } Court of Ralls
Jefferson A. Mayhall & } County State of
James A. Gray } 5 defts. } Missouri.

To Henry C. Wellman Esq Attorney of record for the defendants in the above entitled cause.

You are hereby notified. That the plaintiff in the above entitled cause has sued out a Writ of Error in said cause from the Supreme Court of Missouri, returnable to the next (March) term of said Court, and that said cause has been taken to said Supreme Court by virtue of said Writ.

Wm P. Harrison
Atty for plff.

21 ~~158~~

Spalding pltff in error

vs

Mayhall & Gray
defts in error

Notice of writ of error

Filed 22d March 1858
Wm. S. Glanville
Clk

Executed the within pl Notice by delivering a certified
copy of the same to the within named Henry C. Wellman
in Ralls County Missouri this 13th day of February
A.D. 1858
R. B. Caldwell Sheriff
Ralls County Mo

Sheriff Fee $.50

Hildreth Spalding Plaintiff
vs } Error to Ralls Circuit Court
Jefferson A Mayhall & James
Gray Defendants ss

Now at this day comes the Plaintiff aforesaid & assigns and says the Court below ~~comm~~ erred as follows

1. The said Court erred in refusing to give the instruction asked by the Plaintiff
2 The Court below erred in giving the instruction asked by the Deft.
3 The Court erred in refusing to grant a new trial — on Plaintiff's motion

Wherefore the Plff asks a reversal of the decision of the Circuit Court on the cause aforesaid &c

Porter & Harrison
Attorneys for Plff

21

Error to Rolls

—

Hildreth C. Spalding
vs
Gray & Mayhall

Assignment of
errors.

Filed 15 April 1858.
Wm S Glanville Cl

Heldry C. Spalding Pff
against
James H. Gray &
Jefferson A. Mayhall defts

appeal from the Walls Ct Ct

1st This action is brought upon a portion of the 3d sec of the act of "Forceable entries & Detainers" In the statement of the cause the Pff charges & alledges that he was in possession of the premises in controversy on the 3d day of March AD. 1856 that on said day the defts did wrongfully & without force by disseizin obtained & continued in the possession of said premises

2d The defts rely on the possession of Southworth & Wellman as found by the Jury in their special verdict being after their purchase of the said premises and the agreement of said Spalding to give them the possession within three weeks after their purchase and the possession of Shulemire & the subsequent purchase & possession of Ellis & the possession of Defts as tenants of said Ellis was not in them a wrongfully & without

force by assignee obtained & continued in the possession of said premises against the right of the said Spalding — as he really left the premises & removed to the City of Hannibal leaving in the house of his own or any thing under his control — leaving the said Southworth & Wellman under the agreement to take possession thereof — that the entry & possession of said Southworth & Wellman nothing to the contrary being shown in Evidence is presumed to be rightfully obtained & without fraud as wrong or fraud will not be presumed but must be proved —

3rd If the entry & possession of Southworth & Wellman wrong their subsequent sale & possession to Shalemire & Shalemire to Ellis — & Ellis putting defts in possession with the knowledge of the rights of Spalding is not such a wrongful obtaining possession & keeping possession as will enable Spalding to maintain this suit

4th That the possession of defts is not such a possession as can be disturbed by —

said Spalding — If Spalding has any right to the premises his only remedy is a suit in Ejectment — to try theirs ~~respective~~ respective titles

5th In this case the evidence had on the trial fully supports the special verdict of the Jury

6th The Instructions given for defts to the Jury were properly given

7th The Instructions asked by Pltff and refused by the Court were properly refused

8th That the general verdict for the defendants was in accordance with the facts proved & the special verdict of the Jury —

Southworth & Wellman
Attys for Dfts

21

Spalding
vs
Gray & Mayhall
Defts brief

The Clerk will show this
to Cobbs & Gray & Gibbs
examination
E.W.B.

Filed 15 April 1858.
Wm S Glanville Ck

In Supreme Court March Term 1858

Aldrent, Spalding Plaintiff
vs Error to Rolls Circuit Court
James A Gray and Jefferson A
Maghall Defendants

This was an action instituted before a Justice of the Peace by the Plaintiff under the Statute concerning "Forcible Entry and Detainer" ~~and~~ the object being to recover of the Defendants the possession of the North half of lot 79 in Block 22 in the town of New London in Rolls County on which stood a certain frame dwelling house which Pltff alleged Defts wrongfully & without force by desseizin obtained possession of & detained from Plaintiff - after demand in writing by Plaintiff of Defts for the deliverance of the possession thereof, the Plaintiff having the legal right to such possession & the Defts having refused to deliver the same to him. On the trial of the case in the Circuit Court, whither it was taken by appeal - The jury under the instruction of the Court found a special Verdict to the following effect: The Plaintiff erected the house in question and occupied the same up to September 17th 1833. That said premises had been purchased at Sheriffs sale by Southworth & Wellman under execution against said Plaintiff - and they thereafter viz in August 1855 applied to Plaintiff for possession - which he promised to deliver in three weeks therefrom - That shortly after the expiration of that time, Plaintiff moved to Hannibal, locking up the house taking the Key with him That Plaintiff loaned the Key to one Farmer to get some property

out of said House on Farmers promise to return the Key to Plaintiff. Instead of doing which Farmer at the instance of said Southworth delivered the Key to said Southworth & said Southworth took possession of the said House. & that he & Wellman sold the said premises to one Shulemire and put him in possession thereof, Shulmire to one Ellis and Ellis by his Agent rented the Same to Defendants, and put them in possession - and they so remained until Plaintiff brought suit against them as aforesaid. & finds the damages & monthly value at a specified Sum - in case the Court should be of opinion that Plaintiff is entitled to recover.

The foregoing facts being thus found The Plaintiff asked the Court to decide & instruct as follows: "that upon the facts as found the jury ought to find the Defendants guilty as charged in Plffs complaint" & which the Court refused to do & the Plaintiff excepted.

And the Defendant asked the Court to instruct the Jury: "that if they believed the facts as found by their special verdict they should find the Defendants "not guilty" which instruction the Court gave and the Plaintiff excepted. & the verdict & judgment being for the Defendant, Plaintiff filed his motion for a new trial for all the usual causes which motion the Court overruled: & the Plaintiff excepted. & brings the case here by writ of Error. Brief

To reverse the decision of the Court below The Plaintiff insists that the cause of action set forth in the Complaint (which is predicated upon the 3.d Section of the the Act concerning "forcible entry and detainer") to wit: that the Defendants wrongfully & without force, by disseizin, obtained the possession of the premises in question, & retains the same, when the suit was brought - is made out by the facts found by the Special Verdict & that the Court should have so decided on Plaintiffs Motion See Sec 3. 1 Rev Stats Missouri p 787 - and in view of that Section & the facts found he makes the following points:

1 Southwath by obtaining the Key of the House from Farmer under the circumstances stated without Plaintiffs Consent & thus getting possession was guilty of an "unlawful detainer" by disseizin under said Statute This will not it is presumed be contested -

2.d His possession being thus unlawfully acquired, ~~and~~ his transferring that possession could not relieve himself or any holding mediately or immediately under him - from the liability imposed by Law in Plaintiffs favor - he being actually in possession when such disseizin occurred. And Plaintiff cites on this point

Warren vs. Ritter and Ritter 11 Mo. Reps p 354 & cases there cited

also Brubaker vs Pogue 1. Monroe Reps. p. 127
2 Dana Ky Reps. 111
4 " " 168

3. - It would be alike violation of the letter and spirit of

of the Statute - and calculate to render nugatory its wholesome-conservative provisions (as expounded by this Court in the ~~decision~~ case above cited) if a party who has thus disseized another, and rendered himself amenable to an action in favor of the disseizee, cured by a transfer, or any number of transfers, deprive the party whose rights are thus outraged, of his said right of action - as against the parties ~~acts~~ who have actually or in contemplation of law intruded upon his possession & held it against his will. This Statute is not a penal, but a highly remedial one, & it is contended should be construed liberally ~~& not strictly~~ & so as to accord with the maxim: "verba debent intelligi cum effectu, ut res magis valeant quam pereant"

Porter & Harrison
Attorneys for Pl ff
Spalding

21

Spalding Pl ff
vs
Gray & Marshall
Defendants

Statement & Brief
of Plaintiff

Authorities cited
11 Mo Reps p 354
Warren & Ritter & Ritter —
1 Monroe Reps 127
2 Dana Ky Reps 111
4 Dana 168

Filed 15 April 1858
Wm L Glenn Cl.

The Reporter will set out the substance of the special verdict

No 21. Shalding vs Maghall

It is declared in the third section of the act concerning forcible entry and detainer that "when any person wrongfully and without force by dissessin shall obtain and continue in possession of any lands, tenements or other possessions, and after demand made in writing for the deliverance of the possession thereof by the person having the legal right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an unlawful detainer". Lord Coke says "a dissessin is when one enters intending to usurp the possession, and to oust another of his freehold"; but it was observed in Warren vs Ritter 11. Mo 354 that the term dissessin which is strictly only applicable to freehold estates, was not employed in the statute in its technical sense, and was intended to apply to an entry which is wrongful and without force, upon the actual possession of another. And the obvious design of the statute is "to prevent the intrusion of one person on the lawful possession of another, without his consent, and to secure a peaceable possession from being changed without authority of law against the will of the occupant". Wunsch vs Gidel 26. Mo. 580.

The 26th section of the act provides that the merits of the title shall in no wise be inquired into: for the law forbids an unlawful entry with or without title, and it is immaterial whether the intruder is ~~a trespasser~~ a naked trespasser or enters under a paramount title, for if he has the right to the possession he must resort to the authority of law to obtain it. (Warren vs Ritter 11. Mo. 354. Brumfield vs Reynolds 4 Bibb 388)

The purchaser of real estate under an execution

is but to his ejectment, if he defendant refuses to yield the possession and therefore as the merits of the title cannot be inquired into in this proceeding. Southwick Twellman and those who claim under them, occupy no better position than if they had taken without color of title. And the main question in the case is whether the plaintiff was in the actual possession of the premises at the time of the entry for if he was the defendants cannot take shelter under their title.

The jury might infer from the circumstances that the plaintiff promised to give up the possession and afterwards removed to Hannibal leaving the house vacant. That he intended to abandon the possession in which event he cannot recover. But although he moved away, if by retaining the key he intended to hold the exclusive possession to himself, it continued in being for actual possession does not mean that the owner must remain continually on the land. (11 Mo 354 4. Bebb. 388). It is a question of intention coupled with appropriate acts indicating a purpose to retain possession. This fact is not found in the special verdict

The practice in this case was irregular. After the jury returned a special verdict the Court gave instructions and resubmitted the case to them, who thereupon returned a general verdict. If a special verdict finds the facts responsive to the issue, on which a judgment can be rendered the functions of the jury cease and it is the duty of the Court to give the judgment (2. R.S. 1833. p. 1263 Section 20).

The other Judges concurring the judgment will be reversed and the cause remanded

Jno C Richardson

No 21 —

Spalding

v

Marshall

Opinion of the Court

Rec & remanded

Filed 8 Decbr. 1858
W. S. Glanville
Ck.

Richardson

70