Beeler, Conrad v. Cardwell, James et al 1859 Jefferson 431/4

603/10
59/059
29 Mo 7V

Action
forcible
entry &
detainer

Beeler
app/plaintiff

says Cardwells
entered his field
on his farm on Big River

takes non suit

nothing ever written

Cardwell
resp

D. Cardwell
Huffman Cardwell
Ruben Cardwell

Abner Green (attny)

not guilty

they say Conrad rented the land
to George Beeler & D. Cardwell for five
if they built fence
after 2 years if no cultivation
pay Beeler 2/acre

Ewing

erroneous instruction
R&R

In action of forcible
entry right to possession
or entry are not taken into
consideration

Page No 1

State of Missouri } ss.
County of Jefferson }

Be it remembered that heretofore, to wit on the Sixth day of April A D 1859 there was filed in the office of the Clerk of the Circuit Court within and for said County a Transcript of appeal from the office of C. E Frost a Justice of the peace in and for said County of which the following is a true copy Viz

Transcript from Justice of Peace

Conrad S. Beeler Plaintiff
Against
James Cardwell Dow. Cardwell
Huffman Cardwell Reuben Cardwell

An action for forcible entry and detainer.

Whereas complaint has bin made before the undersigned Justice in writing by C S Beeler and verified by his affidavit on the 1st day of March 1859, that on that day James Cardwell, Huffman Cardwell, Dow. Cardwell and Reuben Cardwell did by force enter and detain possession of one certain field of the said Beeler's known as his lower field on his farm on Big River in the Township of Big River in the County of Jefferson and State of Missouri and demanded Summons for the said defendants in the above entitled case: The Summons was issued on that 1st day of March 1859 returnable to the 19th

(2) day of the same month: Now on the return day the Summons and complaint returned, and by the request of the plaintiff the Justice in open court permitted the complaint to be amended in form and to more fully described the premises; Summons returned served by reading in the presence of Huffman Cardwell, Dow. Cardwell and Reuben Cardwell; the summons not being served on James Cardwell, he James Cardwell came forward and acknowledged the service and consented to go into trial: The Justice impannelled a Jury of twelve men as follows: J. S. Pounds, John Evans Thompson Brown, John Balden James Ervins, J. G. Wilson Leroy Dover, G. F. Gamble, Wm Lock, Frederick Meredith, G. H. Frost and Charles Risk, who after hearing the proofs and allegations, returned the following verdict, to wit: "We the Jury find the defendants not Gilty in manner and form as charged in the complaint. George F. Gamble foreman." The Justice therefore renders Judgment against the complainant C. S. Beeler for the costs of suit this 19 th day of March 1859

C. E. Frost Justice of the peace

Appealed by the complainant the 19 th day of March 1859

I do hereby certify that the above is a true transcript of my docket in the above en

titled cause. Given under my hand this 19th day of March 1859 C. E Frost Justice of the peace

Afterwards on the 14th day of June 1859 the following entry remains of record in said Court: Viz

Judgment of Circuit Court

Conrad S. Beeler
vs
James Cardwell, Huffman Cardwell, Reuben Cardwell Dav. Cardwell

} Appeal from Justices Court.

Now again, at this day come the parties aforesaid by their respective attorneys and thereupon, comes a jury to wit: C. C. Cook Tho Burgess, Jno R Campbell, Rudolph Washburn P. Netherland, John Strickland, Mark Williams Jacob Hample, and Wm S. Howe, nine good and lawful men, the parties consenting to try the cause with that number, who being elected tried and sworn well and truly to try the cause aforesaid and a true verdict render according to the evidence, after hearing the testimony, the plaintiff by his counsel takes a non suit, with leave to move to set the same aside

Bill of Exceptions

C. S. Beeler
vs
James Cardwell et al

} In the Jefferson Circuit Court June Term for 1859 Appeal from J. P.

Be it remembered that on the 14th day of June 1859 it being the 8th Judicial day of

(3) the June Term of the Jefferson Circuit Court for 1859. the above entitled Cause came on for trial & the cause being to a Jury the plaintiff introduced testimony tending to prove that C S Beeler owned a tract of land on Big River; that he rented about 20 acres to George Beeler & Dow. Cardwell, it being unopened land for two years, free of rent, provided they would clear & fence it; that it was expressly understood between the parties that if George Beeler & D Cardwell did not want the land the second year C S. Beeler was to have it for $2.00 per acre, that the fence to be made by Beeler & Cardwell was to be five feet high & staked & ridered where the water from Big River might effect it. that there were about 150 panels that the water would effect; that the field was opened & fenced according to contract the fence was not staked & ridered; that George Beeler & Dow. Cardwell raised a crop in the field last year (1858) that in the fall of 1858 Dow. Cardwell sold his interest to Geo. Beeler, that Geo Beeler sold the growing crop to B. Dover & gave him the stock field; that B. Dover sold the stock field to C. S. Beeler, that C. S Beeler, about the 1st of December 1858 turned his stock into said field & kept them in till about the first of March that about the first of March 1859 all the defendants came into said field while C S Beeler was in it at work with force & beating & threats

turned C S Beeler out & have kept possession up to this time, that George Beeler has moved off to Crawford County; that said field is situate on the N pt pt of Sec. T. 40 R 3 & the of Sec. T. 41. R 3 E. that said field is worth in the way of rents & profits $3 or $4 per month that defendants admitted was the owner of the land in fee. also depositions as follows. viz

Deposition for Plaintiff

Depositions of witnesses, produced, sworn and examined on the 25th day of March 1859 between the hours of Eight O Clock in the forenoon and Six O Clock in the afternoon of that day at the clerks office in the Town of Hillsboro, in Jefferson County Missouri before me Elias J. Coney, clerk of the Circuit Court within and for said County and state aforesaid in a certain cause now pending in the Circuit Court of said County on an appeal from C. E. Hunt, Justice of the peace between C. S Beeler Plaintiff and James Cardwell, Hoffman Cardwell, Dav. Cardwell and Reuben Cardwell defendants on the part of Plaintiff:

Thomas Dunsmore of lawful age being produced, sworn and examined on the part of plaintiff deposes and says. I am acquainted with the peice of land or field in controversy between Plaintiff & defendants. I know of no contract which plaintiff might have entered

(4) into with any one with regard to said field.
Mr C S Beeler, made a proposition to myself and George Beeler in December 1857 to let us have the said field for two years to Cultivate provided we (myself and George Beeler) would clear said field and fence it, and provided further, that if we did not want to Cultivate at the second year we should let C S Beeler have it at the price of two dollars per acre.
In his proposition to us Mr. C. S Beeler expresly said that we should not be allowed to rent the field to third persons or to let third person have it to Cultivate, neither of us at that time accepted said proposition, but George Beeler and Dow Cardwell afterwards accepted said proposition as made to me and George Beeler. I never had anything to do with it: The proposition made by C S Beeler and accepted by George Beeler and Dow Cardwell expresly provided that they were to make a good fence, five feet high and that the fence was to staked and with riders upon the fence wherever the water would effect the fence there are no stakes or riders on the fence anywhere, there were at least one hundred and fifty panels of the fence which are and might be effected by high water from Big River.
George Beeler has moved off to Crawford County in this State and does not as I understand

intend to farm said field this year. I heard Dan. Cardwell say sometime last fall that he had not further interest in the lease of said field and added that he had sold out his interest to George Beeler. this was before George Beeler moved off.— I heard defendants say that Bonaparte Dover had bought the crop of Corn raised in said field last year from George Beeler, while said Corn was still standing in the field. I have heard said Dover say that he had sold the stocks in said field to C S Beeler. I saw C. S Beeler turn his cattle into said field + in December last from that time on he the said C S Beeler had quiet and peaceable possession of said field, claiming it as his own, not only for the use of the stock field, but also the right to cultivate it during next year under the lease between himself and George Beeler, until he was ousted by defendants, I have heard defendants often admit that the title to land or field in controversy was in C. S. Beeler, George Beeler had fallen out with C S Beeler before he left, there are about Twenty acres in said field, Will in an ordinary crop year bring Fifty bushels to the acre, The field in controversy is worth fifty dollars a year I suppose or about Four dollars per month

Thomas G Dunsmore

(5) Sworn to & Subscribed before me at the place on the day & between the hours first aforesaid

Elias J. Honey Clerk

State of Missouri
County of Jefferson } I, Elias J. Honey Clerk of the Circuit Court within and for the State and County aforesaid do hereby certify that in pursuance of the within notice came before me at the Clerks office in the town of Hillsboro in said County Thomas Dunsmore who was sworn by me to testify the whole truth of his knowledge touching the matters in controversy aforesaid that he was examined and his examination reduced to writing and subscribed by him in my presence on the day between the hours at the place in that behalf first aforesaid and his said depositions are herewith returned.

(L.S.) In Testimony whereof I hereto set my hand and affix the seal of said Court at office in Hillsboro March 25th 1859

Elias J. Honey Clerk

When Plaintiff closed her Case,

And that the Defendants introduced evidence, tending to prove that George Beeler in the fall of 1858 employed Defendants to cultivate said field for the next year & was to give them 1000 bushels of corn for their hire, Defendants were to have all the rights

that Geo. Beeler had concerning the field: that George Beeler left shortly after the contract with defendants & has not been back since & that C. S. Beeler was not present when this contract was made between George & defendants, also the deposition of the defendants as follows:

Depositions for defendants

State of Missouri
County of Jefferson }

Depositions of witnesses produced sworn and examined on the first day of April in the year of Our Lord 1859, between the hours of Eight O'Clock in the forenoon and Six O'Clock in the afternoon of that day at my office in the County of Jefferson and State of Missouri before me C. E. Frost a Justice of the peace within and for the township of Big River in the State and County aforesaid, in a certain cause now depending in the Circuit Court of the County of Jefferson in the State of Missouri, between Conrad S Beeler Plaintiff, and James Cardwell, Huffman Cardwell, Dav. Cardwell and Reuben Cardwell defendants on the part of the defendants:

Thomas G Dunsmore of lawful age being produced, sworn and examined, on the part of the defendants, deposeth and saith in answer to Interrogatories

Mr. Dunsmore are you aware of any contract between Mr Conrad S Beeler and

2

(6) George. Beeler, concerning Mr Conrad Beeler's low er field.

I heard Mr Conrad S. Beeler make a proposition to Mr George. Beeler and me.
What was that proposition.
He went with us and shewed us the land where he wanted the fence set, he said we might have this land if we would clear it out for two years if we wanted to cultivate it ourselves if not he would give us two dollars per acre for the second year. He said he wanted it cleared off down to the line. He wanted the fence a good one staked and ridered where the river would interfere with it. they was to break the ground the first spring.
Did he say the fence was to be staked and ridered in any given time? He said that this ought to be done or he said it should be done before the river got up.
Do you consider the work completed.?
I consider the clearing completed. I dont consider the fence completed.
How much does the fence lack of being finished?
It lacks the stakes and riders
Was there any depth mentioned for the stakes to go in the ground?
Yes, two feet.
Do you know of George. Beeler's offering Conrad S. Beeler the field in question upon his fal

felling and giving the stipulated price?
Dont know anything about that
Do you know of George Beeler offering to settle up with Conrad Beeler
No Sir. I was not at Mr Beelers at that time
How long do you think it will take to complete that work stake & ridering &c?
Two hands a month
Did Mr Beeler say anything about putting logs any part of said fence?
He said the fence was to be made of rails
Do you consider George Beeler took up and worked under the contract or proposition made by Conrad, to you and him? Yes Sir;

Cross Examined

Did you have have an opportunity of knowing the business transactions of Conrad Beeler and George Beeler?
Yes Sir I did;
Where did you reside at the time this contract or proposition between Conrad Beeler and George Beeler was made? At Conrad Beelers;
Where did George Beeler reside at that time?
He resided in the house with Conrad Beeler;
Has Mr Conrad Beeler paid George Beeler the two dollars per acre.
I dont know whether he has or not

(7) Was Mr Conrad Beeler to have the feild in question provided George Beeler did not want to cultivate it himself at two dollars per acre? He was:
Was George Beeler to rent the feild to any one else?
Nobody else was to have it.
What amount of land is there in this feild?
About twenty acres:
Has the river ever been up since the contract?
Yes Sir. and this deponent further saith not

Thomas G Dunsmore

We the parties agree that this deposition shall be used in Court for both parties

James Cardwell & others

Subscribed and Sworn to before me on the day at the place and between the hours first aforesaid

C E Frost. Justice of the peace

State of Missouri
County of Jefferson } Depositions of witnesses produced and Sworn and examined on the first day of April in the year of Our Lord 1859 between the hours of eight O'Clock in the forenoon and Six O' Clock in the afternoon of that day at my office in the County of Jefferson and State of Missouri before me C. E Frost a Justice of the peace within and for the township of Big River in the State and County aforesaid in a certain Cause now depending in the Circuit Court of the County

of Jefferson in the State of Missouri, between Conrad S. Beeler plaintiff, and James Cardwell Huffman Cardwell Dow Cardwell and Reuben Cardwell defendants, on the part of the defendants.

Elisha Rogers of lawful age being produced sworn and examined on the part of the defendants deposeth and saith.

Do you Know of George Beeler Hiring James Cardwell & Huffman Cardwell to tend a peice of ground Known as Conrad Beelers lower field

Both George Beeler and the two Cardwells been with me. both parties said they wished me to read an instrument of writing which I did.

What Kind of writing was it.

objected to as not legal.

It was an agreement, binding George Beeler as Employer to pay James Cardwell and Huffman Cardwell to tend a certain field,

This Agreement is attached the marked A marked.

Were you a witness to George Beeler, hiring James Cardwell & Huffman Cardwell to tend this field?

I witnessed their signing the agreement.

Did every thing said in your presence amount to a bona fide Hiring of the two Cardwells to tend this field? Yes Sir.

Do you Know this field

Yes Sir I Know the peice of ground in dispute

(8) How much corn in a good season would 30 acres of such ground bring in a fair rate season I suppose it would bring fifty bushels to the acre, Is not stake and ridering and other necessary work to be done before tending worth considerable Yes, it would be worth something

Cross Examined

Do you know the size of the feild? No Sir

Do You know of any other agreement besides marked A.3 None other. and further this deponent saith not

Elisha W. Rogers

Subscribed and Sworn to before me on the day at the place and within the hours first aforesaid

C E. Frost. Justice of the peace

September 13/58

Agreement We the hereinsigned parties obligate and bind Ourselves to Cultivate a peice and parcel of land Known as Conrad S Beelers lower field Situated in Big River bottom in the County of Jefferson in State of Missouri. Bounded East by Big River South by the remainder of Beelers farm. West by the bluffs North by Enoch Thomas entry. now in the possession of George W Beeler and to be cultivated for his sole benifit and due in consideration of a remuneration to be paid

to us the hereunsigned to consist of One thousand bushels of Corn. Said land to be cultivated in the year eighteen hundred and fifty nine And we further obligate and bind ourselves to keep all and every fence in good order and repair. Otherwise we forfeit our claim to said remuneration Witness this our hands & seals this thirteenth day of September in the year of Our Lord Eighteen hundred and fifty eight

James N. Cardwell (Seal)

Attest A. H. Cardwell (Seal)

Elisha W. Rogers.

Conrad S. Beeler

vs

James Cardwell. Huffman Cardwell
Don Cardwell Reuben Cardwell.

To C. S Beeler, the above named plaintiff; you are hereby notified that depositions of witnesses to be read in evidence in the above cause on the part of the defendants will be taken before C E Frost in Big River Township in the County of Jefferson and State of Missouri on the first day of April 1859. between the hours of Eight O'clock in the forenoon and Six O'clock in the afternoon. and that the taking of said depositions if not completed on that day will be continued from day to day at the same place and between

(9) the same hours untill completed this 26th day of March 1859 James Cardwell & others.
This day personally appeared Pleasant Maness before the undersigned one of the Justices of the peace within and for the Township of Big River in the County of Jefferson and State of Missouri, who testified that he served the within by leaving a copy of the same with Conrad Beeler on the 28th day of March 1859. Given under my hand this first day of April 1859

C. E Frat. Justice of the peace

I. C E Frat. Justice of the peace within and for the township of Big River in the County of Jefferson and State of Missouri do certify that in pursuance of the annexed notice came before me at my office in the County and State last afore-said Elisha H Rogers and Thomas G. Dunsmore, who were by me duly sworn to testify the whole truth of their Knowledge touching the matter in controversy aforesaid, that they were examined and their examination reduced to writing and subscribed by them respectively in my presence, on the day, between the hours and at the place in this behalf first aforesaid and their said depositions are now herewith returned, and I further certify that said Elisha H. Rogers and Thomas Dunsmore are at this time residents of the said County of Jefferson

and State of Missouri. Given at my office in the County of Jefferson and State of Missouri this 1st day of April 1859

C. E Frost. Justice of the Peace

this being all the evidence on both sides the Plaintiff asked the Court to give the following instructions

Instructions asked by Pltff.

If the Jury find from the evidence that Conrad Beeler got the stock field from Dover, and put his cattle in the field, and was on the fast of March last at work in said field, and that defendants came in and drove him out they will find a verdict for the plaintiff

Refused

Unless the Jury find from the evidence that George Beeler assigned the lease to the Cardwells, with the assent of Conrad Beeler in writing then the Cardwells could acquire no title to the field in controversy under the lease to George Beeler

Refused

Even if the Jury find from the evidence that Conrad Beeler was not entitled to the field for the year 1859 and was in possession there of cutting and rolling ~~log~~ and burning logs on the first day of March 1859, and the defendants came in and drove out the plaintiff, they will find a verdict for the plaintiff, and assess such damages as he may be entitled to for waste and injury com

(10) mitted upon the premises.
The Court instructs the Jury that if they find from the evidence that Pltff had quiet & peaceable possession of the field in controversy & that defendants with force put him out they will find for Pltff.

That if the Plaintiff got possession of the field by buying the stock feed of Geo Beeler or his assignee then the defendants, never having had possession, cannot with force put Pltff off & they will find for Pltff.
which the Court refused to give, & that the Court on its own motion instructed the Jury as follows. viz
If the Jury find that the plaintiff rented the field in controversy to George Beeler for the term of two years, and that after the Expiration of the first season the said George assigned his lease to the defendants or some of them, without the consent in writing of the plaintiff, then before the plaintiff can lawfully take possession thereof, he must terminate the lease by giving ten days previous notice to quit possession. And the Plaintiff having failed to prove that he gave notice as above, they will find a verdict for the defendants.

Whereupon Plaintiff took a non suit with leave to move to set the same aside.

That afterwards to wit on the 9th day of said term plaintiff filed his motion to set aside said non suit which motion is as follows.

C. S. Butler
vs
James Cardwell et al } Appeal from J. P.

Motion for new trial

Now at this day comes the Plaintiff & moves the Court to set aside the non suit taken by him in this cause & to grant him a new trial for the following reasons

1. Because the instruction given by the Court on its own motion was erroneous

2d. Because the Court should have given the instructions asked for by Plaintiff

Thomas & Pepkin
Attys for Plaintiff

Endorsed. "Filed June 11th 1859

And that afterwards to wit on the 9th day of said term said motion coming up for hearing & the Court having seen and fully understood the said motion overules the same. to all of which decisions of the court in refusing the instructions ask by him & in giving the one given by the court on its own motion & in overuling said motion. the plaintiff excepts & objects. & tenders this his bill of exceptions and prays that the same may be signed

(11)

& sealed & made a part of the record in this cause, which is done in open court.

John A Stone (Seal)

Endorsed." Filed June 15th 1859.

And again on the said 15th day of June 1859 the following entry remains of record in said Court in said Cause, to wit

Conrad S Beeler
vs
James Cardwell et als } Now again at this day comes said plaintiff, and presents to the Court his affidavit and bond for an appeal from the Judgment of the Court, to the Supreme Court of Missouri, which being seen and heard is by the Court approved, and the said appeal granted. It is therefore ordered by the Court, that the Clerk of this Court make and send duly certified to the Clerk of the Supreme Court at St Louis, a complete transcript of the record and proceedings in this Cause.

State of Missouri } In the Jefferson Circuit Court
Jefferson County } June Term for 1859.

Conrad S. Beeler
vs } Appeal from J. P.
James Cardwell } Personally came before

me E. J. Coney Clerk of the Circuit Court within &
for the State County aforesaid Conrad S Beeler
the plaintiff in the above entitled Cause being
duly sworn says that he does not take an ap
peal to the Supreme Court from the judgment
of the Circuit Court in said Cause for vexation or
delay but because he feels himself aggrieved
by the judgment of said Circuit Court, further
says not. C. S Beeler

Sworn to & Subscribed before me
this 14th day of June 1859.
Elias J. Coney Clerk

Endorsed. "Filed June 15th 1859.

Know all men by these presents that we C S Beeler
as principal and Daniel Beeler & Sam Herrington
as Security are held and firmly bound unto James
Cardwell. Don Cardwell. Ruben Cardwell &
Huffman Cardwell in the sum of One hund
red dollars. to which payment well & truly to be
made we bind ourselves, our heirs executors & ad
ministrators by these presents. Witness our hands &
Seals this the 14th day of June 1859.
The Condition of the above obligation is such
that whereas the said C S Beeler has this day
taken an appeal from the judgment of the Cir
Court for Jefferson County in a certain Cause
wherein the said C S Beeler is plaintiff &

(12) James Cardwell & others are defendants.
Now if the said C. S. Beeler shall well & truly prosecute his appeal with due diligence to a decision in the Supreme Court, or such as the Supreme Court may direct the Circuit Court to give & if the Judgment of such Court or any part thereof be affirmed, that he will comply with & perform the same so far as it may be affirmed and shall pay all damages & costs which may be awarded against him by the Supreme Court, then this bond shall be void, otherwise it shall be in full force & effect in law.

C. S. Beeler (Seal)
Sam his mark Herrington (Seal)
Daniel Beeler (Seal)

Attest
John L. Thomas

Endorsed "Filed June 15th 1859.
Elias J. Coney Clerk

State of Missouri } ss
County of Jefferson }

I, Elias J. Coney Clerk of the Circuit Court within and for the County aforesaid hereby certify that the foregoing is a true, complete and perfect copy of the record and proceedings had in said Court in the Case of C. S. Beeler against James Cardwell and others as fully as the same remains on the record and on file among the papers in said Cause in my office

In Testimony whereof I hereto set my hand and affix the seal of said Court at office in Hillsboro August 12th 1859

Elias F Coney Clerk Cir. Ct.

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(10) 40

October T. 1859

Conrad S. Beeler
appellant

vs. & Transcript

James Cardwell et als
respondents

Appeal Jefferson Circuit Court.

Honey clerk Cir ct.
Fee $7.10

Filed August 23. 1859.

Wm. S. Glanville
C.J.C.

40

appt/ after bf/ res. stat. & bf/

Reversed & remanded 14 Dec. 1859, C. p. 24

$10.00 paid by pltff. Mr. Beckler

C. S. Butler Appellant
vs
James Cardwell et al
respondents

IN SUPREME COURT,
TERM, 18 59
Oct.

AND now come the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondents
2. That said Court rejected proper and legal testimony offered by Appellants
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by plaintiff
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the defendants when it should have been rendered for the plaintiff
10. That said Court overruled the motion for a new trial, made by plaintiff

Pipkin & Thomas for Appellant

And now come the said Respondents and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court of Jefferson County in said cause, as assigned by said Appellants

Abner Green
Atty for Respondents

40

C. S. Baker
vs
Jos Cardwell et al

Assignment of
Errors —

Pipkin & Thomas
attys

Filed 24 Oct. 1859
(W L Glanville
ck

SOLER
MASS

C. S. Beeler, — Appellant
Against
James Cardwell
and others, — Respondents,

In the Supreme Court, Oct. Term 1859.

Abner Green,
For Respondents.

Insists on the following points.

1 — The instruction given by the Court is right. George Beeler's agreement to let C. S. Beeler have the field the second year, if he did not want it, only gave C. S. Beeler a claim to the possession, based on contract, but did not give him the possession. — George never gave up the possession to C. S. Beeler. George Beeler was not bound to remain actually on the land all the time in order to keep possession. It was enough that he showed by his acts & declarations an intention to hold possession for the second year. — 11 Mo. Rep. 354, 4 Bibb 388, Spalding vs. Mayhall, et al. 27 Mo. 377.

2 — James, & Huffman Cardwell were employed by George Beeler to cultivate the land for him, and hence George's term continued. — But, granting that George's agreement with the two Cardwell's amounted to an assignment of his term, C. S. Beeler could not maintain his action of Forcible entry & detainer, or re-enter without first giving to George Beeler, or

the Cardwell's ten days Notice to quit, R. Statutes, 1012, Sec. 10, and 11, — Prentiss, vs. Warne 10 Mo. 601 —

3. — The instructions of Appellant were rightly refused, — Bonaparte Dover did not, and could not, acquire any interest in the Lease, by buying the Cow of George Beeler, — hence, he could give none to C. S. Beeler. And unless George Beeler had surrendered his Term to C. S. Beeler, he could not lawfully reenter without giving ten days Notice to quit.

In Supreme Court
Oct. Term 1859

C. S. Beeler
vs.
James Cardwell
& others

Respondent's
Brief

Filed 24th Oct. 1859
Wm L Scarville
Cl

C. S. Beeler, - Appellant
Against
James Cardwell
& others, - Respondents

In the Supreme Court, Oct. Term 1839.

Abner Green,
For Respondent,

Statement of the Case.

This was a suit of Forcible entry and detainer, brought before a Justice of the peace for possession of a field. The Justice giving Judgment against Plaintiff, he appealed to the Circuit Court, where Judgment being again rendered against him, he appeals to this Court.

At the trial evidence was given tending to shew that Coonrod S. Beeler rented to George Beeler & Dow Cardwell for two years the Field in question, - they to clear & fence certain New ground for the use of the field; and if they did not want it the second year, they were to let C. S. Beeler have it back for $2.00 per acre.

George Beeler & Dow Cardwell cleared the ground agreed upon, and made the fence, & cultivated the field for one year, - and then George Beeler hired James S. Cardwell and A. N. Cardwell to cultivate the field for him the next year, and he moved out of the neighborhood.

That George Beeler sold his crop of Corn to B. Dover in the fall, who sold the stock field to C. S. Beeler, who ~~without~~ turned his cattle in the field

during the winter - and in the spring, went in the field and began to pile up logs, when the Respondents came in to work, and forcibly turned him out, The said James N. and A. H. Cardwell claiming that they were tending the field for George Beeler.

On the trial Plaintiff asked the following instructions, which were refused,

If the Jury find from the evidence that Coonrod Beeler got the Stock field from Dover, & put his Cattle in the field, and was on the first of march last at work in ~~the~~ said field, and that Defendants came in and drove him out, they will find a verdict for the plaintiff.

2 - Unless the Jury find from the evidence that George Beeler assigned the lease to the Cardwells with the assent of Coonrod Beeler in writing, then the Cardwells could acquire no title to the field in Controversy under the lease to George Beeler.

The Court then on its own motion gave the following instruction

If the Jury find that the Plaintiff rented the field in Controversy to George Beeler, for the term of two years, and that after the expiration of the first season the said George assigned his Lease to the Defendants, or some of them, without the Consent in writing of the plaintiff, then before

the plaintiff can lawfully take possession thereof, he must terminate the Lease, by giving ten days previous notice to quit possession. And the Plaintiff having failed to prove that he gave Notice as above, they will find a verdict for the Defendants.

In the Supreme
Court, Oct Term 1859

C. S. Beeler
vs.
James Cardwell
& others

Statement
of the Case
By Respondents

Filed 24 Oct. 1859
Wm. S. Glanville Ck.

In the Supreme Court
Oct. Term 1859.

C. S. Butler Appellant
vs
James Cardwell Respondent.

Statement of the Case

The plaintiff leased to One George Butler for the term of two years a certain field belonging to plaintiff, reserving to himself the right if the lessee did not want to cultivate it the second year to take it at $2.00 per acre. George Butler transferred without plaintiffs consent to defendants. He also sold the first year crop to One Dover with the stock field Dover gathering the corn and sold the stock field to plaintiff who kept his cattle in it all winter. In the Spring of the second year plaintiff took possession of the field to prepare it for cultivation for that year when the defendants came in a gang and by force drove him out and took possession
Plaintiff brought suit of Forcible Entry against defendants before a justice of the peace, when there was a verdict and judgment against him from which he appealed to the Circuit Court. On the trial in the Circuit Court

Plaintiff asked the Court to give the following instructions which the Court refused.

1 If the jury find from the evidence that Conrad Buler got the ~~possession~~ the stock field from Doner and put his cattle in the field and was on the first of March last at work in said field and that defendants came in and drove him out they will find a verdict for the plaintiff

2. Unless the jury find from the evidence that Conrad Buler was not entitled to to the field for the year 1859 and was in possession thereof cutting and rolling & burning logs on the first day of March 1859 and the defendants came in and drove ~~him~~ the plaintiff they will find a verdict for the plaintiff and assess such damages as he may be may be entitled to for waste and injury committed upon the premises

3. That if the plaintiff got possession of the field by buying the stock field of George Buler or his assignee then the defendants never having had possession cannot with force put plff. off and they will find for plaintiff.

The court then of its own motion gave the following instructions

1. If the Jury find that the plaintiff rented the field in controversy to George Bulen for the term of two years and that after the expiration of the first season the said George assigned his lease to the defendants or some of them without the consent in writing of the plaintiff then before the plaintiff can lawfully take possession thereof he must terminate the lease by giving ten days previous notice to quit possession, and the plaintiff having failed to show that he gave notice as above they must find a verdict for the defendants,

Upon the giving and refusal of these instructions plaintiff took a non suit. And brings it here by appeal,

The main question to be settled in this case is whether the plaintiff was in the lawful possession of the premises when defendants came and forced him out.

Points of law made

1. That George Beeler the Lessee of the plaintiff could not legally assign the lease so as to give to defendants the possession or the right of possession.

2. A lease does not give possession, but only the right to the possession. An actual entry is necessary. Michaw vs Walsh Admr. of Wilcox 6 Mo Rep. 436

4. A tenant has no power to assign his interest in the leased premises without the written consent of the Landlord 11 sec. Landlord & Tenant act.

5. Plaintiff having taken the quiet and peaceable possession of the field, it was such a lawful possession within the meaning of the act regulating Forcible Entries & Detainers as would make the defendants liable for a Forcible Entry. Krevet vs. Meyer et al. 24 Mo Rep. 107.

6. The lease being forfeited by a breach of one of its conditions the plaintiff was entitled to the immediate possession, and having taken it peaceably and quietly, the defendants could not put him out in any way except those pointed out by law. 27 Mo. Rep. 111 near top. Upon the whole case the following additional authorities are relied upon. 27 Mo. Rep 377. Spalding vs Mayhall. 26 Ibid 581 Boraas Dalton. 11 Mo Rep Barren vs Ritter & Ritter. 354. Milliard on Real estate vol 1. 260. 26 Mo Rep. 116.

7. No notice to quit was necessary on the part of the plaintiff 10 - 11 & 12 sec. Landlord & Tenant act.

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C. S. Butler Appellant
by
James Cardwell et al

Statement of the
Case points & Authorities
by appellant
Pipkin & Thomas

Filed 24 Oct. 1859
W. L. Glanville
Clk

Conrad & Beiler Appl. v James Cardwell et al Respondents

From the facts proved in this case it is obvious that a question of fraud & the issue involved, was submitted to the jury in the instruction given by the Court. The jury were instructed that if the plaintiff rented the field in controversy to George Beeler for the term of two years, and that this said George assigned his lease to the defendants or some of them without the consent in writing of the plaintiff then before the plaintiff can lawfully take possession thereof he must terminate the lease by giving ten days notice to quit possession and the plaintiff having failed to show that he gave notice as above they will find a verdict for the defendants. —

The evidence shows that the land in controversy was leased by appellant for two years to ~~one~~ George Beeler and Don Cardwell — the latter of whom after the first crop was made sold his interest to his covenant

Butler, who sold the crop to Dover. Dover sold the stock-feed to appellant the Landlord, who took possession and kept his stock therein until about August of March, and while at work on the premises was forcibly ejected therefrom by the respondents.

It was also proved that the premises in question sometime during the year 1858 were sublet to the respondents or rather, the lease was assigned to them by Butler, to which, it does not appear the Landlord assented.

As the case is presented to us by the record the only question for the consideration of the jury was whether the appellant, plaintiff below, was in peaceable possession of the field and was ousted by force: if so, he was entitled to recover without reference to the question submitted to the jury in the instruction of the Court. ~~That~~ Whether there was an assignment of the lease or not to respondents, was immaterial. That would be important, as well as the question of notice in action by the Landlord against the assignee

of the lease to recover possession upon the ground of an assignment or transfer of the tenants term, or interest, without the ~~assent of the~~ Landlords assent. Act. Land lord and tenants Sec 10 & 11 2 RS 1012. It is conceded that in such case the Land lord could only regain the possession by a peaceable re-entry, or by suit after ten days notice to the Sub tenant or under tenant to quit.

In an action of forcible entry and detainer the right of entry or of possession, are questions not involved in the issue to be tried, ~~and of course is no defence to in such actions~~ It is evident that the Statute on this subject means to compel restitution of the possession to the party forcibly ousted, without any reference whatever to ~~the~~ such questions. It declares that no person shall enter upon or into any lands, tenements or other possessions and detain and hold the same, but when entry is given by law, and then only in a peaceable manner. The 16 Section of the act which says that the Plaintiff may sustain the issue by proof that he was lawfully possessed

of the premises and that the defendant unlawfully entered has received a construction which harmonizes with the tenor of the act, and the only one that would make effective, the remedy it gives. Kseirt v Meyer 24 Mo Rep 110. In that case the word lawfully was interpreted to mean ~~peaceably~~ nothing more than peaceably.

The instruction given was erroneous and the judgment will be reversed and the cause remanded the other judges concurring,

E B Ewing

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Beeler v Cardwell et al

Opinion of the Court

E B Ewing

Reversed & Remanded.

Filed 14 Dec. 1857
Wm S Glannice Cl.