

No. 710

Supreme Court of Illinois

Caesar Williams

vs.

John O. Alexander

(379)  7

Pleas held at Palestine, before the Hon. Justin Marlan,
Spring Term Crawford Circuit Court, 1839.

John Doe, on demise of
John C. Alexander
as
Caesar R. Williams } Action of Ejectment.

State of Illinois, Crawford County & Circuit, &c. -

Of the March Term, A.D. 1839.

Richard Roe was summoned to answer John Doe of a plea whereinon the said Richard Roe, with force and arms, &c. entered into a certain Tract of Land, being the West half of the South west quarter of Section Thirty-five, in Township Seven north in Range Tencien west containing Eight acres of Land, with the appurtenances, situate and being in the County of Crawford & State of Illinois, which John C. Alexander had demised to the said John Doe for a term which is not yet expired & ejected him from his said farm, and other wrongs to the said John Doe and against the peace of the People of the State of Illinois, &c. and hereupon the said John Doe, by C. S. Jauney, his attorney complains, that whereas the said John C. Alexander on the first day of September, in the year of our Lord 1833, at the County and Circuit aforesaid had demised the said tract of Land with the appurtenances to the said John Doe, to have and to hold the same to the said John Doe, and his assigns from the 3rd day of August, in the year aforesaid, for & during and unto the full end and term of seven years from thence next ensuing and fully to be complete and ended. By virtue of which said demise the said John Doe entered into the said Tract of Land with the appurtenances and became and was thereof possessor for the said Term so to him thereof granted, as aforesaid. And the said John

Doe being so thereof possessed, the said Richard Roe, afterwards, to wit:— on the 30th day of Dec: in the year aforesaid, with force and arms, &c. entered into the said tract of land with the appurtenances in which the said John Doe was so interested in manner and for the Term aforesaid, which is not yet expired, and ejected him the said John Doe out of his said farm, and other things to the said John Doe then and there did, to the great damage of the said John Doe and against the peace and dignity of the people of the State of Illinois, wherefore the said John Doe saith that he is injured and hath sustained damage to the value of \$100, and therefore he sues, &c.

Sanney, P. C.—

Mr. Caesar C. Williams,

Sir:— I am informed that you are in possession of, or claim title to, the premises in this declaration ^{of Ejectments} mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear at the next Term of the Circuit Court, to be holden in and for the County of Crawford and State of Illinois, at the Court House in Palestine, on the fifth Monday after the fourth Monday in the month of September next, by some Attorney of that Court, and then and there by a Rule of said Court to cause yourself to be made defendant in my stead; otherwise I shall suffer Judgment therein to be entered against me by default, and you will be turned out of possession. —

Yours, with great Respects,
Richard Roe.

Said this 16th Jan, 1837. }

John Doe, on the demise of
J. C. Alexander,
vs
Richard Roe. Ejectments. -

It is ordered by the Court,
by the assents of both parties, and their attorneys, that
Caesar B. Williams be made defendants in the place
of the now defendants Richard Roe, and shall imme-
diately appear to the plaintiffs action, and shall receive
a declaration in a plea of trespass and Ejectment of the
lands and tenements in question, and shall immediately
plead thereto not guilty, and upon the trial of the issue
shall confess lease, entry, and ouster, and insist upon his
title only. And upon the trial of the issue the said Caesar
B. Williams do not confess lease, entry and ouster, and
by reason thereof the plaintiff cannot prosecute his writ,
then the said Caesar B. Williams shall pay, such costs to
the plaintiff as the Court shall adjudge for such default
in the non performance of this rule, and Judgment shall
be entered against the said Richard Roe, now the named
ejector by default.

And it is further ordered, that if
upon the trial of the said issue, a verdict shall be
entered for the defendants, or if the plaintiff shall not
prosecute his writ, upon any other cause than for the
not confessing lease, entry and ouster, as aforesaid, then
the lessor of the plaintiff shall pay costs, if the plaintiff
himself doth not pay them.

It is further ordered, that this cause
be continued until next Term.

John C. Alexander
vs
Caesar B. Williams } Ejectments.
And the said Defendants.

comes and defends the wrong and injury when, &c. and for
plea to the said Plaintiff's declaration, says that he is not
guilty of the said supposed Trespass and Ejectment in
the Plaintiff's declaration mentioned, and of this he puts
himself upon the country.

Judah S. Gibson, atty for deft.

And Plff. doth the like.

McRoberts & Janney.

John C. Alexander

vs

Cassan R. Williams

Ejectments.

April Term, 1838.—

At this day came the parties by their counsel,
and the defendant upon affidavit made, moved the
Court for a continuance herein, which is allowed at his
costs. Therefore it is considered and adjudged by the Court
here, that the Plaintiff recover of the Defendant his costs
at this Term of the Court expended, and thereof have
Execution, &c.—

John Doe, on the demise of

John C. Alexander,

vs

Cassan R. Williams.

Action of Ejectment.

April Term, 1839.—

And now at this day came the parties
by their attorneys, and issue being joined herein, it is ordered
that a Jury come, and thereupon came a Jury to wit:—
Doctor Hill, James Wroolin, Richard Lagow, Sew. Williams
Mitchell, Isaac Walter, Francis M. Brown, Middleton
Brashear, Lewis Jones, James Higgins, Solomon Mace,
James Salisbury, Elisha Fitch, Twelve good & lawful
men, who being duly elected, tried and sworn the truth

to speak, upon the issue joined, upon their oaths do say,

"We, the Jury, find the defendant guilty and assess the damages at one cent." It is, therefore, ordered and adjudge by the Court, that the said John C. Alexander recover of the said defendant the possession of the Tract of Land claimed in said Declaration, to wit: The south west quarter of Section thirty-five, Township seven north of Range Fourteen west of the 2^d Principal Meridian, and have a writ of possession therefor, together with one cent damages, and also his costs about his suit in this behalf expended, by the Clerk to be taxed, and thereof have execution. Whereupon the defendant, by his counsel, filed his Bill of Exceptions herein, which is made a part of the Record, which is in words and figures, following, to wit:—

John Doe, on the demise of
John C. Alexander,

vs

Caesar R. Williams.

} Action of Ejectment.—

Be it remembered, that on the trial of this cause the plaintiff offered, in evidence to the jury, a copy of the Record of a Deed, certified by the Recorder of Crawford County, purporting to have been given by the Auditor of State, which Deed is in the words and figures following, to wit:—

The Auditor of Public Accounts of the State of Illinois, to all who shall see these presents, greeting:—

Know ye, that whereas I did, on the 20th day of January, A.D. 1831, at the Town of Vandalia, in conformity with all the requisitions of the several acts in such cases made and provided, expose to public sale a certain Tract of Land, being the west half of the south west quarter of Section Thirty-five, Township seven north in Range fourteen west, of the 2^d Principal Meridian, for the sum of one

dollar and 41 cents, being the amount of the Tax for the year 1830, with the interest and costs chargeable on said Tract of Land. And whereas, at the time and place aforesaid, John C. Alexander, offered to pay the aforesaid sum of money for the whole of said Tract of Land, which was the least quantity bid for, and the said John C. Alexander has paid the sum of one dollar and 41 cents into the Treasury of the State, I have granted, bargained, and sold, and by these presents, as Auditor of the aforesaid State, do grant, bargain and sell, the whole of the West half of the South West quarter of Section thirty-five in Township seven north in Range fourteen west, of the 2nd Principal Meridian, to John C. Alexander, his heirs & assigns. To have and to hold said Tract of Land to the said John C. Alexander, and his heirs forever, subject, however, to all the rights of redemption provided for by Law.

In Testimony whereof, the said Auditor
has hereunto subscribed his name, and
affixed his seal, this 23^d day of February,
1833. James T. C. Stapp,
Auditor.

State of Illinois,
Crawford County. ss. I hereby certify, that above to be a true and correct copy of the original deed on record in my office.

April 29. 1839.

Wm. D. Baker, Recorder.

which was objected to by the counsel for the defendants the plaintiff then proved that the original deed was lost & a millaid, whereupon the Court overruled the objection of the counsel for the defendants and admitted the copy of the record as evidence to the jury, to which opinion of the Court in overruling the objections and admitting the deed aforesaid, as evidence to the jury, the defendant by his counsel excepts, and prays this his Bill of Exceptions

to be signed, sealed, and made a part of the Record.

On the trial of this cause, among other things the defendant proved that he and those under whom he claimed, had had uninterrupted adverse possession of the lands in controversy, ever since the fall of 1825, and it was not proven by any witness that the lessee of the Plaintiff, or those under whom he claimed, ever had actual possession of the said land in the said Declaration described. The Plaintiff also proved that his Deeds covered the identical lands in controversy, upon which evidence the defendant moved the following instructions: That the paper, marked A and purporting to be a Deed from the Auditors of Public Accounts to John C. Alexander, confers no title upon said Alexander, and they should therefore find for the defendants.

2^d. The Court is further requested to instruct the jury that the several Laws existing at the time of said sale, making land subject to sale for the non payment of Taxes, are unconstitutional and void, and all sales of lands in this State made in pursuance of said several Laws are likewise void of none effect.

3^d. That inasmuch as the 20th section of the 8th Article of the Constitution of this State provides, "That the mode of levying a Tax shall be by valuation, so that every person shall pay a Tax in proportion to the valuation of the property he or she has in his or her possession", that, therefore, the Laws in existence at the time of said sale, and under which said sale was made, are unconstitutional and void.

4th. That land cannot be sold for taxes by the State government until there shall have been a judicial adjudication and a judgment in favor of the State for Taxes due.

5th.- If the jury believe from the evidence that there was an adverse possession for twelve years in the defendant

and those under whom he claims, and that the heirs of the Plaintiff, and those under whom he claims, never have been in the actual possession of the Lands in controversy in this suit, then this suit cannot be maintained. Which several instructions the Court refused to give, to which opinion of the Court in refusing to give the aforesaid instructions the defendant by his counsel excepts, and prays this his Bill of Exceptions to be signed, sealed, and made a part of the Record.

J. Harlan.

Sealed

And thereupon the defendant prays an appeal to the Supreme Court, which is granted him upon the condition that he file an appeal Bond in the penalty of one hundred and fifty dollars, with John Boyd his surety, which Bond is here filed and approved by the Court.

State of Illinois,

Crawford County ss-

I, William B. Baker, Clerk of the Crawford Circuit Court, do hereby certify that the foregoing eight pages contain a complete Transcript of the Record & Proceedings of the Circuit Court of the County aforesaid in the foregoing entitled cause.

In Testimony whereof I have hereunto
Subscribed my name and affixed the
Seal of said Court, at Palestine, this
One day of May, A.D. 1839.

Wm B Baker, Clerk

65-0167a

Sanford & Co.

Caesar R. Milliam

of } Ruor d
Enor

Wm Doe ex dem

John B. Alexander

Filed May 23^d

1839 - Jm Duncan

710

Revised by Hyland

only from
1839

State of Illinois } 1st. July term of the Court. 1839
Supreme Court }

Cesar R. Williams } Plff in Error

John C. Alexander } Deft. in Error

Afterwards to wit on the 5th day of July 1839 at this same term of the Court, before the Justices thereof, comes the said Cesar R. Williams by Orlando W. Ficklin his attorney, and says that in the record and proceedings, aforesaid, and also in the rendition of the judgment, aforesaid, there is manifest error in this to wit: That the declaration aforesaid and the matters therein contained, are not sufficient in law for the said John C. Alexander to have or maintain his aforesaid action thereof against him the said Cesar R. Williams. There is also error in this to wit: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given was for the said Alexander and against the said Williams, whereas by the laws of the land, the said judgment ought to have been given for the said Williams and against the said Alexander.

The Court erred, 1st. In admitting the copy of the record of the paper purporting to be a deed from the Auditor of the State of Illinois, to go to the jury as evidence without any proof of the due execution of the original deed & that Stapp was Auditor at the time the deed bears date 2nd. In refusing to instruct the jury that, the paper purporting to be a copy of the record of a deed from the Auditor to John C. Alexander, conveyed no title upon Alexander.

3rd. In refusing to instruct the jury that so much of the revenue laws of this State as authorise the sale of land for the non-payment of taxes are absolutely void because they are in derogation of the constitution of the State of Illinois.

4th In refusing to instruct the jury that a

sale of land for the non-payment of taxes before there has been a judicial decision fixing the amount of taxes remaining unpaid, is unconstitutional and absolutely void.

5th In refusing to instruct the jury that if the Williams and those under whom he claims had been in the actual adverse possession of the premises for eight years, ^{precluding the commencement of the suit} and that Alexander and those under whom he claims never had been in the actual possession of the premises. That then the verdict must be for Williams.

6th In refusing to instruct the jury that the mode of laying a tax at the time this tax was levied was in violation of the 20th section of the 5th Article of the ^{law pointing out the} Constitution. And that the mode of collecting the tax at the time the tax on the property in dispute was collected was in violation of the first & second sections of the 1st article of the Constitution of this State.

And the said Williams prays that the judgment aforesaid, for the errors aforesaid, and for other errors apparent in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all that which he hath lost by occasion of the said judgment &c.

Orlando B. Fickler
for P.H. in error

Esq. R. Williams

John C. Shearer

Assignment of Bonds

Filed July 9. 1839.

State of Illinois, scd.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of

Krauford

GREETING:

BECAUSE in the record and proceedings, as also in the rendition
of the judgment of a plea which was in the Circuit Court of
Krauford county, before the Judge thereof, between

John Dan Ex dem John A. Alexander
plaintiff and *Leazar*

R. Williams defendant it is said manifest error hath intervened to the injury
of the aforesaid *Defendant* as we are informed by *his* complaint, and we being
willing that error (if any there be) should be corrected in due form and manner, and that
justice be done to the parties aforesaid, command you that if judgment thereof be given, you
distinctly and openly without delay, send to our Justices of our Supreme Court the record
and proceedings of the plaint aforesaid, with all things touching the same, under your seal,
so that we may have the same before our Justices aforesaid at *Vandalia* in the county of
Lanham *on the 22 Monday in July*
Payette, on the next, that the record and proceedings, being inspected, we may cause to be done therein, to
correct the error, what of right ought to be done according to law.

Witness, the Hon. William Wilson, Chief Justice of our said
Court, and the seal thereof at Vandalia, this *23d*
day of *May* in the year of our Lord one
thousand eight hundred and *thirty nine*

J. M. Duman etc

Supreme Court

Caesar B. Williams

vs } Writ of Error

John Doe ex dem

John B. Alexander

Filed May 23

1839 Jm Duman

The People of the State of Illinois,

To the Sheriff of Vermillion County.

BECAUSE in the record and proceedings, and also in the rendition of the judgment, of plea which was in the Circuit Court of Crawford County, before the Judge thereof, between John Doe an *admirer* of John C. Alexander
Plaintiff & Caesar R. Williams

defendant it is said that manifest error hath interceded to the injury of the said *Defendant* as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Vandalia, before the Judges thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *John C. Alexander*

that *he* be and appear before the Judges of our said Supreme Court, at the next term of said Court, to be holden at *Springfield* Vandalia, in said State, on the *2^d* Monday in *July* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John C. Alexander* notice, together with this writ.

Witness, the Hon. William Wilson, Chief Justice of our said Court, and the seal thereof, at Vandalia, this *23^d* day of *May* in the year of our Lord, 1839.

J. McDunnack

Executed by Reading to the with
-in named John Alexander

May 30th 1839

Fees for Executing & Returning 63¹/₂

Travel 1 mile 6¹/₄

68³/₄

Milton Lesley App
W.C. Id

Supreme Court

Warrant to Return

on 3 fees paid

John Doe Ex dem

John to William

To Wm. D. D. D. D.

John Doe 10

1839- John Doe

Postage 25¹/₂