

12749

No. _____

Supreme Court of Illinois

Edwards

vs.

Edwards

71641  7

153 37

James O Edwards
vs
George J Edwards

153

1274

Hear before the Hon J. Wilson Dwyer,
Judge of the Sixth Judicial Circuit of the State
of Illinois at a term of the circuit court begun
and held at the Court House in the City of
Rock Island in and for the County of Rock
Island and State aforesaid on the first
Monday the Tenth day of September
A. D. 1854

Present: Hon J. Wilson Dwyer Judge
C. M. Brinsley Sheriff
Dwight M. Wood clerk

George J. Edwards } Change of Venue from Marion
" } Court
James O. Edwards }

Be it remembered that heretofore
tort on the 25th day of October A. D. 1854
the plaintiff filed in the said cause the
following declaration

State of Illinois } Marion Circuit Court
Marion County } October Term A. D. 1854
George J. Edwards }
O. Edwards being in default of answer that
whereas heretofore tort on the 25th day of
May 1854 at and within the County of
Marion in the State of Illinois the said George
J. Edwards was possessed in his own right
of the certain tract or parcels of land

Situated at the North East quarter of Section
 Nine (9) and the East half of the North East
 quarter of Section nine (9) Township Thirtieth
 (30) North Range Two (2) West of the fourth
 (4) Principal Meridian with the appurtenances
 which premises the said ~~James C. Edwards~~
 claims in fee simple and in right of
 the said James C. Edwards
 22nd day of May A.D. 1854 at the County
 of Mason State of Illinois entered into the
 possession of the said premises and ejected
 the said George J. Edwards therefrom, and
 still unjustly and unlawfully withholds the
 possession of the said George J. Edwards
 to his damage in the sum of Ten thousand
 dollars. Whereupon for the cause aforesaid
 the said George J. Edwards brings his suit
 B. C. Talliferro
 John C. Pepper
 attys for plaintiff

And afterwards on the 25th day of
 October 1854, the said defendant by his attorney
 filed his plea to defendant's complaint
 it is as follows to wit:

State of Illinois Mason County Circuit Court
 Mason County } October Term 1854

James O Edwards }
ads } In Examinant
George J Edwards }

And the said ~~plaintiff~~
Reads by his attorney ~~and says~~
the price and injury ~~in the~~ ~~re~~ ~~and~~ ~~for~~ ~~the~~
says that he is not guilty of unlawfully
withholding the premium claimed by the said
plaintiff as alleged in his said declaration
herin and of this he puts himself upon
the country &c.

J. J. Brantley
atty for def.

And the Plaintiff doth the like
B. C. Talbot
atty for plff.

State of Illinois } J. Quincy McNeil clerk of
Rock Island County } the circuit court in and for said
County do hereby certify that the foregoing is a true
copy of the declaration and plea filed in the
above cause; that the original thereof was sent
on taking the charge of same from Mason
County to Rock Island County and that on the
15th day of September 1837 by the agreement of
the parties the declaration and plea above
forth were ~~presented~~ ~~as follows~~ ~~and~~

"Filed the 15th day of September 1837 as of

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25 October 1854 in view of declaration and file
"file of that date and lost from the files"

"Quincy McNeil & Co"

I further certify that the manuscript of the
record from Mercer County was at that time
lost the 25 day of October 1857 lost from the
files in the case; that the undersigned considers
that paper a misapprehension of the law
of venue was taken only for the reason that
the then Judge John S Thompson
had been counsel in the case and refused
to hear the same; and that since that
time no effort has been made to supply
the place of the manuscript aforesaid

In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
this 4th day of April 1859
Quincy McNeil Clerk

I do afterwards certify at a term of the
aforesaid Court begun and held at the Court
house in this said for the County of W. H.
Island on the 1st day of September 1859
day of said term and the 1st day of said
month the following proceedings were had
to wit:

George J. Edwards }
James O. Edwards } Defendant

This day came the parties
by their attorneys and appeared
before a jury of seven men
Buffum, John Fairbairn, J. B. Stoddard,
Charles M. Knox, W. A. Hurd, Bailey
Davenport, E. A. Ames, Elijah Carter, W. C.
Lawrence, Herman Wolford, Alvin Cook and
William T. Riggs, who now each and severally
swore to well and truly try by the issue
joined and having heard the evidence
returned their verdict into Court which is
as follows to wit: "We the jury find the defendant
"guilty of withholding the possession of the
"estate mentioned in the declaration; we find
"the whole of the interest in the premises
"in the plaintiff in an estate in fee"

It is therefore ordered by the Court that
plaintiff have and recover of defendant
his costs in this suit expenses and that
a writ of Restitution issue against
the defendant. Thereupon the defendant
and prayed an appeal hereto which is
granted by the Court on condition that the
defendant file in bond in the sum of
Two hundred and fifty Dollars by the first day
of January next with such security
as will be approved by the Court of the Court

6 And afterwards to wit on the 31st day of December 1857 the said defendant filed his appeal bond which is in the words and figures following to wit

Know all men by these presents that we James O. Edwards as principal and John Marshall as surety of Mercer county in the state of Illinois are held and firmly bound unto George J. Edwards in the good sum of five hundred Dollars for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators jointly severally and jointly by these presents Witness our hands and seals this 1st day of December 1857

The condition of this obligation is such that whereas herebefore at the September term of the circuit court in and for the county of Rock Island in the state of Illinois the said George J. Edwards as plaintiff in a certain suit of ejectment received judgment for the seizure and possession of certain premises situate and being in Mercer county in said state and decreed in plaintiff's favor in said action of law

And whereas the said James O. Edwards at the term of said court aforesaid prayed an appeal for and was allowed an appeal to the Supreme Court of

7
Said State in and for the Grand division
thereof held at Ottawa in the county of
La Salle in said State.

Now if the said ^{James O. Edwards} ~~James O. Edwards~~
shall pay all the costs and charges which
he shall by said Superior Court be adjudged
to pay and all damages and interest
which he may be adjudged to pay in and
the said Judgment shall be affirmed
and shall also duly execute his said
appeals then the obligation to be void
otherwise of force.

James O. Edwards *J.P.*
John Mauck *J.P.*

Approved Dec 31. 1857

Quincy McNeil clerk.

State of Illinois }
Rock Island County } I, Quincy McNeil clerk
of the circuit court in
for said county do hereby certify that the above
and foregoing is a true copy of all the files in
the above entitled cause: That I have compared
the same with the Record thereof and find it
to be a perfect true and complete transcript
therefrom.

In Testimony whereof I have
hereunto set my hand and affixed
the Seal of said court this 10th
day of April 1857.
Quincy McNeil clerk.

State of Illinois } Of the September Term
 Rock Island County } of the Circuit Court in and
 for said County A. D. 1857

George J. Edwards

James O. Edwards

Be it Reminded that at the
 law of the court aforesaid this cause coming
 on to be heard before a jury the plaintiff
 offered in evidence a copy of the Patent
 from the United States to William Edwards
 of the land described in the plaintiff's
 declaration which was read to the jury
 a copy of which is as follows

James Monroe

President of the United States of America
 To all to whom these presents shall come greeting
 Know Ye that in pursuance of the acts
 of Congress appropriating and granting
 land to the late army of the United States
 passed on and since the sixth day of
 May, 1812 William Edwards having
 deposited in the general Land Office
 a Patent in his favor numbered 301.
 there is granted to the said William Edwards
 late a private in the Second Regiment
 of Riflemen a certain tract of land
 containing three hundred and twenty acres

9 being the north half of Section nine
of Township Thirteen north in Range
two west in the tract appropriated
(by the acts aforesaid for Military Bonuses
in the territory of Illinois.

To Have and to hold the said
half section of land with the appurtenances
thereto unto the said William Edwards
and to his heirs and assigns forever.
In Testimony whereof I have caused
these letters to be made patent and the
Seal of the General Land Office to
be hereunto affixed.

S. S.

Given under my hand at
the City of Washington this sixth
day of July in the year of
our Lord one thousand eight
hundred and eighteen and of
the independence of the United
States of America the forty the

By the President

Josiah Mays

James Monroe

Commissary of the General Land Office

The Plaintiff has offered in evidence
a deed from William Edwards to the
plaintiff in this suit of which
together with the proof of the execution
and recording thereof is in the records

10 and figures following to wit.

This Indenture made this 28th day of October in the year of our Lord one thousand eight hundred and fifty five between William Edwards and Sally his wife of the county of St. Clair and state of Illinois of the one part and George Joseph Edwards of the same county and state of the other part Witnesseth that the said William Edwards and Sally his wife for and in consideration of the sum of Two Thousand Six Hundred and fifty Dollars to them in hand paid the receipt whereof is hereby acknowledged do hereby grant bargain sell convey and confirm unto the said George Joseph Edwards his heirs and assigns forever the following described tracts of land lying in the state of Illinois viz The South half of the North West quarter of Section twenty Eight - The South half of the North West quarter of Section twenty nine - The South half of the North East quarter of Section twenty nine - the North end of the West half of the South East quarter of Section twenty nine containing twenty acres - The South half of the South East quarter of Section thirty - And the North East quarter of the North East quarter of Section

11 Thirty one, all in Township Two North, Range
Six West of the third principal meridian
Also the north half of Section Nine, Township
Thirteen north two West Situate in Monro County,
Illinois. Together with all and singular
the appurtenances thereto belonging or in anywise
appertaining To Have and to hold the above
described premises unto the said George Joseph
Edwards his heirs and assigns forever And the
said William Edwards and Sally Edwards
his wife unto the said George Joseph Edwards
his heirs and assigns against the claims of
of all and every person whomsoever
do and with warrant and force defend
by their persons. In witness whereof
the said William Edwards and Sally Edwards
knifs, of the first part have hereunto set their
hands and seals the day and year above
written

Signed Sealed & delivered
in presence of
C. Cunningham

William Edwards *LS*
Sally Edwards *LS*

State of Illinois }
St Clair ~~Not a~~ }
Justice of the peace of said county do hereby certify
that William Edwards and Sally Edwards his
wife whose signatures appear to the within
premise deed and who are personally

Known to me to be the persons described
in and who executed the same did
acknowledge that they executed the
said conveyance for the purposes therein
mentioned. And the said Mary
Edwards having been by me made
acquainted with the contents of the
said deed and examined separately
and apart from her said husband acknowl-
edged that she had executed the same and
relinquished her dower to the premises
therein conveyed, voluntarily, freely and
without compulsion of her said husband.
Given under my hand and seal
the 28th day of October A. D. one
thousand eight hundred and forty five
C. Cunningham J. P. Ill.

State of Illinois }
St. Clair County } I John School, clerk
of the County Court for St. Clair County and
ex officio recorder of Civil Commissions
in and for said county, certify that C. Cunningham
was on the 28th day of October 1845 an acting
Justice of the Peace of St. Clair County, Illinois
duly elected, commissioned and qualified, and that
full faith and credit is and ought to be given to all his
official acts as such Justice of the Peace.
Witness John School clerk of the court

13 Court and the Seal thereof at office
Belleville this 29th day of
July 1853



John Sahul

clerk Cr. Court.

State of Illinois } Recorder's office.
St Clair County } the 12th November A.D. 1848
I do hereby certify that the within
deed of conveyance & the annexed certificate
of acknowledgment were this day duly
recorded in Book P pages 720 & 721 of this
office
R. H. May
Recorder St. C. Co.

State of Illinois } Clerk's office Circuit Court
Macon County } Receiving July 9th 1851
I hereby certify that the within deed
and certificate is this day duly filed in this
office for Record and Recorded July 24 1851
in Book D of Deeds on pages 174 & 175 and
No 3896 and examined
Thomas B. Calhoun clerk

The defendant then admitted the copy in
possession of the premises to be a correct
copy of the plaintiff's deed.

The Defendant then offered in evidence the original patent from the United States to William Edwards in the words and figures following to wit:

I, James M. McKim,
President of the United States Land Office,
Do all to whom these presents shall come greeting
Know ye, that in pursuance of the acts of
Congress appropriating and granting land to the
late Army of the United States passed on
and since the Sixth day of May 1812 William
Edwards having deposited in the General Land
office a warrant in his favor numbered 301
there is granted to the said William Edwards late
a private in the Second Regiment of Mississippi
a certain tract of land containing three hundred
and twenty acres being the north half of
Section Nine of township thirteen north in
Range two west in the tract appropriated (by
the act aforesaid) for Military Purposes in
the territory of Illinois. To Have and to hold
the said half section of land with the appur-
tenances thereof unto the said William Edwards
and to his heirs and assigns for ever.
In Testimony whereof I have caused this letter
to be made patent and the seal of the General Land
office to be hereunto affixed. Given under my
hand at the city of Washington in the year
of our Lord one thousand eight hundred

15 and Eighteen and of the Independence of
the United States of America the
fifth thereof



By the President

James Monroe

Isiah Meigs Commissioner of the General Land Office

Defendant then offered in evidence a deed
from Said William Edwards to Defendant
in the suit. with the proof of recording them
entered and proof of acknowledgment then
appearing, a copy of which is in the
words and figures following to wit,

This Indenture made and entered into
this twentieth day of June in the year
after Said one thousand eight hundred and
fifty one between William Edwards of
the county of Mercer and State of Illinois
of the first part and James O. Edwards
of the county of Mercer and State of Illinois
of the second part Witnesseth that the
Said William Edwards party of the first
part for and in consideration of the sum
of Eight hundred and fifty dollars to him
of the United States by him paid
by the said party of the second part before
the executing and delivery of these presents
the receipt whereof is hereby acknowledged

has bargained sold transferred and
quit claimed and by these presents
does assign, let, convey and quit
claim unto the said party of the first
part the hereunto assigned all that and
little interest and estate in and to
certain parts of in and to two ^{acres} tracts
of land or lots of ground situate lying
and being in the county of Mercer and
State of Illinois and ^{described} as follows to wit The North East quarter
of Section number nine (9) and the East
half of the North West quarter of Section number
nine (9) both in township number Thirteen
(13) north of Range Two (2) west of the
fourth principal meridian. To have
and to hold the aforesaid tracts of land or
lots of ground together with all and
singular the appurtenances, improvements
and privileges thereto belonging or in
any wise appertaining to him the said
James O. Edwards his heirs and assigns forever.

In Witness whereof the said party of
the first part has hereunto set his hand and
seal the date above written.

Signed Sealed and delivered
in presence of
John S. Thompson

James O. Edwards

17 State of Illinois } This day personally
Mercer County } appeared before me the
undersigned clerk of the county court in and
for the county of Mercer and State of
Illinois the within named grantor William
Edwards who is personally known to me
to be the identical person whose name is
subscribed to the within and foregoing deed
of conveyance to the said James O. Edwards as
being made and executed the same, and
acknowledged that he had made and
executed the same to the said James O. Edwards
for the uses purposes and considerations therein
mentioned and expressed.

In Testimony whereof I have hereunto
set my hand and affixed the
seal of the said county court
at my office in Keokuk on the
seventeenth day of June in
the year of our Lord one thousand
eight hundred and fifty one

John S. Thompson
clerk of the county court of Mercer
County Illinois

State of Illinois
Mercer }
Not Public County }
Keokuk }
Illinois }

I hereby certify that the within deed and
foregoing certificate are duly recorded

19 William Edwards and James O. Edwards being
in custody &c. For that whereas hereof
prior on the first day of July A.D. 1853
at and within the county of Mercer in
the State of Illinois the said George J. Edwards
was possessed in his own right of two
certain tracts of land to-wit as the North
East quarter of Section Nine and the east half
of the North West quarter of Section nine in
both of which tracts of land are in township
thirteen north of Range two east of the
fourth principal meridian with the appurtenances
which premises the said George J. Edwards
claimed in fee and being so possessed that
the said William Edwards and James O. Edwards
afterwards went on the second day of July
A.D. 1853 at the county aforesaid entered into
the said premises against the said George J. Edwards
therefore and still unjustly and unlawfully
withheld the possession of the said premises
from the possession of the said George J. Edwards
to his damages the sum of Fifteen hundred
Dollars. Whereupon for the aforesaid reasons the
said George J. Edwards

20 To William Edwards & James Edwards, Srs

You are hereby notified that the
Declaration a copy of which has been
sent and to which copy the same will
be filed in the Court at the County of
Hercules, State of New York, on the
A.D. 1833 being the 30 day of the Month of June
That upon filing the same a rule will be entered in said
Court requiring you to appear and plead to said declaration
within twenty days after the entry of said rule; and
that if you neglect so to appear and plead a
Judgment by default will be entered against
you the said William Edwards and the said

21

James O Edwards and the Said George J.
Edwards will recover possession of the
premises specified in the said declaration
this 18 day of July A.D. 1853

John Manning
Tolifun & P. H. H.

State of Illinois }
 Mercer County } James Garner Sheriff
 of Mercer County being }
 and Says that he is }
 Oct. 17th 1833 }
 Edw. C. & J. A. }
 this caused me to do the act of }
 of the premises for which this action is }
 brought, each with a true copy of the notice }
 in miting to the said declaration and }
 likewise hereto annexed and further said not }
 I have submitted to before }
 on this 17th day of October A.D. 1833 } James Garner
 Thomas B. Colan etc } Sheriff

State of Illinois }
 Mercer Circuit Court }
 County of Mercer }

Be it Remembered that heretofore
 writ on the 26th day of October in the year
 of our Lord One thousand eight hundred and
 fifty three William Edwards and James O.
 Edwards by their attorney Law W. Thompson
 filed in the clerk's Office of the Court aforesaid
 a plea as defendants, to the said declaration
 a copy of which is as hereto annexed

State of Illinois }
 Mercer Circuit Court }
 Mercer County } October Term A.D. 1833

23 George J. Edwards }
 William Edwards & }
 James O. Edwards }

Exhibition

And the said defendants by their
 attorney comes and defends the said force and
 injury when v.c. and says he is not guilty
 of unlawfully withholding the premises claimed
 by the plaintiff as alleged in his said declaration
 and of this they put themselves upon the country.

Geo W Thompson

att'y for defendants

State of Illinois } October Term A.D. 1853
 Mercer County } Mercer Circuit Court

Now before the Honorable John A.
 Walker Judge of the fifth Judicial Circuit
 Court of the State of Illinois sitting in Exchange
 with the Honorable C. M. Wood Judge of the tenth
 Judicial Circuit of the State of Illinois at a
 Term of the Circuit Court begun and held at
 the court house in the Town of Kitchburg in
 the County of Mercer and State of Illinois
 on the 1st day of November 1853
 in the case of ~~George J. Edwards~~ vs ~~James O. Edwards~~
 and fifty three

Present ~~James O. Edwards~~ Sheriff
 Thomas B. Catron clerk

24 And afterwards came on the 3^d day
of the term being the 26th day of October 1853
the following proceedings:

Geo. J. Edwards

William Edwards and }
James O. Edwards }

The day came Plaintiff by his
attorney and made proof of due service of
a notice and declaration herein, Thereupon
said declaration and notice is filed in this
Court It is thereupon ^{and ruled} ordered by the court
that the defendant appear and plead to
said declaration in twenty days and that
if he neglect so to appear and plead
a judgment by default will be entered
against him, and the Plaintiff will have
possession of the premises described in said
declaration.

Geo. J. Edwards

"
William Edwards
James O. Edwards }

Ex. &

And the said defendants came
by their attorney and filed the plea to
Plaintiff's declaration.

25 State of Illinois } April Term A.D. 1854
Murder & Assault,

Plas before the Hon. J. C. M. Head
Judge of the tenth Judicial Circuit in the State
of Illinois at a Court begun and holden
at the Court House in the City of Keokuk
on the third Monday in the month of April
in the year of our Lord one thousand eight
hundred and fifty four it being the 17th day
of said month

Present Hon. J. C. M. Head Judge

James Gunn Sheriff

Thomas B. Calver Clerk

And afterwards tried on the third day of
the term being the 19th day of April 1854
the following proceeding was had to wit

George J. Edwards

William Edwards
James O. Edwards

In Extradition

At this day being called to be sworn
came the Plaintiff
defendant
issue being joined
the County of Keokuk
has put more to wit James
William, Oliver Vanmeter, Thomas

26 William Prouty, Samuel G. McClun, Thomas
S. Hall, John Moorhead, A. D. Dwyer,
John S. Mott, John [unclear] Smith
Brown, who being called to the bar
to try the case, and after hearing
the evidence and arguments of counsel
retired to consider, under the direction of the Court,
their verdict, and soon returned into court
with their verdict which is as follows, That the jury
do find for the defendants, Thereupon
came the plaintiff and entered his motion
for a new trial herein

And afterwards went on the fifth
day of the term being the 21st day of
April 1884. the following proceedings among
others were had

George J. Edwards	}	Counsel
James O. Edwards		
William Edwards		

And now this cause came on for a
hearing on the motion herein made herein
for a new trial and the court being now
fully advised and satisfied that the
plaintiff had paid the costs of the trial
herein had, It is considered that the
motion be sustained. Thereupon it is ordered
by the court that a new trial be granted herein

27 agreeable to the provisions of the Statute
in such case made and provides

And afterwards went on the sixth day of the
term being the 22nd day of April 1854 the
following proceedings amongst them were had

George J. Edwards

William Edwards

James O. Edwards

Defendants

At this day came the plaintiff
by his attorney and dismissed this suit
at costs of plaintiff. Thereupon it is ordered
by the court that this suit be dismissed and
that the defendants receive of the said
plaintiff this certain sum of his behalf expended
and that they have execution therefor

State of Illinois, Clerk's office

Morgan County, Circuit Court

I Harry S. Seiler, Clerk of
the Circuit Court for the County of
Morgan do hereby certify that the
preceding is a true and correct copy of the
file and the proceedings in the
of the circuit court in the
said County of Morgan

In testimony whereof I do hereby



Subscribed my name and affix the seal
of said Court this 11th day of March A.D.
1857.

It is to be seen the plaintiff then on the 11th day of March
account of immateriality of the evidence (concerning the
any objection to the admissibility of the evidence (concerning the
which objection of the plaintiff the court then and
there sustained and said Court now then and then
excluded as evidence by said Court, to which
decision of the court excluding said words
as evidence the said Defendant then and then
and at the time excepted. The Plaintiff then
offered in evidence the deposition in evidence
the deposition of Robert A. Edwards which
was read to the Jury and is as follows

Deposition of witnesses produced and sworn and
examined before me Samuel J. Reed a Justice of the
peace at office in Tecumseh in the county of
Shannon and territory of Kansas on the
20th day of May A.D. 1857 by virtue of
the annexed Commission and upon the
interrogations thereto attached to be read as evidence
in a certain suit at law now pending in the
Circuit Court of Rock Island County in the
State of Illinois wherein George J. Edwards
is plaintiff and James O. Edwards is defendant
in behalf of the said plaintiff.

Deposition of Robert A. Edwards

29 The Said Robert A. Edwards being first duly sworn doth depose and say in answer to the several interrogatories as follows to wit:

Int. 1. What is your name age and place of residence?

Ans. My name is Robert A. Edwards I am twenty seven years old. I live in Shawnee County Kansas Territory

Int. 2. Are you acquainted with George J. Edwards the plaintiff in this suit and James O. Edwards the defendant in this suit? If so where, when, how long and under what circumstances have you known them?

Ans. I am acquainted with George J. Edwards. I am acquainted with James O. Edwards. I have known them to the winter 1835. I know them in Missouri and St. Clair County in Illinois. I have known them for the last twenty years. I have known them under various circumstances.

Int. 3. Are you acquainted with William Edwards? If so where, when, how long and under what circumstances have you known him? Is he the same as George J. Edwards the plaintiff or James O. Edwards the defendant? If so where?

30 And state further ~~whether~~^{if} you know whether
the said William Edwards is the same as William
Edwards to whom the government of the
United States granted by patent the
North half of Section (9) in township
Thirteen (13) north of Range (2) west of
the fourth principal Meridian situated in the
County of Mercer and State of Illinois

Answer I am acquainted with William Edwards
have known him for twenty years. I
have known him from 1834 to 1854 in
Mercer and St Clair Counties in the State
of Illinois. I am related to him. He is my
father. He is related to George J. Edwards
and James O. Edwards. He is their father.
I know that he is the identical William Edwards
to whom the government of the United States
granted by patent the North half of Section
nine (9) in township thirteen (13) north of Range
two (2) west of the fourth principal Meridian
situated in the County of Mercer in the State
of Illinois

Inter 4 Do you know of the said William Edwards
arriving by deed to the said George J. Edwards
the said tract of land mentioned in the third
interrogatory and afterwards making a deed of
conveyance to James O. Edwards the defendant

Know? If so, state as near as you can the circumstances by which you know that said conveyance was made, about the time and if you know whether the said James O. Edwards knew of the prior deed or conveyance made as aforesaid, if any such there was by the said William Edwards, and if the said James O. Edwards did know state the circumstances by which you know he did know it.

Answer I know that William Edwards conveyed by deed to George J. Edwards said tract of land mentioned in the 3rd Interrogatory and I believe afterwards William Edwards made a deed of conveyance of the same tract of land to James O. Edwards. James O. Edwards told me himself that William Edwards executed to him a deed of conveyance for said tract of land. James O. Edwards told me this in the summer of 1850 or 1851. I do not recollect exactly. I know that James O. Edwards knew of the prior deed of conveyance made by the said William Edwards to the said George J. Edwards. James O. Edwards told me that he knew of the deed of conveyance made by William Edwards to the said George J. Edwards to said

32 tract of land but that he did not regard it as valid.

Int 5 Do you know whether the said William Edwards at any time had any land ~~in the tract~~ mentioned in 3rd interrogatory herein to the said James C. Edwards the defendant herein. If so do you or not know that the said James C. Edwards at the time of said conveyance made to him as aforesaid (if any there was) knew that said land had been previously conveyed to George J. Edwards the plaintiff herein.

Answer I do not know positively that William Edwards conveyed the said tract of land mentioned in the 3rd Interrogatory herein to James C. Edwards, but believe that he did. I know that James C. Edwards knew at the time said conveyance of said land was made to him by the said William Edwards that said land had been previously conveyed to George J. Edwards.

Int 6 Did you ever have a conversation with the said James C. Edwards in relation to the said conveyance of said land mentioned in the 3rd interrogatory herein to the said George J. Edwards by the said William Edwards? If so, state what said conversation was as near as you can and the circumstances under which said conversation took place.

33.
Answer

I have had conversation with James C. Edwards in relation to the prior conveyances of the land mentioned in 3rd Interrogatory herein to George J. Edwards by William Edwards. I asked James C. Edwards if he was not afraid to buy said tract of land. He said that he was not, considering the said George J. Edwards' title to said land worthless. I replied to the said James C. Edwards that the title of the said George J. Edwards to said land was better than any title he the said James C. Edwards could get. To which the said James C. Edwards again replied that the title of said George J. Edwards to said land was worthless. The circumstance which produced the above conversation was that I desired to purchase a part of said land myself.

W. C. Edwards

County of Winnebago
County of Shawano
Justice of the peace in and for the county
and territory aforesaid do hereby certify that
the above deposition of Robert A. Edwards
was sworn to and signed by the said deponent
before me on the 20th day of May 1857 at the place
of the said deponent's residence and in the
presence of the undersigned Justice of the Peace
at the place and on the day and in the presence
of the undersigned Justice of the Peace and
at my office in Shawano this 20th day of May 1857
L. J. Smith J. P.

34

Territory of Kansas,
County of Shawnee *J. S.*
State of the United States
The *J. S.* *J. S.* *J. S.* *J. S.* *J. S.*
of *J. S.* *J. S.* *J. S.* *J. S.* *J. S.*
S. *J. S.* *J. S.* *J. S.* *J. S.* *J. S.*
and now is an acting Justice of the peace
within and for the County of Shawnee and
Territory of Kansas, duly commissioned
and qualified according to the laws of this
territory and that full faith and credit is
due to his official acts as such. I further
certify that the above signature purporting to
be his is his true and living signature.

J. S.

In Witness whereof I have signed
at my hand and affixed the seal
of said court at my office in
Shawnee, this 24 day of May A. D.
1857. *Chas. R. Bullcock*

By *J. S.* *J. S.* *J. S.* *J. S.* *J. S.*

The defendant then made motion to exclude
from the case and the consideration of the jury
the said deposition on the ground that it was
substantially the motion of the defendant the said court
overruled and permitted said deposition to
go to the jury as evidence, to which decision
of the court the defendant then and there assented.
The foregoing is a true and complete transcript
of all the evidence adduced at the trial of

35 this case and the said matter not appearing
of Record the Defendant prays that the same
be entered in a bill of exceptions and made
a part of the Record in this case and that
the same be attested and signed and sealed
by said Court where it done

J. H. Pomeroy Seal

36 State of Illinois } In the circuit court of said
Rock Island County } Term, August 1857

George J. Edwards

James O. Edwards } It is remembered that
at the time of the circuit court aforesaid the
said cause of George J. Edwards plaintiff vs
James O. Edwards, being on trial the said plaintiff
by his counsel asked for the following instruction
to the jury to wit:

- 1 If William Edwards conveyed the land in
controversy to the plaintiff and afterwards conveyed
the same land to defendant and defendant
died was first put on Record. Yet if the
defendant at the time he received his deed
from William Edwards knew that William
Edwards had before that time conveyed the
land to plaintiff, then the conveyance
from William Edwards to defendant was
inoperative as against the plaintiff.
- 2 If William Edwards conveyed the land
in question to plaintiff and afterwards
conveyed the same land to defendant
and defendant put his deed on Record
first. Still the deed to defendant will not
operate as against the deed to plaintiff.

27 If the defendant at the time he received the conveyance to him had such notice of the prior conveyance, as would be sufficient to put an ordinarily prudent man upon inquiry in relation to the same.

3 If the defendant at the time of the execution of the deed from William had knowledge of the prior conveyance of the land devised in his deed by William Edwards to George J. Edwards (the plaintiff) he is bound by the effect of such prior deed although he may have considered it invalid.

4 If the jury believe that the deed from William Edwards to the plaintiff was filed for record in St Clair County before the making of the deed from William Edwards to the defendant it is evidence tending to prove that that the first mentioned deed was delivered to plaintiff prior to the making of the said second deed.

Which said instruction was approved by the court and given to the jury in accordance with the law, and to the jury at the time said instructions were given. The defendant then, at the time the jury were deliberating, did not appear to object, and inasmuch as the matter does not appear of record, defendant prays

38 that this his bill of exceptions be attested
Signed and approved on _____ of _____
the Court in said _____

State of Illinois
Rock Island County J. Quincy McNeil clerk of the
Circuit Court in and for said County do certify
that the foregoing is a true perfect and complete
Record of the above entitled cause and contains
all the pleadings evidence, orders, instructions and
finds belonging in the said cause that I have
compared the same with the originals on file in
my office and find it to be a true transcript
therefrom.

In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court this 4th day
of April 1857

Quincy McNeil clerk.

State of Illinois In the Supreme Court
Third Grand Division of said Division and
State at the App. Term thereof at Ottawa,

James A. Edwards
Appellant

App. Term A.D. 1859-

George J. Edwards
Appellee

And now comes the
said James A. Edwards appellant in
the above entitled cause, and says
that in the sum & proceedings of the

Court below and also in the rendition
of judgment him, manifest error
both intrinsic to the injury of said
appellant, in this twist:

Because the Court below exercised
error at the trial of said cause
which should have been admitted

Pravsky & Smith

Atty for Appellant,
and now comes the said appellee says that in
the record of proceedings of said cause and in the
rendition of the Judgment of said cause there is no
error the prop said error be affirmed

B. C. Cook

for appellee

James O Edwards
vs
George O Edwards

Transcript of
Record.

Filed April 11. 1889
L. L. Cook
Clerk

Court below and also in the rendition
of judgment him, manifest error
both intrinsic to the injury of said
appellant, in this twist:

Because the Court below exercised
error at the trial of said cause
which should have been admitted

Pravsky & Smith

Atty for Appellant,
and now comes the said appellee says that in
the record of proceedings of said cause and in the
rendition of the judgment of said cause there is no
error the prop said error be affirmed

B. C. Cook

for appellee

James O Edwards
vs
George O Edwards

Transcript of
Record.

Filed April 11. 1889
L. L. Cook
Clerk

BRIEF.

JAMES O. EDWARDS,

Appellant

vs.

GEORGE J. EDWARDS,

Appellee,

*Appeal from Rock Island
County.*

BEARDSLEY & SMITH,

for Appellant.

The record in this case shows that the parties to this suit, both derived title from the same source, through William Edwards: the plaintiff below (the appellee,) by deed dated Oct. 25th, A. D. 1845,—recorded Nov. 12th, A. D. 1845, in St. Clair County, and in Mercer County, where the premises are situate, July 9th, A. D. 1851.

The deed of appellant, (defendant below,) bears date 17th June A. D. 1851, and was recorded in said Mercer county, July 1st, A. D. 1851, eight days earlier than the deed of the appellee.

The record also seems to show satisfactorily, that the appellant, at the time he took his deed of the premises, had notice of the title of appellee; and hence it is claimed that the deed last in date, but earliest of record, is inoperative to pass the title, as against the plaintiff below.

To obviate this difficulty, the def't. below offered in evidence a copy of a record showing a verdict and judgement in his favor, in respect to the same premises sought to be recovered in this suit,

in which former suit the appellee in an action of ejectment to recover possession of these same premises, was plaintiff, and this appellant and William Edwards, were defendants. This record so offered in evidence, also shows that this appellee, after verdict and judgement against him, paid the costs of that suit, and took a new trial according to the statute in that behalf provided, and afterwards dismissed his suit.

This copy of record, offered in evidence in this suit, by the appellant, was excluded by the court below.

The question now arises did the court err in excluding said record.

On behalf of appellant, it is claimed, that the record thus excluded, showed a bar to the appellees right of recovery in this suit. The subject matter involved, had, by the former trial, as between those parties becomes *us judicatores*, as the title then stood.

The appellee in his former suit, after verdict and judgement against him, took a new trial, after paying costs, which, it is true he had a right to do; but having done it, and afterwards dismissing his suit, he cannot thereby annul the effect of the judgement against him.

In order to do so, he must pursue his statute right or remedy, that he thus invoked in his behalf. He must use it, not as a ruse or evasion, to circumvent his opponent, but for the honest purpose intended by the statute. It is evident the statute does not contemplate, that by taking a new trial of right, the former judgement and all proceeding under it are wholly vacated, and the parties placed in *statu quo*, vide § 34 and § 35 Rev. Statute, Title Ejectment—Under the condition of things mentioned in these sections, the parties merely change positions, the plaintiff becoming defendant, and the defendant, plaintiff.

But, to permit a party plaintiff thus to nullify a judgement in ejectment herein, would be a fraud upon the law, and an abuse of the right given him by statute. Having set aside the judgement without cause, and after a full and fair trial, he does so under an obligation to pursue the special remedy under the statute. He cannot claim the remedy in part to his advantage and then abandon it to the injury of the other party.

This view of the case is fully sustained by the court in Frazier, vs. Weller, ET. AL. 6. McLeans, Rep. 11.

We can see no reason why the court should regard with overmuch favor this provision of our statute in regard to new trials in

not indicated

merely

ejectment, especially in that class of cases mentioned in Rev. Statutes, § 30. title Ejectment. Under this section, a party after a full and complete trial, if unsuccessful, can take a new trial without cause, and as a matter of right—an indulgence extended to a party in no other action, and one of doubtful policy, and questionable constitutionality.

This new trial, of right, after a full and fair hearing before jury is certainly not a common law right; and when we remember the provisions of the federal constitution, that "no fact tried by a jury shall be otherwise re-examined in any court, than according to the rules of the common law," it seems somewhat troublesome suppress doubts of its constitutionality.

Chief 153

J. O. Edwards
appellant,

Geo. J. Edwards
appellee

Mearns & Smith
for appt

The verdict was
wiped out by the
pouncing a new
trial and then
putting over the
trial, is not the
of another action

James O. Edwards }
 vs }
 George A. Edwards }

9 1/4 13 R 2 West 4 principal

Plaintiffs proof.

Exemplified copy of Patent from the United States to William Edwards Dated July 6th 1818
 Deed from William Edwards to Geo A Edwards dated 26th October 1845 Recorded in St Clair County November 12th 1845 Recorded in Mercer County July 9th 1851

Defendants Proof

1st Original Patent to William Edwards
 2nd Deed from William Edwards to James O. Edwards
 dated June 17th 1851
 (Abstracts says July 1851)

In the Circuit Court of the District of Columbia
 and James O Edwards vs Geo A Edwards
 verdict and judgment for Geo A Edwards under
 the Statute then Plff dismissed his suit

Rebutting proof by plff

Plaintiff proved that James O. Edwards at
 the time he took his deed from William Edwards
 for the premises in dispute knew that William

Edwards had conveyed the premises to George J. Edwards

The only Question is did the former proceedings in Worcester County bar the plffs recovery in this suit there was no ^{adjudication}

The action of ejectment at common law was a possessory action, after traversals concerning the court would entertain a bill of peace which would quiet the title our action of Ejectment is in analogy to this

If this former suit was a bar where does it rest, what is the bar, is it the former verdict that is set aside, is it the Judgment, that is vacated is it the nonsuit, this will not be pretended

The case in 6th Mass is not in point it only decides, that where the party has had one trial in a State Court he must keep on in the State

Court, and should not be permitted to go into the federal Court, this is only to avoid conflicts between the Courts

153

Edwards

vs

Edwards

Dickey's points

Supreme i

2 Film 400

3 Film 600

Peterson R 46-58

Bonnie L Leis 306 2.

3 B ins 234

James A Edwards

15

George J. Edwards

Experiment

B. C. Cooks -
points

The Budget of manuscript is no less

10^m Saunders 207

Archbold's from the 89

1 Saunders 291

2 Macell & Selwyn 444

1 Wilson's Reports 89

5 Lohu

1 Peters Reports 74.

4 Gilman 497

Supreme Court
April Term 1859

Edwards

vs
Edwards

The position I take
in this matter is that the former
verdict & Judgment for defendant
is not a bar ^{to any thing} - and never was
& would not have been if
it the same had not been
set aside -

1st it Common Law a judgment
in ejectment was not a bar to any
2nd thing - By our statute is not
a bar when rendered for a defend
ant - See Ejectment Statute
sections 24 - & 29 Scates Statute
page 217 -

(Comment)

Section 24 specifies the form of
the verdict in seven different states
of case - ^{all of which are cases} where the plaintiff succeeds
but says nothing about verdicts for
defendants - The 7th Clause of Section
24 - provides "The verdict shall specify
"the estate estat"
"by the plaintiff" There is nothing

Said any where in the Statute
about any title being established
by a defendant -

Section 29 - provides

Every judgment in ejectment
rendered upon a verdict shall be
conclusive "as to the title estab-
lished in such action" - evidently
referring to the title shown ~~to the~~
~~established~~ by the verdict to
have been established by the
plaintiff as provided in Clause
7th of Section 24 -

In fact a defendant
can not establish a title on
the trial he only defeats plaintiff's
action by his proof - Again
a defendant may have a
verdict & judgment without
establishing any title - & for
aught that appears may have
had his verdict on the want
of proof of possession -
Did the Legislature intend that
a verdict of not guilty for
defendant - (which might as

L. A. D. King

[12747-25]

JAMES O. EDWARDS, Appellant, }
versus
 GEORGE J. EDWARDS, Appellee. }

APPEAL FROM ROCK ISLAND COUNTY

DRURY, Judge, presiding.

BEARDSLEY & SMITH, for Appellant.
 TALIAFERRO and others for Appellee.

Action of ejectment to recover the seizin and possession of northeast quarter of section nine (9), and the east half of the northwest quarter of section nine (9), township thirteen (13) north, range two (2) west, fourth principal meridian.

Seizin and ouster alleged the 20th May, 1854.

Plea: Not Guilty.

The plaintiff, to maintain the issue on his part, introduced and read in evidence a duly authenticated copy of patent from United States, granting to William Edwards the land in question, dated 6th day of July, A. D. 1818.

Next, a deed from William Edwards to George J. Edwards, dated 25th day of October, A. D. 1845, duly acknowledged, conveying said land.—Recorded November 12th, 1845, in St. Clair county.—Recorded July 9th, 1857, in Mercer county. The defendant below admitted himself in possession of said premises; whereupon the plaintiff rested.

The defendant then offered, and read in evidence, the original patent from the United States to William Edwards, dated 6th July, 1818, granting to him the land in controversy.

Next, a deed from said William Edwards to James O. Edwards, defendant, dated 17th June, A. D. 1851, conveying the premises in question, and recorded July 1, 1851.

Defendant next offered in evidence a duly authenticated copy of record of the Circuit Court of Mercer county, the substance whereof is as follows:

Said record shows, that at the October Term of the Circuit Court of Mercer county, A. D. 1853, the plaintiff in this suit filed his declaration in ejectment, in the manner prescribed by statute, against this defendant and William Edwards, whereby he sought to recover the seizin and possession of the same premises sought to be recovered in this suit, and therein alleging his seizin and ouster on the first day of July, A. D. 1853.

That at said Term, the defendants in said suit filed their plea of not guilty in due form.

Record,

Page 1,

2,

3,

8,

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13,

14-15,

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That at the April Term of said Court, A. D. 1854, a trial of said cause was had, which resulted in a verdict and judgment for defendants.

26

That at the same Term of said Court, the plaintiff made his motion for a new trial, according to the statute in such case provided, and, after having made proof of payment of costs, the Court granted a new trial therein, according to the statute in that behalf.

27

That afterwards, and at the same Term of Court, the said plaintiff moved to dismiss his said suit, which by the Court was done, agreeable to said motion; whereupon it was ordered by the Court that said defendants have and recover their costs of said plaintiff.

28

To the introduction of which said record in evidence in this case, the plaintiff objected (waiving all objection to the informality of the certificate attached to and authenticating such record); and the Court sustained such objection, and refused to permit said record to be read in evidence to the jury; to which decision of said Court, excluding said record as evidence, the defendant then and there excepted.

29

Said plaintiff then introduced, in evidence to the jury, the deposition of Robert H. Edwards; and said deponent states, substantially, that he knows the parties to this suit; that William Edwards is the father of plaintiff and defendant, and deponent; that said William Edwards is the patentee and identical person to whom the United States granted, by patent, the lands in controversy in this suit. Deponent states, that he knows that William Edwards conveyed said lands by deed to George J. Edwards (the plaintiff), and believes that said William Edwards afterwards conveyed said lands to James O. Edwards (the defendant); said James O. told the defendant this, in the summer of 1851 or '52. Defendant states that he knows James O. (the defendant); knew at the time he took a conveyance of said lands from said William Edwards, that the said William had previously conveyed the same by deed to said George J. (plaintiff); that said James O. told deponent so.

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Deponent further states the circumstances under which the conversation occurred between deponent and said James O., in relation to said land; that deponent was anxious to purchase a portion of it, when the title of said land was talked over between them.

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The foregoing is substantially all the evidence adduced at said trial.

36

On the part of the plaintiff, the Court was requested to charge the jury as follows:

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37

1. If William Edwards conveyed the land in controversy to the plaintiff, and afterwards conveyed the said land to the defendant—and defendant's deed was first put on record—yet if the defendant, at the time he received his deed from Wm. Edwards, knew that William Edwards had, before that time, conveyed the land to plaintiff, then the conveyance from William Edwards to defendant was inoperative, as against the plaintiff.

2. If William Edwards conveyed the land in question to plaintiff, and afterwards conveyed the same land to defendant, and defendant put his deed on record first, still, the deed to defendant will not be operative as against the deed to plaintiff, if the defendant, at the time he received the conveyance to him, had such notice of the prior conveyance as would be sufficient to put an ordinarily prudent man upon inquiry in relation to the same.

36-7
3. If the defendant, at the time of the execution of the deed from Wm. Edwards, had knowledge of the prior conveyance of the land described in his deed by Wm. Edwards to George J. Edwards (the plaintiff), he is bound by the effect of such prior deed, although he may have considered it invalid.

*This filing in St. Clair
proves nothing -*
4. If the jury believe that the deed from Wm. Edwards to the plaintiff was filed for record in St. Clair county, before the making of the deed from William Edwards to the defendant, it is evidence tending to prove that the first mentioned deed was delivered to plaintiff prior to the making of the said second deed.

And on the part of the defendant, the Court was requested to charge the jury as follows:

1. In order to entitle the plaintiff to recover in this suit, by virtue of a title derived from William Edwards, older in date, but not recorded in Mercer county at the time the defendant took his title from said William, and caused the same to be recorded in said county, it is necessary for the plaintiff to satisfy the jury by evidence that the defendant had full notice of the prior conveyance of the premises in question to the plaintiff in this suit: otherwise, the jury should return a verdict for the plaintiff.

2. The plaintiff in this case, having given in evidence an original deed to himself from Wm. Edwards, of the premises in question, must prove that said deed was delivered to him, either by direct or circumstantial evidence: otherwise, said deed will not have the effect to pass the title to the plaintiff.

The Court gave the instructions to the jury, so asked by plaintiff, and for giving the same, at the time thereof, the defendant then and there excepted.

The Court also gave the aforesaid instructions asked by defendant.

Verdict and judgment for plaintiff; to which judgment plaintiff excepted.

15-8

Edwards vs. Edwards

Alfred

Filed April 20, 1901

W. H. Edwards