

No. 14557

Supreme Court of Illinois

Anderson

vs.

Hassler

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Anderson v. Hassler

No. 106 - 45

J. W. Middleton & Co., Stationers, 126 Lake St.

Anderson

Hassler

37

1864

Lacon Mich. 9th 1864

Sir

We send Record in case of Anderson &
Maugh vs. Kapler.

Please file issue with of Error and Sci
fc. to hear Errors and direct to Sherris of
Bureau Co and send to us & Oliver

Yours truly

Barry Shaw

Chas. Eugene Bank

at Ottawa Ills.

We send \$11.50 If more required will
send when advised.

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the *Circuit* Court for the County of *Putnam* - 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 *Putnam* County, before the Judge thereof, between

Henry Hassler

plaintiff, and

Oscar Anderson & Richard R. Hargle

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

Anderson & Hargle

as we are informed by *Them*

complaints and we being willing that error should be corrected, if any there be, 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 the 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 Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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.

Printed by J. C. Norton

Witness, The Hon. ~~JOHN D. CATON~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *eleventh* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Sixty *four*.

S. Seland
Clerk of the Supreme Court.



106

Oscar Anderson

et al. —

No. 106

vs.

Henry Hassler

WRIT OF ERROR.

FILED Dec. 11th A. D. 1864.

L. Seland

Clerk.



STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Bureau County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Putnam County, before the Judge thereof, between

Henry Hassler

plaintiff, and Oscar Anderson & Richard R. Naugh

defendants, it is said that manifest error hath intervened, to the injury of the said

Anderson & Naugh

as we are informed by their complainant, the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices 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

Henry Hassler

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Henry Hassler

notice, together with this writ.

Pinckney C. Walker
Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 11th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Iceland

Clerk of the Supreme Court.

I have served this writ this 28th day
March A.D. 1864 by reading the same
to the within named Henry Hapster
as I am commanded

Silas Batty Shff of
Buman County Ill

By Charles Savage Deputy

Alan Anderson &
Richard A. Mangle
vs.
Henry Hassler

SCIRE FACIAS.

Filed April 17th
A. D. 1864

L. Leland Clerk.

Fees \$120
Paid by Batty & Shaw
Silas Batty Shff

State of Illinois
Third Grand Division } 56.

In Supreme Court
In April Term A.D. 1864

Henry Hassler

vs

Oscar Anderson +
Richard R. Waugh

} Error to Tipton County

Judgment in Replevin
at October Term A.D. 1863 for damages and cent
+ property replevied Dollars; costs

~~Dollars~~ and costs of suit to be taxed

Issue a writ of error to the Circuit Court
of Tipton County against, Henry Hassler, in
favor of Oscar Anderson and Richard
R. Waugh returnable on

Bangs & Shaw for Hff. in Err.
Burns & Cummins for Aff. in Err.

Dated March 10, 1864

To the Clerk of the Supreme Court of the
Third Grand Division

106
Anderson trad
D
Hassler

Tracings for a writ of
Error

Filed clerk 11. 1864.
Leland
CR.

The court erred in refusing to let the La
clued go in evidence to the jury. It is
evidence in connection with other matters
offered to be proven & already in evidence
to make out a defense for the defendant
under the 47 section of the Chapter of
the Revised Statute of 1845 intitled Eject
ment. That section provides that
"Every person who may hereafter ^{be} evicted
from any land for which he can show a
plain clear & connected title in law or
equity deduced from the record of some
public office without notice of an
adverse title in like manner derived
from record shall be exempt & free from
all & every species of action writ or
prosecution for or on account of any
rents or profits or damages which
shall have been done accrued or incurred
at any time prior to receipt of actual
notice of the adverse claim by which
the eviction may be effected provided
such person obtained possible possession
of the land,"

By the 54 section of the same chapter.

the actual notice to be given the claimant in possession is defined which is

The bringing of a suit in law or equity by one of the parties or by leaving an attested copy of the entry survey or patent from which he derives his title or claim with the ~~other~~ party his wife or other free person above the age of 16 years on the plantation.

This statute is a perfect shield and protection to the one in possession under such apparent title held in good faith without notice actual of the adverse claim by virtue of which he is finally ousted.

The law does not require the occupant to investigate or inquire whether another has or ~~not~~ a paramount title, but puts him at rest & encourages him to use & improve the land & ^{have} its products & all the appurtenances till actual notice brought home to him of his defect of title and of the paramount title in another.

He is to have the mesne profits & be exempted from all "species of action writ or prosecution for or on account of any rents profits or damages" prior to receipt of actual notice.

The law does not intend that the owner

of the paramount title shall sleep upon his rights and thereby reap a real benefit from his own laches.

It does not allow him to lye by and suffer the occupant under an apparent title to convert the only product of the land as in this case into cord wood and deliver it in market & then convert the wood & labour & expences of the industrious occupant to his use without compensation.

If this be so the occupant under such title is in worse condition than one who enters ^{into} possession & enjoys the benefits of the lands without title of record.

By the common law an action of Trespass vi et armis was the appropriate remedy to recover Mesne profits and damages after the judgment in Ejectment. ^{1 Chittys Pleadings p 193 with Mesne profits} But the action could not be maintained till the successful claimant was invested with the possession. The party in possession claiming title is treated as a Trespasser and not as Tenant nor as a contractor or covenantor. It cannot be assumed that he agreed to pay the rent & for the damages. If he is a Trespasser he is liable as for an injury to the possession. The successful party can be said to have

no possession till after entry and then
his possession is supposed to relate back
to the time when his right accrued
(Smith's Leading Cases pp 614, ⁶¹⁵ vol 1)
Morgan vs Wernick 8 Wend 87 Burrows
Austin 4 Verm Rep 105 Lillingham vs Adams
pp 382.

Mesne profits could be recovered only from
the time of the demise laid in the declaration.

The Statute provides that the plaintiff
recovering in Ejectment may file a sugges-
tion of his damages in form similar to a
declaration in assumpsit for use & occupation
which shall be entered upon the record
of the proceedings or be attached to & form
part of the proceedings & be a continuation
of the proceedings in the Ejectment suit,
and provides for service of copy of such
proceedings on the defendant and provides
for the pleadings & defense which may
be made & for offsetting for the improvements
made by defendant to the amount of mesne
profits &c. See Revised Statute of 1845 Pages
209 & 210 Sections from 36 to 41 inclusive
Sections 42 & 43 on page 210 of Revised Stat-
ute provides for the proceedings when no issue
of fact is made upon such suggestion or
in case of judgment by default.

which provision of the statute abolishes the ancient action of Trespass & provides this mode of procedure mentioned as contained in the foregoing sections as a substitute therefor which provision of the statute undoubtedly provides for the adjustment of the rights of the parties where the occupant-evicted has no such ^{plain} claim & ^{connected} ~~color of~~ title as is mentioned in the 47 section before referred to.

The mode of adjustment of the rights of the parties where there is such claim & plain clear & connected title as mentioned in the 47 section without notice of the adverse claim provided for in the 48-49-50-51 52 & 53 sections of the chapter intitled.

Ejectment will apply only to such case of eviction where the occupant has such title and claims the benefit of his improvements as in the cases of Rop & Irving & Pryor & Irving decided in 14 Ill 171.

These two modes can be adopted alone at law to determine the rights of either party upon eviction. The remedy is special & exclusive, it is intended to provide a kind of equitable mode of adjustment such as the rules of the common law does not provide for. The intention is to give relief to ^{the} plaintiff, not provided for & to let

in such defense as the law does not generally allow. A Court of Equity alone could do full & complete justice to the parties even where the right is declared or existed & where the Statute law points out no remedy. The Common law does not allow of the pleas of the ~~xxx~~ set off for the judgment. The right & the remedy are created by the statute.

The value of the improvements ~~were~~ not allowed at common law at all Equity sometimes interposed to allow them as an off set to the value of the mesne profits but there only were they allowed as an off set. The occupant making the improvements however innocent he might be in taking & holding the possession & making the improvements could not recover for them in a suit at law or equity but must lose them unless equity could relieve him when sued for the mesne profits.

To allow the plaintiff below to recover in Replevin the profits would be to deprive the defendant of his improvements for he cannot off set them nor can he turn round & sue for his improvements as plaintiff and besides if he could it would induce a multiplicity of suits & unnecessary

expenses & delay. and would defeat the policy & equity of the statute which intends a summary cheap speedy & equitable remedy so that complete justice shall be done in one action to all parties concerned.

The statute having provided this specific right & mode ^{of procedure} not attainable at all at common law without which complete justice fails necessarily excludes all other rights & remedies. It is a common maxim that the expression of one thing is the exclusion of others and this is clearly so where there is such incompatibility in attempting other remedies and where the adaption of other remedies would impair the rights of the parties.

This is only another mode or remedy adopted by the Plaintiff below to recover the measure profits & damages as the wood the turf the coal the stone the minerals the fish in the pond or any thing which the land produces upon or below the surface are profits (See Bouviers Dictionary term profits & measure profits).

Now the law is the bonafide covenant under a Tax deed which is utterly insufficient to protect possession or establish title excepting

under the limitation laws where there has been possession & payment of taxes for 7 successive years or payment of taxes for 7 successive years where the land is vacant is sufficient to protect the occupant in good faith from all "writs prosecutions or actions", for rents profits or damages which have accrued or occurred previous to actual notice of the adverse claim or title (See 14 Ill 171)

This is the deduction from this decision as will be seen from the record proceedings & decision although the reported case does not fully verify the deduction. See Blackwell on Tax Titles ¹⁸⁶⁹ where the law is quoted & reviewed.

A fair construction of the Statute of this State when all its provisions are construed together on the subject under discussion is that no compensation for mesne profits received or damages done by the occupant under an apparent title as mentioned in the 47 section of the Ejectment act where he enters peaceably can be recovered by suit or proceeding instituted by the party receiving possession either before or after eviction but such occupant is exempted from all proceedings for recovery thereof excepting

such as accrued after actual notice of the paramount title.

He has a perfect shield & protection under his title till notice and this is for the encouragement of agriculture for the improvement of the country the furtherance of the interests of the government of society the protection of the innocent occupant and to prompt owners of real estate to vigilance & perseverance in asserting their rights that others may not be wronged & blasted in their hopes and lose the fruits of their labour.

Such pay for improvements as is usually obtained ~~as~~ but a poor recompense for the loss of time and toil & care expended in preparing the same for comfort & convenience.

It requires the affirmative act of the bona fide occupant under such title after eviction to call the court into action to appoint commissioners to adjust the rights of the parties. He must move in the matter. He must make the application unless he has received ~~residue~~ profits after notice or trespassed upon the premises so as to render him liable to damages. If the other party can apply

for the appointment of the Commissioners then the Statute does not protect him from the Writ prosecution & action, and the 47 section of the Statute referred to is a nullity. And yet there is no doubt that if he applies to the Court for an allowance for betterments put upon the land he would be charged with the Mesne profits as an offset to the improvements for the Statute is altogether equitable in its whole scope & ~~bearings~~ and he must receive equity only upon the terms of doing equity which is the rule applied to all who seek equitable relief.

If this is not the construction to be given to this provision then there is in effect no perceivable difference between the occupant with an apparent title & a claimant without paper title and the Statute is mere nonsense. It is a shadow as is his title derived of record without the substance. The Statute would seem to create a distinction without a difference.

The object of the Statute being to establish equality of right & provide equitable remedies so as to get rid of the harsh rules of the Common

law to protect the innocent occupant and enforce diligence should be strictly enforced & liberally construed so as to accomplish this & whatever ends

The rule in equity where the occupant is ignorant of the adverse or paramount title is to allow mesne profits from the time of filing the bill and this is the rule of the civil law. and it is said the laws of some of the European States go even further than this and allow mesne profits & damages only from the rendition of judgment or decree. See the notes to Lillinghams & Adams at page 387

The spirit of the Statute is the same as the civil law it follows the equitable rule and should be construed & applied so as to enforce the equities between the parties as in Chancery & as is done by the rules of the civil law.

It is important that these provisions of the Statute receive a construction that the citizen may know his rights and seek his remedy.

If this Replevin can be sustained it should be known that owners of paramount title may avoid the tedious & tardy remedy of

bringing Ejectment before he can recover mesne profits. And if he can wrest from the occupant his crop or other products of the soil & appropriate his labour in this way and avoid the off set for improvements then he can make his laches in giving notice & bringing suit in Ejectment profitable to him and minims to the occupying claimant and in fact defeat the law allowing for improvements entirely.

The evident construction of the law is this. First where the occupant has no apparent title derivable of record as mentioned in the 147 section of the statute he may be sued in a summary suit for the profits & damages after ouster only not before as the statute says the plaintiff recovering in Ejectment may recover the damages &c. see Section 36 of the ~~Ejectment~~ act.

Second where there is an apparent title under which the occupant claims the statute provides for the appointment of commissioners to go upon the premises & adjust the rights of the parties without suit after first providing that the ~~occupant~~ shall be exempted from all suits for the mesne profits & damages in the 147 section.

Now in both cases the right to sue or have the profits & damages & improvements

adjusted accrue only after eviction.
At common law Trespass was the appropriate remedy as the defendant was in not as Tenant but wrongfully & without permission and there could be no implied contract and Trespass could not be maintained as there was no possession to support it till eviction. And the common law prohibited the action from being brought till eviction as has been seen till eviction. Titles to real estate are not to be tried at any rate in this way and the Statute has not enlarged the right. But has simply provided another mode of adjustment and cannot by implication change the common law rule. The Statute thus changing the common law is to be construed strictly.

The Statute at any rate was made more particularly for the benefit of the occupant than the ~~other~~ party. It is intended to extend his rights & remedies & curtail those of the other which were considered unjust & arbitrary.

Probably such a mode of recovering mesne profits & damages was never before attempted where both parties claim the land under adverse titles after all the legal investigations had for ages upon these questions.

The Tax deed should have gone to the jury with the other evidence offered in connection therewith and the instructions were wrongfully given

Replevin will not lie where the plaintiff to establish his title to the personal property has to make proof of his title to the land from which the property was taken unless he was in the actual possession and there seems to be no difference of opinion by the courts upon this question

Morris on Replevin pages 57+58 + cases there referred to

By a late statute the plaintiff in the Replevin suit is estopped from disputing the title of defendant before till he had tendered double the amount of taxes & costs paid for the land with interest. Statute of 1861 page 170 and therefore the tax deed should have been admitted, when offered as absolute title -

Burns & Cummings
Bangs & Shaw. Attys
for plaintiffs in Error -

106 - 44
Oscar Anderson

vs -
Henry Hooper

Plaintiff's Argument

Filed April 22, 1864
J. Leander M.

Burns & Cummings
Barns Shaw
for plaintiff

Oscar Anderson & } Error to Putnam,
 Richard R. Waugh } Supreme Court of Ill.
 vs }
 Henry Hapler } April T. AD 1864.

In this Cause the defts in error (who are the plaintiffs in the Court below) established his title to the Cord wood sequestrated, by proving that the land upon which the Plaintiffs in error (who were the defts in the Court below) had cut such wood, belonged to the plaintiff Hapler.

The defts below ^(Plaintiffs in error) insist in defence to the action
 1st That they having had color of title and possession, that under the Exemption law of this State, they are exempt from this action.

To this the defts in error replies,

- 1st That this is not a Suit of Exemption,
- 2^d That defts below had not been evicted, or any judgment of Eviction been rendered,
- 3^d That such defts ^{below} had no clear & Connected title in law or equity deduced from the record of some public office.

That defts below not having introduced any judgment, precept, or notice of the Expiration of Redemption, They did not establish any Connected title deduced from the record of some public office.

2^d Defts below insist, that this action can not be sustained, because they claim, that their tax ~~title~~^{deed} could not be attacked, until the taxes with the interest were paid or tendered, as required by the Statute of 1861,

That ^{to this} the Deft in error replies "

1st That Defts below had no right to have had their tax title in evidence until they produced the judgment & precept —

That not having produced such judgment & precept, their tax deed was not received in evidence, and there was no occasion to attack such deed "

2^d That such tax deed was obtained on tax Sale of 1860, while the Statute requiring payment or tender of taxes was passed in 1861 — That the legislature could not impart validity to a tax Sale, made before the enactment of the law, that was invalid and void, That if the legislature could enact that, a tax deed obtained on a Sale made prior to such enactment, could not be attacked only on certain points, unless the taxes were paid with interest, they had the right to declare such tax deed, should not be attacked in any point, unless such taxes & interest were paid or tendered, and if the legislature could enact that the taxes & interest should be paid,

They could enact, that the full value of the land should be paid to the grantee of the tax deed, or his deed should not be attacked, and thus declare, that though when this tax sale was made, it gave no right to the purchaser, to demand the land or money paid, yet the legislature had the authority by subsequent law, to require that the owner of the land should pay the purchaser at an invalid and void sale, certainly money or such owner should lose his land, on a claim that was totally worthless when the same was obtained, certainly such a construction would not be constitutional

3^d Deft in error insist, that as no redemption notice was given, the statute of 1861 does not require any tender or payment of taxes.

Pleffs in error insist that the pleffs in Court below, should have proved that they defts in Court below, gave no such notice, But Deft in error claims as the Supreme Court has decided that the party who affirms a material fact has to prove it, that a negative is seldom or ever required to be proved by the opposite party

1 & 2 140 3^d Pleffs in error & defts in Court below, insist that Replevin will not lie

and cite Morris on Replein Page 57 -
But on the same page of the authority cited
It is said, that Replein will not lie for a
house built upon leased land, while the
16 Ill, 151 Supreme Court of this State holds it will,

13 Ills
198 Our Supreme Court holds, that the owner of
timber cut off of his land, can follow and
replein it, so long as it can be identified

19 Ills
281, Our Statute has enlarged the remedy by
action of Replein, and made several
essential changes, so that it is now a
Statutory remedy.

2 Maine
(Shepley) 216, Where the tenant for life in possession cut
trees without the permission of the reversioner,
it was held that such reversioner could
maintain Replein for the trees so cut,

1 Wendell Since in New York the Statute has been
111 extended to permit Replein for unlawful
3 Denis detention as well as for the taking, Replein
79, in the Detinet as well as trover will
lie in such cases as this —

When trees or any thing else attached
to the freehold are unlawfully detached
therefrom. The property thus unlawfully

3 Wendell Separated from the freehold, becomes
108 the personal property of the owner of
the inheritance, and such owner can
maintain trover for the same —
So where a tenant without the permission
of his landlord severed machinery from
the mill and in that situation, such
machinery was sold in execution against
the tenant, it was held that no title
passed and trover would lie for such
machinery.

3
104 A person who enters into the possession of
wild and uncultivated land, under a
Wendell Contract of purchase, which gives him the
right of entry and occupancy, and cuts
timber for any other purpose, than for the
cultivation and improvement of the
premises. The timber thus separated becomes
the personal property of the landlord, and an
action of trover will lie for such timber by
the landlord —

Our Statute has extended the action of Replevin
to Cases where the party has never been in possession
and has only the right of possession. So that
decisions from other States that hold that
Replevin will ^{not} lie where trespass can not
be sustained are not authority here.
Milton J. Peters
att'y for Repl. in Essex

No 1067 45

Oscar Anderson
& Richard R. Waugh
vs.

Henry Chapler

Milton, J. Peters
argument for deft.
in error

Filed April 23. 1884
L. Leland
Clerk

1
State of Illinois
County of Putnam } ss.

Pleas before the Honorable Samuel L. Richmond, Judge (of the Circuit Court) of the 23rd Judicial District of the State of Illinois, in and for said County of Putnam, at a Term of said Court, begun and held at the Court-House, in Hennepin, in said County of Putnam, on the Fourth Monday of October (26th day of October A.D. 1863) in the year of our Lord one thousand eight hundred and Sixty-three, and of the Independence of the United States the 88th year.

Present - Hon. Samuel L. Richmond, Judge of said District -
James H. C. Boal, Esq., State atty -
Asa Cunningham, Esq., Sheriff and
John C. Gerberich, Clerk -

Be it remembered that heretofore, to wit: June 12, 1863, the following affidavit was filed in the Bureau County Circuit Court, and State of Illinois in the following words and figures, viz:

"State of Illinois
Bureau County } ss.

Henry Hassler, being duly sworn, says that he is the owner of the following property about to be replevied and described in such writ of Replevin, to wit: a lot of Cord wood, corded up at the Selby Station in Trenton in said County and also likewise some not corded up lying on the bank of the lake in the village of Trenton as aforesaid consisting of about 100 cords of Cord wood worth two Dollars and seventy-five cents per Cord, and ^{this} Affiant further states that he is at this time lawfully entitled to the possession of said wood, that the same was wrongfully and unlawfully, and

against the consent of this affiant cut and carried away from the premises of this affiant by Oscar Anderson and Richard R. Waugh, and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of this affiant liable to execution or attachment & that the said wood is now unlawfully detained from this affiant by said Defendants

Subscribed and sworn to before me } Henry Hassler -
this 12th day of June A.D. 1863. }

Geo. M. Radcliffe, clk,

By Cairo D. Trimble, Depy }

On the said day, to wit: June 12th A.D. 1863, the following was filed in said Circuit Court of Bureau County, viz:

State of Illinois, Circuit Court
Bureau County } August T. A.D. 1863 -
Henry Hassler }
vs. } Replevin -
Oscar Anderson & } Damages
Richard R. Waugh } \$275.00

The Clerk will please issue a Writ of Replevin in the above entitled case as per affidavit filed -

Milton T. Peters
atty. for Pltff -

Henry Hassler complains of the above Defendants for that on the 12th June A.D. 1863, before the commencement of this suit, at said County, the

said Defendants unlawfully detained in their possession and from the Plaintiff the goods and chattels described in the Pltffs affidavit, against sureties & pledges until the same was replevied by the writ of Replevin herein issued —

Milton T. Peters

Atty. for Pltffs " —

On the same day, to wit: June 12th A.D. 1863, a Writ of Replevin issued out of said Bureau County Circuit Court, which is in the words and figures following, viz:

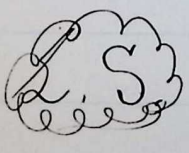
State of Illinois,
Bureau County }^{ss.} The People of the State of Illinois,
To the Sheriff of said County,

Greeting:

Of Henry Hassler shall give you bond and sufficient security to prosecute his suit to effect and without delay, and to make return of the following goods and Chattels, the property of him the said Henry Hassler, to wit: A lot of cordwood, corded up at the Delby Station in Trenton in said County; and also likewise some not corded up, lying on the bank of the Lake in the village of Trenton as aforesaid consisting of about 100 cords of cordwood worth Two Dollars and seventy-five cents per cord altogether — of the value of Two hundred and seventy-five Dollars, which one Oscar Anderson and one Richard R. Haugh wrongfully and unlawfully detain against gauges and pledges as he saith, if return thereof shall be awarded, and

further to save and keep you harmless in replevying said goods and Chattels aforesaid, then you are to cause the said goods and Chattels to be delivered to the said Henry Hassler without delay, and to summon the said Oscar Anderson and Richard R. Haugh to be and appear before our Circuit Court within and for said County, on the first day of the next Term thereof to be holden at the Court-house in Princeton in said County on the Second Monday in the month of August next, then and there to answer the plaint of the said Henry Hassler for unlawfully and wrongfully detaining the goods and Chattels aforesaid to the damage of the said Henry Hassler as he says in the sum of Two hundred and seventy-five Dollars, and make due return of the bond to be taken from the said Plaintiff as aforesaid to the clerk of our said Court together with this writ with an endorsement thereon as to the manner in which you may have executed the same —

Witness George M. Radcliffe, Clerk of our said Circuit Court, and the seal thereof, at Princeton, in said County this 12th day of June in the year of our Lord one thousand eight hundred and Sixty-three —

 { G. M. R. —
50¢ 50¢
June 12, 1863 — } Geo. M. Radcliffe, Clerk —
By Cairo D. Trimble, Depy —

Which said Writ has the following endorsement on the back of the same, to-wit:

"I have executed this Writ this 12th day of

June A.D. 1863, by taking a Bond of Henry Hassler with sufficient surety and also put him the said Hassler in possession of the within described Cordwood, July 18th 1863 and summoned the within named Oscar Anderson and Richard R. Waugh by reading the within writ in their presence and hearing -

Dilas Battey,

Sheriff of Bur. County -

The following is a copy of the Bond, returned by said Sheriff, to wit: "I

Know all men by these presents, That we Henry Hassler as principal, and Edw^d. Tirley as surety, both of the County of Bureau and State of Illinois, are held and firmly bound unto Dilas Battey, Sheriff of said County and state, in the penal sum of Five hundred and fifty Dollars, lawful money, well and truly to be paid, we bind ourselves, our heirs, executors and administrators firmly by these presents; signed with our hands, and sealed with our seals this 12th day of June A.D. 1863 -

The condition of the above obligation is such that, whereas the above bounden Henry Hassler has commenced an action of Replevin against Oscar Anderson and Richard R. Waugh in the Circuit Court of said County for the taking and unjustly and unlawfully detaining the following goods and Chattels, to wit: a lot of Cord wood Corded up at the Delby Station in Trenton in said County and also likewise some not corded up lying on the bank of the lake in the village of Trenton as aforesaid, consisting of about 100 cords of Cord wood worth two Dollars and seventy-five cents per cord, altogether -

the property of the said Henry Hassler as he saith -

Now if the said Henry Hassler shall personally be and appear before the said Circuit Court on the first day of the next Term thereof, to be holden at the Court House in Princeton on the Second Monday in the month of August next, and shall then and there prosecute said suit to effect, and without delay, and doth make a return of the said property to the said Henry Hassler if a return thereof shall be awarded by the said Circuit Court and shall save and keep harmless the said Sheriff in replevying said property, then this obligation to be void, otherwise to remain in full force and effect -

Taken by me at my office, in
Princeton this 12 day of June
A.D. 1863 -

Henry Hassler Seal
Edw. Tinley Seal
Seal

Silas Patley,

Sheriff Bureau Co.

} H. 26 - Revenue Stamp -
259. 259
June 12. 1863 - }

Afterwards, to wit: July 30, 1863, the following Declaration was filed in said Bureau County Circuit Court, viz:

"State of Illinois } Bureau Co. Cir. Court -
County of Bureau } ss. August Term A.D. 1863 -

Henry Hassler
vs.

Oscar Anderson &
Richard R. Waugh }

} Replevin -
Dad: \$275.00 -

Henry Hasler, by Milton T. Peters, his attorney Com-
plains of Oscar Anderson & Richard R. Waugh, the De-
fendants, in a plea of Replevin: for that the Defendants
heretofore, to wit: on the 12th of June A.D. 1863, and
before the commencement of this suit, to wit: at the
County of Bureau aforesaid, wrongfully & unjustly
detained in their possession, and from the Plaintiff,
the following goods and Chattels of the Plaintiff, &
until the same were replevied by the Writ of Replevin
issued herein, to wit: a lot of Cord-wood, corded up
at the Selby Station at Trenton in said County, and
also likewise some Cord-wood not corded up, lying
upon the bank of the lake in the village of Trenton
in said County, in all amounting to about one hun-
dred Cords of Cord-wood of the value of Two Hundred
& Seventy-five Dollars, which said wood was wrong-
fully & unlawfully & against the will and consent
of the Plaintiff by the said Defendants cut and
carried away from the premises of the said Plain-
tiff, by the said Defendants; To the Damage of the
Plaintiff of Two hundred & seventy-five Dollars,
and thereupon he sues,

Milton T. Peters

atty. for Plffs —

Afterwards, to wit: September 26th A.D. 1863,
a Transcript was filed in the Circuit Court of said
Putnam County, from the Records of the Circuit
Court of said Bureau County, which is in the
words and figures, following, to wit:

Pleas before the Honorable M.E. Hallister

Judge of the Ninth Judicial Circuit of the State of Illinois at a Term of the said Circuit Court within and for the County of Bureau in the State aforesaid begun, held and continued at the Court House in Princeton in said County on the Second Monday in the month of August (being the tenth day of the said month) in the year of our Lord one thousand eight hundred and sixty-three.

Present, Honl. M. E. Hallister, Judge -

George M. Radcliffe, Clerk -

Silas Battey, Sheriff and

David P. Jones, States attorney -

Henry Cassler

vs.

} Replevin

Oscar Anderson and

Richard R. Waugh }

Now comes the said Plaintiff by Peters his attorney, and the Defendants come by Bangs their attorney, and, by agreement of the said parties and on motion, It is considered by the Court that the venue of this cause be changed to Putnam County in the State of Illinois. It is therefore further considered by the Court that the clerk of this Court forthwith certify and transmit to the clerk of the Circuit Court of said Putnam County a copy of the record in this cause, together with all the papers now on file in said cause -

State of Illinois,

Bureau County } ss S. George M. Radcliffe,

Clerk of the Circuit Court in and for the County in the State aforesaid, hereby Certify the foregoing to be a true and correct Transcript from the Records and files in my office of all the proceedings in the aforesaid Cause and the accompanying papers numbered from 1-to 6 inclusive are all the papers on file in said Cause —

Given under my hand and the seal of our said Court at Princeton in said County, this Twenty-third day of September A.D. 1863 —

Geo. M. Radcliffe, Clk —

By Cairo D. Trimble, Depty —

L.S.

Afterwards, to wit: October 26th A.D. 1863, pleas were filed in said Putnam County Circuit Court which are in the figures and words following, viz:

In Putnam County Circuit Court
October Term A.D. 1863 —

Henry Wessler

vs.

Oscar Anderson &
Richard R. Waugh

} Replevin —

1.

And now comes the Defendants, by Burns & Cummings, Bangs & Shaw, his attorneys and defend the wrong and injury, when &c. and say they did not at the time when, &c. wrongfully detain said goods and Chattels in manner and form as in said Narr. alleged —

And of this they put themselves upon the Country &c. —

2.

And for a further plea in this behalf, Defend.

ants say actio non, because they say that at the time when &c - the said goods and Chattels were not the property of the Plaintiff as in said Narr. alleged -

And of this they put themselves upon the Country -

3

3

And for a further plea in this behalf Defendants say actio non, because they say that at the time when &c. the said goods and Chattels were the property of the Defendant Oscar Anderson, and not the property of Plaintiff as alleged in Narr. and of this they put themselves upon the Country &c -

4 And for a further plea in this behalf Defendants say actio non, because they say that at the time when &c. the said goods and Chattels were the property of the Defendants and not the property of Plaintiff as in said Narr. alleged -

And of this they put themselves upon the Country &c -

Burns, Bangs & Shaw -
Attys. for Defts -

Afterwards, to wit: October 28th A.D. 1863 - being one of the days of the said Term of the Circuit Court of said County of Putnam, the following order was entered of Record in said Cause, to wit:

(3^d day of said Term)

- Present same as yesterday -

No. 55.

Henry Hassler
vs.

Oscar Anderson &
Richard R. Waugh }

} Replevin -

Now comes the Plaintiff, by M. J. Peters, his attorney, and Defendants come, by Bangs & Shaw, Burns & Forsyth, their attorneys, and here also come a jury of twelve good and lawful men, to wit: William Peterson, N. A. McBord, Walter Cowen, L. N. Worrell, Addison Kammum, James G. Kass, Aaron Parlow, Morris Wilson, M. A. Beecher, Elijah Jenkins, Jr., William Dewese and William McCoy, who are duly selected and sworn, to well and truly try the issue joined &c. -

Afterwards, to wit: on the 29th day of October A.D. 1863, the following ^{order} was entered of record in said Court last named, in the said cause - to wit: (4th day of said Term -)

Present same as yesterday -

No. 55.

Henry Hassler
vs.

Oscar Anderson &
Richard R. Waugh }

} Replevin -

Now again comes the Plaintiff, by Peters, his said attorney, and the Defendants come by Bangs & Shaw & Burns & Forsyth, their attorneys, and here also come the jury heretofore sworn herein, and the said Jury say upon their oaths, "We the Jury find the property in the Plaintiff and find the Defendants guilty of detaining the same wrongfully, and

assess the Plaintiff's Damages at one cent -
Whereupon the Defendants, by their said attorneys,
make a motion for a new trial herein -

Afterwards, at the same Term of said last
named Court, to wit: October 31st A.D. 1863, the
following order was entered of Record in said
Court, in said Cause, to wit:

(6th day of said Term)

Present same as yesterday -

No. 55.

Henry Hassler

vs.

3 Replevin -

Oscar Anderson &

Richard R. Waugh 3

And the Court having now duly
considered the motion heretofore entered herein,
by the Defendants' said attorneys, for a new trial
herein - overrules said motion for a new trial -

Therefore it is considered by the Court that
the said Plaintiff have judgment for the said
property replevied, and that he recover of said
Defendants the amount of one cent Damages,
assessed as aforesaid, and also his Costs herein
expended, to be taxed, and have execution
therefor -

And afterwards, to wit: November 2nd A.D.
1863, a stipulation was filed in said Putnam
County Circuit Court, in said Cause, which is
in the words and figures as follows, viz:

State of Illinois } In Circuit Court of said
Putnam County } ss. County, October Term A.D. 1863 -

Henry Kessler
vs. } Replevin -
Oscar Anderson + }
Richard R. Waugh }

It is stipulated and agreed by and between the parties to the above suit that on the trial thereof in said Court at said Term before the Jury, that Plaintiff proved title in himself prima facie by a regular chain of Conveyances from the United States to the following described lands, to-wit:

Fractional Section Thirty-three (33), $12\frac{81}{100}$ acres, and Fractional Section Twenty-eight (28) 10 acres, both in Township Thirty-three (33) North of Range Two (2) West of the Third Principal Meridian, in Putnam County and State of Illinois -

And that Plaintiff acquired such title on the 16th April 1863 - Plaintiff then proved that Defendant Oscar Anderson cut the wood in controversy from said tracts between the 22^d day of April A.D. 1863 and the 11th day of June A.D. 1863 and that at the time it was replevied he, Anderson had caused the same to be piled up at Trenton in Bureau Co., and was in Anderson's + Waugh's the Defts possession + the Plaintiff then proved that the said property in controversy was replevied from the possession of the said Defendants when this suit was commenced -

And thereupon Plaintiff rested -

Defendants offered in evidence as

color of title, a Tax Deed from the Sheriff of Putnam Co. of which the following is a copy -

"Know all men by these presents, That whereas at the May Term A.D. 1860, of the County Court of Putnam County, a Judgment was obtained in said Court, in favor of the State of Illinois, against the following described lots, pieces or parcels of land, for the sum herein specified, to wit: Fractional Section Thirty-three (33), $12\frac{1}{100}$ acres, and Fractional Section Twenty-eight (28), 10 acres, both in Township Thirty-three (33) N. of R. 2 W. 3 E. P. M., first piece for \$1.47 & last for \$1.32 -

Said sums being the whole amount of taxes, interests, and costs assessed upon said lots, pieces, or parcels of land for the year 1859 -

And whereas, on the 28th day of May A.D. 1860, E. Wright, then Treasurer & Collector of the County aforesaid, by virtue of a Precept or order issued out of the County Court of the County aforesaid, dated the 21st day of May A.D. 1860, and directed to the said E. Wright, Treas. & Collr. as aforesaid, did expose at public sale, at the Court House, in the County aforesaid, in conformity with all the requirements of the statutes in such case made and provided, the said lots, tracts or parcels of land above described, for the satisfaction of the judgment so rendered as aforesaid.

And whereas at the time and place aforesaid Edward F. Pulsifer of the County of Putnam and State of Illinois, having offered to pay the aforesaid sums, amounting to the sum of Two

Dollars and seventy-nine cents, for the whole of said lots, pieces or parcels of land, as follows, to wit: the sum of one Dollar sixty-nine cents Taxes and one Dollar + ten cents Costs —

Which was the least quantity of said lots, pieces or parcels of land bid for, the said lots, tracts or parcels of land were stricken off to him at those prices. And whereas, the said purchaser has by himself made and delivered to me affidavit of having complied with all the requirements of the statute and Constitution of the State of Illinois necessary to entitle said purchaser to a Deed for the premises so sold to him as aforesaid; and whereas, the said Edward F. Pulsifer has duly assigned the certificates of purchase of the land above described, unto Oscar Anderson:

Now, Therefore, I, Asa Cunningham, Sheriff of the County of Putnam for and in consideration of the said above named sum, amounting to the sum of Two Dollars and seventy-nine cents, paid to E. Wright of said County of Putnam by the said Edward F. Pulsifer, at the time of the aforesaid sale, and in consideration of one $\frac{100}{100}$ Dollar to me paid by said Oscar Anderson, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Oscar Anderson, his heirs and assigns, the premises so sold as aforesaid, situated in said County of Putnam and State of Illinois, to wit: Fractional Section Thirty-three (33), $12\frac{8}{100}$ acres and Fractional Section Twenty-eight (28), $10\frac{1}{100}$ acres, both in Township Thirty-three (33) North of Range two (2)

N. 3^d P. M., in Putnam County, Illinois —

To have and to hold, unto him, the said Oscar Anderson, his heirs and assigns, forever, subject, however, to all the rights of redemption provided by Law —

In Witness Whereof, I, Asa Cunningham, Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this 24th day of March A.D. 1863

Asa Cunningham Seal
Sheriff of Putnam County —

State of Illinois
County of Putnam 3^{ss}. I, John F. Gerberich, Clerk of the Circuit Court in and for said County and State, do certify, that Asa Cunningham, Sheriff of said County, who is personally known to me to be the real person; who executed and subscribed his name to the foregoing Deed, appeared before me this day and acknowledged that he had executed the same as such Sheriff, freely and voluntarily, for the uses and purposes therein set forth.

In Attestation whereof, I have hereunto set my hand and attached the seal of our said Court, at my office, in Vermilion said Putnam County and State, this 24th day of March A.D. 1863 —

John F. Gerberich, Clerk —

And Certificates of purchase from les-

Collector and Treas. of which the following are true copies

State of Illinois }
County of Putnam } ss.

This is to Certify, That, Fractional Sec. $12\frac{8}{100}$ acres, section numbered 33, in Township numbered 33 North, Range numbered 2 W. of 3 $\frac{1}{2}$ Principal Meridian, in the County of Putnam and State of Illinois, with the buildings (if any) situated thereon, was duly assessed to pay $92\frac{27}{100}$ Dollars Taxes for the year 1859 pursuant to Law; that a judgment was rendered against the same at the May Term of the Putnam County Court, 1860, and that in pursuance of said judgment, an Execution was issued to the collector of said County, directing him to sell said tract for the sum of one $47\frac{27}{100}$ Dollars, being the amount of the judgment for taxes as aforesaid, and costs; that by virtue of this execution the collector did this day offer for sale so much of said tract as would pay the sum aforesaid; and that E. F. Pulsifer became the purchaser of the whole tract, and paid thereon the sum aforesaid, that being the smallest portion of said tract for which any person would pay the taxes and costs accruing thereon.

Now, Therefore, in case the premises above sold are not redeemed in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a Deed of the premises above sold, as by law provided.

Dated, at Bernepin, this 28th day of May A.D.

1860
E. Wright, Collector—

A. T. Purviance

Which has the following assignment on it
Clerk of County Court.

back of the same E. F. Pulsifer —

State of Illinois
County of Putnam 3^{es}. This is to certify, That Trac-
tional sec. 10a. of section numbered 28, in Township
numbered 33 North, Range numbered 2 W. 3^d Prin-
cipal Meridian, in the County of Putnam and State
of Illinois, with the buildings (if any) situated there-
on, was duly assessed to pay 7⁷⁰/₁₀₀ Dollars Taxes for the
year 1859 pursuant to Law; that a judgment was ren-
dered against the same at the May Term of the Put-
nam County Court, 1860, and that in pursuance of
said judgment, an execution was issued to the Col-
lector of said County, directing him to sell said
tract for the sum of one ³²/₁₀₀ dollars, being the amount
of the judgment for taxes as aforesaid, and costs; that by
virtue of this execution the collector did this day offer for
sale so much of said tract as would pay the sum afore-
said; and that E. F. Pulsifer, became the purchaser of the whole
tract, and paid thereon the sum aforesaid, that being the small-
est portion of said tract for which any person would pay the taxes
and costs accruing thereon.

Now, Therefore, in case the premises above sold are not redeemed
in manner and form as the law directs, within two years from
the date hereof, the said purchaser, his heirs or assigns, will be en-
titled to receive a deed of the premises above sold, as by
law provided —

Dated at Vermilion, this 28th day of May A.D. 1860 —
E. Wright, collector A. J. Purviance
Clerk of County Court —

Which had the following assignment on
the back of the same — E. F. Pulsifer —

Said Deed dated the 24th of March
A.D. 1863 and recorded in the Recorder's office
of Putnam County on the 27th day of March
A.D. 1863 to the same lands above named, and
stipulated to follow up the same with proof
that within three or four days after the date of
said Tax Deed said Anderson entered upon the
peaceable possession of all of said lands, the same
being then vacant & unoccupied, in good faith
and made valuable improvements thereon and
has ever since retained the possession thereof. No
objection was made to the order in which proof
was offered - The Court excluded said Tax Deed
& certificates of purchase and Defendants in
apt time excepted - Defendants offered to prove
by a witness that said Anderson within 3 or 4 days
from date of said Tax Deed entered into the peace-
able possession of all of said lands under said
Tax Deed in good faith and made valuable
improvements thereon and has ever since re-
tained the possession thereof - Court excluded
the evidence and Defendant excepted - Defend-
ant offered same Deed & certificates as absolute
title - Excluded and Exception which was
all the evidence in the case - The jury hav-
ing found for Plaintiff - Defendants entered a
motion for a new trial assigning as reasons
therefor that the Court erred in excluding Defend-
ants evidence offered - And that the verdict was
contrary to the law and the evidence - Court over-
ruled the motion for a new trial and Defendants
in apt time excepted - Defendants then entered

a motion in arrest of judgment which was overruled by the Court and Defendants in apt time excepted -

It is stipulated that this agreement shall operate and be considered a Bill of Exceptions in said Cause and Certified as a part of the record of the same and all merely formal and technical objections to the same are waived and the Supreme Court of Illinois shall decide the question on the substantial merits of the case

Peter & Eccles
Attys for Petff

Burns & Cummings
Bangs & Shaw
Attys. for Defendants -

State of Illinois,
Putnam County Jss.

I, John P. Gerberich, Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby Certify, that the foregoing is a correct and complete Transcript of the proceedings & matters therein contained in said Cause, therein mentioned, as appears of Record in my office -

Witness my hand & the seal of our said Court at Bennepur, in said County, this Second day of December A.D. 1863

John P. Gerberich, Clk.

making Record \$6.00

Paid by Deft. Anderson J. P. Gerberich, Clk -



State of Illinois

Third Grand Division } For Supreme Court
30 April Term A. D. 1864

Oscar Anderson & Pft in Error }

Richard R. Mayhew

Henry Hareless

Assignments of Error

And now the said Oscar Anderson and Richard R Mayhew plaintiffs in Error, come and say that in the Record and proceedings aforesaid there is manifested error in this & wit

I

That the said Circuit Court erred in admitting improper testimony on behalf of defendants in Error

II

The Circuit Court erred in excluding competent evidence offered on behalf of plaintiffs in Error

III

The Circuit Court erred in overruling said motion for a new trial

IV

The verdict of the jury is manifestly against the weight of evidence

V

The Court erred in overruling motion in arrest of judgment

VI

The judgment was for defendant in Error when by the law of the land it should have been in favor of plaintiffs and against defendant in Error

By reason whereof and of other errors not mentioned plaintiffs pray that said judgment be reversed &c &c

By Bangs Shaw &

Burns Cummings

Attys for plaintiffs in Error.

Supreme Court of the State of Illinois
3^d Grand Jurisdiction

106
Baugh & Anderson }
Henry Kasper } From Putnam
County Circuit }
Court }
April T. 1864 }

And the said Henry Kasper
says that there is no error
in the record and proceedings
of the Court below, wherefore he
says that the judgment of the
said Circuit Court be in all
things affirmed.

Milton T. Peters
att'y for Henry Kasper

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Wagh & Anderson
vs

Henry Hepler

From Putnam County
Circuit Court

founder in error

Filed April 18. 1864

S. Deland MR

Henry Hassler
1858.

Oscar Anderson &
Richard R. Waugh

Certified Copy of Record

Filed Dec. 11. 1864.
Skeland
Ch.