

No. 12333

Supreme Court of Illinois

^{il}
P~~e~~kington

vs.

Ford

71641  7

100

Blackly Pilkinton
& Dr. P. Evans

vs
Rufus Ford

100

1857

12333



The State of Illinois }
County of Bureau } ^{as} Be it remembered that
on the tenth day of December in the year of our
Lord one thousand Eight hundred and fifty five
Rufus Ford by Milton Peters and Robert Sawell
his attorneys came and filed in the office of the
clerk of the Circuit court of said county his
declaration in the words and figures following, to
wit:

State of Illinois

Bureau county ss. Circuit Court

January Term AD 1856

Rufus Ford Plaintiff in this suit com-
plains of Blakey Pilkington and Ira P Evans defendants
in this suit of a Plea of Trespass and Ejectment.

For that whereas, heretofore, to wit on the first
day of October AD 1855 at and within the county of
Bureau and state of Illinois the said plaintiff
was possessed in his own demesne as of fee simple
of a certain tract of land situate lying and being
in the county and state aforesaid and described as
follows viz: the North East quarter of section ten
in Township Fifteen North of the Base line of Range Seven
East of the fourth principal Meridian and the said
plaintiff being so possessed, the said defendants
thereafterwards to wit, on the day and year aforesaid
unlawfully and wrongfully entered into the possession
of the said premises and have from the time last afore-
said unlawfully and wrongfully withheld the

Filed Dec 10 1855

E M Fisher

Clerk

and still do unlawfully ^{and wrongfully} withhold the possession thereof from the said plaintiff & the damage of the said Plaintiff in the sum of one cent. and therefore he brings his suit by

Peters & Farwell his Attys

To Mr. Blakey Pilkington and Ira P Evans

Gents: You will hereby take notice that on the second day of the next term of the Circuit Court to be holden on the second Monday of the month of January next for the County of Bureau and State of Illinois the foregoing declaration with a copy of which you are now served together with this notice will be filed and that upon filing the same a rule will be entered requiring you to appear and plead to the same within twenty days and in default of appearing and pleading within such time judgment by default will be entered against you and the plaintiff mentioned in said declaration will recover possession of the premises therein described

October 26th 1855

Peters & Farwell

Plffs. Attys.

State of Illinois }
Bureau county } ss David E Norton Deputy Sheriff
of said county & state being first duly sworn
deposes and says that he served the within declaration and Notice on the within named Ira P Evans by delivering to him personally a true copy of the same on the 5th day of December AD 1855 and he further deposes

and says that the within named Blakey Pickington
cannot be found in said county.

Subscribed & sworn to	}	Stephen G. Paddock
before me this 10 th day		Sheriff Bu. Co. Ills
of December AD 1855		By D. E. Norton Jpt.
Edward M. Fisher	}	
Clerk		

Pleas before the Hon^l. M. E. Hollister
Judge of the Ninth Judicial circuit of the circuit court
of the state of Illinois at the January Term of said
circuit court for the county of Bureau begun and held
at the court house in Princeton within and for said county
on Tuesday the Fifteenth day of January in the year of
our Lord one thousand Eight hundred and fifty six.

Present Hon^l. M. E. Hollister Judge

Edward M. Fisher Clerk

Stephen G. Paddock Sheriff

W. H. Wallace Dist Attorney

Do wit on the tenth day of said Term

Rufus Ford

vs

Blakey Pickington &

Ira P. Evans

Ejectment

Now comes the Plaintiff by Peters his attorney
and it appearing to the Court that said
defendants had been duly served with a
notice of this proceeding and a copy of the declar-
ation filed herein as required by law on motion

of said Attorney a rule is taken on said defendants to file their plea to said plaintiffs declaration herein within twenty days from this date or judgment will be entered against them by default and the said plaintiff will recover possession of the said premises.

So writ on the seventh day of said term
Now comes the defendants by Hazard their attorney and files their plea to the plaintiffs declaration filed herein which is in the words and figures following to wit:

Rufus Ford

vs

Blakey Pilkington &
Ira P Evans

In the Circuit court of
Bureau county Ill

January Term A.D. 1856

Plea in Ejectment

And the said defendants by Hazard and Perley their attorneys comes and defends the wrong and injury when &c & for plea say that they are not guilty of unlawfully withholding possession of the premises described in plaintiffs declaration as alledged therein and this they pray may be enquired of by the court

Hazard & Perley
attorneys for defts

So writ on the eleventh day of said term
Now comes the Plaintiff by Peters & Harwell his attorneys and the defendants come by Hazard

" Filed Jan 22^d 1856

" E M Fisher

" Clk.

their attorney and said defendants attorney files his affidavit herein and moves the court for a continuance of this cause which motion is sustained by the court and this cause is continued to the next term of this court; it is also further considered by the court that the said defendants pay the costs accruing at the present term of this court.

Pleas before the Hon^{ble} W^{illiam} E^{lliott} Hollister Judge of the ninth judicial circuit of the state of Illinois at the term of the circuit court begun and held at the court House in Princeton in the County of Bureau on the first Monday in October in the year of our Lord one thousand eight hundred and fifty two

Present W^{illiam} E^{lliott} Hollister Judge

E^{lliott} M^{orris} Fisher Clerk

Stephen G. Paddock Sheriff

To wit on the first day of said term:

Rufus Ford

vs

Ejectment

Blakey Pilkington &

Ira P Evans

Now comes the Plaintiff by Jarrell his attorney and the defendants comes by Hazard his attorney and by agreement of said parties it is considered by the court that this cause be continued to the next term of this court

Pleas before the Hon^{ble} W^{illiam} E^{lliott} Hollister Judge of

the Ninth Judicial circuit of the State of Illinois at the
term of the circuit court begun and held at the Court
House in Princeton in the county of Bureau and State
of Illinois on the second Monday in the Month of
January in the year of our Lord One Thousand Eight
Hundred and fifty seven.

Present M. E. Hollister Judge

Em. Fisher Clerk

J. K. Maldron Sheriff

W. Bushnell States Attorney

To wit on the fifth
day of said Term

Rufus Ford

vs

Ejectment

Blakey Pilkenton &
Ira Evans

Now comes the Plaintiff by Peters &
Farnell and the defendants come by Hazard
their attorney, and by agreement of said parties
a jury is waived and this cause is submitted
to the Court for trial and the Court not being fully
advised in the premises takes the same
under advisement

To wit on the ninth day of said Term

Now come the said parties by their attorneys
aforesaid and the Court being now fully advised in
the premises considers that the said defendants
are guilty of unlawfully and wrongfully withholding

possession of the said lands and tenements from the said Plaintiff: To wit: The North East quarter of section ten in Township Fifteen North of Range Seven East of the fourth principal meridian

It is therefore considered by the court that the said plaintiff have possession of the said lands and tenements and that he recover of said defendant all his costs and charges in and about his suit in this behalf expended and that he have a writ of possession issued herein directed to the Sheriff of Bureau county commanding him to cause the said Plaintiff to have possession of the said lands and tenements without delay and that he have execution for the collection of his said costs and charges. And the said defendants by Hazard their attorney enter their motion for a new trial herein. To wit on the seventeenth day of said Term -

Now come the said parties by their said attorneys and after argument of counsel and being fully advised in the premises, It is considered by the court that said motion for a new trial be overruled. And the defendants by their said attorney pray for an appeal to the Supreme Court which is allowed by the Court on condition that said defendants file their bond herein for the sum of one hundred dollars with E. W. Hazard security within twenty days from this date.

D.

Filed 31st Jan, 1857 Copy of Bill of Exceptions herein.

Em Fisher & Rufus Ford

vs

Blakey Pilkington &

Oran P Evans

In the Circuit Court of Burlington
County Dec Jan 3, 1857

} action of Ejectment

Be it remembered that on this 16th day
of January AD 1857 this cause coming on to be heard
the plaintiff appeared by his attorney Milton Peters
Esq and the defendants by their attorney E W
Hazard Esq. The parties waived a jury and tried
said cause by the court, the Hon. McHolister
Presiding. The Plaintiff to maintain the issues on
his part gave in evidence a deed from the Auditor of the
State of Illinois to Joel Wright bearing date April 18th
1835 [to wit]

The Auditor of Public Accounts, of the State
of Illinois. To all to whom these presents shall
come, Greeting:

Know Ye, that Whereas I did on the 15th day
of January AD 1833 at the town of Vandalia in
conformity with the requisitions of the several
acts in such cases made and provided expose
to public sale a certain tract of land being the
North East quarter of section ten Township Fifteen
North in Range Seven East of the fourth Principal
meridian for the sum of Two Dollars and sixty two
cents being the amount of tax for the year 1832
with interest and costs chargeable to said tract of land
and whereas at the time and place aforesaid Joel

Wright offered to pay the aforesaid sum of money for the whole of said tract of land which was the least quantity bid for, and the said Joel Wright has paid the sum of Two Dollars and Sixty two cents into the Treasury of the State. I have granted bargained and sold and by these presents as Auditor of the aforesaid State do Grant Bargain and Sell the whole of the North East quarter of section ten in Township Fifteen North in Range Seven East of the fourth principal meridian to Joel Wright his heirs and assigns.

To have and to hold, said tract of land to the said Joel Wright and his heirs forever. Subject however to all the rights of redemption provided by law.

In testimony of which the said Auditor has
 hereunto subscribed his name and affixed his seal this 18th day of April 1835

James B. Stapp Auditor
also deed from Joel Wright and wife to John Wilson Jr. dated March 19th 1835 - also deed from John Wilson Jr to Joseph W. Montton dated April 25th 1835 - also deed from Joseph W. Montton & wife to Charles J. Montton et al dated Nov 18 1835 - also deed from Charles J. Montton et al to Lemuel Lamb and Thomas Dunlop dated April 30th 1838 - also deed from Lemuel Lamb and Thomas Dunlop and wives to David H. Nevins and John Alstyne dated March 18th 1845 - also deed from David H. Nevins and John Alstyne to John J. Thomas dated Sep 1st 1845 - also deed from John J. Thomas & wife to Rufus Ford dated Sep 13th 1854 in each and all of which the North East quarter

of section ten of Township Fifteen North and Range Seven East of the fourth principal meridian was described and conveyed being the same land described in Pliffs declaration, all of which said several deeds were admitted without objection. Plaintiff then proved that his Grantor John J. Thomas paid all the taxes legally assessed against said land for the years 1846-1847-1848-1849-1850-1851-1852 & 1853. It was admitted by defendants that said land had always before and during said time of payment of taxes been vacant and unoccupied and that said premises at the time of the commencement of said suit was in the occupation of the defendants.

Here the plaintiff rested his case.

The defendants to maintain the issues of on their part, proved by a certificate signed by the Auditor of the State of Illinois (admitted under agreement) that the North East quarter of section ten in Township Fifteen North of Range Seven East was not duly listed according to law for the years 1830-1831-1832- & 1833 - which fact plaintiff admitted.

Defendants here rested their case. The foregoing contains all the evidence given upon said trial.

The Plaintiff then admitted that said Auditor's deed given in evidence by him was not an absolute conveyance of the title to said land in fee simple, but claimed it was color of title made in good faith and that having proved the payment of all the taxes legally assessed upon said land from the year 1846 to 1853 a period of more than seven years during which time

said land was vacant and unoccupied, that by virtue of section 9 of Chapter 24 Entitled Conveyances, Rev. Stat. page 104 he should be adjudged to be the legal owner of said land.

The Defendants claimed that the 9th section of Chapter 24 of Rev. Statutes is a limitation act, and can only be set up as a bar to a recovery when the parties claiming the benefit of said section are in the actual occupation of the premises demanded - that it may be used as a "shield" but not as a "sword". That if the auditor's Deed was only color of title and not sufficient to enable the plaintiff to recover, the additional payment of taxes for seven years while the land was vacant and unoccupied, would not vest the title to said land in the Plaintiff. That in this case the Plaintiff is bound to show title in himself as he can only recover, on the strength of his own title and not upon the weakness of the defendants, and that it is not necessary that the defendant should show title either in himself, or an outstanding title in another in order to protect himself against the plaintiff's action. This was the only question presented for the consideration of the court by the parties.

The court then and there decided that the plaintiff was entitled to recover, to which decision the defendants then and there excepted. The defts then and there moved for a new trial, which motion was overruled by the court; and the defts then and there excepted, and prayed the court to

sign and seal this their Bill of Exceptions and
make it a part of the record in this case —
which was done accordingly

[Signed] M. E. Hollister 

[Copy of Appeal Bond herein.]

Know all men by these presents that we Ira P.
Evans Blakey Pelkington and Erastus W. Hazard
are held and firmly bound unto Rufus Ford in
the sum of One Hundred Dollars good and
legal money of the United States to be paid to the
said Rufus Ford or his certain Attorney, executor
administrators or assigns for which payment ~~we~~
well and truly made we jointly and severally bind
ourselves our heirs executors and administrators
firmly by these presents. Sealed with our seals
and dated this 9th day of February A.D. 1887.

The condition of this obligation is such that
whereas the above bounden Ira P. Evans and Blakey
Pelkington have prayed an appeal to the Supreme
Court of the State of Illinois in an action of
Ejectment pending in the Circuit Court of Bureau
County State of Illinois wherein the aforesaid
Rufus Ford is Plaintiff and the said Ira P. Evans and
Blakey Pelkington are defendants in which a judgment
was rendered at the January Term of said Court A.D.
1887 in favor of the Plaintiff. Now if the said Ira P.
Evans and Blakey Pelkington shall prosecute said
appeal with effect, or pay the judgment and costs
interest and damages in case judgment be affirmed

Approved &
Filed February 25th 1887
E. M. Fisher

then this obligation to be null and void otherwise to remain in full force.

[Signed] Ira P. Evans 293
Blakey Pilkington 253
Erastus W. Hazard 253

The State of Illinois
County of Bureau. I Edward M. Fisher
Clerk of the Circuit Court within and for the
aforesaid County do hereby certify the foregoing
to be a true copy of the record in a certain
cause lately pending before said court
wherein Rufus Ford was Plaintiff and
Blakey Pilkington and Ira P. Evans were
defendants. In testimony of which I
have herewith subscribed my name and
affixed my official seal as said Clerk
at Princeton in the County aforesaid this
fourth day of April Anno Domini One Thousand
Eight Hundred and Fifty seven.

Ed. M. Fisher Clerk
per Geo L. Paddock
Deputy Clerk.



Clerk's Fee - Copying (2800 words) \$2.80
Chf. .35
\$3.15
also postage .10
3.25

Onfus Ford 100

vs

Blakey Pilkington &

Via P. Evans -

Bureau Ct. Ct.

Records.

Filed April 13, 1857

L. Leland

Clerk

Blakey Pilkington et al } Supreme Court
vs } at Atlanta, Ga.
Rufus Ford } Term 1887

and the said Rufus Ford
says that there is no error in the
above case either in the Judgment
rendered or any of the proceedings of
the Court below, wherefore he
prays that the said Judgment may
be affirmed & —

Peters & Farnell
attys for Rufus Ford

Blalloy Peltingston et al

vs

Rufus Ford

Indenter in error

Filed May 1st 1857

L. Leland

Clerk