

No. 13850

# Supreme Court of Illinois

Smith

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vs.

Rankin

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

JAMES A. SMITH vs. WILLIAM RANKIN.

*Error to Marshall.*

ABSTRACT OF THE RECORD.

THIS was an action of ejectment brought by Rankin in the circuit court of Marshall county for the recovery of the N E 1-4 of Sec. No. 19, in T. 13 N., Range No. 9 E. of 4th P. M.

Declaration, notice, bond for costs and affidavit of service filed Dec. 21, 1854.

At the April term of said Court, 1855, defendant was ruled to plead to plaintiff's declaration, and filed plea of not guilty.

The cause was tried by jury at the April term of said Court, 1856.

The plaintiff first offered in evidence a patent from the United States to Lemuel Tucker for said premises, which was admitted in evidence without objection.

The plaintiff next offered in evidence a deed from Lemuel Tucker to Christopher Vanzant, to wit:

"THIS INDENTURE, made this fifteenth day of January, one thousand eight hundred and nineteen, Between Lemuel Tucker, of Davidson county, and State of Tennessee, of the one part, and Christopher Vanzant, of the county of Davidson and State of Tennessee, of the other part, Witnesseth, that the said Lemuel Tucker, for and in consideration of the sum of one hundred and sixty dollars 00 cents, to him in hand paid the said Christopher Vanzant, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, aliened, conveyed and confirmed unto the said Christopher Vanzant, his heirs and assigns forever, a certain tract or parcel of land, situated, lying and being in the territory of Illinois, and distinguished in the plan of surveys made to satisfy the bounty land of soldiers in said territory as the north-east quarter of section nineteen, of township thirteen north, in range nine east, supposed to contain one hundred and sixty acres of land, be the same more or less, which land was patented to the said Jeremiah Tucker by the President of the United States, the 29th of November, 1817.

"To have and to hold the aforesaid land, with all and singular the rights, profits, emoluments, hereditaments and appurtenances of, in and to the same belonging, or in any wise appertaining to, the only proper use and behoof, him, the said Christopher Vanzant, his heirs and assigns forever. And the Lemuel Tucker, for himself, his heirs, executors and administrators, doth covenant and agree with the said Christopher Vanzant, his heirs or assigns, that the before recited land and bargained premises he will warrant and forever defend against the right, title, interest or claim of all and every person whatsoever.

"In witness whereof, the said Lemuel Tucker hath hereunto set his hand and affixed his seal the day and year above written.

"Signed, sealed and delivered }  
in the presence of } LEMUEL TUCKER. [SEAL.]"

On the back of said deed appear the following endorsements, to wit :

“STATE OF TENNESSEE,

“*Davidson County Court,*  
January Session, 1819.

“This indenture of bargain and sale, between Lemuel Tucker of the one part and Christopher Vanzant of the other part, dated the 15th day of January, 1819, for 160 acres of land in the Illinois territory, was acknowledged in open Court by the said Lemuel Tucker to be his act and deed, and ordered to be so certified. The Probate being of record in this Court.

“In testimony whereof, I, Nathan Ewing, clerk of said Court, have hereunto set my hand and affixed the seal of said Court at office [SEAL.] at Nashville, this 20th day of January, in the year of our Lord 1819, and 43d year of American Independence.

“NATHAN EWING.”

“Recorder’s office, Edwardsville, Madison Co., Illinois. I, Josiah Rundle, Recorder for Madison county, do certify the within deed to be duly recorded and examined in Book vol. 4, page 29, this 1 day of Jan., 1820.  
JOSIAS RUNDLE.”

“(Tit.)

“No. 6869.

“Recorded Vol. 4, p. 29.

“Evd. J. Rundle. 150.

“Lemuel Tucker

“To } Deed. 160 Acres.

“Christopher Vanzant.”

To which defendant’s counsel objected.

The plaintiff then read in evidence the deposition of Charles A. Rankin, for the purpose of laying a foundation for the introduction of said deed, to which defendant objected. The objection was overruled by the Court.

Deposition of Charles A. Rankin:—

I am 28 years of age; am a tailor by trade; residence Shelbyville, Ky. I am acquainted with Wm. Rankin, the plaintiff, he is my brother; I am also acquainted with Mr. Smith, the defendant in this suit; have known him since the 1st of April, 1853. I do not know Henry Clapp. I do not of my own knowledge know of Henry Clapp ever calling on William Rankin, sen., in his lifetime. I know nothing of the land Mr. Clapp wished to purchase of my father or any one else.

I took possession of the N E 1-4 Sec. 19, in Township 13 N., of Range 9 East of the 4th principal meridian in the spring of the year 1853. I took possession of the land in behalf of William Rankin, and there was no one in possession of the land when I took possession of it in the year above named.

I had a conversation with Mr. Smith, defendant in this suit, a few days after I took possession of the land. I left the land for a day or two and went to the town of Henry, and when I returned I found Mr. Smith on the land; he had put up a shanty and claimed the land. I told him that the land belonged to my father; that I could show him the title deeds. Smith said that he had bought the land of Mr. Lombard; that he

(Lombard) stood between him and danger. He also stated that he had been to see Lombard, and Lombard told him that if he was dissatisfied he would take it back. When I first took possession of the land I had some lumber hauled to build a house. Mr. Smith took my lumber and threw it in the by-road.

I had a communication with Mr. Lombard some time after I took possession of the land. Mr. Lombard told me that he did not expect to hold the land with his deed, but he thought his tax title would hold it.

Mr. Smith, the defendant, told me that he knew of my father's claim before he bought it. Mr. Smith also told Mr. George Bonham that he knew Rankin claimed the land before he bought it.

Plaintiff offered to read the aforesaid deed in evidence. Defendant's counsel objected. The Court overruled defendant's objection and allowed the aforesaid deed to be read in evidence.

The plaintiff offered to read in evidence a deed from Christopher Vanzant to William Rankin, to wit:

"THIS INDENTURE, made and entered into this 3d day of October, 1825, between Christopher Vanzant and Louisa his wife, of Shelbyville, Kentucky, of the one part, and William Rankin, of the same place, of the other part, Witnesseth, that the said Vanzant, for and in consideration of the sum of two hundred and ninety dollars, to him in hand paid, the receipt of which he does hereby acknowledge, hath granted, bargained and sold, and by these presents does hereby grant, bargain, sell and convey unto the said William Rankin and his heirs forever, a certain tract and parcel of land, situate, lying and being in the State of Illinois, containing one hundred and sixty acres, being the north-east quarter of section nineteen, in township thirteen north, in range nine east, in the tract appropriated by the acts of Congress for military bounties, in the territory, now state of Illinois, being the same tract of land granted by the United States of America to Lemuel Tucker, by grant bearing date the 29th day of November, 1817, and by said Lemuel Tucker conveyed to the said Christopher Vanzant. To have and to hold the said tract of land hereinbefore described, to the said William Rankin and his heirs forever, and the said Christopher Vanzant and Louisa his wife will warrant and defend the right and title thereof against the claim of themselves and their heirs, and all and every person or persons whatsoever, claiming or to claim the same.

"In testimony whereof, the said Vanzant and wife have hereunto set their hands and affixed their seals the day and year first above written.

"Witness:

CHRISTOPHER VANSANT. [SEAL.]  
[SEAL.]

"STATE OF KENTUCKY, }  
Shelby County, sct. } I, Hector Alhinin, clerk of the county court for the county aforesaid, certify that this deed from Christopher Vanzant to William Rankin was produced to my predecessor in office (or his deputy) on the 11th day of October, 1825, and acknowledged by the said Christopher Vanzant to be his act and deed, as appears from an endorsement on said deed in these words and figures, (to wit): '1825, 60, Oct. 11th, A. by C. Vanzant.'

"In testimony whereof, I have hereto subscribed my name and affixed the seal of said court at Shelbyville, this 8th day of March, 1853, and in the 61st year of the Commonwealth.

"HECTOR ALHININ, *Cik. Shelby County Court.*"

“STATE OF KENTUCKY, }  
*Shelby County,* } sct. I, Robert Doak, Presiding Judge of the  
 Shelby County Court, certify that Hector A. Chinn, whose Jinneine signature appears to the foregoing certificuit is now and was at the time of signing the sam clerk of the county court, duly elected, commishion and qualified, and due credit should be given to all of his official acts. Given under my hand this 31st day of March, 1853.

“ROBERT DOAK, P. J. S. C. C.”

On the back of which are the following endorsements:

“*Christopher Vanzant*  
 “*To* } *Deed.*

“*William Rankin.*

“*160 a. Illinois.*

“*1825, C. O. Oct. 11th.*

“*A. by Vanzant.*”

“*Vanzant & Wife*

“*To*

“*Will Rankin.*

“*1825, C. O. Oct. 11th.*

“*A. by Vanzant.*”

“File for record March 21st, at 7 o'clock A. M., A. D. 1853, and recorded in Book M, page 450.

G. L. FORT,

“*Recorder of Marshall Co.*”

To which defendant's counsel objected, which objection was overruled by the Court, on the ground that said deed was 30 years old and therefore proved itself. To which ruling defendant then and there excepted. Said deed was read to the jury.

The plaintiff then offered to read in evidence a quit-claim deed for said premises, from Wm. Rankin, sen., to Wm. Rankin, jr., to which defendant objected. The objection was overruled and the deed read in evidence to the jury.

The plaintiff then called Samuel Flemming, who testified, that the deed of Lemuel Tucker to Christopher Vansent, with the other papers in said suit, were handed to him by plaintiff.

First. Said deed, prior to the date of the deed from Wm. Rankin, sen., to Wm. Rankin, jr.,—to wit, Aug. 15, 1853. Did not know whether he took said deeds from plaintiff since the commencement of suit, but thinks he did. The plaintiff claimed title through said deed. Knows Charles Rankin; first saw him in the summer of 1853. Don't know as any one introduced him; thinks he introduced himself. He was in Lacon; thinks he remained in Lacon a month or two, during which time he worked for J. D. Coulett, as a journeyman tailor.

The land in question is about eight miles from Lacon. Said Charles Rankin told him he had been out and had taken possession of the land, and to look at it, and said he had hauled on a load of lumber, for the purpose of putting up a house. Thinks he went there before he came to see us.

That he did not learn from him that he did more than to haul lumber upon said land to build a house, the quantity not stated; that Rankin did not live on said land, but that it was vacant and unoccupied at the time, and was natural prairie. Does not know what became of said Charles

A. Rankin; he said he was agent for Mr. Rankin, the plaintiff in this suit.

Here plaintiff rested his case.

Defendant offered no evidence.

The Court gave the following instructions to the jury on the part of plaintiff:

1. If the jury believe from the evidence, that the defendant was in possession of the land in controversy at the time of the commencement of this suit, then the plaintiff, by the evidence in the case, is entitled to recover, provided the jury believe he had the title to the land in controversy.

2. If the jury believe from the evidence, that the land in controversy was patented by the United States to Lemuel Tucker, and deeded by said Tucker to one Christopher Vanzant, and by said Vanzant to William Rankin, the elder, and by William Rankin, the elder, to the plaintiff in this suit, then the plaintiff is entitled to recover the possession of the land, if the defendant was in possession at the time of the commencement of this suit.

3. The jury are instructed, that the evidence in this cause shows a legal title in the plaintiff.

The defendant asked the Court to give the following instructions:

1st. That there is no evidence in this case to entitle the plaintiff to recover.

2d. That in order to constitute actual possession of land a person must have it enclosed or in some way actually occupied; that the man going on to a piece of land and hauling a load of lumber there, is no such possession as will authorize a recovery in this action without the legal title.

4th. That a party saying that he took possession of land does not prove the fact that he did take possession, if it appears that he only hauled lumber on the land.

5th. That possession of a tract of land by one for a day or a week is not sufficient prior possession on which to maintain this suit, without a legal title thereto.

6th. That the plaintiff cannot maintain this action upon his supposed prior possession, if he has only proved that Charles Rankin, as agent of the plaintiff, went onto the land, the same being vacant and unoccupied, and hauled a load or loads of lumber thereon for the purpose of building a house, and was in a few days thereafter turned out and his lumber thrown off the land by defendant.

7th. That if the jury believe from the evidence, that the plaintiff only had such possession of the land as is stated in the 6th No. instruction, then the deeds from Tucker to Vanzant, and Vanzant to Rankin, and Rankin to Rankin are improperly in evidence, and the plaintiff cannot recover.

The Court refused to give the 1st and 7th of defendant's instructions, to all of which rulings of the Court defendant then and there excepted.

Verdict for plaintiff.

Defendant moved the Court for a new trial, because improper evidence had been permitted to go to the jury; that the verdict was against the law and the evidence; that the instructions given by the Court at the

request of the plaintiff are not the law, and that the instructions asked by the defendant and refused by the Court ought to have been given as the law governing the case. The Court overruled the motion for new trial and rendered judgment in favor of plaintiff.

To which ruling of the Court defendant excepted, and prayed that his bill of exceptions be signed, &c.

*Assignment of Errors.*

1st. Said Court erred in admitting the evidence objected to by defendant below.

2d. Said Court erred in giving the instructions asked by plaintiff below, and in refusing the instructions asked by defendant.

3d. Said Court erred in overruling the defendant's motion for a new trial.

4th. Said Court erred in rendering judgment against said defendant below.

HAZARD & PURPLE,  
*For Plaintiff in Error.*

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James Smith

vs

Opp<sup>n</sup> Bankin

1st. Said Court erred in admitting the evidence objected to by defend-  
 ant below.  
 2d. Said Court erred in admitting the evidence objected to by defend-  
 ant below.  
 3d. Said Court erred in admitting the evidence objected to by defend-  
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 4th. Said Court erred in admitting the evidence objected to by defend-  
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 ant below.  
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 ant below.  
 7th. Said Court erred in admitting the evidence objected to by defend-  
 ant below.  
 8th. Said Court erred in admitting the evidence objected to by defend-  
 ant below.  
 9th. Said Court erred in admitting the evidence objected to by defend-  
 ant below.  
 10th. Said Court erred in admitting the evidence objected to by defend-  
 ant below.

Filed April 23, 1838

D. Le Grand Clerk

Wm. A. Smith

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