

12482

No. _____

Supreme Court of Illinois

Brooks

vs.

Bruyn

71641  7

Plas before the Honorable
John S. Thompson, Judge of the
tenth Judicial Circuit of the
State of Illinois, At a ~~trial~~
Court. Special Term of the Court
Began and held at the Court
House in Monmouth, within and
for the County of Warren and
State of Illinois, on the fourth
Monday of November, in the
year of our Lord, one thousand
Eight hundred, and fifty Six
It being the 24th day of said Month
aforesaid,

Present Hon. John S. Thompson Judge

James H. Stewart State Attorney

William Billings clerk

James McEoy Sheriff

No 105 Zachariah Bryon { Appeal
 by Thompson Brooks }

And afterwards
to wit on the 24th day of November AD 1856
the following record was made in the
above Entitled Cause to

105 Zachariah Bryon { Appeal
 by Thompson Brooks } This day came the

parties herein by their respective counsel.
And it appearing to the Court that there
had been no timely service in this suit
It being thereupon ordered by the Court
that this cause be continued generally
until the next term of this Court.

Plas before the Honorable
John S. Thompson, Judge of the
tenth Judicial Circuit of the
State of Illinois. At a circuit court
began and held at the Court
house in McDonough, within
and for the County of Warren
and State of Illinois, on the
third Monday in Month of March
in the year of our Lord one
thousand eight hundred and
Fifty seven. It being the sixteenth
day of said month

Present Hon. John S. Thompson Judge

James H. Stewart, State Attorney

William Lafayette Cook

Charles McNeill, Sheriff

Zachariah Bryan
by
Thompson Brooks } Appeal

The following is a
true copy of the complaint and affidavit
before the Justice of the Peace before whom this
cause was tried in the Court below, and is
in the words and figures as follows,

State of Illinois }
Warren County } Zachariah Bryan, being

and sworn, depose and say, that he is
now lawfully entitled to the possession
of the North West quarter, of Section
Nine (9) in Township Nine (9) North
in Range Two (2) West, in Warren
County, and State of Illinois: that he
has and has been lawfully entitled
to the possession of the said land, ever
since the 26th day of June A D 1856.
That on or about the second of
July A D 1856, the said Bruyn was
in the actual possession of the said land
claiming to be seized in fee thereof; that
on said day when the said Bruyn, was
in the actual possession of said land
one Thompson Brooks, made an entry
into said land, where entry was not
given to him said Brooks, by law, that
said Brooks, continued in possession
of said land, & continued in possession
of said land, and more detain forcibly
& wrongfully, than since said day of
said entry has forcibly & wrongfully
detained said land from the possession
of the said Bruyn. Your affiant further
states that the said Thompson Brooks,
entered on said land wrongfully, on
or about said 2nd day of July A D 1856
and without right, and kept the said
affiant, B. Bruyn from regaining
possession of said land, & now with bold
& even since said entry has withheld possession

of the said land from the said defendant
your affiant further avers, that
the said Brooks, was not at the time
of said entry, lawfully entitled to the
possession of said premises, your affiant
further states, that on the day after the date
hereof he did by his agent & attorney, George
W. Harding, make a demand in writing
for the possession of said premises from
said Brooks, and that said Brooks,
altogether refused to give up possession
of the said premises.

Sworn to & subscribed { Zachariah Bryan
before me this 10th }
day of September A.D. }
1856. Elisha Ayer J.P. }

Zachariah Bryn }
by } Appeal
Thompson Brooks }

The following
is a true copy of the transcript of all the
proceedings had before the Justice of the peace
in the Court below and is in the following
words & figures

State of Illinois } ss }
Marion County } } Justice Court, Before Elisha
Coy, J.P.

Zachariah Bryn }
by } Forecible Entry & detainment
Thompson Brooks }

Summons issued Sept 10
1856. Cate and affidavit of Zachariah
Bryn against Thompson Brooks, for
Forecible Entry and detainment. and
returned to D B Elmharger Const. to return
returnable for trial on the 20th day of
Sept 1856. at 10 o'clock A. M.
Subpoena issued for testimony. also notice
the writ issued and returned duly served
Summons & subpoenas returned duly served
Verine issued for jury return. Jury com-
paneled case proceed and after hearing
the evidence and the arguments of counsel
the jury retire and after deliberating return
a verdict as follows viz. "That the Jury find the
defendant guilty in matter and form
as stated in the complaint of plaintiff," signed
by all the jurors. after then gave notice that
he should appeal, Sept 23, 1856. after with

Guarland Ray, as security, find a bond
for cost &c which was approved by the
court, and appeal granted.

State of Illinois }
Harris County } 25

I Elisha Nye Justice
of the peace in and for said County, do
certify that the foregoing transcript is
true copies from the books & files of my
office, In witness whereof I have hereunto
set my hand this 15th day of
Nov 1856.

Elisha Nye, J.P.

Zachariah Bryon

vs

Thompson Brooks

}

Appeal

And afterwards
on the 17th day of March 1857, the following
record was made in the above entitled case
and is as follows

Zachariah Bryon

vs

Thompson Brooks

}

Appeal

This day came the
parties, & their respective counsel, and issuing
being joined for trial, they put themselves
upon the country, Thompson came a jury
to wit, B. W. Gray, William Richard, Cyrus L. Buck,
Nelson Lear, Simon Deibel, Daniel Leacock, James
McKask, Thompson B. Winkley, George Stier

John Wallace, Thomas A. Weakley, and Julius
Watson, who being elected true and sworn
men and truly to try the issue joined herein.

And afterwards on 18th day of March 1857
the following record was made in the above entitled
Cause, and is as follows

Zachariah Bryan

by

Thompson Branks

}

Appeal

This day again this
Cause coming on for a hearing, and the
Jury that was empaneled and sworn
herein, on yesterday, well and truly to try the
issue joined herein, and after hearing part of
the Evidence, being by order of the Court,
permitted to separate.

And afterwards on the 19th day of March 1857
the following record was made in the
above entitled Cause, and is as follows

Zachariah Bryan

by

Thompson Branks

}

Appeal

This day again this
Cause coming on for a hearing, and the
Jury that was empaneled and sworn herein
after hearing the Evidence, and argument
of Counsel, retired to consider of their
Verdict.

And afterwards on the 20th day of March 1857
the following record was made in the above
Entitled Cause, and is as follows,

Bachariah Briggs	}	Apparel
Thompson Brooks		

This day again this
Cause coming on for a hearing, and the
Jury that was empanelled and sworn herein,
came into Court with the following Verdict, to wit,
"We the Jury find the defendant guilty, in manner
and form as stated in the Complaint." Thereupon
came the defendant by his counsel, and Entry
his motion for a new trial herein, which motion
was overruled by the Court. Thereupon it is
ordered by the Court, that Judgment be
entered against the said defendant upon the
Verdict of the Jury herein. Therefore it is
considered by the Court, that the said plaintiff
have and recover of and from the said defendant
his cost by him in this Cause expended, as well
in the Court below as in this Court, and may
have Execution therefor. And it is further ordered
by the Court, that the plaintiff have and recover
of and from the defendant, the possession of the
premises described in his said Complaint, to wit,
The North West quarter of Section nine, in
Township nine North, of Range two West
of the fourth Principal Meridian. And that
a writ of restitution issue therefor. Then came
the defendant, and prays an appeal to the Supreme
Court, which is allowed by the Court, on the
condition, that the defendant enter into bond.

with John Riggs and Ephraim Smith as his
Security, to be approved by the Clerk, of this Court,
within ten days from the date hereof. By agreement
of the parties herein, it is ordered by the Court,
that the bill of exceptions be made and signed
within sixty days from this date.

Bill of Ex ceptions

Zachariah Bruyn }
vs } In the Western Circuit Court
Thompson Brooks } March Term A.D. 1887

Forcible entry and detainer

Be it remembered that on the trial of this cause the Plaintiff Proved that he went on to the quarter section of land in Controversy, With some men and two teams loaded with lumber on the night of the first day of July that he reached there about 10 or 11 o'clock at night and left his lumber on the land. And went to sleep at a neighbors near at hand that on the next morning early at day light (being on the second day of July 1886) he went on to the land near one corner of the tract and built a small shanty of boards and posts about 8 feet by 12 Which he finished about noon of that day, and then put a Carpet sack and bed into the Shanty. That the Plaintiff continued for a few nights to sleep in the Shanty. That at the same time he built a small yard or pen with rails near the Shanty. And a few days after commenced building a dwelling house upon the premises Which he afterwards completed and put a tenant into. That the Plaintiff by himself and tenants has continued in the uninterrupted and Peaceable Possession of the Shanty pen dwelling house and a yard attached thereto ever since the

2^d day of July 1856 that a day or two before
the 2^d day of July 1856 Plaintiff and some fur-
rows, with a plow partly round the premises.

That the quarter section of land was not
enclosed in any manner but was open vacant
Prairie, And it never has been enclosed,

That the dwelling house was finished on 8th or 10th
of Sept 1856 and the Plaintiff then moved his bed
from the Shanty where it had been since the 2^d
of July into the house and took Possession,

That soon after he went into Possession as afore-
said on the 2^d of July he broke up 40 or 50 acres
of Prairie that joined the small part broken
by Defendant. That when he went on to the
premises there was one or two acres of land broke
or ploughed thereon which had been broken
before. And also a rail pen partly finished for
the purpose of keeping hogs in. But the Plaintiff
did not go on to the piece broke or Ploughed.

That the rails were hauled there by
Nathaniel Bruyn the father of Plaintiff in
the Summer of 1855 and partly erected a pen
and left the other rails there for Coates to finish
it if he wished to use it. that he made an
arrangement with Coates to use it if he wanted
it (which he never did) to keep hogs in. That
Nathaniel Bruyn took the rails there & partly
erected the pen for the purpose of taking the
possession of the quarter section of land as
the Witness Nathaniel Bruyn Stated

That while Plaintiff was putting up his Shanty on the 2^d day of July in the forenoon of that day some men came on to another part of the same quarter with some logs and teams and said they would put them on the land in the name of the Defendant

They continued then on and put up a log stable, made a yard and crib of rails, and on the same day hauled a dwelling house with a family in it on to the same tract of land. Which improvements have been occupied ever since by Cincinnatiatus Mumford and his family who were in the house then under the permission of the Defendant. And for the purpose of keeping possession of the Premises

And the Plaintiff then offered in evidence the following deed from David Crawford and Wife to Nathaniel Brinyn dated 28th of June 1852

Copy of Deed from David Crawford &
Wife to Nathaniel Bruyn

0010162 This Indenture made the Twenty fifth
day of June in the year of our Lord one thousand
eight hundred and fifty two Between David
Crawford and Fanny his Wife of the Village of
Newburg Orange County & State of New York
parties of the first part and Nathaniel Bruyn
of the Town of Shawangunk Ulster County &
State aforesaid party of the second part
Witnesseth that the said parties of the first
part for and in consideration of the sum
of Six hundred & forty Dollars to them in hand
paid by the said party of the second part the
Receipt Whereof is hereby Acknowledged Have
granted bargained sold Aliened remised released
Encoffed and Confirmed and by these presents
do clearly and absolutely sell alien remise release
encooff and Confirmed unto the said party
of the second part and to his heirs executors
Administrators and assigns for ever All the right
title and Interest (lower right title or claim of
Power) Claim or Demand whatsoever in law or
Equity of the said parties of the first part of in
and to all that certain Tract Piece or Parcel of
Land situate lying and being in the State of
Illinois in the tract Appropriated for Military
Bounties and known and distinguished therein
as the North West qd of Section nine Township
nine North Range two West (In the County of
Warren)

To have and to hold all and singular
the said tract Piece or Parcel of Land with the

Rights members and Appurtenances therewith
Belonging or in any wise Appertaining unto the
said Party of the Second Part and to his heirs
executors administrators and assigns to his and
their own proper use benefit and behoof forever
And the said parties of the first part for them-
selves and their heirs executors and Administrators
hereby Covenant promise and agree to and with
the said party of the second part his heirs executors
Administrators or assigns that they the said parties
of the first part have not done or Committed and
will not do or Commit any act matter or thing
whereby the right of the said party of the second
part can in any manner or way be impaired to
the said Land hereby granted or Conveyed

In Witness Whereof the said parties of the first
part have hereunto set their hands and seals the day
and year first above Written

Sealed and Delivered

in the Presence of
C. S. Belknap

D Crawford
Fanny C. Crawford

Essex
Essex
Essex

State of New York
Orange County } ss On this 25th day of June
1852 before me came David Crawford and
Fanny C his Wife to me known to be the same
persons who are described in and who executed
the Within Conveyance and Acknowledged
they executed the same. And the said Fanny C being
by me examined separate and apart from her
husband Acknowledged she executed the same freely
& Without any fear or Compulsion of her husband
Chamney S. Belknap
Justice of the Peace
in & for Orange County

State of New York
Orange County. I, Nathan Westcott clerk
of the County of Orange do hereby certify that
Chancy & Belknap Whose name is subscribed
to the Certificate of the Proof or Acknowledgment
of the annexed instrument and thereon written
was at the time of taking such proof or acknow-
-ledgment a Justice of the peace for said County
dwelling in said County Commissioned and Sworn
and duly Authorized to take the same. And
further that I am well acquainted with the
handwriting of such Justice and verily believe
that the Signature to the said Certificate of
Proof or Acknowledgment is genuine. And that
According to the Laws of the State of New York
the proof or Acknowledgment is sufficient to
allow the same to be recorded in this State.

In testimony Whereof I have hereunto set
my hand and affixed the seal of the said
County the Eighth day of July 1882

E. S. J.

John C. McConnell
Deputy Clerk

No 10169

Recorded in Warren County Illinois
December 3^d 1882 in Vol 17 Page 489 & 90
H. S. Hascall Clerk

To which Defendant objected and the Court
sustained the objection and excluded the deed
to which the Plaintiff by his counsel then
and then objected excepted

The Plaintiff claimed to own the land
and offered the following deed from Nathan
iel Bruyn to Zachariah Bruyn dated
June 26, 1856

Copy of Deed from Nathaniel Brumby
To Zachariah Brumby

This Indenture Made this 26th day of June in
the Year of our Lord One thousand Eight
hundred and fifty six Between Nathaniel
Brumby and Cornelia Brumby his Wife of the
first part Zachariah Brumby of the second
part Witnesseth that the said party of the first part
for and in Consideration of the sum of Six hundred
and forty Dollars lawful Money of the United
States of America to him in hand paid by the
said party of the second part at or before the
executing and delivery of these presents the receipt of
whereof is hereby Acknowledged Have remised
Released Sold and forever Quit claimed and
by these presents do remise release and forever
Quit claimed unto the said party of the second
part and to his heirs and assigns forever
All that tract or parcel of land known and
described as follows to Wit. The North West
Quarter of section nine (9) in Township nine
(9) north of Range two (2) West of the 4th
Principal Meridian, in Warren County, Illinois

To have and to hold the above
described premises with all the Privileges
and Appurtenances thereto belonging to him
the party of the second part his heirs and assigns
forever

In Witness Whereof the said party of the first part have
hereunto set their hands & seals the day and Year
first above Written

Signed sealed & delivered
in the presence of

Nathaniel Brumby

State of Illinois
County of Warren

I A. G. Kirkpatrick a
Notary Public for the City of
Mannanthe Do Certify that on this day personally
appeared before me Nathaniel Bryn & Cornelia
his Wife Whose names appear signed to the forego-
ing Deed of Conveyance and who are personally
known to me to be the identical persons Whose
names are subscribed to said Deed as having
Executed the same and acknowledged that they
had Executed the same as their Voluntary act
and Deed for the uses and purposes therein
expressed. And Cornelia Bryn Wife of the
said Nathaniel Bryn having been by me made
acquainted with the Contents of said Deed and
being by me examined Separate and Apart
from her said husband Acknowledged that
she had Executed the same and had relinquished
her dower to the premises therein conveyed Volun-
tarily freely and Without any Compulsion
of her said husband and does not wish
to retract

Given under my hand and Notarial
seal this 26th day of June Eighteen hundred
and fifty six

(Sd)

A. G. Kirkpatrick N^o

So the introduction of this deed the defendant then and then objected, but the objection was overruled and the deed read in evidence whereupon the defendant then and then on the trial of said cause in open Court excepted to such decision.

The Plaintiff also proved that the defendant Brooks the first week of September 1886 sowed a part of the land broken by Plaintiff with Wheat and while the defendant was thus sowing the Wheat the Plaintiff requested him not to do it and claimed the land as his own but the defendant denied the Plaintiff's claim, and claimed the land for himself and told the Plaintiff he was a trespasser himself and then offered to purchase the Plaintiff's claim which the Plaintiff refused to sell.

The Plaintiff afterwards on the 10th day of September 1886 and before the commencement of this suit served a written notice upon the defendant demanding possession of the premises.

This notice was served on the defendant at the Court house in Monmouth which is 10 or 12 miles from the land in controversy.

The Defendant on his part proved that he went on to the quarter of land in controversy on the 25th day of June 1856. with his team under a claim of title. And broke up between one and two acres of the land for the purpose of taking Possession of it. That as hereinbefore stated that on the morning of the 2^d day of July 1856 he hauled logs on to the land at a different place from where the Plaintiff was built a small cabin or stable thereon and a few and also on the same day hauled a small frame dwelling house thereon with a family in it. Which family has continued to reside therein ever since.

The Defendant then read in evidence the following deed from J. H. Baker & Co to him dated the 24th day of December 1855

(Copy of Deed from J H Baker & others to S. Brooks)
This indenture made this twenty fourth day of
December in the year of our Lord one thousand
eight hundred and fifty five Between J H Baker
and Isabelle Baker, J. S. Swyman & Nancy W.
Swyman, John N. Westfall and Leelinda Westfall
of the first part and Thompson Brooks of the
second part Witnesseth that the said party of
the first part in Consideration of the sum of
Four hundred & fifty Dollars paid by the said
party of the second part. The receipt whereof
is hereby acknowledged have granted bargained and
sold and by these presents do grant bargain and
sell convey and confirm unto the said party of
the second part his heirs and assigns forever a
certain tract of land situated in the tract
Appropriated to Military Bounties in the State
of Illinois known and described as follows viz.
The North West Quarter of Section Nine in
Township Nine North in range two West in the
County of Warren and State of Illinois.
To have and to hold the said premises with all the
appurtenances thereto belonging or in any wise
appertaining to the only proper use benefit and
 behoof of the said party of the second part his
heirs and assigns forever And the said party of
the first part covenants with the party of the
second part his heirs and assigns that they
are lawfully seized in fee of the said premises
and have good right to convey the same that
they are free from all incumbrance and that
for the Consideration above named the title
thereof to the said party of the second part

his heirs and assigns against all lawful claims
Whatever will forever warrant and defend
In Witness Whereof the said grantors have
hereunto set their hands and seals the day and
year first above written

Signed sealed and
delivered in
presence of

J. H. Baker Seal
Isabella Baker Seal
Iverson S. Troyman Seal
Nancy W. Troyman Seal
J. H. Westfall Seal
Fidelinda Westfall Seal

State of Illinois
McDonough County } Be it Remembered that
on this 24th day of December in the year of our
Lord one thousand eight hundred & fifty five
before me came personally J. H. Baker & Isabella
his wife Iverson S. Troyman and Nancy W. his
wife John W. Westfall & Fidelinda his wife perso-
nally known to the undersigned a Justice of the
peace of said County to be the identical persons
who executed and whose names are subscribed
to the foregoing deed of Conveyance as having
executed the same and acknowledged the same
to be their voluntary act and deed for the pur-
poses therein expressed and the said Isabella
Nancy W. & Fidelinda Wives aforesaid being by me
made acquainted with the contents of said deed
of Conveyance and examined separate and
apart from their said husbands acknowledged
that they executed the same and relinquished
their dower in the premises therein mentioned
voluntarily freely and without the compulsion

of their ^{said} husbands and that they do not
wish to retract the same. In testimony
Whereof I have hereunto set my hand and affixed
my seal at my office at Macomb the day
and year first above written

Thompson Chandler J. P. ^{Seal}
ccccc

State of Illinois }
McDonough County } J. S. Isaac Grantham clerk of
the County Court within and for said County do
hereby certify that Thompson Chandler Esq. whose
name appears to the foregoing Certificate of Acknowl-
edgement was on the day of the date thereof and
now is an acting Justice of the peace in and for
said County duly Elected Commissioner & qualified
and that to all his official acts as such officer
full faith and credit is and ought to be given

In testimony Whereof I have hereunto
subscribed my name and affixed the seal of
said Court at my office in Macomb in said
County this twenty sixth day of December AD 1858
Isaac Grantham Clerk

The Defendant then offered & Proffered to
prove a regular patent title to the Premises
in Controversy by regular Conveyances from the
United States to himself. but the Court refus-
ed to hear the evidence and decided that it
was inadmissible to which decision the
Defendant then and then excepted.
This was all the evidence in the case

The Court gave the following instructions to
the jury upon the part of the Plaintiff

March Term 1857

Plaintiffs Instructions

- 1 If the Jury believe from the Evidence that the Plaintiff was in the Possession of the Premises described in the Complaint, and that while he was so in possession and before the commencement of this suit, the Defendant illegally or Wrongfully entered upon such Possession and detained the same from the Plaintiff at the time of the Commencement of this suit, After demand made in Writing for the Possession thereof by Pltff, Then they will find the Defendant guilty.
- 2 If the Jury believe from the Evidence that the Plaintiff had Possession of a part of the Premises by actual Occupancy and use thereof and a deed purporting to convey the Whole in fee simple then the Plaintiff had Possession of the Whole tract so as to enable him to recover in this action, if they also find the Defendant entered on such Possession and detained the same against the Will of the Pltff, After demand made in Writing for the Possession thereof by Pltff.
- 3 If the Jury believe from the Evidence that while the Plaintiff was in the Possession as mentioned in the foregoing instructions, the Defendant against the Will of the Pltff, entered on a part of the Premises placing thereon a House Stable and Corn Crib, which part is undefined so that it cannot be fixed by any certain bounds

and claiming the Possession and Control of the Whole tract thereby. And that the Plaintiff was at the time in Possession of the Premises and that the Defendant from that time has continued to Occupy the same against the Will of the Plaintiff then the law is that such acts are a Disturbance of the Plaintiffs Possession which will enable him to obtain Maintain this action for the Whole tract and by Process of law turn the Defendant off of any part of the tract he may be found Occupying after Demand in Writing made for the Possession thereof by the Plaintiff

4 The Prior Possession of said $\frac{1}{2}$ sec of land by the Defendant to that of the Plaintiff is insufficient to prevent the Plaintiff from recovering unless such Possession is open notorious and exclusive occupancy or use of the Whole or of some part thereof with a Claim to the Whole Evidenced by a deed Purporting to Convey the Whole to the Defendant in fee simple

5 It is not necessary to constitute a forcible entry and detainer under the Complaint in this case that the entry should be made with force or violence and that the Plaintiff should be expelled from every part of the Premises

To which Defendant then & there responds

The Defendant then asked the Court to
give the following instructions to the Jury
on his part.

March Term 1857

Instructions for Defendant

- Given
- 1 In order to entitle the Plaintiff to recover in this case he must prove to the satisfaction of the Jury that he was in the possession of the Premises described in his Complaint at the time therein specified and that the Defendant illegally, or wrongfully entered upon such Possession and continued unlawfully to hold such Possession
 - Given
2 If the Jury believe from the Evidence that the Defendant was in the quiet and Peaceable Possession of the Premises described in the Complaint and that the Plaintiff intruded upon such Possession then the Plaintiff cannot recover unless the Defendant had abandoned such Possession. And they will find the Defendant not guilty
 - Refused
3 That an illegal or wrongful entry upon a part of a quarter section of land not enclosed, but in the Constructive Possession of Another and While such other person has an enclosure upon such quarter, is not an entry upon that portion of the land thus enclosed. And in this Action no recovery can be had for the portion of the land thus enclosed

4 That an illegal or wrongful entry by the defendant upon a part of the land in controversy will not entitle the Plaintiff to recover for the whole tract and as the Plaintiff in this action has sued for the whole tract he cannot recover, unless the jury believe from the testimony that the Defendant entered upon the whole tract and illegally or wrongfully withheld the whole of such tract of land from the Plaintiff

Refused

3^d If the jury believe from the evidence that both Parties went into Possession of portions of said tract of land at the same time on the 2^d day of July 1856 and have remained in such Possession ever since, then the Plaintiff cannot recover in this action for that part of said tract of land occupied by him

Given

6 That if the jury believe from the evidence that the Plaintiff went on to the tract of land in controversy and built a Shanty & Yard thereon, and that such Shanty & yard have not been entered or in any way disturbed by the Defendant then the Plaintiff cannot recover for that portion of said tract of land covered by said Shanty & Yard

Refused

7 That the act of Nathl Bryn in hauling rails upon the land before the entry of the Defendant does not give the Plaintiff any right to recover in this case! If the Plaintiff recovers, such recovery must be grounded upon his own Possession and not upon the Possession of another

Given

8 The Court is asked to instruct the jury on the part of the Defendant

Given

If they believe from the Evidence that the Defendant was in quiet and Peaceable Possession of the Premises before the Plaintiff in point of time. Or if they believe the Defendant was in quiet and peaceable Possession from and after the 25th day of June A.D. 1856 Then they will find the Defendant not guilty of forcible entry and Detainer as complained of by the Plaintiff

9 That actual Possession of land can only be had by an enclosure, that Constructive Possession of a tract of land can only be had by Exercising ownership over it in some way or paying taxes thereon, And that the bare Enclosure of a few feet on a quarter section under a claim to the whole tract without any other acts of Ownership over the tract does not constitute such Possession as will enable the Possessor to maintain forcible entry and Detainer

Given

10 That no recovery can be had in this action for vacant unenclosed and unoccupied Land

Refused

Refused

11 That forcible entry and Detainer will not lie for land not in the Actual Possession of the person bringing such Action

Refused

12 That such action will not lie in favour of one who has but a Constructive Possession of land. And in this case if the Jury believe from the Evidence that the Plaintiff had no other than a Constructive Possession of the land sued for. They will find the Defendant not guilty

Refused

13 To maintain this Action in this case there must be not only an illegal or Wrongful entry, but an Actual Ouster by the Defendant of the Plaintiff, or by Dispossessing him. And if the Jury believe from the Evidence that the Plaintiff was neither ousted nor dispossessed of the Premises by the Defendant he cannot recover

Given

14 That a mere trespass upon land in the Possession of another is not sufficient to maintain this Action

15th That if the Jury believe from the Evidence that the Defendant went on to the Premises in Controversy on the 25th day of June 1886 and under a claim of title and having a deed therefor. And broke up one or two acres in good faith for the purpose of taking Possession of the Premises and Afterwards on the 2nd day July 1886 went on to said premises and made other and further Improvements This is a Constructive Possession of the Whole of said tract of land from said 25th day of June

16th That breaking up a quarter section of land or a portion thereof not enclosed, is as much evidence of Possession as building a small Cabin on the same tract of land

17th Before the Plaintiff can recover in this case the Jury must believe from the Evidence that the Defendant entered and detained the Whole quarter section of land sued for

Which the Court refused to do but gave those marked Given and numbered 1. 2. 3. 7. 8. 9 & 14 & 15. And refused to give those marked refused being Nos 3. 4. 6. 10. 11. 12. 13. 16. 17 So Which decision of the Court the Defendant then and then excepted

The Jury found a verdict for the Plaintiff

The Defendant then filed the following motion
for a new trial

Zachariah Bryn }
vs } In the Wane Circuit
Thompson Brooks } Court March Term 1857

And now comes the said defendant
and moves the Court for a new trial herein
for the following reasons

- 1 Because the Verdict is contrary to the
evidence
- 2 Because it is contrary to the instructions
of the Court
- 3 Because it is against the law
- 4 Because the Court refused to give proper
instructions upon the part of the defendant
- 5 Because the Court gave improper instructions
on the part of the Plaintiff
- 6 Because the Verdict is not justified by the
Evidence

By Paine Griffith &
Wheat his Atty

Which motion was overruled by the Court and
refused to grant a new trial to which decision
of the Court the Defendant then and there

Excepted. Whereupon Judgment was rendered
for the Plaintiff. All the exceptions were taken
in open Court on the trial of said Cause
Whereupon it is ordered that the Matters
aforesaid be made a part of the Record and
this Bill of Exceptions signed and sealed
Witness my hand and seal

John S Thompson ^{Pres} Seal

Zachariah Bryn
vs } Appeal
Thompson Brooks }
Copy of Bond

Know all men by these presents that We
Thompson Brooks and John Pigg & Ephraim
Smith of the County of Warren and State of
Illinois are held and firmly bound unto
Zachariah Bryn of the same place in
the penal sum of Two hundred dollars for
the payment of which well and truly to be
made we bind ourselves our heirs Executors
and Administrators jointly severally and firmly
by these presents Witness our hands and seal
this 20th day of March Anno Domini one
thousand eight hundred and fifty seven
The Condition of the above obligation is such that
Whereas the said Zachariah Bryn did on 20th
day of March 1857 in the Circuit Court
within and for the County of Warren and State
of Illinois recover a judgment against the
above bounden Thompson Brooks for the
possession of a certain tract of land in said
County being the North West Quarter of Sec
9. 9 North Two West and costs of suit from
which judgment of said Circuit Court the said
Brooks has prayed for and obtained an appeal
to the Supreme Court of said State Now if
the said Thompson Brooks shall duly prosecute
his said Appeal with effect and shall Mon-
-ver pay the amount of the judgment costs
Interest and Damages rendered and to be
rendered against him in case the said

Judgment shall be affirmed in the said
Supreme Court then the above Obligation
to be null and void Otherwise to remain in
full force and Virtue

Thompson Brooks ESB
John Riggs ESB
Ephraim Smith ESB

Approved by me this
20th day of March AD 1857
Jm. Lafayette Clerk

State of Illinois }
Warren County }

I William Safety Clerk
of the Circuit Court for said County (Do
hereby Certify that the foregoing is a full,
complete, and true Copy of all the Proceedings
in the foregoing Case as appears from the
files and Records now in my office

In Testimony Whereof I have
hereunto set my hand and affixed
the Seal of said Court at my
office in Maumonth this 9th day
of April AD 1857
William Safety Clerk

Thompson Brooks } In the Supreme Court April
vs } Term AD 1857
Zachariah Bruyn }
appeal from Verdict

And now comes the said plaintiff and says that
^{manifest} error hath intervened in the foregoing proceedings
record and judgment to his injury in this

- 1st Because the verdict is contrary to the evidence
- 2 Because it is against the law
- 3 Because it is contrary to the instructions of the Court
- 4 Because the Court refused to give proper instructions
asked for by the Defendant below
- 5 Because the Court gave improper instructions on the

part of plaintiff below

6 Because the Court verdict is not justified by the evidence

7 The court erred in not setting aside the verdict and granting a new trial

8 The court erred in rendering judgment and awarding restitution against defendant below

Wherefore he prays the judgment may be reversed and for nought held

By Mead & Williamson
plffs attys

In Mello Est Erratum

Goudy & ~~Murdock~~
depts attys

137
Thompson Brooks
161
Zachariah Brown

Filed April 22, 1887
L. Leland
Clerk

137

1857

Runn

1857

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