

E. Peck Esq.
Sir

You will oblige me very
much by inserting in your report of this
case, the substance of the depositions, and the
points made, with the authorities for each, as set
forth in the brief Memoirs attached, and oblige

Sir

Your Obedt^t Servant
Daniel Eastman.

E. Peck Esq

E. Peck Esq
Reporter.

Supreme Court, Third Grand Division
Patrick Halligan } of the June Term A.D. 1854, at Albany N.Y.

Chas. & Rock Island
Rail-road Co.

Appeal from LaSalle Co. Cir. Court
Action, - Trespass Du. Claus. Freight.
Appellants Authorities.

1 An allegation of a trespass on two or more closes, is not duplicity, and is allowable. - Definition of Duplicity - Gould's N. Chd. §§ 1, 3, 4, 5, & 6 Ch. 4 §§ 99, 100 - Steph. Pl. 293, & Chit. Pl. 226.
Precedents of Dec. 2 Swift's Digest 430, - 2 Flum-
phreys' Proc. & P. 722, 723, 509 - 2 Chit. Pl. 866, 872, -
Cases - Pythian v. White, 1 Mees. & W. 101, 102, 103, 104, 105, 106, - Tapley v. Wainwright 27 Eng. C. L. R. 99 - Richards v. Peake, 9 E. C. L. R. 394

2 If the allegation of the expulsion of the tenants be an impertinent allegation, it does not vitiate the count, nor render it obnoxious to a special demurrer, but only to a motion to strike out. - The demurrer, in such case, should have been overruled, and the such surplusage (if any) stricken out, or disregarded. - Sabine v. Johnston, 1 Bos. & Pul. (top,) 60. - Lord v. Tyler, 14 Pick 156. - Wyatt v. Aland, 1 Salk. 324-5 - 1 Chit. Pl. 229. - Steph. pl. 421, 422.

An impertinent allegation

3

~~Non prosequi~~ only vitiates a count when it shows that no cause of action exists — Goulds Pl. Ch 3. §§ 171, 172, 173. — 1 Chit. Pl. 231, 232. — Steph. Pl. 420. 421

4

Two or more separate or several closes may exist in one general close; and proof of entry upon, or expulsion from, any portion of a several parcel, in the possession of the plaintiff, will support this action. — Tapley v. Wainwright, 27 Eng. C. L. R. 49 — Richards v. Peake, 9 Eng. C. L. R. 394. — Stephens v. Whistler 11 East (top), 51 — Croker v. Grompton D. Eng. C. L. R. 207 — Bapitt v. Mitchell 22. Eng. C. L. R. 34.

5

Any special right of use, however small, in a close, being in the possession of the plaintiff, even if a third party hold a general right over the entire close, subject to the special right, — if invaded, gives the right of action in Tr. Dec. 66. Tr. — 1 Chit. Pl. 174, 170. — 3 Steph. Nis. Tr. 2634. —

6

When from any cause whatever, the particular estate determines, the reversion is extinguished, by merging in the title or possession of the grantor of the particular estate — 49 Lab. Lib. (Whar. Com.) top page 69, 70 & note. — 2 Black. Com. 177 — 5 Bac. Abr. (top p.) 676. — Daniels v. Pond 21 Pick 367 — ~~XX~~ — Packer v. Gibbins 41 Eng. C. L. R. 607. ~~XX~~ 2 Black. Com. 177

7

When there is a tenancy at will, and the close
be broken by a stranger, and permanent injury be
done to the ~~land~~ realty, both landlord & tenant have
their actions in T. D. C. Freight, and will recover accord-
ing to their respective losses. — 1 Thos. Coke, top paging,
* 504 note 21 — Daniels v. Pond, 21 Pick. 367 — Davis
v. Nash, 32 Maine, (2 Medington), 411 — Curtis v. Hopkins,
19 Conn. 154, ^{note} (16740) — 11 Starr v. Jackson 11 Mass 519

8

If a tenant at will commit waste, the land-
lord has his action of T. D. C. Freight against him.
— 1 Thomas Coke, top paging 503, 504 — Starr v. Jack-
son, 11 Mass. 519 — 4 Kent's Com. 111 note b. — 3 Steph. N. P.
2634 — 1 Grant's Convey (top paging) § 11 — 5 Conn. Rep. page 207 —
4 Conn. Dig. page 101

9

But the allegation of the expulsion of the tenants,
as stated in the declaration, is not surplusage, but is
clearly an averment in aggravation of damages, and
merely shows a portion of the injury and damages sus-
tained: — And the allegation, "Using & occupying" &c, "at
the rate of," &c. — shows clearly that the tenancy was
only at ^{will} — or tolerated, — which does not in law create
any prospective estate in the premises, and the
proper ratio of rent is therefore payable from day to
day. — 2 Sel. N. P. "Use & Occupation". — 1 Chit. Pl. 344 — 8 Bac.
Abr. page 520, M. 2 — Parker v. Gibbins, 41 P. G. L. R. 507 — Stout v.
Whitney, 12 Ill. 210 (on page 227)

10

When the tenant at will abandons the pre-
mises, for any cause, the relation of landlord and
tenant ceases, and the rents cease; — for the tenant's
estate, (such as he had) is terminated by his own act, and

the constructive possession is then in him in whom
the title exists. — Wilcox v. Kinsie 3 Sam., 210 — 4 Latw
Lib. (Ran. on Re. ac.) 472 bottom of page. — Bliss v. Burwick-
1 Salk. 200-g (top paging.) ^{20 Law Lib.} Archb. Lan. & Ten. 70 (top 93) — 25
Law Lib. (2 Arch. N. P. 391) ^{top 37 2/3} — 2 Black Com 146,
177. — 3 Steph. Nis. Pr. 2722-3

11

It may well be ~~questioned~~ ^{questioned} whether a tenant
at will has such degree of estate in the premises,
as can create a reversion — (Mid Ant. Storr
v. Jackson 11 Map. 519 — 4 Kent's Com. ^{27 Ed} 111 note ^{b.} — 1 Chas.
Coke (top.) 503, 504 & note 21, 23, 24 — 3 Steph. N. P. 2034 —
Roscoe on Re. ac. 113, 663. — Daniels v. Pond, 21 Pick. 36 ⁹⁰)
also, Adams on Eject. 31, ^{by Fillingast} — 1 Sel. N. P. 36 ("Consideration") 1 Grand Couine,
top paging ²⁶⁶ ~~to 267 both inclusive~~ Title IX. "Estate at will"
Adams on ^{Eject} Eject. page 54 note 1 — 4 Corn. Dig. "Estate",
II 2 (page 67) — 1 Sel. N. P. 505 (with "Ejectment")

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V.
Chas. M. S. M. R. Co.
Indrop Dr. Cl. G. G. G.
Supreme Court, June Term 1854

Brief

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