

No. 12780

Supreme Court of Illinois

Hanson et al.

vs.

Armstrong

71641  7

115

Charles Hanson
et al vs
Jacob Armstrong

115

12780

1859

115, 68

SUPREME COURT.

CHARLES HANSON, }
JOHN M. GRAYAM, } Pl'ffs in Error.
JAMES K. EDSALL, }

VS.

JACOB ARMSTRONG, Def't in Error.

BRIEF OF POINTS & AUTHORITIES.

FILED FEBRUARY 9, 1859.

L. LELAND, *Clerk.*

JAMES K. EDSALL, *for Plaintiffs in Error.*

(Page 1)

State of Illinois }
Lee County } Oct

I was in the Lee County
Circuit Court in the 22nd Judicial Circuit
of the State of Illinois in the matter of
Jacob Armstrong Plaintiff against
Charles Hanson, James H. Edsall and
John Mc Gray in an action of
Ejectment.

UNITED STATES CIRCUIT COURT,

United States of America,
STATE OF ILLINOIS,
COUNTY OF Lee

OF THE Third TERM,

In the Year Eighteen Hundred and Fifty Eight

Plaintiff in this suit by Meaton & Robertson his Attorneys, complains of

Charles Hanson, James R. Cobble and John M. Bryan

Defendants in this suit, in a plea of Trespass and Ejectment, for that whereas the said Plaintiff heretofore to-wit on the First day of June in the Year of our Lord Eighteen Hundred and Fifty Eight was possessed of a certain parcel or lot of land situate in the County of Lee in said State, to-wit: a strip of land

containing on half an acre of the east side of a tract of land containing five acres of land being a part of the east part of the north west fractional quarter of Section No. Five Township twenty one range nine East fourth principal meridian bounded and described as follows, commencing at a stone fifteen inches long six inches wide four inches thick set in the ground at the center of the western termination of First a main street in the town of Dixon in said County of Lee said stone being the same known as station number eight in the plat of certain real estate belonging to the estate of Smith Kilbrack deceased and which plat is recorded in the recorder's office in said County of Lee in Book "D" of Deeds page 222 said stone being at the termination of the line marked in said plat as dividing certain lots known as lot one and four, thence running a westerly direction sixteen rods on a line dividing said lot one and four thence north on a line parallel with line dividing said lot four from the said town of Dixon twenty rods thence in an easterly direction on a line parallel with the first described line of the said lot fifteen rods to the western line of the said town of Dixon thence along said line twenty rods to the place of beginning

in which the said plaintiff claims an estate in fee simple. And the said Plaintiff being so possessed thereof the said defendant afterwards, to-wit, on the twenty second (22) day of June last aforesaid in the year of our Lord last aforesaid, entered into the premises aforesaid and ejected the said plaintiff therefrom, and kept out and unlawfully withholds from the said plaintiff the possession of said premises to the damage of the said plaintiff, of Four hundred and therefore he brings suit.

Meaton & Robertson Plaintiff's Attorneys.

COURT.

vs.

Ejectment.

I do hereby enter myself security for costs, in this cause and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court, in pursuance to the laws of this State.

Dated this 3 day of June A. D. 185

On oath makes affidavit that _____ have been
duly authorised and requested in writing by _____
the Plaintiff in the above entitled suit to commence the said action of Ejectment in favor of the
said _____ and against the said _____
Sworn to before me this _____ day of _____ 185

NOTICE.

To Charles Hanson James R. Edsall and John M. Grayam
The above named defendants Sirs

You will please take notice that on the
_____ day of July
of the June term of the Su County Circuit Court of
for the Year Eighteen Hundred and Fifty-Eight at the Court Room of said Court in said
County, a declaration in Ejectment of which the foregoing declaration is a copy, will be filed
with the Clerk of said Court, and that upon the filing of the same, a rule will be entered, re-
quiring you to appear and plead to the same within twenty days after the entry of said rule
and in default of such appearance and plea, a judgment by default will be entered against you,
and the said plaintiff will recover possession of the said premises.

June 28 Heaton and O'Brien Plaintiff's Attorneys.
A. D. 185

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS, } ss. Su County Circuit COURT, }
COUNTY OF Su } June Term 185 }

Leah Armstrong }
vs. } EJECTMENT.

Charles Hanson James R. Edsall and John M. Grayam
E. A. Snow

On oath makes affidavit that he served a
copy of the above declaration, and of the above affidavit and notice accompanying the same
in the above entitled cause, by delivering a copy of the same to

Charles Hanson
James R. Edsall & John M.
Grayam and to each of them

on the 29th day of April, A. D. 185

Subscribed and sworn to this 6th day of July 185

Geo. E. Haskell Clerk } E. A. Snow
per Joseph Ball }
S. C.

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Lee County Circuit Court
November Term A.D. 1858

John M. Grayson
Charles Hanson
James K. Edsall
advs
Jacob Armstrong
} Ejectment
} Rea-

And now comes the said de-
fendants Grayson & Hanson
by James K. Edsall their attorney
- & the defendant Edsall in
person - & depose &c, when &c,
& say that they are not guilty
of withholding the premises
claimed by the plaintiff in
manner & form as the plain-
tiff hath above thereof in his de-
claration alleged - & this the
defendants pray may be in-
quired of by the court.

James K. Edsall
for Defts

And the Plff doth the like
Verdict & Attention
for Plff

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Of the November Term 1858
Of the Lee County Circuit Court

Jacob Armstrong

Charles Hanson

John M. Graham

James K. Eddall

Bell of Exceptions

Be it remembered
that on the 16th day of November A.D. 1858
said day being one of the days of the No-
vember Term of said Court in the year
aforesaid, the said cause came up for
trial upon the issue aforesaid and the
jurors of the jury whereof mention is
within made, being called likewise
came and after being elected tried and
sworn to try the issue joined, the Counsel
for the said plaintiff learned in the law
he gave in evidence on the behalf of the
said plaintiff to said jury as follows

1st The Plaintiff offered to read in evidence
the following Deed. to the reading of
which the defendants by their Counsel
then and there objected, which objection
was overruled by the Court, to which
ruling the Defendants excepted; and
said Deed was thereupon read as fol-
lows;

"John Monahan wife
Do

Samuel Hornick

} This Indenture made
this Twenty second day
of January in the year of our Lord One thousand

(Page 6)

and eight hundred and fifty one be-
tween John Monahan & Susan Monahan
his wife of the County of Lee and State
of Illinois of the first part and Samuel
Herrick of said County of Lee and State
of Illinois of the second part witnesseth
that the said party of the first for and
in consideration of the sum of six
hundred Dollars to said party of the
first part in hand paid by the said
party of the second part the receipt
whereof is hereby confessed and acknowledged
has granted bargained and sold and by
these presents do grant bargain sell
confirm unto the party of the second
his heirs and assigns forever All the
right title interest claim or demand
which the said party of the first has
in the following described lot or parcel
of land situate lying and being in the County
of Lee and State of Illinois to wit; A tract of
land containing two (2) Acre being a
part of the East part of the Northwest
fractional Quarter of Section number
five Township number twenty one (21)
of Range number 19 nine East of
the fourth principal Meridian
Bounded and described as follows
to wit Commencing at a Stone (15)
fifteen inches long (6) six inches wide
and (4) four inches thick set in the
ground at the western termination
of first or Main Street in the
Town of Dixon in the said County of Lee.

(Page 7) "said stone being the same known and
"marked as Station Number Eight (8)
"on the plat of certain Real Estate belonging
"to the estate of Smith Gibbards deceased
"and which plat is recorded in the Recorder's
"office in the said County of Lee
"in Book D of Deeds on page (222) two
"hundred and twenty two said stone
"being at the termination of a line marked
"on said plat as dividing certain lots
"known as lots Number (3) three and
"four thence running in a westerly
"direction (16) rods on a line dividing
"said lots three and four thence north
"on a line parallel with the line dividing
"said lot Number four from the said
"town of Dixon (20) twenty rods thence in
"an easterly direction on a line parallel
"with the first described line of the lots here-
"by conveyed (16) rods to the western line
"of said town of Dixon, thence along said
"line (20) twenty rods to the place of begin-
"ning

"To have and to hold the same
"together with all and singular the appur-
"tenances and privileges therunto belong-
"ing or therunto appertaining and all
"the estate right title interest and
"claim whatever of the said party of the first
"part either in law or equity to the only purpose
"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 the aforesaid tract or parcel of

(Page 7) "therein conveyed fully and without
"the compulsion of her said husband
"I witness whereof I have here
"unto set my hand and affixed my seal
"at Des Moines the Twenty second day of January
"AD 1887"

"Recorded Jan. 23rd 1887 at 6 o'clock P.M. Youngs Wood J. P. [Seal]"
"C. C. Chase, Recorder"
"By R. H. Porter"

Whereupon ~~the~~ the plaintiffs
called Henry G. Noble as a witness who
being duly sworn testified as follows;
That he knew the bounds of the
old Gilbreath place and the premises
in controversy they being part of the
same; knew that Gilbreath owned the
premises described in the foregoing
Deed and other grounds. Mr Graham
one of the Defendants is now in the possession
of some of the said lands and was so
in possession June 29th 1888. Mr Mon-
ahan succeeded Gilbreath in the pos-
session of the premises occupied same
premises about eight years ago &
Samuel Herriek succeeded Monahan
in the possession of the same. Mr Her-
riek has possession of some of the
land now. Can't tell when he
(Herriek) gave up possession of the
remainder. he gave up possession
of premises in controversy to Charles
Hanson who succeeded said Herriek
in the possession of the same several
years since. do not recollect precise
time. Graham one of the Defendants

(Page 15)

succeeded Hansen in the possession of the premises and has been in possession of premises described in said plaintiffs declaration for more than one year prior to June 29th 1888

Whereupon the defendants by their attorney admitted for the purposes of this trial that Defendant Gray and was at the time and before the commencement of this suit in the sole and exclusive actual possession and occupancy of the premises described in the plaintiffs declaration.

The Plaintiffs next offered in evidence the following Deed

"This Deed made
"this 29th day of October in the year of our
"Lord One Thousand eight hundred and
"fifty six, Witnesseth that Samuel Herrick
"and Sally Herrick his wife of Dixon in the
"county of Lee and State of Illinois in con-
"sideration of six hundred & eighty dollars
"to them in hand paid by Jacob Armstrong
"of Dixon of the county of Lee and State of
"Illinois the receipt of which is hereby duly
"acknowledged, do grant bargain and sell
"convey and confirm to the said Jacob Arm-
"strong his heirs and assigns forever the
"following described tract of land situated
"in the county of Lee and State of Illinois
"to wit; A Strip containing one half an
"acre off the East side of a tract of land con-
"taining two acres being a part of the
"East part of the Northwest fractional

(Page 12) "depend the title to the said premises to the
" said Jacob Armstrong his heirs and as-
" signs forever against the lawful claims
" of all persons whatsoever claiming by through
" or under them and all others.
" In witness whereof the said parties of the first
" part have hereunto set their hands and seals
" the day and year first above written"

"Done in presence of"
"The words crossed on the 21st
" & 22nd line from top crossed
" before signing
" Edwin W. Hoines"

S Herriek
Sally Herriek

{Seal}
{Seal}

"State of Illinois," ss "Be it remembered that
" Lee County," ss "on this 24th day of October in the year
" of our Lord eighteen hundred and fifty
" six before me Edwin W. Hoines a Justice
" of the Peace in and for the County afore-
" said appeared Samuel Herriek and Sally
" Herriek his wife who are personally
" known to me to be the identical persons whose
" names are subscribed to the foregoing instru-
" ment as parties thereto and acknowledged
" the said Instrument to be their act and
" deed for the purposes therein mentioned
" And Sally Herriek wife of the said
" Samuel Herriek having been by me
" made acquainted with the contents
" of said Deed and being by me examined
" separately and apart from her said hus-
" band acknowledged that she had
" executed the same and relinquished
" her right of dower to the lands and
" tenements therein conveyed fully

(Page 11)

"Quarter of Section No five (5) in Township No
"Twenty one (21) of Range No nine (9) East
"of the 4th P.M., Bounded and described as
"follows, commencing at a Stone fifteen
"inches long six inches wide and four inches
"thick set in the ground at the centre of the
"western termination of First or Main Street
"in the town of Dixon in said county of Lee;
"Said Stone being the same known as Station
"Number eight (8) on the plat of certain Real
"Estate belonging to the estate of Smith Ed-
"braith deceased and which plat is recorded
"in the Records office in the said county of
"Lee in Book "D" of Deeds, page ^{No} 222 said Stone
"being at the termination of the line marked
"on said plat as dividing certain lots Nos 3 & 4
"thence running in a westerly direction 16
"rods on the line dividing said lots 3 & 4
"thence North on the line parallel with
"the line dividing said lot No 4 from the
"said town of Dixon, twenty rods thence
"in an easterly direction on a line par-
"allel with the first described line of the
"lot hereby conveyed, 16 rods to the western
"line of said town of Dixon thence along said
"line 20 rods to the place of beginning

"To have and to hold the
"same with the privileges and appur-
"tenances thereto belonging to the
"said Jacob Armstrong his heirs and
"assigns forever, the said parties of
"the first part hereby covenanting that
"they their heirs executors and admin-
"istrators will warrant and forever

(Page 13) "and without the compulsion of her said husband. Given under my hand and seal at Dixon the day and year aforesaid"

Edwin R. Hines J.P. ~~Hines~~

To the reading of which the defendants by their counsel then and there objected which objection was overruled by the court and the defendants then and there excepted and said deed was accordingly read in evidence.

Whereupon the Plaintiff offered to read in evidence from Book B of Power of Attorney, being ^{one} of the books of Record kept by the Recorder of Lee County a copy of an Instrument purporting to be an assignment of the premises in question among other things from defendant Hanson to defendant Edsall for the benefit of Hanson's creditors to the reading of which from said book of Records the defendants objected; which objection of defendants was then and there overruled by the court to which ruling of the court the defendants then and there excepted; and said Record of said assignment was thereupon read to the jury in these words and figures, to wit:

"Charles Hanson")

To "His Indenture made
"James H. Edsall" and entered into this 11th

(Page 14) Monday of July 4th 1857 between Charles Hanson
of the town of Dixon county of Lee and
State of Illinois of the first part and
James K Edsall of the second part -
Whereas the said Charles Hanson is
is firstly indebted ^{for}undry considerable sums of
money and has become unable
to pay and discharge the same with
punctuality or in full and is desirous
of making a fair just and equitable
distribution of all his property and
effects among his creditors

Now therefore this Indenture
witnesseth that the said Charles Hanson
in the consideration of the pre-
mises & the sum of one dollar to him in
hand paid by the said party of the
second part. the receipt whereof is
hereby acknowledged has granted bar-
gained sold released assigned transferred
and set over and by these presents doth
grant bargain sell release assign trans-
fer and set over unto James K Edsall the
said party of the second part and to his
heirs and assigns forever all and sin-
gular the lands tenements hereditaments
and appurtenances situate lying and being
in said county of Lee to wit: lot (10) con-
tain Block No (16) situate in Dixon in addition
to the town of Dixon in said county and
also a strip containing (1/2) one half acre
off from the East side of a tract of land con-
taining two acres being a part of the East
part of the North West fractional quarter

Page 18) " of section Number (8) in Township
" number (21) twenty one Range (9) 1st East
" of the 4th principal Meridian bounded &
" described as follows commencing at
" a stone 15 inches long six inches wide &
" 4 inches thick set in the ground at
" the western termination of First or Main
" Street in the town of Dixon aforesaid, said
" stone being the same known as Station
" Number (8) eight in the plat of certain
" Real Estate belonging to the Estate of
" Smith Gilbreath deceased and which
" plat is recorded in the Recorder
" Office in and for the said County of Lee
" in book D of Deeds page 222, said stone
" being at the termination of the line mark-
" ed on said plat as dividing certain lots
" known as lots Number three and four (3 & 4)
" thence running in a westerly direction
" 16) sixteen rods on the line dividing said
" lots 3 & 4 thence North on a line parallel
" with the line dividing said lot No (4)
" four from the town of Dixon, twenty thence
" in an Easterly direction on a line parallel
" with the first described line of the lot hereby
" conveyed, 16 rods to the western line of
" the said town of Dixon, thence along said
" line (20) rods to the place of beginning.
" together with all my right title and
" interest as well in law as in equity in
" and to the same; And also all goods wares
" Merchandise Chattels Notes bills bonds
" judgments evidence of Debt securities
" and vouchers for and effecting the payment

(Page 16) of money claims demands things in
"action and property of every name and
"nature whatsoever of and belonging to the
"said party of the first part excepting
"my household furniture and other prop-
"erty exempt by law from execution; To have
"and to hold the same and every part and
"parcel thereof with the appurtenances there-
"unto belonging to the said party of the second
"part his heirs executors and assigns and
"administrators

"In Trust Nevertheless for
"and upon the following uses and pur-
"poses viz: the said party of the second part is
"to take possession of all and singular the lands
"tenements and hereditaments property and
"effects hereby assigned and sell and dis-
"pose of the same upon such terms and
"conditions as in his judgment may appear
"best and most for the interest of all parties
"concerned but not upon credit, and to
"convert the same into cash and to collect
"all and singular the said notes bills bonds
"judgments evidences of debt securities
"claims demands things in action property
"or so much thereof as may prove collect-
"ible and thereupon execute acknowledge
"and deliver all conveyances as receipts
"and instruments necessary and proper in
"the premises for the purposes aforesaid;
"and by and with the avails and proceeds
"of such sales and collections pay a sum
"to be paid.
"And all just and reasonable expenses

(Page 1) Costs, Commissions and Charges of Ex-
ecutions and carry out the objects of this as-
signment and all rents assessments and
taxes due and to become due on the lot's land
tenements aforesaid until the same shall
be sold or disposed of according to the as-
signment;

Secondly. To pay and discharge in full
the several and respective debts, notes bonds
and obligations and sums of money due
or to become due from the said party of the
first part to the following named persons
and firms to wit; John Demont Jacob Som-
strong, Nicholas Davis Charles Housling and
Bonsuud & Sheffield together with all inter-
est-moneys now due or to grow due thereon
and if the said proceeds and avails shall
not be sufficient to pay and discharge
the same in full, then such proceeds
and avails shall be distributed "pro rata"
among the said several persons and firms
aforesaid in proportion to the amount of
their respective claims share and share
alike.

Thirdly — To pay and discharge all the
other debts of the party of the first part now
due or hereafter to become due provided there
be sufficient funds for that purpose and
should they prove insufficient then the same
to be applied "pro rata" to the payment of the
said debts in proportion to their respective
amounts.

Lastly — To return the full sur-
plus of the said proceeds and avails of

(Page 18) any thing ^{should} be to the said party of the first part his executor administrator and assigns.

Also for the better execution of these presents and the several trusts hereby reposed the said party of the first part hereby nominates constitutes and appoints the said party of the second part his true and lawful Attorney irrevocably with full power and authority to do transact and perform all acts deeds and matters which are or may be necessary in the premises as fully and completely as he the said party of the first part might or could do were these presents not executed with full power of substitution and revocation hereby ratifying and confirming all and every thing whatsoever that my said Attorney or his substitute shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal the day and year first aforesaid

In presence of

Charles Hansen {^{Seal}}

State of Illinois)

Lee County)

SS I David Kelly a Justice of the Peace in and said County in the State aforesaid do hereby certify that Charles Hansen who is personally known to me as the person whose name is subscribed to the foregoing within instrument as having executed the same appeared before me this day in person and acknowledged

(Page 17) that he signed sealed and delivered the
said Instrument of writing as his
free and voluntary act for the uses
and purposes therein set forth
Given under my hand and
seal this 17th day of July A.D. 1857

David Welch J. L. Esq.

Whereupon the plaintiffs rested and the
defendants offered no evidence. The
defendants asked the Court to instruct
the jury as follows:

"1st That unless the evidence
shows that the plaintiffs has a good legal
title to the premises in question the jury
should find for the defendants"

"2nd That if ^{the} evidence and admission
of the respective parties show that the
defendant Grayam was in the sole and
actual possession and occupancy of
the premises in question at the time of the
commencement of this suit the jury
should find the defendants Hanson
and Edsall not guilty; even if the evi-
dence ^{shows} that they said Hanson and
Edsall claimed title to the premises
in question."

"3rd That unless the jury believe from
the evidence that the premises in question
at the time of the commencement of
this suit were vacant and unoccupied
the jury should find the defendants

Hanson and Edrall, not guilty - notwithstanding the jury should believe from the evidence that they said Hanson & Edrall claimed title to the premises."

"^{4th} That if the jury believe from the evidence that defendant Grayson was in the actual possession of the premises in question and resided thereon at the time of the commencement of this suit, and also that defendants Hanson & Edrall were not in possession - but claimed title to or some interest in the same - the jury should find in favor of said defendants Hanson and Edrall."

"^{5th} That it is only in cases where lands are vacant and unoccupied, that this form of action - Ejectment - can be maintained against parties upon the ground that they claim title to, or some interest in, such lands."

The Court thereupon refused to give said 2nd 3rd 4th & 5th instructions to which refusal the said defendants then and there excepted.

And the Court thereupon gave its first instruction, but appended thereto of its own motion, the following qualifications to wit: "If the jury believe from the evidence that the Plaintiff has shown a legal title derived from a party shown to have been in possession of the premises

(Page 21) " Several years ago; this in absence
" of any title shown by defendants
" is sufficient to authorize the find-
" ing of a verdict for Plff. — if the jury
" also find that the defendants at the
" time of the commencement of the suit
" were in possession of said premises,
" or claimed title thereto. The jury can
" find one or more of the defendants
" guilty or one or more or all of
" them not guilty "

As the giving of
which said qualifications of said
first instruction the defendant by
their Attorney then and then excepted.

The foregoing was the whole of the
evidence offered to the jury; & the cause
was thereupon submitted to the jury
— who having retired to consider of their
verdict — returned into court with
their verdict finding all of the defend-
ants guilty in manner and form as
alleged in the Plaintiffs Declaration, &
that the Plaintiff was seized of an Estate
in fee simple to the ^{persons therein} described —

Whereupon the defendants entered their
motion for a new ~~motion for a~~
new trial and assigned as grounds as
follows:

1st That the Court erred in the
admission of evidence objected by de-
fendants.

over

(Page 22)

2nd That the Court improperly refused instructions asked by defendants.

3rd That the Court erroneously qualified defendants 1st instruction

4th That the verdict is against the evidence ~~which said~~
Which said motion for a new trial was afterwards on the 29th day of November A.D. 1888, being one ^{of the} days of said term of said Court, overruled by the Court - to which the defendants then and there excepted

And forasmuch as the several matters hereinbefore stated do not otherwise appear the defendants by their counsel hereby pray that this their bill of exceptions may be duly signed and sealed and made a part of the Record of the said Court
Consent which is done -

(Signed) John V. Engstrom
Judge 22nd Jud. Cir.

State of Illinois
Lee County

(Page 23)

At a Term of the Circuit Court
of Lee County, in the State aforesaid, begun and holden
at the Court House in Dixon in said County on
third Monday in June in the year of our Lord
one thousand eight hundred and fifty eight

Present. Hon John V. Eastuse

Judge of the 22nd Judicial Circuit

Robert C. Dorepell State's attorney
for said 22nd Judicial Circuit.

George E. Haskell Clerk of the
Circuit Court of Lee County
Myself Deput. Clerk.

Ozias Wheeler Sheriff of Lee County

As it remeembred that on the 6th day of July
in the year of Our Lord One thousand eight hundred
and fifty eight (the same being one of the regular
days of the said June Term) the following entry
appears to us of record concerning the aforesaid
recited matters to wit:—

" Jacob Armstrong

Charles Hanson James H. Edwards John A. Maynard

Exponent

On this day
comes the Plaintiff by Hutton & attached his attorneys
and in his motion this suit is Docketed and
the Declaration filed herein, and thereupon the said
Defendants are ruled to stand in twenty days from
the date hereof. "

And afterwards, at the November Term of said Court, begun and holden at the Court House at Dijon aforesaid on the Second Monday of November in the year of Our Lord One thousand eight hundred and fifty eight -

Present Now: John Oustree Judge
Robert C. Dorrnell State Attorney
Seas P. Brindman Clerk
Orin Wheeler Sheriff

It is remembered that on the 16th day of November (the same being one of the regular days of said November Term) the following entries appear to us in this book to wit:-

" Jacob Armstrong

Charles Hanson, James H. Edsall & John Mc Grayson

} Ejectment

On this day came the Plaintiff by Hutton & Hutton his attorneys, and the Defendants by Edsall their attorney, also came a jury of good and lawful men to wit: A D Moore, Calvin Dorrket, Benjamin Gilman, D F Brindman, A C Steadman, Horram Perry, John S. Little, John Baker, James Goble & William H. Geo., the regular panel being now exhausted the Sheriff was directed to call two persons from the bystanders as talesmen, whereupon came James W. House & Horram S. Perry who with the regular jurors immediately started tried and sworn well and truly to try the issues joined, having heard the evidence and the argument of counsel, now retire to consider of their Verdict; and afterwards on this day the said jury came into Court and return the following Verdict to wit:

"We the jury in the above entitled cause find the Plaintiff possessed of a fee simple title to the premises described in his said Declaration.

(Page 25)

"A that the said Defendants Charles Hanson,
J. M. Grayson & J. H. Edsall are guilty of unlawfully
withholding the possession of the same" and now
come the Defendants and enter their motions for a New Trial

And afterwards at said November Term, to wit:-
on the 29th day of said month the following entries
appear to us in this behalf of Record to wit:-

" Jacob Armstrong

Charles Hanson James H. Edsall John M. Grayson } Espectment

On this day
again comes the said Plaintiff by Norton & others and
his attorneys and the Defendants by Edsall their attorney
and now the motion for a New Trial herein is over-
ruled to which ruling the said Defendants except.
It is now therefore considered ordered and adjudged
by the Court that the Plaintiff have and recover of the
Defendants and Estate in Fee Simple, in and to the
premises in his said Declaration mentioned and
described to wit:- a strip of land containing one
half an acre off the East side of the tract of land, con-
taining five acres of land, being a part of the East part of
the North West fractional quarter of Section No five
Township twenty one Range Nine East of fourth principal
meridian bounded and described as follows; commencing
at a stone fifteen inches long six inches wide four inches
thick, set on the ground at the center of the western ter-
mination of first or Main Street in the Town of Dixon
in said County of Dec, said Stone being known as Station
No Eight in the Plat of certain Real Estate, belonging to the
Estate of Smith Edwitt Deamond, and which Plat is
recorded in the Recorder's Office in said County, of Dec
in Book 'D' of Deeds page 232, said stone being at the
termination of the line marked in said Plat

(Page 26)

as dividing certain lots known as lots three and four
thence running a Westerly direction Sixteen rods on
a line dividing said lots three and four North on
a line parallel with line dividing said lot four from the
said Town of Dixon twenty rods, thence in an Easterly
direction on a line parallel with the last described
line of the said lot sixteen rods, to the Western line of the
said Town of Dixon, thence along said line twenty rods
to the place of beginning all being situated in the County
of Lee and State of Illinois: according to the Deed
heretofore recorded by the parties herein: and that the said
Plaintiff have a Writ of Possession thereof, and that he
have and recover of the said Defendants his costs and
charges by him in and about this suit expended
and that he have Execution therefor: And on
motion of Defendants leave is given them to have Bill of
Exceptions signed & sealed within thirty days from this date

State of Illinois
Lee County

I, S. Isaac Boardman Clerk of the
Circuit Court in and for the County
and State aforesaid do hereby certify that the above
and foregoing matter is a full true and complete
exemplification of all the pleadings and proceedings
of Record in said cause, truly copied from the
Books and filed in my office

In Testimony whereof I hereunto
set my hand and the seal of said
Court at Dixon this 8th day of
January AD 1859
Isaac S. Boardman
Clerk

(Page 17)

Lee Co. Court Comm
November Term 1858

Jacob Armstrong }
Charles Hanson } Ejectment
John M. Grayson }
James K. Edsall }

Clerk of said Court will
please make an attention
and transcript of the, Decla-
ration, Notice, Affidavit of
Service, Plea & Similitur,
-all orders of the Court be-
fore verdict- the verdict-
orders after verdict & judgement
of the Court- and the Bill
of Exceptions: Oblige Ye
Jas. K. Edsall
Att'y for Defts

Jacob Armstrong

Hammond

(Page 28)

Bill of Cost
Jacob Armstrong

Charles Henderson, J. B. Caldwell & J. M. Grayson

Copy of the Cost -

Docket 2 terms 20	Cost 30	Writ 10	Writ atty 20	Writ 5 p. 25	95
Writ of Habeas Corpus 20	Ent. writ to p. 20	Ent. call p. 20			60
Ent. writ to p. 20	Call de jure 15	2 C. 10	Ent. V. 10		35
Ent. writ to p. 20	Ent. writ to p. 20	Ent. writ to p. 20	Ent. writ to p. 20		90
Writ of Habeas Corpus 40	Ent. writ to p. 20	Ent. writ to p. 20			80
Bill of Cost 30	Copy 20	Cost & Seat 35			85
Jerry Fee 300.	Theriff Fee 325	Writs 325			6.25
					10.90

I certify the foregoing to be a correct copy of
Hunt's Cost in said cause

J. J. Boardman Clerk

Copy of Defendants Cost			
Writ atty 20	Writ 4 p. 20	Ent. writ to p. 20	65
Ent. Exception 20	Ent. writ to p. 20		40
Transcript to Supreme Court			10.00
Bill of Cost 30	Copy 20	Cost & Seat 35	95
Docket Fee 250			2.50
			1430

I certify the above to be a correct copy of Cost
from my Fee Book in said cause

James P. Boardman
Clerk

State of Illinois }

Supreme Court of the State of
Illinois, of the April Term
A.D. 1858. Third Grand
Division —

Charles Hanson, John M. Grayson &
James K. Edsall Plaintiffs in
Error

vs
Jacob Armstrong Defendant in Error

And now come the said
Charles Hanson, John M. Grayson
& James K. Edsall, plaintiffs in
Error, & say that in the Record
proceedings aforesaid there is man-
ifest error in this:

1st That the Court improperly
admitted evidence objected to
by plaintiffs in Error.

2nd That the Court erroneously
refused to give to the jury instruc-
tions asked for by Plffs in Error.

3rd That the Court erroneously
qualified instructions asked
for by Plffs in Error.

4th That the Court erred
in overruling motion for
New Trial; and

5th That the Court erred
in entering Judgment for
Defendant in Error.

And the said plaintiffs
in Error pray that the
Judgment aforesaid, for
the errors aforesaid, & for other
errors in the said Record
& proceedings being, may be
reversed, annulled and
altogether holden for naught.

That they may be restored
to all things which they have
lost by occasion of the
said judgment for costs

Per K. Edsall
Att'y for Plffs in Error

And now comes the said deft in error
and says that in the above proceedings
aforesaid there is no error and says
except he approve

B. L. Cook
for deft

1151
Trenton

in re
Charles H. Hume

vs
John H. Hume

Assignment of Error

Filed February 7, 1859

at Deland
Fla.

Testimony

B

Supreme Court of the State of
Illinois - April Term A.D. 1857 -
Third Grand Division -

Charles Harrison, John
M. Grayson & James K.
Edsall, Plffs in error } Error
to
Lee Co. }
Jacob Armstrong Defs.
in error

Clerk of said Court will
please issue Seize Facias
against Defs in error - di-
rected to the Sheriff of Lee County
upon the transcript of
Record herewith filed, and
oblige &c

Dated at Dixon this } Just M. Edsall
8th day of Feb., 1857 } Atty for Plffs in error

Same vs Same } I do hereby enter my
self necessity for Costs herein
& acknowledge myself bound
to pay, or cause to be paid
all costs which the Plffs in
error shall make herein, or
which they shall be adjudged
to pay in pursuance of the
laws of this state -
Dated at Dixon this 8th day of
February 1857 -

E. P. Stiles

Chas. Hanson et al

Plffs in error

Leeah Armstrong

Defn in error

Pr. for Sci. Fund

Security for Costs

Filed February 9. 1859

L. Leland
clerk

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

CHARLES HANSON, *et. al.*, Plaintiffs in Error, vs. JACOB ARM-
STRONG, Defendant in Error.

BRIEF OF POINTS AND AUTHORITIES.

JAMES K. EDSALL, of Counsel for Plaintiffs in Error, presents the following Brief of Points and authorities:

The evidence shows, affirmatively, that Grayam was in the sole and exclusive actual possession and occupancy of the premises in question, and Hanson and Edsall are sought to be made defendants upon the ground that they claimed title to, or some interest in, the same.

- 1 The Instructions, numbered 2, 3, 4 and 5, asked by plaintiffs in error and refused by the Court, are based upon the hypothesis that it is only in cases where lands are vacant and unoccupied that ejectment can be maintained against parties upon the ground that they claim title to, or some interest in, such lands.

That this is the correct reading of the law, would seem to be sufficiently obvious from the language of the statute, as follows: "If the premises for which the action is brought are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are *not* so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein, at the commencement of the suit." (R. S., Chap. 36, Sec. 4.)

- 2 That the legislature *meant* what they *said*, in the section above quoted, is, if need be, more fully made apparent from the fact that, in each subsequent clause of the statute wherein this subject is alluded to, the same distinction is kept in view. (Sec. 12 and subd. 4, sec. 23, same chap.)

- 3 Beyond this, our statute relative to the action of ejectment is a literal transcript of the New York statute upon the same subject; and the Courts of that State have uniformly held that it is only in cases in which lands are vacant and unoccupied that ejectment can be maintained under their statute against parties not in possession, but who claim title to, or some interest in, such lands. (*Banyer vs. Empie*, 5 Hill 51; *Sherwood vs. Vanderburgh*, 2 Hill 307; *Shaver vs. M'Graw*, 12 Wen. 559; *Edwards vs. Farmers' Fire Ins. and Loan Co.*, 21 Wen. 481.) *

- 4 It is, indeed, an anomaly and unknown in the common law to permit suits in ejectment to be brought to dispossess parties *not* in possession; and the apparent reason for the statute fails, unless this privilege of making parties defendants in ejectment, upon the ground that they claim title to, or some interest in, lands, is confined to its legitimate object, the defending the title to vacant and unoccupied lands against those who wrongfully assert and proclaim interest in, or title to, the same, without actually disturbing the possession. (*Banyer vs. Empie*, 5 Hill 51.)

Lucas v. Johnson
8 Barb. 294

The objection to the qualification made by the Court to the first instruction asked by the plaintiffs in error, is substantially the same as the above in this: That the instruction, as qualified, was liable to be construed by the jury, that if one or more of defendants were in possession, and the others claimed title, &c., at the time of the commencement of the suit, the jury should find against all of them.

The only item of evidence admitted by the Court to which plaintiffs
6 in error urge particular objection, is the reading, from the records kept by the Recorder of Lee county, the copy of an instrument purporting to be an assignment of the premises in question from Hanson to Edsall. The objections are: 1st. The evidence was irrelevant to the issue, in this, that it had previously been affirmatively proven by defendant in error that the lands were *not unoccupied*, but were in the actual possession of Grayam, thus precluding the possibility of holding parties upon the ground of claiming title, &c.

Second. There had been no grounds laid to justify the introduction of secondary evidence.

Court
7 Third. In case such grounds had been shown, the Record Books in possession of the Circuit Clerk, as *ex officio* Recorder, are not records of the ~~county~~, and the only way in which their contents can be made evidence is in pursuance of the statute calling such records into existence, viz: by a "transcript of the record thereof, certified by the Recorder in whose office the same may be recorded, &c." (R. S., Chap. 24, sec. 25.)

Again: conceding that it were proper to make parties defendant in
ejectment who simply claim title, &c., jointly with others in actual pos-
8 session, to recover possession of lands thus actually occupied, the evidence—admitting it to be properly before the jury—is clearly insufficient to sustain the verdict as against Hanson and Edsall. The mere fact that a deed is found upon record, conveying lands to or from parties not in possession, without any evidence of the manner in which it came there, no evidence connecting either party with such deed, except that their names appear in it, and no evidence that either party had ever claimed any rights under it or in any manner interfered with the lands in question, cannot prove such a claiming of title thereto, or interest therein, as
9 the legislature intended should render parties liable to be sued in an action of ejectment.

115-

SUPREME COURT.

CHARLES HANSON, }
JOHN M. GRAYAM, } Pl'ffs in Error.
JAMES K. EDSALL, }

VS.

JACOB ARMSTRONG, Def't in Error.

Briefs points &c
~~ABSTRACT~~ OF THE RECORD.
A

FILED FEBRUARY 9, 1859.

L. LELAND, *Clerk.*

JAMES K. EDSALL, *for Plaintiffs in Error.*

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Lee — 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 Lee County, before the Judge thereof, between
Jacob Armstrong

plaintiff, and Charles Hanson, John M. Gray & James H. Edsall

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

as we are informed by their complaint — 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!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of February in the Year of Our Lord one thousand eight hundred and fifty-nine.

Leland Black

Clerk of the Supreme Court

J. B. Rice Deputy

Charles Hanson & others
vs
Jacob. Armstrong
Writ of Error.

Filed February 8. 1839
L. Leland
clrk

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

To the Sheriff of the County of See

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of See County, before the Judge thereof, between Jacob Armstrong

plaintiff, and Charles Hanson, John M. Graham and James K. Edsall

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

as we are informed by their complaint, _____ the record and proceedings of which said judgment 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 Jacob Armstrong

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 records 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 Jacob Armstrong

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of February in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

S. Leland
Clerk of the Supreme Court,
by J. B. Rice Deputy

State of Illinois

See County } I have executed the
within with my reading the same
to & within the hearing of the
within present Jacob Armstrong
this 19 day of February A.D. 1859

Hearing 50-
McLeage 3-
Return 10
Paid by P. H. Mason 65-0

Lester Hoagberg
Thurston
Bry D. B. McKee

Charles Hanson & Mrs
vs
Jacob Armstrong
Sen. Jacin

Filed Feb 28. 1859
L. Leland Clk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

CHARLES HANSON, *et. al.*, Plaintiffs in Error, vs. JACOB ARMSTRONG, Defendant in Error.

BRIEF OF POINTS AND AUTHORITIES.

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That this is the correct reading of the law, would seem to be sufficiently obvious from the language of the statute, as follows: "If the premises for which the action is brought are actually occupied by any person, 2 such actual occupant shall be named defendant in the declaration; if they are *not* so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein, at the commencement of the suit." (R. S., Chap. 36, Sec. 4.)

That the legislature *meant* what they *said*, in the section above quoted, is, if need be, more fully made apparent from the fact that, in each subsequent clause of the statute wherein this subject is alluded to, the same distinction is kept in view. (Sec. 12 and subd. 4, sec. 23, same chap.)

- 3 Beyond this, our statute relative to the action of ejectment is a literal transcript of the New York statute upon the same subject; and the Courts of that State have uniformly held that it is only in cases in which lands are vacant and unoccupied that ejectment can be maintained under their statute against parties not in possession, but who claim title to, or some interest in, such lands. (*Banyer vs. Empie*, 5 Hill 51; *Sherwood vs. Vanderburgh*, 2 Hill 307; *Shaver vs. M'Graw*, 12 Wen. 559; 4 *Edwards vs. Farmers' Fire Ins. and Loan Co.*, 21 Wen. 481.) X

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* Lucas vs. Forman - 8 Barb.
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