

12605

No. _____

Supreme Court of Illinois

Smith

vs.

Rankin

71641  7

³⁷
James A. Smith }
William Rankin }
Argument & Brief

Filed May 6, 1858
L. Leland
Clerk

1
Pleas before the Honorable Circuit Court
of the County of Marshall in the State of
Illinois at a term thereof began and
holden at the court house in the city of
Lacon in and for said County on
Monday the fourteenth day of April
in the year of our Lord one thousand eight
hundred and fifty six

Present the Honorable Madison E Hollister
Judge of the Ninth Judicial Circuit of the State
of Illinois.

William H L Wallace States Attorney
A Gardner Sheriff & J L Fort Clerk & by Jas-
McBoul his deputy. To wit

Be it remembered that heretofore to wit
on the 21st day of December AD 1854
S L Fleming filed in the office of the Clerk
of said Court the notice or Declaration
in ejectment of William Rankin to & vs
James A Smith. Which said Decla-
ration is in words and figures as
follows To wit—

In the Circuit Court of the County
of Marshall April Term 1855.

William Rankin }
vs }
James A Smith }

William Rankin
Plaintiff in this suit complains of
James A Smith Defendant in this
suit for that whereas on the first day
of November AD 1854. at the County
aforesaid, he said Plaintiff was pos-
sessed of the following described real
Estate the North East quarter of Section
Number (19.) in Township Thirteen North
and Range Number nine East of the
fourth principal meridian being sit-
uated in said County of Marshall and
State of Illinois —

The title to which he the Plaintiff
claims in fee and the said Plaintiff
being so possessed thereof the said Defen-
dant on the fourth day of November
AD 1854 entered into said premises and
unlawfully withholds from the Plaintiff
the possession thereof to the damage of
the said Plaintiff one hundred dollars
and therefore he brings suit &c —

William Rankin
By his Atty Protty Fleming

3

You are notified that on the first day of the next term of the Circuit Court to be holden in and for the County of Marshall or as soon thereafter as counsel can be heard the foregoing declaration in ejectment will be filed and thereupon a rule will be entered requiring you to appear and plead thereto within twenty days after the entry of such rule. And that if you neglect so to appear and plead judgment by default will be entered against you and the Plaintiff will recover possession of the premises described in said declaration

Lo James A Smith Esq } William Rankin
Defendant } By his Atty Pratt
Fleming -

State of Illinois }
Marshall County } ss. -

Samuel L Fleming being duly sworn says that he served the foregoing declaration and notice on the Defendant within named by giving him a true copy of the same the 13th day of December A.D. 1854.

Subscribed and sworn to before me this 21 day of December A.D. 1854

Samuel L Fleming
Atty for Plff

G L Fort
Clerk -

Endorsed

William Rankin vs James Admirk Dec -

Filed December 21. A.D. 1854. G. L. Fort clerk

Bond for
costs 4

William Rankin
vs
James A Smith

} Marshall Circuit Court
Apr 1st Term AD, 1854
In 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 of the laws of this state

Dated this 21st day of Dec Samuel S Fleming
AD 1854.

Rule to Plead

William Rankin
vs

~~William~~

James A Smith

} Ejectment

Be it remembered that this day come the Plaintiff by Ramsey Fleming & Pratt and make proof of service of declaration & notice to the satisfaction of the Court. It is therefore ordered that the defendant be required to plead herein within twenty days from the adjournment of Court.

Plea
5
William Rankin }
vs } In the Circuit Court
James A Smith } of Marshall County
April Term AD 1855.

And now comes the said defendant and says that he is not guilty of ~~the~~ wrongfully withholding from the Plaintiff the possession of the premises in said Plaintiff declaration mentioned in manner and form as the said Plaintiff hath complained and of this he puts himself upon the country etc.

Bill of
Exceptions William Rankin } In the Circuit Court
vs } of Marshall County
James A Smith } Illinois
April Term AD
1856.
Action of Ejectment

Be it remembered that on the 24th day of April AD 1856. a jury was empanelled in this cause to try the issues as made by the pleadings - and the Plaintiff to maintain the issues on his part offered in evidence a Patent from the United States to Lemuel Tucker for the land described in plaintiff's Declaration To wit -

7

James Monroe
President of the United States of
America. — To all to whom these
presents shall come, Greeting:

Know Ye That in pursuance of the the
Acts of Congress appropriating and granting
Land to the late Army of the United States
passed on and since the sixth day of May
1812. Lemuel Tucker having deposited
in the General Land Office a Warrant in his
favour numbered 12, 158. there is granted
unto the said Lemuel Tucker late a private
in Davenports Company of the eighth regi-
ment of Infantry, a certain Tract of Land
containing one hundred and sixty acres
being the Northeast quarter of section nine-
teen, of Township thirteen north, in Range
nine East in the Tract appropriated (by the
Acts aforesaid) for Military Comities in
the Territory of Illinois.

To have and to hold the said quarter section
of land with the appurtenances thereof unto
the said Lemuel Tucker and to his heirs
and assigns for ever.

In Testimony whereof I have caused these
Letters to be made patent, and the
seal of the General Land Office to

6
be hereunto affixed. Given under my
Hand at the City of Washington this
29th day of November in
the Year of our Lord one thousand
eight hundred and seventeen and
of the Independence of the United
States of America the forty second
Cy. By the President James Monroe.

Josiah Meigs
Commissioner of the General Land Office

(Endorsed)

State of Illinois }
Madison County } Records Office at Edwardsville

I Josias Randle Recorder
for Madison County do certify
the within Patent duly Recorded
in my office in Vol 4. page
29 this 1st Jan 1820.

Josias Randle

Which was admitted to be read in evidence without objection
Plaintiff then offered in evidence a deed from Lemuel
Lucker to Christopher Vanseant. So Wit

9
This Indenture made this fifteenth
day of January in the year of our
Lord, one thousand, eight hundred and
nineteen between Samuel Tucker of
^{of the one part and Christopher Vanzant of the County of Saint Louis and State of Missouri}
Devotion County and State of Tennessee,
of the other part, Witnesses: That the said
Samuel Tucker for and in consideration
of the sum of one hundred and sixty
dollars or cents, to him in hand paid
the said Christopher Vanzant the receipt
whereof is hereby acknowledged, hath
given, granted, bargained, sold and al-
lotted 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 anywise appertaining, to the only proper use and behoof of him the said Christopher Vanzant his heirs and assigns forever. And ^{they} Samuel Tucker for himself, his heirs, executors and administrators doth covenant, 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 Samuel Tucker hath hereunto set his hand & affixed his seal the day and year above written

Signed sealed and ^{delivered} in the presence of
 of

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

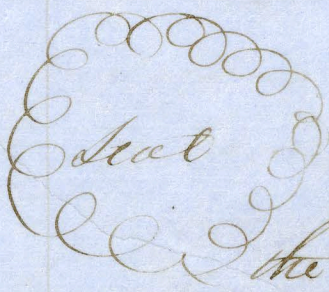
State of Tennessee

Davidson County Court ¹⁸¹⁹ ^{session}

This indenture of Bargain and Sale Between Samuel Tucker of the one part and Christopher

11

Variant 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 Samuel 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 in Wash-
ville this 20th day of January in
the year of our Lord 1819 & 48th year
of American Independence

Nathan Ewing

Recorder office Edwardsville: Madison Co
Illinois I Josias Rundle Recorder for Mad-
ison 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

(J A)

No. 6869

Recorded Vol. 4. p. 29-

Ed J. Rundle

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Samuel Tucker

To 3 Dec

Christophus August

Which was objected to by defendants
counsel.

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
So W A

13

William Rankin } State of Illinois -
vs } Marshall County Circuit-
James A Smith } Court-
Lo April Term AD 1855.
In Ejectment - -

Sir

Take Notice that on the twenty fifth day of December AD 1854 at ~~the~~ ten o'clock in the forenoon. I will sue out a commission from the office of the said Circuit Court directed to Fielden Neil Esq of Shelbyville Ky a justice of the Peace without & for the County of Shelby and State of Kentucky or an other competent authority to take the Deposition of Eliza Matthews Charles A Rankin James S Whitaker & George W. Johnson of said County of Shelby on the annexed interrogatories to be read in evidence on the trial this Cause when & where you may attend and file corp. interrogatories.

Dated the 9th day of } Youss & c
December AD 1854. - } William Rankin
To James A Smith Esq } Plff
Deft }

Interrogatories to be administered by the Commissioner above named to Eliza Matthews Charles A Rankin James S Whitaker and George W Johnson on behalf of the Plaintiff in the above entitled suit & by virtue of the foregoing Commission hereto annexed

14.

1st. What is your age occupation & place of residence?

2^d are you acquainted with the parties to suit on either of them & how long have you known them respectively —

3 Do you know Henry Clapp & if you state the extent of your acquaintance with him — Where & where did you know him —

4 Do you know if said Henry Clapp ever calling on William Rankin Sen- (now deceased) in his life time? if you state fully and particularly when it was & whether he the said Clapp called more than once? State also what said Clapp's business was with the Old man Rankin and all that was said between them.

5th If in answer to the 4th interrogatory you say that said Clapp's business was to purchase land of Rankin then state what land it was & giving the description of the same if you know it —

6 was the land spoken of between said Clapp and Rankin the land that said Rankin bought of Christopher Vansant —

7th

7th (15) To James S Whitaker & George W
Johnson only)
Are you acquainted with the hand
writing of Christopher Vansant. de'd &.

8th Is the signature to the deed annexed hereto
marked "A" in the hand writing of said
Christopher Vansant.

9th (To Charles A Rankin only)

Did you in the year 1853 or at any other
time take possession of the North East
quarter of Section nineteen (19.) in
Township thirteen (13) North of Range nine
(9) East of the fourth principal meridian
& if you state when & in whose behalf you
took possession of said tract of land & state
also whether any one else had possession
of said land when you first took possession

10th Did you have any conversation with the
Defendant Smith about the time you
took possession of the land if so, state it
in full. ~~THE~~ (To all the witness)

11. Do you know any other matters or things in
question that may tend to the benefit of
that Plaintiff if you declare the same as fully & at
large as if you had been particularly in-
terrogated thereto. -

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William Rankin }
vs } Marshall Circuit Court
James A Smith } To Appear Term AD 1854

State of Illinois)
Marshall County) SS

Samuel L Fleming being duly
sworn on oath says that on the 13th day of
December AD 1854 he delivered to said
Defendant James A Smith a full & true
copy of the foregoing notice & interrogatories
Subscribed & sworn to before
me this 21 day of Dec 1854 } Samuel L Fleming
C. L. Fort clerk }

17
STATE OF ILLINOIS, MARSHALL COUNTY, SS.

THE PEOPLE OF THE STATE OF ILLINOIS,

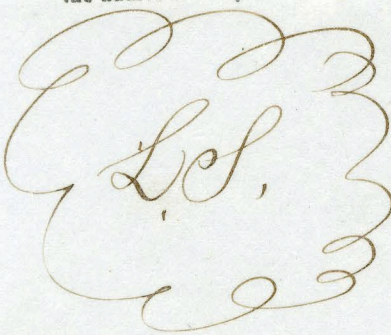
To *Helding Neel Esquire a Justice*
of the Peace within and for the County of
Shelby Ky. residing at Shelbyville in said County

, GREETING :

KNOW YE, that we, confiding in your ability, skill and fidelity, have appointed you, and by these presents do appoint, authorize and empower you, at a certain time and place, to be by you appointed for that purpose, to cause the witness *es* whose names *are* mentioned in the caption of the annexed interrogatories, to come before you, and then and there diligently and faithfully to examine *them* on oath upon the said interrogatories, in the order in which they are propounded; and you will cause the answers of the witness *es* thereto, to be reduced to writing, in the order in which they shall be proposed and answered; and you will then cause the witness *es* to sign *their* names to the same in your presence. You will also annex a certificate, subscribed by yourself at the foot of the deposition, stating that the same *were* sworn to and signed by the deponent *s* and the time and place when and where the same *were* taken. The deposition *s* thus taken and subscribed, and all exhibits produced or referred to by the witness *es* together with this commission and the annexed interrogatories, you will inclose, seal up and direct to the Clerk of the Circuit Court of the County of Marshall, in the State of Illinois, with the names of the parties litigant endorsed thereon.

WITNESS **G. L. FORT**, Clerk of the Circuit Court of said County of Marshall, and the seal of said Court being hereto affixed, this *Twenty-fifth* day of *December* in the year of our Lord one thousand eight hundred and fifty-*four*

G. L. Fort, Clerk.

 The return, if taken by a magistrate, should be accompanied by a certificate of his official character, under the great seal of the State of _____ or of the proper court of record of the county of which he is a resident.

 RETURN BY MAIL, POSTAGE PAID.

Commonwealth of Kentucky

Shelby County Set

Eliza
Mathews

The Deposition of Eliza Mathews taken on the 19th day of Feb'y 1855 at the residence of Mrs Hermito Rankin in the town of Shelbyville Shelby County Kentucky to be read as evidence in a suit in the Circuit Court for Marshall County State of Illinois wherein William Rankin is Plaintiff and James A Smith is Def't taken in pursuance of a Commission issued by the Clerk of said Court on the 25 day of December 1854. —

1 Answer to question first 3 -

I am thirty three years old the ~~fourth~~ tenth of last August. I am a seamstress by occupation. Reside at Shelbyville Ky. —

2 Answer to question 2^d

I am acquainted with William Rankin: have known him since a child, as for Mr James A Smith, I do not know him —

3 Answer to question 3^d

Mr Clap called at my fathers in the year 1850 to see my father he was at our house three times. This is all the

19 acquaintance I have with him I have seen him once since that time on the street but did not speak to him.

4 Answer to fourth question.

Mr Clapp called to see Mr Rankin known as in the year eighteen hundred and fifty two. I think the first call he made was the 23rd day of Augt 1852 Mr Rankin was not at home - he called again to see him on the 25th of August I think he was here twice or three times on that day. he asked Mr William Rankin if he had found his deed.

Mr Rankin said he had not found the deed Mr Clapp asked Mr Rankin if he would sell the land Rankin said he would not sell the land as he had given it up to Mr Meathens and had commenced suit for another Deed - a short time afterwards Mr Rankin found the deed -

5 Answer to fifth question.

I understood from the conversation between Mr Rankin and Mr Clapp that the land spoken of was a tract of land Mr William Rankin owned in Marshall County Illinois this is the only land I heard spoken of I cannot describe the land

6 Answer to question sixth

I understand it to be the same land that Mr Rankin bought of Christopher Vansant

1/1 Answer to question Eleventh,
(20) I have stated all I know touching this case—
Eliza Matthews, —

Charles A Rankin Also the Deposition of Charles A Rankin
Rankin taken at the office of Wm. D. Coshum
March the fifth in the town of Shelbyville
Kentucky

1 Answer to question first
I am twenty eight years of age Jan'y
last I am a Taylor by trade. Residence
Shelbyville Ky

2 Answer to question 2^d
I am acquainted with
Wm Rankin he is my Brother I am also
acquainted with Mr. Smith. I have known
him since the first of April eighteen him
and under fifty three

3 Answer to question 3^d
I do not know him

4 Answer to question 4th
I do not know it of my own knowledge

5 Answer to question 5th —
I know nothing about the land Mr
Clapp wished to purchase of my father or
anyone else.

9 answer to question 9th

(21) Took possession of the North East quarter of section Nineteen in township thirteen North of Range nine East of the Fourth principal meridian in spring of the year eighteen hundred & fifty three. I took possession of the land in behalf of Wm Rankin and there was no one in possession of the land when I took possession of it in the year above named.

10 answer to question 10th

I had a conversation with Mr Smith 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 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 put up a house. Mr Smith took my lumber and threw it in the by road

11th Answer to question 11th

(22)

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 if this is all -

I forgot in answer to the 9th question that Mr Smith told me that he knew of my father's claim before he bought the land. Mr Smith also told Mr George Bonham that he knew Runtins claim the land ~~the~~ before he bought it -

C. A. Smith

Also the Depositions of George W. Johnston
taken at his office in the City of Louisville State of Kentucky to be read as evidence in the same suit mentioned in the caption hereto on the 11. day of April A.D. 1855. The Deponent being of lawful age & duly sworn deposes & says.

Answer to first Interrogatory.

I am forty nine years of age my residence is Louisville Kentucky & I am Judge of the City Court of said City -

For Second Interrogatory I am acquainted

with William Rankin & have known him from my boyhood. I mean William Rankin the Elder

If the Pff in said suit is William Rankin Jr son of William Rankin the Elder who is now dead, then I ~~know~~ have known him from his boy-hood. I do not know the defendant.

To the 3^d 4th 5th & 6th Interrogatories. Deponent says he knows nothing

To the seventh Interrogatory Deponent says he ~~knows~~ is not acquainted with the hand writing of Christopher Vansant

To the 8 Interrogatory Deponent says the deed marked "A" & referred to in this interrogatory is in the hand writing of deponent. Whether the signature thereto is in the hand writing of Christopher Vansant or not deponent cannot say

I know nothing further of benefit to either party & further sayeth not.

Geo W Johnston

J. Whitaker
(24) Also the deposition of J. I. Whitaker taken at his office in the Court house in Shelbyville to be read as evidence in the said state mentioned in the caption on this 14th day of April A.D. 1855. — The Depo^{nt} being of lawful age and first duly sworn deposes and saith as an answer to the first Interrogatory Says that he is Seventy one years of age a Licensed Attorney at Law & resides in Shelbyville Shelby County Ky. So 2^d Interrogatory.

Answers & Says — That he was well acquainted with Wm Rankin of Shelbyville for many years. That he is now dead and during his lifetime Rankin produced to deponent the deed from E. Pansant to William Rankin now before me marked "A". Whether whether this William Rankin is the Plff or not deponent does not know nor is he acquainted with the deft.

Saith to Interrogatory 3^d — He states he has no recollection of any acquaintance with any person of that

So 4, 5 & 6 Interrogatories deponent knows nothing —

So 7 Interrogatories Deponent says that he had a slight acquaintance with

the hand writing of C Vansant
Having seen him write But it is
so long since that He cant say the
name Christopher Vansant subscribed to
the deed is in the hand writing of said
Vansant; the body of the Deed was
written by Judge George W Johnston.

There is two endorsements on the Deed
as follows

Vansant & wife
To } Deed
Wm Rankin -
1825.6.6. Oct. 11th
A by Vansant

This endorsement is in the handwriting
of a sworn deputy writing in the office
of the Shelby County Court of which I
was then Clerk. The deed was re-
folded by me as clerk to suit the files
of papers in the office and the following
endorsement was made by me -

These endorsements were

made as evidence of the

acknowledgement of the Deed

by Vansant in the Office & the

certificate to be written out by it

Christ^o Vansant

To } Deed

William Rankin

60 a Illinois

1825.6.6 Oct 11th

A by Vansant

To Interrogatory 8. deponent says He Cant say
more than he has stated in his answer, ~~to Interrogatory~~
To Inty 7. deponent knows nothing further
to the advantage of the of the parties in
this suit — Ja J Whitaker

Commonwealth of Kentucky Shelby County

J Fielding

Neil a Justice of the Peace in and
for the Commonwealth and County
oforesaid do certify that the foregoing depo-
sitions of Eliza Matthews Charles W
Johnston were taken by me in pursuance
of a Commission of the Circuit Court
of Marshall County State of Illinois
issued the 25 day of December 1854.
said Commission returned herewith
The said depositions were sworn to and
subscribed by the said Witness at the times
and places when and where the same were
taken to wit Eliza Matthews deposition taken
sworn to and subscribed by her at the
house of Henrietta Rankin in the town of Shelby
ville Ky. on the 19th day of February 1855.
C A Rankin at the Office of Mr Henry &
Cochran in the town of Shelbyville Kentucky
on March the 5th 1855. Geo. W. Johnston
at his office in the city of Louisville Ky
on the 11th day of April 1855. and
J S Whitkins at his office in Shelbyville
Ky. on the 14th day of April 1855.
Given under my hand this 14th
day of April 1855.

J. Neal J046

Kentucky Shelby County Sec

I Hector J Chinn
clerk of the County Court for the county aforesaid
do certify that F. Keel whose genuine signature
appears to the foregoing certificate is now
and was at the time of signing the same a
Justice of the Peace in and for the County
aforesaid duly elected Commissioner
and sworn. And that full faith and
credit are due all his official acts as
such.

In testimony whereof I have
hereto subscribed my name and
affixed the seal of said Court
at Shelbyville Kentucky this
11th day of April 1863—
& in the 63rd year of the Com-
monwealth Hector Alchin
Clerk Shelby County Court

which was objected to by defendants Coun-
sel which objection was overruled by
the Court and the said depositions was
read—

The Plaintiff then offered in evidence
a deed from William Rankin to William
Rankin Jr. So wit—

This Indenture made and entered into the
 15th day of August in the year of our
 Lord Eighteen hundred and fifty three
 between ^{of Shelby and State of Kentucky} William Rankin son of the County
~~of Shelby~~ ^{of the first part and William Negley Jr of the County of Adams} and State of Kentucky of the
 second part, Witnesseth, That ^{the} said party
 of the first part for and in consideration
 of the sum of Five hundred dollars and
 — Cents in hand paid, the receipt where-
 of is hereby acknowledged do hereby alien
 release, remise, and quit claim, unto the
 said party of the second part his heirs
 and assigns forever, all and singular
 the following described Real Estate, situate,
 lying ~~and~~ being and in the County of
 Marshall and State of Illinois and
 designated in the plan of Survey made
 to satisfy the bounty land of Soldiers in
 said Territory of Illinois as the North
 East quarter of Section nineteen of township
 thirteen North in range nine East supposed
 to contain One hundred and fifty acres of
 land or the same more or less, which land
 was patented to one Lemuel Tucker by the
 President of the United States on the
 29th day of November 1817 and purchased
 afterwards by D Rankin of Christopher
 Vauzant & wife by deed bearing date,

the 3^d day of October AD 1828 and recorded
in County office of Marshall in Deed
Book M. Page 480

Together with all and singular the appur-
tenances therunto belonging or in anywise
appertaining To have and to hold the
above described Real Estate unto the said
party of the second part his heirs and
assigns forever.

In testimony whereof the said party
of the first part have herunto subscribed
his name and affixed his seal the
day and year first herein written
Signed Sealed and
delivered in presence of

Wm Paulin 



Upon the back of said deed are the fol-
lowing endorsements to wit:

State of Kentucky
Shelby County  I Hector Abhim
Clerk of the County Court within and
for said County, do hereby certify that
William Runkles whose signature appears
to the foregoing Deed of Conveyance and

who is personally known to me to be the real person whose name is subscribed to said deed, as having executed the same, this day appeared before me and he acknowledged that he had signed, sealed and delivered the same as his free act and deed for the uses and purposes therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court this 15th day of August Anno Domini Eighteen hundred and fifty three
 Hector A. Chim Clark
 Shelby County Court

Deed
 Wm Rankin Sen.
 to
 William Rankin Jr.

Filed for Record Aug. 28 1853 at 1
 o'clock A.M. Recorded in Book A. page
 268 August 24th 1853

G. L. Fort Clerk
 & Gov. Recorder
 Marshall Co

Illinois

31

Received fifty Cents the fees in full
for Recording this deed
Given Sept. 14th AD 1883

G. L. Fort

Clerk & Recorder

To which the defendants Counsel objected
which objection was overruled by the
Court and said deed was read in
evidence to the jury—

The Plaintiff then called Samuel Fleming who after being duly sworn testified that the deed of Samuel Tucker to Christopher Vansant with the other papers in said suit - were handed to him by the Plaintiff.

First say said deed prior to the date of the deed from William Rankin sen - to William 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 D Coulett as a journeyman Taylor.

The land in question is about eight miles from Lacon - Said Charles Rankin told me he had been out and had taken possession of the land & 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 therefore he come to see us.

I 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 he did not

live on said land — but that it was vacant and unoccupied, at the time and was natural Prairie — ~~Does not~~ Does not know what became of said Charles A Rankin — he said he was agent for Mr Rankin — Plff —

The Plaintiff then offered the aforesaid deed from Samuel Tucker to Christopher Vansant to which Defts Counsel objected which objection was overruled by the Court, and said deed permitted to be read to the jury —

The Plaintiff then offered to read in evidence the depositions of Eliza Matthews Charles A Rankin George W Johnston and Jn S Whittaker (were offered to be read in evidence, to a portion of the deposition of Eliza Matthews, to wit (See herin before written) The defendants Counsel objected which objection the Court overruled ~~also~~ Also the Defts Counsel objected to a portion of the deposition of Charles A Rankin To wit (See herin before Transcribed) which objection was overruled by the Court and said depositions now read to the jury — The Plaintiff then offered in evidence a deed from Christopher Vansant to William Rankin To wit

(34) This Indenture made and entered into this
3^d day of October 1825 between Christopher Vanzant
and Louisa his wife of Shelbyville, Kentucky
of the one part & William Rankin ^{of the same place} of the other
part Witnesseth that the said Vanzant for in con-
sideration of the sum of Two hundred & ninety
dollars to him in hand paid the receipt of which
he does hereby acknowledge hath granted, bargained
& sold & by these presents does hereby grant, bargain
& sell and convey unto the said William Rankin
& his heirs forever a certain tract and parcel of
land situate lying & being in the State of
Illinois containing one hundred & fifty acres
being the North East quarter of section nineteen
of township thirteen north in Range nine East
in the tracts appropriated by the acts of Congress
for Military Counties in the Territory now State
of Illinois being the same tract of land granted
by the United States of America to Samuel Tucker
by grant bearing date the 29th day of November
1817 & by said Samuel Tucker conveyed to the
said Christopher Vanzant. To have & to hold
the said tract of land heretofore described to
the said William Rankin & his heirs forever and
the said Christopher Vanzant & Louisa his wife
will warrant & defend the right and title ther-
of against the claim of themselves & their heirs
& all & every person or persons whatsoever claim.

35
ing or to claim the same. In testimony whereof
the said Vanzant & wife have hereunto set their
hands and ^{affixed their} seals the day and year first above
written

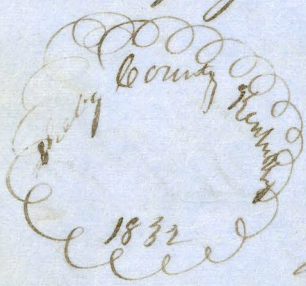
Witness

Christopher Vanzant



State of Kentucky
Shelby County set

I Hector Alchim 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 Agent)
on the 11th day of October 1825 and ^{acknowledged by the said Christopher Vanzant to be his act & deed} and 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 hereunto
subscribed my name and affixed the seal
of said Court at Shelbyville this 8th day of
March 1863 and in the ~~year~~ 61st year of the Com-
monwealth

Hector Alchim Clerk
Shelby County Court

State of Kentucky }
Shelby County } set

I Robert Doak Presiding Judge
of the Shelby County Court certify that Hector

(36) A. China whose genuine signature appears to the foregoing Certificate is now and was at the time of signing the same Clerk of the County Court duly elected Commission and qualified and due 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 Douth P. S. C. C.

On the back of which are the following endorsements

Christopher Vanzant
to 3 Deed
William Rankin
160 A Illinois
1835 C. O. Oct. 11th
A. by Vanzant

A.

Vanzant & Wife
to 3 Deed
Will Rankin
1835 C. O. Oct. 11th
A. by Vanzant

Filed for Record March

21st at 7 o'clock A.M.

A.D. 1853 and Recorded

in Book No. page 450

E. L. Hart

Recorder of Marshall County

Franklin vs Smith.

Which depts Counsel objected to, which objection was overruled by the Court and said deed permitted to be read to the jury.

Plaintiff next called L L Fleming who testified that he served the declaration in this case and that he found the defendant in possession of the land in controversy - Here the Plaintiff rested his case. The defendant offered no evidence.

The plaintiff asked the Court to give the following instructions to the jury To Wit -

Given
If the jury believe from the evidence that the defendant was in possession of the land in controversy ~~at~~ 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.

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 Wainwright

Given

and by said Decree to Mr 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 Deft was in possession at the time of the Commencement of this suit —

Given

The jury are instructed that the Evidence in this Cause shows a legal title in the Plaintiff

which were given by the Court — The Defendant asked the Court to give the following instructions So wit —

William Rankin } Instructions asked
as } by Defendants
James Smith }

Refused

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

Given

2) 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 onto a piece of land and having a load of lumber there is no such possession as will authorize a recovery in this action without the legal title

4.) 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 onto the land —

5.) 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. —

6.) 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. —

7.) That if the jury believe from the evidence that the Plaintiff only had such possession of the land as is stated in the 6th instruction then the deeds from Tucker to Vansant & Vansant to Rankin & Rankin to Rankin are improperly in evidence and the Plaintiff cannot recover.

but the Court refused to give said instructions No 1, 2, 7, to all of which rulings the defendant then & there excepted. The jury returned a verdict for the Plaintiff Lo Wit—
 " We the jury find the Defendant
 " guilty of unlawfully withholding
 " the possession of the premises in the
 " Plaintiff's Declaration described—And
 " And we also find the Title of the
 " Plaintiff to said premises, are
 " Estate in Fee Simple in manner
 " and form as alleged in the Plaintiff
 " Declaration &c—

Whereupon the Court entered judgment against the defendant

Lo Wit—

William Rankin

vs

James A Smith

Ejectment

Be it remembered that this day comes the Plaintiff by Ramsey & Fleming and Pratt his attorneys as well the defendant by Hazard and Purple his attorneys. And this Cause coming on to be heard & tried, and the issue being joined upon the defendant's plea herein Lo Wit— that he the said defendant is not guilty of unlawfully withholding the possession of the premises in the Plaintiff's declaration mentioned and described in manner and form as stated therein And a jury comes to try the same

That is to say Joseph Ray William Atwood
 William Lowden & P Beckwith Saml
 Hearn William Boy Henson Bonham
 William Sharon Thomas Ellis Lyman
 P Bates. Daniel Hollenback & James Cullen
 Twelve good and Lawful men duly chosen
 empanelled and sworn. And who after
 hearing the evidence adduced the argument
 of Counsel and the instructions of the
 Court retire to consider of their verdict
 And after due deliberation return into
 Court and say - we the jury find the
 defendant Guilty of unlawfully
 withholding the possession of the
 premises in the Plaintiffs declaration
 described - And we also find the
 Title of the Plaintiff to said premises
 an Estate in Fee Simple in manner
 and form as alleged in the Plaintiffs
 declaration. — To wit The North
 East quarter of Section Number nineteen
 (19.) in Township Thirteen North and
 Range number nine East of the 4th
 principal Meridian being situate in
 said County of Marshall and State
 of Illinois

Whereupon comes the said defendant
 and enters herein his motion for a new
 trial: And the Court after hearing
 the argument of Counsel and being
 fully advised in the premises doth
 order that the said motion be Overruled

It is therefore Ordered Considered and adjudged by the Court that the said Plaintiff William Rankin have and recover of ~~the~~ and from the said defendant James A Smith the possession of the premises aforesaid, and that the said Plaintiff is seized thereof in fa sample and it is thereupon Considered Ordered adjudged also by the Court that the said Plaintiff have a writ of restitution for said premises directed to the sheriff of said County to execute Commanding him to remove the said Defendant from and off of said premises and to deliver the Possession thereof to the said plaintiff. And it is further Considered by the Court that the said Plaintiff have and recover of the said defendant his costs and charges by him about his suit in this behalf expended and it is ordered by the Court that execution issue therefore.

Whereupon comes the said defendant by Hargard & Purple his attorney and pray an appeal to the Supreme Court of the State of Illinois. Which said appeal is allowed upon Condition that the said defendant enter into Bond in the penal sum of Five Hundred dollars with Benjamin Lombard as security within and ~~for~~ to be filed in thirty days from the adjournment of this Court.

The defendant moved for a new trial for the reason that improper evidence had been permitted to go to the jury that the verdict was against the law and the evidence; and the instructions given by the Court at the request of Plaintiff is 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 and prays that this his Bill of exceptions be signed and sealed which is accordingly done.—

W E Hollister 

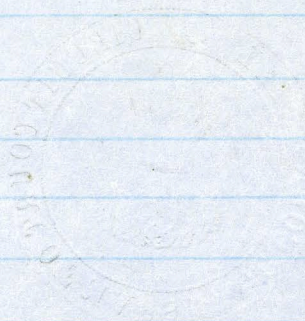
And be it remembered that thereafter
To wit, on the 28th day of April A.D. 1856,
came the ~~Plaintiff~~ defendant and
filed his appeal bond which is in
words and figures following that
is to say—

Know all men by these presents that we James A Smith and Benjamin Lombard of the County of Marshall and State of Illinois are held and firmly bound unto William Rankin of Springfield in the County of Sangamon State of Illinois in the penal sum of Five Hundred dollars for the payment of which well and truly to be made we and each of us bind our selves our heirs executors and administrators jointly severally and firmly by these presents sealed with our seals and dated this 26th day of April A.D. 1856. —

The Condition of the above obligation is such that whereas on the 24th day of April A.D. 1856 the said William Rankin recovered in the Circuit Court of Marshall County State of Illinois a judgment in Ejectment for the following described tract of land to wit — The North East quarter of Section nineteen in Township thirteen North and Range Nine East of the fourth principal meridian situated in Marshall County State of Illinois against the aforesaid James Smith from which judgment the said James Smith hath appealed to the Supreme Court of the State of Illinois. Now if the said James Smith shall prosecute his said appeal with effect and shall pay and satisfy

4 Co Whatever judgment may be rendered by
said Supreme Court of said State of
Illinois upon the dismissal or trial of
the appeal together with the costs interest
and damages in case the judgment
shall be affirmed then then this obligation
to be void otherwise to remain in full force
and effect

James A Smith (Sent)
Benjⁿ Lombard (Sent)



State of Illinois }
 Marshall County } p

I G. L. Fort Clerk of
 the Circuit Court of said County do
 hereby certify the above and foregoing
 to be a true and correct Transcript
 of the Record of said Court in the case
 of William Rankin vs James A. Smith
 heard and tried therein also ~~a~~ a true copy
 of the papers filed in said Court in said
 Cause — as found in my office —

In testimony whereof I have
 hereunto set my name and
 affixed the seal of said Court
 at Lacon this 30th day of
 May A.D., 1856

G. L. Fort
 Clerk —

Clerks fees for Transcript
 & cert & seal \$12.35 —

James A Smith

and

William Rankin

Error to Marshall

And now could the said Plaintiff in Error and says that in the Record and proceedings and in the rendition of the Judgment aforesaid there is error in this to wit

- 1st. Said Court Erred in admitting the Evidence objected to by Defendant below and in refusing and rejecting evidence offered by said Defendant.
2. Said Court Erred in giving the instructions asked by Plaintiff below and in Refusing the instructions asked by Defendant.
3. Said Court Erred in Overruling the Defendant's Motion for a new trial.
4. Said Court Erred in rendering Judgment against said Defendant below.

For these and other Errors the Plaintiff in Error prays that the said Judgment may be reversed, annulled set aside and wholly for nothing esteemed &c
 Done 12. 1856. Hazzard People for Aff in Error

27 1848

William Bankin

vs

Jas. A. Smith

Filed June 19. 1856

L. Leland

Clerk

No Supersedeas

granted

1856

James A Smith } Supreme Court
vs } April Term 1858.
William Rankin }

Points Made by ~~Lawyer~~
for Appeller

The only question in this case is as to the admissibility in evidence of the deed from Samuel Tucker the Patentee to Christopher Vanzant dated 15th January 1817.

And the deed from Vanzant to William Rankin the defendant below dated 3rd October 1825 both of which are over 30 years old and were offered in evidence and admitted in the Court below as ancient Deeds

Rankin to lay the foundation for the introduction of said deeds proved by Chas A Rankin that he took possession of the land in question in the name and for William Rankin in Spring of 1859. hauled lumber to build a house no one occupying the land when possession was taken by Rankin land was recent.

To prove that the deeds came from the

proper Custody ~~But~~ Fleming swears
that the Deeds were handed to him
by Plaintiff below; that he first saw
the deeds prior to Aug. 15th 1853.

That Rankin the Plaintiff below
claimed title through said Deeds

1st It is objected that there is no evidence
of possession under the Deeds sufficient
to allow them to be used as Ancient
Deeds

The old rule that possession must
accompany the deed has been by
the Modern authorities very much
relaxed if not entirely dispensed
with,

A deed 30 years old is said by the
Books to prove itself on the ground
that the Subscribing witnesses are
presumed to be dead, the bare
production of the deed is sufficient
so far as proof of its execution is
concerned 1 Greenl Ev. § 21.

The other evidence of proper Custody
and possession under the Deeds only
goes to the genuineness of the instru-
ment 1 Greenl Ev. § 21.

To say that 30 years possession under the deed is necessary to be shown, would make the rule admitting ancient deeds wholly unnecessary for a grant would be presumed in that case.

2 The tendency of the Missouri authorities is to dispense with proof of possession and allow the instrument to be used if accompanied with proof of proper custody and other circumstances to establish its genuineness. See 1 Greenl. 70. § 144. note 1. where all the authorities are collected.

3 The question of genuineness is one of fact, the evidence is addressed to the Court to say from it whether the instrument is genuine. in this case the Court below have determined from the facts & circumstances in offend, that the deeds were genuine will this Court say that the Court below were in determining the fact of genuineness?

[1860-27]

See 1 Greenl. 20. title "ancient possessions" § 141. 142. 143. 144. & notes where the subject is discussed Also § 21. & 570.

The circumstances of this Country where there are so many lands vacant would seem to call for a greater relaxation of the rule otherwise the rule would be useless

The facts and circumstances in this case from which the Court below determined the genuineness of the deeds, are that Rankin took possession of the land claiming under his deeds, and doubtless would have continued that possession had not the Appellant without title expelled him.

Lumbera under whose Smith claimed or pretended to claim before Rankin took possession stated to Rankin's agent that he (Lumbera) did not expect to have the land against Rankin's title unless by his own title.

Smith also stated that he knew of Rankin's claim before he bought the land.

The 1st above named deed was recorded in Lawrenceville 1 January 1820

The last one was recorded in March 1853.

Both deeds are free from suspicion and appear to have been acknowledged (though defectively) soon after they were made.

They came from the proper custody.

The Court below inspected the originals upon which there were marks & memoranda from which one might reasonably presume in favor of their genuineness. All the foregoing facts & circumstances were proper for the consideration of the Court; from which to determine in favor of the genuineness of the deeds.

4 Rankin ~~the~~ Should Recover upon his prior possession he claimed under a deed to the whole. Smith was a trespasser without any title or claim of title. his possession of part

under his own supervision of all
Securities
for Appellee

Smith 27

Rankin

Bank of Bonds
by Secured for
Appellee

Filed May 6th 1858

L. L. Beckwith

Secured

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *Marshall* — 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 *Marshall* county, before the Judge thereof, between *William Rankin Plaintiff* and *James A Smith* —

defendant, it is said that manifest error hath intervened, to the injury of the said *James A. Smith* —

as we are informed by *his* 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 *William Rankin* —

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 *Second* Monday in *June* 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 *William Rankin* —

notice, together with this writ.

Walter B. Scates

WITNESS, the Hon. *Samuel H. Treat*, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *8th* day of *July* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Six*

L. Deland

Clerk of the Supreme Court.

By *J. B. Rice* Deputy

~~Am not find the within~~
~~summit~~

James A. Smith

vs

William Rankin

Scire Facias

Filed Oct. 12, 1856

L. Leland
Clerk

not found

I can not find the within named in any
County this the 10th day of October 1856

Shewitt Secy

Hardness Shewitt of
Marshall County Ill

not found

James A. Smith } ~~Plff~~ in Error.
no
William Roukin } Deft in Error.

Error to Marshall D.

Argument for Plaintiff.

The deeds offered as ancient deeds
were dated, the first in 1819 and
recorded in 1829, the second is dated
in 1825. and recorded in 1853.

It seems to be conceded by the
Defendants Counsel, that to entitle
a deed to credit as an ancient
deed, it must have been found
in the custody of the proper person
and that some possession must
have accompanied the deed.

Conceding, (for arguments sake)
that this is the law — even then
the Plaintiff below, had not a shadow
of right to recover.

From the Evidence, the first that
was ever shown of the deed from Vanzant
to Roukin, it was found in the pos-

Session of the Defendant in 1853 - when it was before that time, this record and the evidence in the case are wholly silent. Prior to that time there is not a particle of evidence that the deed ever had existence. And this it is contended is a compliance with the requirements of the law, that the deed must be found in the proper custody. - That it is in the custody of the party who desired to use it in an action of Ejectment. - Again, the Plaintiff ^{below} never had any possession of the land. -

His agent once in 1853 while he was living and doing business in Lacon 8 miles off from the land ~~he~~ hauled a load of lumber onto it intending to build a house, and went back to Lacon where he lived; and Smith there hid lumber of the land, put up a house and took possession himself.

If hauling lumber onto a tract of land is possession - Then Plaintiff had possession about a day - If not then he had no possession

It would be dangerous doctrine to hold that such an act would raise a presumption that a deed was Executed 30 years before.

The law as we understand it is that the possession must be consistent with and accompany the deed. So long at least as to raise the presumption that (because the party claiming under it entered into the possession many years since, and that possession, with the possession of the deed had continued for a long time) — the deed was genuine and the party's title good for the reason that for such long time no person had set up an adverse claim, or disputed the title or possession thus asserted —

For the law I refer to the argument of Mr Hazard. — The authorities cited by him fully sustain the position
Purpo

Smith 27
 24
 Rankin

Argument
People

Filed May 6, 1858
 L. Leland
 Clerk

Summed up to 1853, and the
 value of the land - 1853 - 1854
 valued the land at 1853

Know all men by these presents that
Mr James A. Smith and Benjamin
Lombard are held and firmly bound
unto William Rankin in the Real sum
of Three hundred dollars lawful money
of the United States to which payment well
and truly to be made and done we do
bind ourselves our heirs Executors ad-
ministrators and each and every of them
Jointly and Severally by these presents
Witness our hands and Seals this 18th
day of June A.D. 1856.

The Condition of this obligation
is this, Whoso on this day in a certain
suit now pending in the Supreme Court of the
State of Illinois wherein the above bounden James
A. Smith is Plaintiff in Error and the said
William Rankin is defendant in Error a
Supercedas had been directed to be issued
by the Clerk of the Supreme Court of said
State upon the said Plaintiff's filing a bond
in the Penalty of Three hundred dollars con-
ditioned according to law - Now if the
said Plaintiff in Error shall well and
truly pay the costs of this suit and all
such damages costs and interest as
the said Defendant may sustain or as
may accrue by reason of the wrongful
Issuing out of the writ of Error & Supercedas
aforesaid, then this Bond shall be void
Otherwise in force

James A. Smith
Benj Lombard

118 +23

Smith
~~Green~~

^{or}
~~Shunkin~~

Bond

Filed June 30, 1856

L. Leland
Clerk

James C. Smith & Son

James A. Smith }
William Rankin } In the Supreme Court
of the State of Illinois.
Third Grand Division
April Term AD 1838
Exclusion

The errors to which the appellant would call the attention of the Court are the admission of in evidence the deeds from Samuel Tucker to Christopher Vanzant and from Christopher Vanzant to William Rankin. The deed from Tucker to Vanzant bears date Jan. 15. 1819. Upon the back of said deed is a certificate from the Clerk of ~~Knox~~ Davidson County Tennessee, certifying that said deed was acknowledged in open Court at the Jan. Session of 1819. This certificate is not in conformity with the laws of the State of Illinois and there is no certificate showing it to be in conformity with the laws of Tennessee.

The deed from Vanzant to Rankin bears date the 3^d day of October AD. 1828. This deed has no certificate of acknowledgement.

The foregoing deeds were admitted as ancient deeds, being upwards of thirty years ^{old} taking their date to be proof of their age.

The appellant contends that in order to
have entitled the Plaintiff below to read in evidence
the foregoing deeds he should have either
proved the Execution of said deeds by proving
the Signature of the grantors, or should have
proved a continued possession of said land
agreeable to the provisions of said deed. The
bare production of said deeds without ac-
companying possession and without evidence
of how they came into the Custody of the
Plaintiff, without proving their age in-
dependent of their date would not un-
der any rule of Evidence entitle them
to be read in evidence to the jury.
Such a doctrine would be fraught with
danger to the rights of the owners of prop-
erty. It would open the door to the ad-
mission of forged deeds as well as gen-
uine. All that a Forger would have
to do would be to make a deed with-
out witnesses, without acknowledgment
and date it back 30 years and he would
have a prima facie case of title, if that
hint was all that was necessary to
supply it. The weight of authorities
both in point of character and number
settle the Rule to be that where there
is no proof of the Execution of a deed

and the deed is thirty years old, possession of the land consistent with the provisions of the deed is a necessary ingredient to entitle it to be read in evidence. We now refer the Court to

4	Wendell	page	278
3	Johnson Rep.	"	292
3	Johnson's cases		283
7	Wells's Rep.		476
5	Johnson	"	144
9	do	do	169
10	do	do	475
3	Hear. & M.		581
1	do	do	174
6	Brimley		435
4	Pickering		160
4	New Hampshire Rep.		371
2	Munford	Rep.	129

Other cases might be cited to the same point but we deem the above sufficient.

Some few cases may be cited where the deed was admitted without the accompanying possession, but such cases had their attending circumstances which raise a violent presumption in favor of the deed being genuine. ~~See~~ Chancellor Kent in 3^d Johnson's cases page 291. above reference

to, says "in regard to certain endorsements
on the will, the only doubt that could
arise is, whether the endorsements on the
will be not giving some account of
its execution, according to the expression
in Gilbert. But after the current of authorities
which go to ascertain what is requisite to
supply the proof by witnesses, such a
loose expression, cannot be understood
to mean anything different from proof
arising from possession according to
the deed or some other proof strictly legal.
The proof in Dutchess County (referring to the
proofs appearing as endorsements) such as it was,
was completely coram non iudice as far as
it concerns the subject matter now in controversy.
Indeed it does not appear that the proof
in Dutchess was authorized in any case,
or for any purpose whatever. It was
even there a nullity, if I understand
the statute by virtue of which it is said
to be taken. But admitting such proof
was equivalent to a probate of a will
a regular probate could not have been
admitted. It never has been admitted, un-
less a copy, where the original will was
proved to have been lost; nor even then,
unless accompanied with other

circumstantial proof, although the
will had grown to be ancient."

The above remarks are so entirely
applicable to the certificates and endow-
ments upon the deeds in this case
that we deem it proper to adopt
it as a part of our argument.

The several endorsements are not in
the nature of legal proof, and should
have therefore no weight as evidence
in determining the execution of the deed.
They ^{may} have been put there for aught
we know to deceive and give color
to the deed as genuine. Aside from
these endorsements the deed stands un-
supported by any evidence whatever.

The land has been vacant and unoccupied
prairie ~~land~~ up to the time left to the
possession. The deed from Vanzant
to Bunkin was not recorded until 1863,
and had not become an ancient deed until
after the commencement of this suit.

Three facts in connection with the deed
from Vanzant to Bunkin are calculated
to throw suspicion upon the genuineness
of the deed. The first and most important
is that it was not acknowledged. A Statute of
Kentucky in force at the time of the

making of said deed, required where land
was conveyed out of the County where the
grantor resided should be acknowledged in
the presence of two Justices of the Peace or
subscribed in their presence, and they must
make certificate to such fact to entitle
the deed to be admitted of Record. It is
but reasonable to suppose under the cir-
cumstances that the parties in this case
if they had intended to execute and de-
liver said deed would have adopted
the mode of acknowledgment which
must have been common among them.
Inasmuch as the Kentucky Statutes
are not to be found in the Library here
we refer the Court to some decisions
of the Supreme Court of Kentucky
showing such to be the law.

Settle Vol. 5. Select Cases 294 & 464

Bitt Vol. 4. 21

Bitt .. 3 186

Monroe 6 287

Another ~~instance~~ of fact is that a statute ~~was~~
Enacted in 1810 and we believe still in force
require deeds in order to entitle them to be
Recorded to be attested by two subscribing
witnesses, who were required to prove the

Execution of said deed. See J. J. Marshalls
Rep. p. 434.

Now it must have been known to the parties that in order to entitle said deed to be recorded in Kentucky, that two attesting witnesses were necessary. Would not such fact naturally have caused them to require said attesting witnesses. This to our mind is circumstance that throws strong suspicion upon the genuineness of said deed.

The next circumstance is the deed was prepared for Tazant & wife and is not signed by the wife.

Another circumstance is that this deed was not recorded in this State until 1833. It is not natural for a party to sleep upon his title in that way so long a time, without taking some steps in regard to it.

These several suspicious circumstances in the absence of all proof of its execution and delivery, but every other presumption that can possibly arise in favor of the deed.

~~1857~~ ~~1858~~
James C. Smith
vs
William Rankin

27
87

27

1858

~~X~~

Prepared

12605