

8742

No. \_\_\_\_\_

# Supreme Court of Illinois

D. Greenup

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vs.

H. Verner

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October Term Washington Circuit Court Thursday Oct<sup>r</sup> 19<sup>th</sup> 1854

copy of judgment in Circuit Court

vs  
Zenas H Vernor

vs

Darius Greenup

Appeal

And now on this day comes the said  
Plff by C. Melvany & Watts his Attornies  
& said Defdt by Hosmer his Atty and by consent of Parties  
this cause is tried by the Court & the Court after hearing the  
evidence & argument of Counsel finds for the Plff the sum of  
Eighteen Dollars as well as his Costs & charges about this suit  
& Execution is awarded therefor

Nashville March 14<sup>th</sup> 1854  
copy of accept sued on

Darius Greenup to Z H Vernor Dir  
To use of House Garden & Stable on Lot in Block 4 in Town of Nashville from 9<sup>th</sup> July 1853 to  
11<sup>th</sup> March 1854 at \$5.00 per Month 8 Months & 5 day \$110.83

Z H Vernor

vs

D Greenup

copy of motion before J. P.

Before Esq's Talbot J. P

Now comes Defdt & moves to dismiss  
this suit because 1<sup>st</sup> J. P has not Jurisdiction even if the  
Plf has any claim 2<sup>nd</sup> No Relation of Landlord &  
Tenant exists 3<sup>rd</sup> No Contract to pay Rent  
4<sup>th</sup> The Possession of Defdt was adverse to Plf & The  
action should be Trespass in Circuit Court  
5<sup>th</sup> Various other good causes as J. P cannot pass upon  
Title or extent of title to real Estate &c

Hosmer

Atty Pro Defdt

Copy of Bill of exceptions

Z H Vernor

vs

D Greenup

In Washington Circuit Court  
Oct Term 1854

Appeal



This Cause was submitted to the Court for trial without a Jury on the following agreed state of facts. Plf purchased on the 9<sup>th</sup> of July 1853 Lot 6 in Block 4 in Nashville Washington Co Ills at a Commissioners Sale by Order of Court of Chancery in a Case wherein said Greenup was a Party & received from said Commissioner a deed for said lot of that date. Greenup was in possession of said Lot at time of Sale. Said Greenup & heirs of W A Lamb being owners of said Lot & remained in possession up to 14<sup>th</sup> March 1854, At time of Sale it was proclaimed at instance of said Greenup by Commissioners in presence of Plf that the Purchaser of said Lot would not get possession until 1<sup>st</sup> March 1854 but there was no such condition in the Order for the Sale of said Lot & nothing said about rent Plf sues for Rent before a Justice of the Peace from day of Sale and date of Deed up to the 14<sup>th</sup> March 1854 & when the Defdt is served with summons pays to the Constable the worth of the said Lot from the 1<sup>st</sup> March to 14<sup>th</sup> March 1854 & Cost up to time of said service. Before the J.P Defdt moves to dismiss for want of Jurisdiction of Cause of Action & also in Circuit Court which is overruled. On the above agreed state of facts the Court finds for Plf \$18.00 it being agreed that the use was worth from \$2.00 to \$2.50 per Month Defdt moves for new trial which is overruled  
Wm H Underwood (Seal)

State of Illinois }  
Washington County } I Henry H Talbot Clerk  
for said County hereby certify that the foregoing is a true and correct copy of an Order as taken from the Records of said Court & also as taken from The Papers filed in my office in the above entitled Cause

Given under my hand  
And the seal of said  
Circuit Court at Office in  
Nashville this November 10<sup>th</sup> 1854  
H H Talbot cl<sup>k</sup>



1872-3

By H. Vernon  
vs  
D. Greenup.

Transcript

Filed 14<sup>th</sup> Nov. 1854  
F. D. Preston cllk  
By A. Johnston D. Co  
prepaid - \$5.00



Darius Trump } In Supreme Court  
vs. }  
Z. H. Verror } Nov. Term 1854

And now comes  
said Plaintiff in error by Hosmer  
his atty. & says that in the record  
& proceedings aforesaid & in the  
rendition of the judgment aforesaid  
there is manifest error in this; That the  
Court erred in refusing to dismiss the  
action & in entertaining jurisdiction of the  
same,

2<sup>d</sup> Court erred in overruling motion  
for new trial,

3<sup>d</sup> Court erred in giving judgment  
for Deft. in error when by the law of  
the land judgment should have  
been for Plf in error,

4<sup>th</sup> Court erred in allowing Deft. in  
error rent from 5<sup>th</sup> July 1853 to 1<sup>st</sup>  
March 1854 when by the terms of  
his purchase & the law he was  
not entitled to the same,

5<sup>th</sup> For which & other errors  
Plf. in error prays that said judg-  
ment may be reversed &c.

P. E. Hosmer atty. for Plf in error



Darius Greenup = In Supreme Court  
vs =  
Zenas H. Vernor =  
Nov Term 1854

And now comes said Defendant  
in error by Watts his attorney & says there is no error  
in the proceedings of the court below, disclosed in the  
Records of the proceedings, as exhibited in the papers  
on file, and joins issue on the errors assigned by  
the Plaintiff, and therefore prays that the judg-  
ment of the court below may be affirmed  
Amos Watts atty for Deft in Error



Vernon sued Greenup before a justice of the peace. He claimed to recover \$40.83 for the use and occupation of a town lot from the 1st of July, 1853, to the 14 of March 1854. When the summons was served, Greenup paid to the constable the costs that had accrued in the case, and the amount demanded for the use of the lot from the 1st to the 14<sup>th</sup> of March 1854. The cause was heard by the justice, and an appeal taken to the Circuit Court. It was submitted to that court on the state of facts. Vernon purchased the lot in question and received a conveyance thereof, on the 9<sup>th</sup> of July 1853, at a Commissioner's sale, made under a decree in a chancery suit to which Greenup was a party. Greenup was then in possession of the lot, and remained in possession until the 14<sup>th</sup> of March, 1854. The lot, prior to the sale, belonged to him and the heirs of Lamb. It was proclaimed by the Commissioner, at the time of the sale, that the purchaser would not be entitled to the possession of the lot till the 1<sup>st</sup> of March 1854; but the decree contained no such provision, and there was no such reservation in the Commissioner's deed. The use of the lot was worth \$2.50 per month. The Court gave judgment in favor of Vernon for \$16.

Sustaining the objection taken by Vernon to a portion of the evidence, and excluding from the case all that transpired at the sale as to the right of the purchaser to the possession of the lot, it is still very clear that he is not entitled to recover in this form of action. The cases of Dudding v Hill, 15 Minor's 61, and McNeil v Schwartz, ante, , are



Provided however that any  
person or banking institution may  
by agreement stamp exchange  
the bills of any other state, for  
any bills so stamped, without the  
bills exchange being stamped



conclusive against his right to maintain  
this suit. The relation of landlord and  
tenant did not subsist between the parties,  
there was no contract between them, express  
or implied, to create that relation. If  
Greenup could be considered as the vendee  
of the lot, the law of the case would be the  
same. There was no agreement by which he  
was to hold under vendor. There is nothing in  
the mere circumstance of a vendor remaining  
in possession of ~~the~~ premises after a sale,  
from which a tenancy can be implied, so as  
to enable the vendee to maintain an action  
for use and occupation. The remedy of the  
vendee, in such case, is by an action for  
not delivering possession. Jew v Jones 13  
Meeson & Welsby, 12. The payment by  
Greenup to the Constable was not a recognition  
of the right of vendor to compensation,  
for the use of the lot prior to the first  
of March, 1854. It was, at the most, only  
an admission that he held as tenant  
from that day. The judgment is  
reversed -

Judgment Reversed



Receipt & Return  
Opinion  
Recd



No 40

November 1854

Darius Greenup

vs

J. W. Vernon

Error to Washington

Opinion by

Treas. Genl.

8742

Judgment Reversed