

State of Tennessee

Pleas at the Court House in the City of Nashville County of Davidson and State aforesaid on the Second Monday being the ninth day of May in the year of our Lord One thousand eight hundred and fifty three and in the Seventy seventh year of American Independence Present - The Honorable Nathaniel Baxter one of the Judges of the Circuit Court of the State of Tennessee and assigned to hold the Circuit Court of the Sixth Judicial Circuit in said State

John Den Leeper of G. W. Vance

John W. Thompson

Memo

State of Tennessee To the Sheriff of Davidson County Greeting You are hereby commanded to summon John W. Thompson if to be found in your County to be and appear before the Judge of our Sixth Circuit at the next Circuit Court to be held for the County of Davidson at the Court House in the City of Nashville on the Second Monday in January next then and there to answer John Den of a plea wherefore with force and arms he broke and entered the Close of the said Plaintiff and ejected him to his damage 500 dollars. Herein fail not and have there and there this writ Witness Tho S Smiley Clerk of our said Court at Office the Second Monday in September A D 1850 and in the 75th year of American Independence

Tho S Smiley

I acknowledge myself the above plaintiffs security in the sum of five hundred dollars for prosecuting the above writ with effect or payment of all costs and damages to the defendant on failure thereof Witness my hand and Seal the 25th day of December A D 1850

James M. Murrell

I depute N P Leobutt to execute this writ given under my hand and seal this 26 Decr 1850

B. M. Barnsiff

Spued Decr 25. 1850 came to hand the 26 day of Decmber and executed on the 30 day of Decr 1850

N P Leobutt Sr

State of Tennessee

Davidson County

In the Circuit Court January Term 1851

John Den by attorney complains of Richard Fenn summoned &c. of a plea wherefore with force and arms he broke and entered the close of the said John and ejected him. For that whereas Clement W. Nance on the 24th day of December 1850 at civil districts numbered 7 & 9 in said county had demised to the plaintiff a certain tract or parcel of land in the State of Tennessee Davidson county and civil district numbers 7 and nine on Mill Creek containing one hundred and thirty acres unbounded on the East by the lines of James Pigg formerly now Baker & Egell, north by the lines of the land conveyed to the late John M. Kemp by a mortgage deed from the late Benjamin Whitesides, West by the line of the tract upon which the late John Topp resided at the time of his death, and South by a line beginning at a stake in said John Topp's line 121 poles north of a poplar, the north west corner of William Thompson's tract and running from said stake in John Topp's line East 38 poles to a stake on the line of the tract demised as aforesaid by said Nance to the plaintiff thence South 18 degrees East 42 poles to a walnut thence North 68 degrees East 8 poles to a dogwood thence East 232 poles to a mulberry & hickory. To have and to hold the same to the said John Den and his assigns, from thence forth, for and during, and unto the full end and term of seven years, from thence next ensuing and fully to be completed and ended. By virtue of which said demise the said John Den entered into said piece or parcel of land and became and was thereof possessor for the term aforesaid, & to him thereof granted. And the said John Den being so thereof possessed the said Richard Fenn afterwards to wit on the day upon aforesaid with force and arms entered into the said tenement in which the said John Den was so interested, in manner and for the term aforesaid, which is not yet expired, and ejected him the said John Den out of his said farm, and other wrongs to the said John Den then and there did, to the great damage of the said John Den and against the of the State. Wherefore the said John Den says he is injured and has sustained damage to the sum of 500 dollars and thus for he sues

R. J. Fraigo Atty

Mr John W. Thompson

I am informed that you are in possession or claim title to the premises in this declaration of ejectment mentioned or to some part thereof and being sued in this action as a casual ejector only and having no claim or title to the same do advise you to appear in the Circuit Court

of Davidson County Tennessee at the Annany Term thereof 1851 and then and there by rule of said Court to cause yourself to be made defendant in my stead otherwise I shall suffer judgment therein to be entered against me by default and you will be turned out of possession. Dated this 25th of December 1850

Yours
John Den

I delivered a copy of the within to John W Thompson December 30, 1850
A Phoditt

2 Counts Anapherous also Sarah Jackson Thomas Kirkman and Andrew Jackson executors and trustees of James Jackson decd on the 24th of December 1850 at Civil districts numbers 7 & 9 in said County had demised to the Plaintiff a certain other tract of land in said State of Tennessee Davidson County and Civil districts numbers Seven and nine an Mill Creek containing One hundred and thirty acres and bounded on the East by the line of James Pigg formerly now Baker of Eggle north by the line of the land conveyed to the late John M. Nunn by a mortgage deed from the late John Whitener. West by the line of the tract upon which the late John Topp resided at the time of his death and South by a line beginning at a stake in said John Toppo line 131 poles north of a poplar the north west corner of William Thompsons tract and running from said stake on John Toppo line East 38 poles to a stake on the line of the tract demised as aforesaid by said Sarah Jackson Thomas Kirkman and Andrew Jackson to the Plaintiff thence South 18 degrees East 42 poles to a walnut thence North 68 degrees East 8 poles to a dogwood thence East 232 poles to a cyulberry & hickory To have and to hold the same to the said John Den and his assigns from thence forth for and during and until the full end and term of seven years from thence next ensuing and fully to be completed and ended. By virtue of which said demise the said John Den entered into said piece or parcel of land and became and was then of possessed for the term aforesaid so to him thereof granted. And the said John Den being then of possessed the said Richard Kern afterwards to wit on the day and year aforesaid with force and arms entered into the said tenement in which the said John Den was so interested in manner and for the term aforesaid. which is not yet exposed and ejected from the said John Den out of his said farm and other wrongs to the said John Den then and there did to the great damage of the said John Den and against the peace of the State Therefore the said John Den says he is injured & has sustained damage &c

2 Counts And whereas Mitchell and Martha Mitchell his wife
 Sarah Polk A D Huntman his wife Ellen late Ellen Jackson Angus
 Jackson William Jackson Alexander Jackson George Jackson
 and James O. Kirkman heirs at law of James Jackson deceased
 on the 24 of December 1850 at civil districts numbered 7 & 9
 in said County had devised to the plaintiff a certain tract or
 parcel of land in the State of Tennessee Davidson County in civil
 districts numbered seven and nine on Mill Creek containing
 one hundred and thirty acres and bounded on the East by the
 lines of James Pigg formerly now Baker & Coell north by the
 lines of the land conveyed to the late John M. Nix by a mortgage
 deed from the late John Whitson, west by the lines of the
 tract upon which the late John Topp resides at the time of his
 death and South by a line beginning at a stake in said Topp's
 line 131 poles north of a poplar the north west corner of William
 Thompson's tract and running from said stake on John Topp's
 line East 38 poles to a stake on the line of the tract devised as
 aforesaid by said Martha and Sarah Polk A D Hunt and
 wife his wife Ellen late Ellen Jackson Angus Jackson William
 Jackson Alexander Jackson George Jackson and James O.
 Kirkman to the plaintiff thence South 18 degrees East 42 poles
 to a walnut thence north 68 degrees East 8 poles to a dogwood
 thence East 232 poles to a mulberry & hickory. To have and
 to hold the same to the said John Den and his assigns
 from thence forth for and during and unto the full end and
 term of seven years from thence next ensuing and fully to be
 completed and ended by virtue of which said devise
 the said John Den entered upon said piece or parcel of land
 and became and was then in possession for the term aforesaid
 so to him then granted And the said John Den being so
 then in possession the said Richard Kemp afterwards to wit
 on the day and year aforesaid with force and arms entered
 into said tenement in which the said John Den was so situated
 in manner and for the term aforesaid which is not yet expired
 and ejected him from the said John Den out of his said
 farm and other wrongs to the said John Den then and there
 did to the great damage of the said John Den and against
 the peace of the State of Tennessee the said John Den says he is
 injured and has sustained damage to the sum of 500 dollars
 & therefore he sues

R. J. Meigs Attorney for Plaintiff

And afterwards to wit at the January Term 1851 of said Court on the 24th day of January 1851

On motion of John W Thompson is admitted a defendant in the name of Stead of the usual ejector upon his agreeing to enter into the Common rule to admit lease entry and ouster. Pleas a not guilty and upon the trial to rely upon the title only And thereupon came here into open Court D. F. Thompson who acknowledged himself as the Secretary of the defendant John W Thompson in the Sum of five hundred dollars to be paid on condition that the said John W Thompson do successfully defend this suit or pay all costs and charges which may be awarded against him in case of Ejection

May Term 1851. 13 day of May 1851
By consent of parties by their attorneys it is ordered by the Court that William H Haggins and Wm H Howell Survey the premises in dispute according to the directions of either party and that they return two fair plats and explanations of their proceedings to this or the next term of this Court

June 4. 1851
On motion of the plaintiff by his attorney leave is granted him to insert a devise in the declaration in the name of the heirs or devisees of James Jackson Reed

September Term 1851 September 10. 1851
By consent of parties by their attorneys all matters in dispute between them in this case are referred to the final award and determination of Rufell Houston and John Trimble with power if they cant agree to chose an umpire whose award thereon is to be made the judgment of this Court and it is ordered accordingly

January Term 1852 February 10. 1852
By consent of parties by their attorneys the order of reference heretofore made in this case is renewed

May Term 1852. 19 day of May 1852
The parties appear by their attorneys and by consent it is ordered by the Court that the order of reference made in this case at the last term be renewed

And afterwards to wit at the May Term 1853 of said Court on the 16 day of May 1853

The parties appear by their attorneys and the following award of Arbitrators is ordered to be entered of record to wit Whereas at the Term 185 of the Circuit Court of Davidson County Tennessee the case of John Den Lesper of G. W. Nance against John W Thompson pending therein

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was referred to a jury under of John Leant to arbitrate and settle and we having met for that purpose after hearing the proof and argument of counsel on both sides decide the case for the defendant. On the first Count upon the ground that the land in controversy was adversely held by the defendant at the time it was purchased by G. W. Nance, and on the second and third Counts upon the ground that these Counts, the demurrer being from different parties are not distinguishable, so far as respect the Statute of Limitations from any actings. The adverse possession began at least as far back as January or February 1844 and leave to file the second and third Counts was obtained in May 1851 as to these Counts then the Statute of Limitations forms a bar and the action fails This the 12th May 1853

Ruggell Hamilton Esq
John Trimble Esq

Thereupon it is considered by the Court that the award of the arbitrators be confirmed, and made the judgment of the Court that the defendant pay and recover of the plaintiff his costs by him about his defence in this behalf expended and that he have his Execution

June 15. 1853

The parties appear by their attorneys and the plaintiff moves the Court in writ of mandamus which motion is upon consideration granted by the Court. And the plaintiff prays an appeal in the nature of a writ of Error to the next Supreme Court of Errors and Appeals to be held at the City of Nashville on the first Monday in December next which is granted bond and Security being given according to law

Know all men by these presents that we G. W. Nance and J. H. McDonald are held and firmly bound unto John W. Thompson or his certain attorney executor administrators or assigns in the penal sum of two hundred dollars for the true payment whereof we bind ourselves our heirs executors and administrators firmly by these presents sealed with our seals and dated this 15 day of June 1853 The condition of the above obligation is such that whereas the above bound G. W. Nance has prayed and obtained an appeal in the nature of a writ of Error from the Circuit Court of Davidson County to the Supreme Court

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of Errors and Appeals at Nashville in the State of Tennessee
 on a Judgment of said Circuit Court recovered at the present
 term thereof by the said John W. Thompson against the said
 C. W. Nance for of John Den for costs of suit. Now if the
 said C. W. Nance shall well and truly prosecute his said
 appeal with effect or in case he fail therein pay and satisfy
 the whole debt damages and costs which may be awarded
 against him for wrongfully said appeal and satisfy the
 Judgment of said Supreme Court thereon then the above obligation
 to be word else to remain in full force and effect

C. W. Nance *Testis*
 By his atty J. H. McDonald
 J. H. McDonald *Testis*

Bill of Costs

State Tax	3.50
Clerk Smiley writ & Bond 1.15 - 6 continuances 2.25	
Shy & Judgt 88 Judgt for costs 25. Order & Bill 50	
Order for fi fa 25 - 2 orders setting cause 50 -	
Printer 50 - 10 Supenas 1.25 Motion for new trials 25	
Overruling 25 appeal & Bond 75 Transcript 3.80	11.58
Shiff Trupell - Cause & Jury	10
" A. P. Corbett service	1.00
" Heape 10 Spa Ex ^d	2.50
Register Ganett	1.35
The Mop 4 days	3.00
	4.57
	\$23.09

State of Tennessee

I Thomas T Smiley Clerk of the Circuit Court for the County of Davidson do certify that the foregoing is a correct transcript of the record and proceedings had in said Court in the cause heretofore presented and determined therein between John Ben Deffen plaintiff and John W Thompson Defendant as the same remain of record in said Court.

In testimony whereof I hereunto Subscribed my name and affix the seal of said Court at Office in Nashville the 24 day of August in the year One thousand Eight hundred and fifty Three and in the 78 year of our Independence

(Thos T Smiley)

John Van Hook
to W. Vance

MS Transcript

John W Thompson

filed 29th Nov. 1853

6th Dec 1853

Revised Dec 1853

5 Mar 121
1 Oct 156

No. 0

John Den, lessee of C. W. Stance & others

vs
John W. Thompson.

The Defendant took possession of the land in controversy in January or February, 1844.

This action of ejectment was commenced against him on the 25th of December, 1850.

The first count of the Declaration stated a demise in the name of C. W. Stance.

On investigation it appeared, that the land was conveyed to Stance by the representatives and devisees of James Jackson after the adverse possession had been taken by the Dft. It became, therefore, necessary to insert a count or counts in the names of those representatives and devisees.

Accordingly, leave was obtained on the 4th of June, 1851, to add the counts desired, Record page 5, and they were filed.

The case was then referred to the arbitration of Russell Houston and John Trimble, who made their award on the 12th of May, 1853, to the effect:

1. That the pl. could not recover on the 1st count, because the land was adversely held by the dft. when the title of the lessee of the pl. commenced.

2. That the pl. could not recover on the 2^d & 3^d counts, because they were, in effect, new actions, brought after eleven years adverse possession.

The pl. moved in arrest of judgment, but the court confirmed the award and adjudged accordingly; and from this judgment, the pl. appealed in error.

A new demise may be inserted in the Declaration in ejectment, even after the statute of limitations would have barred the suit, unless it introduces a new ^{or substantive} cause of action, which existed when the writ was issued. This is not done in this case.

The trespass complained of, in the new counts, is the same trespass, which the summons calls upon the dft. to answer.

In drafting the Declaration, one of the pl's titles was omitted; the new counts bring it forward; and the whole Declaration shows that the lessee holds by a demise from Stance and also by one from Jackson's heirs and devisees.

Now, if the title of Jackson's heirs and devisees were independent of Stance's; if it proceeded from a different source, that would be to introduce a new cause of action into the Declaration, which could not be done.

But here, Stance's title, and the title of Jackson's heirs and devisees is one and the same, - it being merely supposed

that the latter is not all formally in stances, and hence
giving rise to the necessity of a demise in their name.

1 Cowen, 156.

Ericad v Davi, 6 Peters, 130.

8)

Den lease of stances.

v

John M. Thompson

Trig for R.

Meigs.

Wm Lefe of C. W. Name

~~Wm~~
John W Thompson } This suit was instituted on the 25th day of
December 1850 upon a Declaration laying a claim from C. W. Name. At the
January Term 1851 John W Thompson was admitted as Defendant and at the May
Term 1851 leave was granted the Plaintiff to add a new count in the name
of the heirs of James Jackson dec^d - The cause was then referred to Arbitration
and at May Term 1853 the Arbitrators awarded in favour of the Defendants
they state in their award "that they found from the testimony that the Defendants
was in adverse possession of the land in dispute when C. W. Name purchased it
and that the Heirs of Jackson were barred by the Statute of Limitation, inasmuch
as the amendments in their favour or in other words the commencement of their
suit was in May 1851 and the Defendants had then been in possession for
more than 7 years " The award was confirmed by the Court and the
Plaintiff moved in arrest of judgment and the ~~question~~ motion was overruled by
the Circuit Court from which judgment an appeal was prosecuted

It is insisted that the Plaintiff cannot reach any supposed error
in the award by his motion, and that to accomplish that purpose he ought to have
moved to set aside the award. The award that is made the judgment of the
Court is simply "that they find for the Defendants" and this is all that can be
reached by a motion in arrest of judgment - The reasons and testimony on which
the Arbitrators acted altho incorporated in their award could only be reached
by a motion to set aside & a Bill of Exceptions - It stands on precisely the
same footing as a power of Attorney to confess judgment or an agreed case of
facts for the opinion of the Court, either of which altho spread on the minutes in the
judgment are not part of the ~~jud~~ record unless made so by Bill of exceptions See 10 Yng

We insist secondly that if there is any error in the law made by the Arbitrator it is invidual by the Court See 8 Greenleaf 119 - 6 Pick 148 - 8 Mass 410
10 Pick 348

We insist thirdly that the opinion of the Arbitrator was correct Every leave granted to a Plaintiff to amend his declaration is made on the tacit understanding that it is not to deprive the Defendant of his previously acquired rights and if therefore a party is barred by the Statute of Limitations he cannot take his suit to one already in existence and thus overreach the plea of the Defendant See Adams on Ejectments , 5 Monroe 121
1 Bowen Rep 156 , 6 Peters Reports 124.

Living Hooper

John Ben Lefee of Maine

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John W Thompson
