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NEW JERSEY SUPREME COURT.

WILLIAM GRAHAM

vs.

JANE W. BERRYMAN and WILLIAM H. BERRYMAN.

In ejectment.
On postea and
verdict.
L. & A. Zabriskie,
Att'ys.

As yet, of thirtieth day of August, A. D. eighteen hundred and sixty-seven.

Witness: M. BEASLEY, Esq., *Chief Justice*.
CHAS. P. SMITH, *Clerk*.

Bergen county, ss.—William Graham, the plaintiff in this action, by L. & A. Zabriskie, his attorneys, demands of Jane 10
W. Berryman, and William H. Berryman her husband, the defendants therein, the possession of a tract of land, with the appurtenances, situate in the township of New Barbadoes, in said county, containing eighty-seven acres and eighty-seven hundredths of an acre, more or less, bounded and described as follows: beginning at the centre of the Spring Valley road, in range with the northerly line of Albert Terhune, and running thence (1) north forty-five and a half degrees west, sixty-one chains, to the centre of Sprout brook; thence (2) northerly along said brook to a stake and southerly 20
line of land of Albert A. Voorhees; thence (3) south forty-five and a half degrees east, ten chains and sixty links, to a stump and northwest corner of woodland of Garret G. Aldis; thence (4) south twenty-eight and a quarter degrees west, three chains and fifty-links, to a maple tree, marked; thence (5) south forty-five and a half degrees east, nineteen chains and fifteen links, to a stake; thence (6) north forty-six and a quarter degrees east, three chains and thirty-four links, to

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an oak tree, marked ; thence (7) north forty-five and a half degrees west, five chains and thirty-five links, to the south-easterly corner of land of Andrew A. Voorhees ; thence (8) north twenty-five and a quarter degrees east, two chains and eighty-four links, to a stake ; thence (9) south forty-five and a half degrees east, thirty-four chains, to a stake ; thence (10) north forty degrees east, seventy-eight links, to a stake four links north of a gum tree ; thence (11) south forty-five and a half degrees east, forty-four chains and forty links, to
10 lands of Joseph Hauge ; thence (12) south twenty-nine and a quarter degrees west, ten chains and eighty-seven links ; thence (13) north forty-five and a quarter degrees west, forty chains and twenty links, to the centre of Spring Valley road ; thence (14) north thirty degrees and fifteen minutes east, forty-five links along the centre of said road, to the place of beginning.

And the plaintiff says that his right to the possession of the same accrued on the twenty-fourth day of February, eighteen hundred and sixty-seven, and that the defendants
20 wrongfully deprived him of the possession thereof, to his damage one hundred dollars.

And the said Jane W. Berryman, and William H. Berryman her husband, by Charles H. Voorhees, their attorney, appear and defend this action, and say, that they are not guilty of the injury whereof the said William Graham hath complained in his declaration, nor of any part thereof, and of this they put themselves upon the country.

And the said William Graham doth the like.

Therefore, let a jury thereupon come before the Chief
30 Justice, or some other justice of the Supreme Court of the state of New Jersey, at a Circuit Court, to be holden at Hackensack, in and for the county of Bergen, on the seventh day of April, A. D. eighteen hundred and sixty-eight, by whom, &c., and the same day is given to the parties aforesaid, there, &c.

And now, to wit, the second day of June, in year last aforesaid, before our said Supreme Court, at Trenton, come the parties aforesaid, by their attorneys aforesaid, and the justice before whom, &c., sends here his record had before
40 him, in these words, to wit :

“Afterwards, at a Circuit Court, holden at New Barba- does, in and for the county of Bergen, on the seventh day of April, in the year eighteen hundred and sixty-eight, before Joseph D. Bedle, esquire, one of our justices of the Supreme Court of Judicature of the state of New Jersey, according to the form of the statute in such case made and provided, come as well the within named William Graham, as the within named Jane W. Berryman, and William H. Berryman her husband, by their respective attorneys within mentioned, and the jurors of the jury impannelled to try the matters 10 within contained, being summoned, also come who to speak the truth of the matters within contained, being charged, tried, and sworn, say, upon their oath, that the said Jane W. Berryman, and William H. Berryman her husband, are guilty of the trespass and ejectment within laid to their charge, in manner and form as the said William Graham has within complained against them; and they assess the damages of the said William Graham, by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to six cents, and for those costs and 20 charges, to six cents.

Therefore it is considered, that the said William Graham do recover against the said Jane W. Berryman, and William H. Berryman her husband, as well the possession of the premises aforesaid, with the appurtenances, as also the sum of forty-five dollars and fifty-one cents, for his costs and charges in this behalf, by the court now here adjudged to the said plaintiff, and with his assent; and hereupon the said plaintiff prays the writ of the state of New Jersey, to be directed to the sheriff of the county of Bergen aforesaid, to 30 cause him to have the possession of the premises aforesaid, with the appurtenances, and it is granted, returnable, &c.

Judgment signed this second day of June, A. D. eighteen hundred and sixty-eight (1868.)

M. BEASLEY, *Chief Justice.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the record of judgment in the above stated cause, as the same remains in my office.

In testimony whereof, I hereto set my hand and the seal [L. s.] of said court, at Trenton, this eighteenth day of September, A. D. eighteen hundred and sixty-eight.

CHAS. P. SMITH, *Clerk.*

[Filed November 17, 1868.]

At the day and place within contained, that is to say, on seventh day of April, in the year one thousand eight hundred and sixty-eight, before the Honorable Joseph D. Bedle, Associate Justice of the Supreme Court, at New Barbadoes, in
10 the county of Bergen, the said issues within contained came on to be tried before the jury within mentioned, and the plaintiff, in order to prove the issues on his part, offered in evidence a mortgage of the premises in question, duly acknowledged, made by Jane W. Berryman, and William H. Berryman her husband, to said plaintiff, bearing date the twenty-third day of August, eighteen hundred and sixty-five, whereby, after renting, that the said Jane W. Berryman was indebted to the said William Graham in the sum of nine
20 thousand two hundred and seventy-six dollars and fifty cents, and had agreed that she would pay the same to the said William Graham on the twenty-third day of February, in the year eighteen hundred and sixty-seven, and that she would pay the interest thereon, did bargain and sell unto said William Graham, and to his heirs and assigns, the premises in the declaration mentioned; but said mortgage was upon this express condition, that if the said Jane W. Berryman should pay the said sum of nine thousand two hundred and seventy-six dollars and fifty cents, above mentioned, and the
30 interest, at the times and in the manner therein before mentioned, then the said mortgage, and the estate thereby granted, should cease, determine, and be void, (*pro ut* the said mortgage) and the same being a mortgage without a bond in fact accompanying, and thereupon the said mortgage being exempt therewith, said plaintiff rested his case, and the defendants moved to nonsuit the plaintiff, for that the said mortgage alone was not evidence of title in the plain-

tiff, but that the plaintiff was bound to prove a default in the payment of the money secured by said mortgage, which mortgage of the defendants the court overruled, and thereupon the defendants excepted to the said decision of the said judge, and prayed that this, his exception, might be sealed, and the same is sealed accordingly.

J. D. BEDLE, *Judge*. [L. s.]

And the defendants thereupon asked the said judge to charge the jury that the plaintiff had not given sufficient proof, especially of a default, to entitle him to the verdict, 10 and the said judge refused to charge the said jury as requested, and thereupon the defendants excepted to the said refusal of the said judge, and prayed that this, their exception, might be sealed, and it is sealed accordingly.

J. D. BEDLE, *Judge*. [L. .s]

And thereupon the said judge charged the jury as follows:

Gentlemen: This suit is brought by mortgagee against mortgagors to recover possession of mortgaged premises, which may be done if the mortgage money has not been 20 paid; that is, if default has been made in the payment thereof. To entitle plaintiff to recover he must have a mortgage, and such default must have been made. Plaintiff has produced his mortgage, and his possession and production of it is sufficient evidence of default in the absence of anything to contradict it. You must find for the plaintiff, and the said defendants excepted to the said charge of the said judge, in that he charged the said jury that the possession and production of said mortgage was sufficient evidence of default in the absence of anything to contradict it; to which said part 30 of said charge the counsel of the defendants excepted, and prayed that the exception might be sealed, and it is sealed accordingly.

J. D. BEDLE, *Judge*. [L. s.]

And upon the evidence aforesaid, and the charge of the said judge, the said jury within mentioned find the defendants guilty, as is within set forth, and these bills of

exceptions are signed on the day and year aforesaid, that is to say, on the seventh day of April, A. D. eighteen hundred and sixty-eight.

J. D. BEDLE, *Judge.* [L. s.]

[Filed December 17, 1868.]

Of the term of November, D. A. one thousand eight hundred and sixty-eight.

Afterwards, that is to say, on the third Tuesday of November, A. D. one thousand eight hundred and sixty-eight, 10 before the judges of the Court of Errors and Appeals, in the last resort, came Jane W. Berryman, and William H. Berryman her husband, the plaintiffs, by Charles H. Voorhis, their attorney, and say that in the record and proceedings aforesaid, and in the giving of judgment, there is manifest error in this, to wit, that the court adjudged that the said William Graham was entitled to recover possession of the lands in said declaration mentioned, without other proof of default than the mere production of the mortgage.

And there is also error in this, that the judgment aforesaid, 20 said, by the record aforesaid, appears to have been for the said William Graham, whereas, by the law of the land the said judgment ought to have been given for the said Jane W. Berryman and William H. Berryman, and against the said William Graham; and the said plaintiff prays that the said judgment for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed and for nothing holden, and that the said plaintiffs may be restored to all things lost by occasion of said judgment, &c.

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CHAS. H. VOORHIS,
Attorney of plaintiffs in error.

[Filed December 19, 1868.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

William Graham,
Defendant in error,

ads.

Jane W. Berryman, and Wil-
liam H. Berryman her hus-
band.

} *Joinder in error.*

And hereupon, the said William Graham, by L. & A. Za-
briskie, his attorneys, comes and says, that there is no error, 10
either in the record and proceedings aforesaid, or in giving
the judgment aforesaid; and he prays that the said Court of
Errors and Appeals here may proceed to examine, as well
the record and proceedings aforesaid, as the matters afore-
said assigned for error, and that the judgment aforesaid, in
manner aforesaid given, may in all things be affirmed, &c.

L. & A. ZABRISKIE,

Att'ys, and of counsel with def't in error.

Court of Errors and Appeals

IN SENATE, FEBRUARY 18, 1851.
REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE,
IN ANSWER TO A RESOLUTION
PASSED BY THE SENATE,
MAY 18, 1850.
ALBANY: PUBLISHED BY
J. B. KNEELAND, 1851.

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