

HOSKINS V. BYLER, ADMINISTRATOR.

Decided November 22, 1890.

Ejectment—Holding possession under another—Estoppel.

One who acquires possession of lands from another, whether as agent or tenant, cannot withhold the possession, and, in an action of ejectment against him, put the principal or landlord to proof of his title.

APPEAL from *Marion* Circuit Court.

R. H. POWELL, Judge.

W. F. Pace for appellant.

One who enters lands as the agent or tenant of another, cannot deny his title. 28 Ark., 154; 1 Greenl. Ev., sec. 207; Story, Eq. Jur., sec. 833.

Ejectment may be maintained when plaintiff is legally entitled to the possession of the land. Mansf. Dig., sec. 2627; 14 Ark., 492; 41 Ark., 467.

If neither party shows title, then the prior possession will prevail. 43 Mo., 556; 41 Ark., 467.

Z. M. Horton for appellee.

One holding legal title and out of possession must bring ejectment. 43 Ark., 28; 37 Ark., 644; 30 Ark., 579; 29 Ark., 476; 27 Ark., 414.

Plaintiff must rely on the strength of his own title. Defendant's possession being presumed lawful, he need not show anything until plaintiff establishes some right to disturb him. 1 S. W. Rep., 72; 47 Ark., 215; 47 Ark., 413; 19 Ark., 201.

When plaintiff's title is denied he must show legal title and right of possession. 1 S. W. Rep., 72; 27 Ark., 632; 26 Ark., 423; 24 Ark., 401-439; 19 Ark., 201; Mansf. Dig., sec. 2627.

PER CURIAM. One who acquires possession of lands from another, whether as agent or tenant, cannot withhold the possession, and, in an action of ejectment against him, put the plaintiff to proof of his title. The agreed statement of facts shows that the appellee entered upon the lands as agent of the appellant; he is not entitled to hold against him, even though he may have no title.

Reverse and remand the cause, with instructions to render judgment for plaintiff for possession of the lands and \$148.53 damages for detention thereof.
