

1810.

Cockey
vs
Smith

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

Key and Winder, for the Appellant, cited in their argument on the first bill of exceptions, *Peake's Evid.* 70. *Chitty on Bills*, 402. *Owings vs Norwood's Lessee*, 2 *Harr. & Johns.* 96. *Faulkner vs Eddy's Lessee*, 1 *Binny's Rep.* 188; and *Oneale vs Lodge*, 3 *Harr. & M'Hen* 433. On the second bill of exceptions, they cited *Chitty on Bills*, 402.

Martin, Harper and Kell, for the Appellee, on the first bill of exceptions, cited *Gittings's Lessee vs. Hall*, 1 *Harr. & Johns.* 18. *Ford vs Lord Grey*, 6 *Mod.* 44. 11 *Vin. Ab. tit. Evidence*, 57, pl. 9. *Loffl's Gilb.* 102, 103; and *Carroll's Lessee v Llewellyn*, 1 *Harr. & M'Hen* 164. On the second bill of exceptions they cited *Lloyd vs Gordon*, 2 *Harr. & M'Hen.* 254. *Carroll's Lessee vs Norwood*, 4 *Harr. & M'Hen.* 287. *Peake's Ev.* 23. *Vin. Ab. tit. Evidence*, 97. *Tolly's Lessee vs Ford*, 1 *Harr. & Johns.* 413. *Boreing's Lessee vs Singery*, 4 *Harr. & M'Hen.* 398. And on the third bill of exceptions they cited *Co. Litt.* 6. *Gilb. L. E.* 97, 100. *Hall's Lessee vs Gough*, 1 *Harr. & Johns.* 119; and *Carroll's Lessee vs. Norwood*, 4 *Harr. & M'Hen.* 287.

CHASE, Ch. J. delivered the opinion of the court. In actions of ejectment to recover the possession of land, it is incumbent on the plaintiff to show a grant of the land from the proprietary. To prove such grant he must produce the patent, or a copy under seal. This is the general rule, and must be generally adhered to, because there can be no recovery in ejectment without showing a legal title in the plaintiff, which cannot be done without producing a grant from the proprietary.

The cases in which this general rule has been deviated from, and in which secondary evidence has been resorted to, and admitted, for the purpose of obtaining the direction of the court to the jury to presume and find a grant, rest on strong facts and circumstances, evincing an equitable right to the land—an incipient title from the proprietary, and length of possession in conformity thereto—mesne conveyances and wills, transmitting the right from the taker up to the plaintiff.