

**CORKINS V. PRICHARD, 1884-NMSC-023, 3 N.M. 278 (3 N.M. 184, John. ed.), 3 P. 746 (S. Ct. 1884)**

**Joseph Corkins  
vs.  
Hugh Prichard and others**

No. 132

SUPREME COURT OF NEW MEXICO

1884-NMSC-023, 3 N.M. 278, (3 N.M. 184, John. ed.), 3 P. 746

May 03, 1884, Filed

Appeal from a Judgment Entered in favor of Plaintiff, Corkins, in an Action for Forcible Entry and Unlawful Detainer.

**COUNSEL**

G. W. PRICHARD for appellants.

T. F. CONWAY for appellees.

**JUDGES**

Axtell, C. J. Concur: Bell, J.; Bristol, J.

**POINT OF COUNSEL**

G. W. PRICHARD for appellants.

{\*279} In an action of forcible entry and detainer, the property in question should be particularly described, to enable the sheriff to readily identify it. **Sanchey v. Luna**, 1 N.M. 238; **Lewis v. Steele**, 1 Minn. 88; **Murphy v. Lucas**, 2 Ohio, 255.

The plaintiff must show actual possession in himself at the time of the forcible entry complained of, to entitle him to recover. **People v. Leonard**, 11 John. 504; **Wood v. Phillips**, 43 N. Y. (4 Hand.) 152; **Russell v. Desplons**, 29 Ala. 308; **Singleton v. Finlay**, 1 Port. (Ala.) 144.

Where the possession is not established, nor certain, the action can not be maintained. **Conroy v. Duane**, 45 Cal. 597. A struggle for possession will defeat the action. **Voll v. Butler**, 49 Cal. 75. Even the building of a cabin and deadening trees, without occupying

the land, are not sufficient evidences of possession. **Pennsylvania v. Lemmon**, Add. (Penn.) 315.

There must be force, either actual or circumstances tending to excite fear of violence. **Butts v. Vorhees**, 1 Green (N. J.), 13; **Hopkins v. Calloway**, 3 Sneed (Tenn.), 11; **Holmes v. Holloway**, 21 Tex. 658; **Comm. v. Dudley**, 10 Mass. 403; 5 Waite's Pr. 292.

The court erred in refusing to let defendant show the circumstances by which his claim to the premises arose and his reason for asserting the right to enter upon them. The defendant offered to show he had leased the land in question, but was denied that right. See **Phillips v. Sampson**, 2 Head (Tenn.), 429; **Brooks v. Bruyn**, 18 Ill. 539; **Settle v. Settle**, 10 Humph. (Tenn.) 504.

**AUTHOR:** AXTELL

### OPINION

{\*280} {1} This action was brought by Corkins against Prichard, before a justice of the peace in San Miguel county, and, on appeal to the district court, Corkins had judgment.

{2} The assignments of error are: (1) That there was no sufficient description of the property; (2) no possession was shown to have existed in plaintiff prior to bringing the suit; and (3) that no forcible entry was proven.

{3} All these assignments of error are facts about which the record shows a substantial conflict in the evidence. In such a case this court will not disturb a verdict of a jury unless it is shown that some error in law occurred upon the trial.

{4} The fourth and only assignment of error in law is that the court refused to admit certain evidence.

{5} The evidence thus refused to be admitted by the court was an offer to prove that defendant Prichard desired to rent a piece of land "on the other side of the ridge of rocks."

{6} This witness was asked: "Do you know where the quarries are that Mr. Corkin has been taking rock from?" **Answer.** "No, sir." "Are you acquainted with Hugh Prichard?" "I am." "Under what circumstances did you become acquainted with him?" "He came to me to rent a piece of land out on the other side of the ridge of rocks, to get some rocks from the side of the land."

{7} We fail to see in what possible way the exclusion of the offer to prove that Prichard desired to rent or did rent land "out on the other side of the ridge" could affect the case.

{8} The court did perfectly right in excluding this evidence. Judgment affirmed.