

Opinion of the Court.

These motions are denied. The value of the two sections of land which are in dispute is conceded to be more than \$5,000. The complaint alleges a joint entry and ouster, and the answer does not set up separate claims to distinct parcels of the land by the several defendants. The judgment for the recovery of the possession is against all the defendants jointly. In this respect the case is entirely different from those of *Tupper v. Wise* and *Lynch v. Bailey*, 110 U. S. 398. We have jurisdiction therefore.

The questions arising on the merits are, some of them, of a character that ought not to be disposed of on a motion to affirm.

KILLIAN *v.* EBBINGHAUS.

ORIGINAL.

Submitted April 21st, 1884.—Decided May 5th, 1884.

Mandate—Practice.

An appeal was taken from the court below by appellant under an incorrect description, not corresponding with the title in the court below. Under this incorrect title proceedings were conducted to final judgment here and a mandate issued. That mandate is now recalled and a new one issued conforming the title and description to those in the court below.

This was a motion to correct an error in the mandate issued on the judgment reported in *Killian v. Ebbinghaus*, 110 U. S. 568.

Mr. Garnett and *Mr. Robinson* for the motion.

Mr. Cuppy and *Mr. Dye* opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This suit was brought against the trustees of the German Evangelical Concordia Church, then in possession of the premises in dispute. They answered by that name, setting up their title to the property and their claim to the possession. The record shows a notice by Ebbinghaus, the appellee and com-

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plainant below, to the trustees of the German Evangelical Lutheran Concordia Church. The final decree was against the "trustees or authorities of the said Concordia Church, whether under the name of the trustees of the German Evangelical Concordia Church, or under the name of the trustees of the German Lutheran Evangelical Concordia Church." The trustees appealed, but in their appeal bond they described themselves as trustees of the German Lutheran Evangelical Concordia Church. The case was entered here promptly and docketed in the name of *John G. Killian et al., trustees of the German Lutheran Evangelical Concordia Church Appellants v. John W. Ebbinghaus, trustee*. Both parties appeared and argued the case, as presented by the record, on its merits. No objection was made to the form of the appeal. A mandate which was sent to the court below described the appeal as "taken by John G. Killian *et al.*, trustees of the German Lutheran Evangelical Concordia Church." As in this there was error, the mandate has been recalled, and we now order that a new mandate issue describing the cause below as between John W. Ebbinghaus, trustee, complainant, and John G. Killian *et al.*, trustees of the German Evangelical Concordia Church, and August Sievers *et al.*, trustees of the First Reformed church defendants (Equity, No. 5,688) and the appeal as "taken by John G. Killian *et al.*, trustees of the German Evangelical Concordia Church."

It is so ordered.

