

Statement of the Case.

that title." And the instruction of the court below in that case was approved, that if "any of the defendants entered upon and took possession of the land, without title or claim, or color of title, such occupancy was not adverse to the title of plaintiffs, but subservient thereto."

The fair implication in both of these cases is that where possession is taken under claim of title it sufficiently shows the intention of the party to hold adversely within the meaning of the law upon that subject. There is no case to be found which holds that this adverse claim of title must be found in some written instrument.

In the case of *Bradstreet v. Huntington*, 5 Pet. 402, 439, this court said :

"The whole of this doctrine is summed up in very few words as laid down by Lord Coke (1 Inst. 153) and recognized in terms in the case of *Blunden v. Baugh*, 3 Cro. [Car.] 302, in which it underwent very great consideration. Lord Coke says: 'A disseisin is when one enters *intending* to usurp the possession, and to oust another of his freehold; and therefore *querendum est à judice quo animo hoc fecerit*, why he entered and intruded.' So the whole enquiry is reduced to the fact of entering, and the intention to usurp *possession*."

The judgment is reversed and the cause remanded, with a direction to award a new trial.

SEIBERT *v.* UNITED STATES *ex rel.* HARSHMAN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MISSOURI.

No. 130. Submitted December 18, 1888. — Decided January 21, 1889.

Seibert v. Lewis, 122 U. S. 284, was very carefully and elaborately considered, and is adhered to.

THE case is stated in the opinion.

Syllabus.

Mr. E. John Ellis, Mr. John Johns and Mr. D. A. McKnight for plaintiff in error.

Mr. Clinton Rowell for defendant in error.

MR. JUSTICE FIELD delivered the opinion of the court.

The facts of this case are similar to those in *Seibert v. Lewis*, before the court at its October term, 1886, 122 U. S. 284, and it is admitted by the counsel for the plaintiff in error that the decision there, if adhered to, will control here. He, however, asks us to reconsider our rulings and reverse our former judgment. We see no reason to justify such reconsideration and change of position. The very elaborate argument of counsel is but a re-presentation of the reasons originally offered against the decision in that and analogous cases. *Seibert v. Lewis* was very carefully and elaborately considered, and to the doctrines there announced we adhere. Upon its authority

The judgment of the court below must be affirmed.

GALIGHER v. JONES.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 75. Submitted November 14, 1888. — Decided January 21, 1889.

A stock-broker received orders by telegraph from his principal to sell certain securities belonging to the principal in his hands and invest the proceeds in certain other securities, named in the order, at a fixed limit. When the telegram arrived the order might have been executed that day, and the securities ordered could have been bought within the limit. The principal was in the habit of dealing with the agent in that way, the agent executing the orders, making advances when necessary and charging the principal with commissions and interest. At the time when this order was received the principal was indebted to the agent for advances, commissions and interest about \$4000 more than the value of the securities in his hands: The broker did not execute the order, did not notify the principal by telegraph that he declined to do so, and made no demand for further advances; but notified him of his refusal by a letter written on the day when the order was received, but received by the principal