

Killian Vs. Ebbinghaus

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Court : US Supreme Court

Decided On : May-05-1884

Appeal No. : 111 U.S. 798

Appellant : Killian

Respondent : Ebbinghaus

Judgement :

Killian v. Ebbinghaus - 111 U.S. 798 (1884)

U.S. Supreme Court Killian v. Ebbinghaus, 111 U.S. 798 (1884)

Killian v. Ebbinghaus

Submitted April 21, 1884

Decided May 5, 1884

111 U.S. 798

ORIGINAL

SYLLABUS

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. 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 complainant

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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.

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