

No. 12423

Supreme Court of Illinois

Bull.

vs.

Griswold.

United States of America
 State of Illinois
 Winnebago County

Be it remembered that, heretofore, to wit
 on the twentieth day of November, in the
 year of our Lord one thousand Eight hundred
 and fifty six. Horace E. Griswold by
 Loop & Lathrop his Attorneys filed in
 the office of the Clerk of the Winnebago
 County Court, a certain Præcipe for
 summons in words & figures following, to wit.

State of Illinois }
 Winnebago County } ss Winnebago Co, Court.

Horace E. Griswold }
 vs } Trespass
 John Bull } Damages \$900.⁰⁰

The clerk will please issue
 Summons in above cause in an action
 of Trespass Damages nine hundred
 dollars returnable at the next Term
 of said Court And oblige
 To W^m Kulin Esqr Loop & Lathrop
 Clerk &c Attys, for Plff,

Rockford Nov. 20th 1856

And afterwards, to wit, on the day & year
 last aforesaid, there issued out of the office of
 the clerk of said court the Peoples writ of summons
 in the words & figures following, to wit

State of Illinois

County of Winnebago

The People of the State of Illinois to the
Sheriff of Said County, Greeting

We command you that you summon
John Bull, to appear before the County
Court of Said County on the first day of
the next term thereof, to be held at the
Court House in Rockford on the first
Monday of December 1856 to answer
unto, Horace E. Griswold, in a plea of
Trespass, damages nine hundred dollars
and have you then and there this writ
Witness - William Henlin, Clerk of Said
County Court at Rockford, this twentieth
day of November, A.D. 1856 and the Seal
of Said Court W^m Henlin, Clerk

Seal

And afterwards, to wit, - on the
twenty second day of November A.D. 1856
Said summons was returned to the office
of the clerk of Said Court with the following
Endorsement thereon, Viz,

Nov. 20th 1856 I have duly served
the within writ by reading the same to
John Bull, as I am therein commanded
S. J. Church Sheriff
By M. J. Upright - Dep. Sheriff

And afterwards, to wit, on the twenty first day of November AD 1856
 Horace E. Griswold filed in the office of the Clerk of Said Court his Declaration which declaration is in the words and figures following, to wit,

State of Illinois { Winnebago County Court
 Winnebago County } 1st of December Term 1856

Winnebago County, ss. Horace E. Griswold the Plaintiff in this cause by Loop & Lathrop his Attorneys complains against John Bull the defendant in this cause who has been duly Summounded to answer Said Plaintiff in an action of Trespass.

For that the Defendant on the first day of June in the year of our Lord one thousand Eight-hundred and fifty six, And on divers other days and times between that day and the Commencement of this suit. And with force & arms broke and entered the Plaintiffs Close, Situate in Said County of Winnebago and State of Illinois and known & described as follows

The South East Quarter of the South west Quarter and the south west quarter of the South East Quarter of Section No twenty three (23) in Township No twenty seven (27) North of Range No ten East of the 4th P.M. and then and

there with feet in walking trod down
trampled upon and Spoiled the wheat
and ~~Grass~~ of the Plaintiff there then
growing, of great value, to wit, of the
value of nine hundred dollars, and
with Cattle, to wit, Horses Cows Oxen
and Sheep ate up and depastured the
grass, Wheat and other crops of the
Plaintiff of great value, to wit, nine
hundred dollars, then growing, and
being in said close. And with divers
other Horses Cattle and Sheep, and also
with the wheels of divers Wagons and
other Carriages, Crushed, damaged, and
Spoiled other the grass wheat and crops
of the Plaintiff of great value, to wit,
of the value of nine hundred dollars
then & there also growing and being,
and with the feet of said Horses &c and
with the wheels of said Wagons &c Tore up
damaged and Spoiled the Earth & Soil
of said close, And also then & there
reaped & cut down the wheat of the said
Plaintiff, then standing and growing in
the said close, and then & there took and
carried away the wheat, to wit, two
hundred wagon loads of wheat of the Plaintiff
of great value, to wit, of the value of
nine hundred dollars, off and from the
said close and converted the same to his
own use, to wit, at the County aforesaid
And for that also the said
defendant on the fifteenth day of June

4.
in the year of our Lord one thousand
Eight hundred & fifty Six. with force &
Arms, to wit, at the Town of Lysander
in the County aforesaid, Seized, took
and Carried Away, Certain goods & Chattels
to wit, one hundred & fifty Wagon loads of
unthreshed wheat, of the Said Plaintiff
of great value, to wit, of the value of
nine hundred dollars, then & there being
found, and Converted and disposed of the
same to his own use

And also for that the Said
defendant afterwards, to wit, on the
first day of July in the year Eighteen
hundred & fifty Six. with force & arms,
to wit, at the Town of Lysander in
the County aforesaid, reaped, cut down
and took and carried away the wheat
and Straw raised & grown upon forty
acres of land then & there found & being
of the property of Said Plaintiff of great
value, to wit, of the the value of nine
hundred dollars, and Converted and
disposed of the same to his own use

and by reason of the premises the
Plaintiff says he has suffered Damages
to the sum of nine hundred dollars
and therefore he brings suit &c

Loop & Lathrop
attys. for Plff

56
And afterwards, to wit, on the
third day of December in the year
aforesaid, said day being one of the days
of the December Term of said Court
the said defendant filed in said Court
the following Demurrer & Plea to said
Plaintiffs declaration, in words and
figures following, to wit,

John Bull }
advs. } State of Illinois Win,
Horace E. Griswold } Co, Court Dec Term AS 1856

And now comes the said defendant
by L. F. Warner his attorney and defends
the wrong & injury when &c in the first and
third counts of the said plaintiffs declar-
ation and for Pleas thereto severally says
that the said counts are each of them
insufficient in Law & Judgment and
that the said defendant is not bound
by Law to answer the same

And shows the Court, the following
Causes of demurrer, That the first
count shows no cause of action against
the defendant.

That the said third count does
not show in what or whose case the
alleged trespasses were committed. That
the damages are not sufficiently alleged

All which he is ready to verify &c

L. F. Warner
att'y for Deft.

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And for Plea to the Said Second Count
of the Said Plaintiffs Declaration
mentioned the Said defendant Says
that he is not guilty in manner & form
as therein alleged and of this he puts
himself upon the Country for trial &c
S. F. Warner
Atty for Deft,

To which last mentioned Plea the
Plaintiff answered as follows, to wit,
And the Plff. doth the like
Loop & Lathrop
Atty for Plff.

And afterwards, to wit, on the third day
of December AD 1856 there appears of
Record the following order of the Court

Horace E. Gridwold }
vs } Trespass
John Bull }

On Motion of Said Plaintiff by
his Attorney leave is granted to amend
the first Count of the Plaintiffs
declaration herein

7.

And afterwards, to wit, on the said third day of December 1856 the said defendant filed in court the following Pleas, to wit,

John Bull

advs

Horace E. Griswold

} State of Illinois, Win
Co., Court Dec Term AD 1856

And the said defendant by L. F. Warner his attorney, comes and defends the wrong & injury when &c in the first and third counts of the said Plaintiffs declaration and says that he is not guilty of the said supposed trespasses in the said counts mentioned or either of them in manner & form as therein stated and of this he puts himself upon the country for trial

L. F. Warner
atly for Deft,

And the said defendant for a further plea to the said first count of the said Plaintiffs declaration, by leave of the court for that purpose first had & obtained, says, Actio non, because he says, that the said close in the said count mentioned and in which the said trespasses are alleged to have been committed now is and at the said several times when &c was the close soil and freehold of the defendant at

Winnebago County aforesaid. Wherefore
 the said defendant in his own right
 at the several times when & committed
 the several supposed trespasses in the said
 count mentioned, in the said close, so being
 the close, Soil & freehold of the said
 defendant, as he lawfully might for
 the cause aforesaid which are the several
 supposed trespasses whereof the said plain-
 tiff hath in said count thereof complained
 against him, and this he is ready to
 verify. Wherefore he prays judgment &c
 S. F. Warner
 atty. for Deft.

And afterwards, to wit, on the fourth
 day of said December in said year 1856

The following order was made & appears
 of Record —

Thursday December 4th 1856

Horace E. Griswold }

vs

John Bull }

By agreement of said parties as
 per stipulation filed, it is ordered that
 this cause stand continued to the
 next Term of this court

And afterwards, to wit, on the twelfth day of March AD 1857. Said day being one of the days of the March Term of Said County Court. The Said Plaintiff filed in Court the following ~~Rejoinder~~ ^{Rejoinder}, to wit,

Horace E. Griswold }
vs
John Bull }

And the Said Plaintiff as to the Said Plea of the Said Defendant by him secondly above pleaded, Says, precludi' non, because he Says, that at the Said time whene the Said close was the close of the Said Plaintiff and not the close, soil and freehold of the Defendant as in & by Said plea supposed, and this Said Plaintiff prays may be enquired of by the Country^{re}

Loope & Lathrop
attys. for Plff.

And afterwards, to wit, on the said twelfth day of March AD 1857. The Said Defendant filed in Court the following Rejoinder, to wit.

John Bull }
 ad } State of Illinois, Win
 Horace E. Griswold } County Court, March
 Term AD 1837

And now comes the said defendant by
 L. F. Warner his attorney, and as to the
 Replication of the said plaintiff in
 this cause filed to the said defendants
 second plea herein filed. wherein the
 said plaintiff puts himself upon the
 Country for trial, doth the like

L. F. Warner
 Atty for the Defendant

And afterwards, to wit, on said twelfth
 day of March. the following appears of
 Record. To wit,

Thursday March 12 1837.

Horace E. Griswold }

vs
 John Bull }

On Motion & Affidavit of said Defendant, it is ordered
 that this cause be continued to the next Term of this
 Court, at the cost of said Defendant, and that all
 the costs & fees of witnesses in attendance at this Term
 that have been subpoenaed in this cause on the part
 of said Plaintiff be taxed against said Defendant
 in costs of this Term, which witnesses this Court
 certifies to be necessary on the behalf of said Plaintiff
 It is therefore considered & ordered by the Court, that
 said Plaintiff have & recover of said Defendant his
 costs & charges about this Term expended, and
 that he have execution therefor —

And afterwards, to wit, on the third day of June, said day being one of the days of the June Term of said County Court of Wainebago County, the following appears of Record in said cause to wit

Horace E. Griswold }

vs

John Bull }

And now comes the Plaintiff by his Attorney, and the Defendant by his Attorney also comes, and issue being duly joined, it is ordered that a Jury come, and thereupon comes a Jury of twelve good & lawful men, who having been duly impannelled tried & sworn well & truly to try the issue joined hereby and having heard the evidence until the hour of adjournment arrived, by agreement of the parties, and being fully charged by the Court, leave is granted them to depart and meet the Court at the hour of nine o'clock tomorrow morning

And afterwards on the day following to wit, June 4th 1857 the following appears of Record in said cause, to wit,

Horace E. Griswold }

vs

John Bull }

Trespass

And now come the parties by their Attornies, and the Jury heretofore impannelled herein, and having heard

The Evidence and arguments of Counsel they retire under the charge of an officer to consider of their verdict, and the hour of adjournment having arrived; it is ordered by agreement of Counsel that, when they shall have agreed upon their verdict, they may Seal the same and separate and meet the Court at nine o'clock tomorrow morning.

And afterwards on the day following, to wit, March 5th 1857, the following appears of record in said cause, to wit,

Horace E. Griswold }
 vs } Grespass
 John Bull

This day come again the said parties by their attorneys and also come the Jurors heretofore empannelled & sworn to try this cause, and the said Jurors render their verdict as follows, We the Jury find the Defendant guilty and we assess the Plaintiffs damages at the sum of (\$760.⁰⁰) Seven hundred & sixty dollars, and each of said Jurors being called & interrogated concerning the same did answer and say that the same was & still is his verdict, and so declared all of said Jurors, and thereupon the attorney for the said Defendant moves the Court for a new trial herein.

And afterwards, to wit, on the Eighth day of June AD 1857 the following record was made in said Cause, to wit,

Horace E. Griswold }
 vs } Trespas
 John Bull }

This day come again the said parties by their Attornies, and the Court having heard the arguments upon the motion for a new trial by the said Defendant in this cause submitted and being fully advised thereon, overrules the same, whereupon it is considered and ordered by the Court that the said Plaintiff have & recover of the said Defendant the sum of (\$760.00) Seven hundred & Sixty dollars, the damages of the Plaintiff heretofore by the jury assessed herein, as also his costs and charges herein expended, and that he have execution therefor, and the said Defendant thereupon prays an appeal to the Supreme Court of the State of Illinois which appeal is granted, provided the said Defendant file a Bond in the Penal sum of twelve hundred dollars with condition as required by law in the case of such appeals, signed & sealed by himself as principal & by John Garver & Asel Dale or Lyman F. Warner as security,

And afterwards, to wit, on the ninth day of June 1857 the said Defendant filed his bill of exceptions which bill of exceptions is in the words and figures following, to wit,

14.

Horace E. Griswold

vs
John Bull} State of Illinois
Winnebago County
Court June Term
AD 1857

Be it remembered that this Cause
now at this day coming on for trial by the
Court and a jury duly empannelled and
sworn well & truly to try the issue in said
Cause

Whereupon the Attorneys for the Plaintiff
introduced & read in evidence, by consent
of parties, to the Jury a deed of conveyance
from John Bull the defendant, bearing
date the fourteenth day of April AD 1855
and duly acknowledged by the said
defendant Bull on the fourteenth day
of April AD 1855, and duly recorded in
the Records office of said county of
Winnebago on the said fourteenth day
of April AD 1855, a copy of which deed
with the acknowledgment and the date
& of Recording is herewith attached marked
as deed no 1-

Whereupon by the consent of parties
a deed of conveyance of Lands was introduced
and read in evidence to the Jury, from the
Plaintiff Griswold to Defendant Bull
bearing date the twenty third day of April
AD 1856 and duly acknowledged by the
said Plaintiff Griswold on the twenty third
day of May AD 1856 & duly Recorded in
the Records office of said County of Winnebago

on the twentyfourth day of May AD 1856
at four o'clock P.M. of that day. A copy of
which ~~deed~~ deed with the acknowledgment & the
certificate of the filing the same for record
is herewith attached. marked as deed
number 2. which Deeds with the Ack-
nowledgements & the Certificate of the recording
was read in evidence to the jury by the
Consent of the Counsel for the respective parties

Whereupon by the consent of the attor-
neys for the respective parties an Affidavit
of which the following is a copy was by
the Counsel for the Plaintiff read in evidence
to the Jury. to wit State of Illinois
Winnebago County Court, June Term 1857

Myron E Young of said County being
duly sworn doth depose & say that at the
request of Horace E Griswold I did on
the 29th day of November last, measure
a certain piece of ground on the South East
Quarter of the South west quarter & the South
west Quarter of the South East quarter
of Section twenty three Township twenty
seven North Range ten East of the 3^d
P.M. Said piece of Land shown to me
by John Gould who assisted in measuring
Said land and said by him to be the land
on which the wheat in controversy grew
Said piece of Land contained forty three
acres & thirty one one hundredths of an acre
Signed M E Young

Subscribed & sworn to June 1st 1857
before me William Keulin Clerk
Co. Court

Whereupon the following named witnesses were called & sworn on the part of the Plaintiff namely H. D. Adams, John Garner, Orrin Pate B. Vanmettizing, Willson Judd, John Judd, L. Johnson, Benjamin Robbins

H. D. Adams the witness first called & examined on the part of Plaintiff testifies, That he is acquainted with the parties to the suit and was acquainted with them the latter part of May 1856, that he was acquainted with the defendant previous to that time

The parties came to my office to transact some business concerning some real Estate, at the office of Miller & Miller in the City of Rockford occupied by me, it was concerning the Land described in the Deed from Plaintiff to the Defendant here in evidence, it was the latter part of May or the first of June 1856 about noon

The following question was then asked by Counsel for the Plaintiff, "was there anything said at that time about some notes or interest on notes that the Defendant held against the Plaintiff" The question & answer of the witness to the question were objected to by the Counsel for the defendant and the objection was overruled by

Court, to which the Defendant Excepted which exception was allowed by the Court. Witness answering said "there was" The witness was then asked by the Counsel for the Plaintiff "if anything in that conversation was said in regard to any subsequent interest accruing on any of those notes, and if so what was said" To which question & the answering thereof the defendant by his counsel objected, and assigned as cause that it was irrelevant & should be shown to have been subsequent to the delivery of the said Deed from Plaintiff to the Defendant, which objection the Court overruled, and directed the witness to answer, To all which the Defendant Excepted & which exceptions are allowed by the Court. The witness then stated in answer, "That something was said concerning interest coming due on some of the notes, That when the parties came in witness asked them if they wanted a Deed drawn. Bull said they had a deed, that they wanted him to compute the interest on some of the notes from that time to the first of September 1856 which he did, but cannot tell on how many notes he cast the interest nor how much the amount was

The witness then stated that the parties wanted Sheriff Taylor before they could finish the business, and one of the parties went after him, cannot state which of them. Sheriff Taylor came into the office, he had an execution in favor of Bull against Griswold the amount of which was to be applied towards the payment of the land described in the deed from Plaintiff to Defendant. The deed was there at that time."

The witness was then asked by the Plaintiff's Counsel, "if there was any reason given in that conversation for computing the interest up to September first 1856, and if so what was said?"

To which question & the answer by the witness the defendant objected and assigned the same reasons as in the previous objection, which objection was overruled by the Court.

To which ruling of the Court the Defendant took Exceptions which is allowed by the Court.

The witness answering, stated, "That to the best of his recollection the interest recored on the notes from that date to the first of September 1856 was allowed to Bull by Griswold for crops on the land, or the use of the land to the first of September 1856, the same described in the deed."

The Witness on Cross Examination was then asked by the Counsel for the Defendant to state fully all that was said or done at that time by each & boath the parties & to state all that took place at the time, refered to in his direct examination.

Witness then stated, "That the parties wanted him to do some business for them concerning some land, That Mr Bull had quite a large amount of notes against Mr Griswold, and the parties wanted witness to cast the interest on some of them from that time to the first of September 1856 which he did, but cannot state on how many or what ~~notes~~ the amount of the notes he did cast it on, but thinks fifteen hundred or two thousand dollars, he cast interest on, thinks some of the notes were given up by Mr Bull to Griswold Towards payment for the Land in the Deed described, from Griswold to Defendant Bull. here in evidence, and that the parties wanted Sheriff Taylor, before they could finish their business, and that one of the parties, but cannot say which, went out after Sheriff Taylor and soon came back with Sheriff Taylor, he had an Execution in favor of Deft Bull against Plaintiff Griswold which was to be applied towards the

payment for the Land described in the Deed, I think it was not in full payment for the Land. I think some of the notes held by Bull against Griswold was given up to Mr Griswold but cannot tell how many or what amount. The Deed in question from Griswold to Bull was on the table among the papers at the time the business was being done. My best impression is that Deft. Bull brought the Deed, but am not positive. I think the interest was cast up to the first of September 1856 on some of the notes for the use of the Land or the crops on the Land described in the Deed but am not certain. But think the crops were spoken of and that they was the consideration for the interest spoken of.

The witness then stated the time at which the business was done & conversation had between the parties, referred to by me in all my evidence. I now know to be on the twenty fourth of May 1856 from a writing or receipt drawn by me at that time for the parties. It was about noon of that day. I do not know whether the deed referred to, from Griswold to Bull was either signed or acknowledged at that time. I do not positively remember whether the deed was there delivered to Mr Bull or not

The business was finished soon after Sheriff Taylor came in and the parties left the office together, they were at the office I should think about an hour

Orrin Pate, was then called as a witness by the Plaintiff and testified as follows

"I know the parties to this suit I have known Defendant Bull for fifteen years, and the Plaintiff since the summer of 1853. The latter part of June or the fore part of July, I heard Defendant Bull say he had bought back a part of his old farm from Griswold

I met Mr Bull in the Road at Pecatonica, and I said to him you have bought back a part of your old farm from Griswold I hear. Bull said he had, I said to Bull you have made money in the operation for I hear that you bought it back for less than you sold it to Griswold

Bull said. Griswold had the crops said, he pays me, or has paid me for the crops, or the use of crops, or use of the Land I mean to be understood, the use of the Land

In this conversation Bull said Griswold had the crops, I know the Land bought back by Bull from Griswold, I saw the wheat while growing, Part of the field was good & part not so good

Orrin Pate Cross Examined by Deft.
Says he has no particular ill feeling
against Mr Bull. I do not approve of
his conduct. I have never said in
presence of Bryan or any one, that I
would have revenge on defendant Bull
or that I would ruin him. I have no
particular good feelings towards him

Benjamin Vanmetting was then
called & examined by the Plaintiff and
testified as follows

I know the parties, and I know the
Land in controversy, on which the wheat
in controversy grew. There was about
forty acres of wheat growing on the same
in the Spring of 1856. I saw it about
the time it was harvested, passed it fre-
quently. I think it would turn from
fifteen to twenty bushels to the acre.

It was on the Land bought back
by Bull from Griswold

Benjamin Robins was then
called as a witness on the part of the
plaintiff and testified as follows.

I know the parties to the
suit. I know the premises that Mr
Bull bought back of Mr Griswold

I heard a conversation between Mr
Bull & Dr Richings at Dr Richings office
Rockford, the latter part of May or the
fore part of June 1856. I heard Mr
Bull say to Dr Richings, that he had

bought a piece of ~~Land~~ his old farm back from Griswold. He Bull asked Pickings to guess how much he paid for it per acre.

Pickings said he guessed he paid fifteen dollars per acre. Bull said he paid more.

that he paid twenty three or twenty three dollars & a half per acre, and that Griswold was to have the wheat or the crop. Did not hear the whole conversation between them.

Calvin Johnson was then called as a witness on the part of the Plaintiff and testified that he is acquainted with the parties to this suit, that on the sixteenth day of July 1856 he was working for the Plaintiff in the field of wheat in question, that Mr Griswold had several others there at work, some were reaping & some binding; they had reaped about two acres when Defendant Bull and his son William & two men came to the wheat field. Defendant Bull was in or by his wagon and his son William was by & in hearing. Griswold was inside of the field. Bull, defendant, said he forbid Griswold harvesting the wheat and told him to leave the premises. Heard Griswold say to him did I not pay you the interest on the notes up to the first of September

to have, or harvest this wheat, heard Bull say, you did

William Bull might have heard it he was close by his Father, and John Gidd was within about two rods at the time, and one Morrison who now lives in Philadelphia was present and heard it, I turned & went away.

The crop was more than an average crop, I think it would turn from twenty to twenty five bushels per acre

Gridwold forbid Bull to come into the field. Gridwold & his hands left the field. It was the 16th or 17th day of July 1856

John Gidd was then called as a witness on the part of the Plaintiff and testified that he knew the parties and that he knows the land in controversy on which the wheat in controversy grew, that he was there on the 16th of July 1856 at the time Mr Bull forbid Mr Gridwold harvesting the wheat, - witness was at work in the field when Bull & his men came up, he said he would prosecute us all if we did not leave the field, that he would pay us for what we had done, and did pay me, There was seven men including the Plaintiff at work in the field for Gridwold. They had cut about

an acre & one half when Bull came and forbid them cutting it. Griswold wanted me to hear what he & Bull would say about the wheat. And Griswold said to Bull, did I not allow you the interest on those notes up to the first day of September, to harvest this wheat

and Bull in reply said, "No Sir you rascal, you have cheated me enough ~~already~~ leave the premises"

Griswold told Bull to leave, Bull was outside the field and his son William Bull also. Griswold, and his hands left the field

I think one half of the field would turn twenty bushels to the acre & the other half fifteen bushels per acre. Peatonica Station, was the nearest wheat market to the premises & about two miles distant

The following question was then asked the witness by the counsel for the Plaintiff. "What was the highest market price paid for wheat at Peatonica Station during the time of harvesting or threshing the wheat in question"

which question was objected to, and assigned as reason that. The highest market price of wheat during such time was not the rule of damages and that it should be confined to the value of the wheat at the time lost. committed

the acts complained of" which objection the court overruled & directed the witness to answer, to which the defendant excepted, which was allowed by the Court. The defendant excepted to the answer of the witness, which was allowed by the Court.

The witness then stated that the highest market price of wheat at Pecatonica Station was one dollar per bushell.

The witness was then asked by the Plaintiff the following question.

"What was the value of new wheat when it first came into market in Pecatonica in 1856" To which question & the answer the defendant objected, and assigned the same causes as in the previous question.

The Court overruling the same directed the question to be answered. To which ruling of the Court the defendant by his counsel excepted, which was allowed by the Court.

The witness stated in answer that the highest value was one dollar, or one dollar & three cents per bushel at the time.

Bull forbid Griswold harvesting he went to harvesting it forthwith.

The witness was then cross examined by Defendant, and Defendants Counsel put the following question. "What was it worth to cut, harvest, thresh & take to Pecatonica Station the wheat in controversy here. To ~~which~~ answering which the Plaintiff objected, and the Court sustained objection.

and refused to let the witness answer to which ruling the Defendants Counsel took exceptions which were allowed by the Court. Witness was then asked

"What was the value of the wheat per acre as it stood & was in the field at the time Bull forbid the plaintiff to cut or harvest it". The witness answering said it was worth five hundred & fifty three dollars.

The witness was then asked to state his reason for saying worth \$533, 00 and the basis of his judgment which was objected to by the Plaintiff

The Court directed the witness to answer

The witness said "he considered that there was $43 \frac{3}{100}$ acres of the wheat. That it would produce $17 \frac{1}{2}$ bushels to the acre and one dollar per bushel

Almon Benton was then called on the part of the Plaintiff & testified that he knew the field in question, that Mr. Parker threshed the wheat in question sometime in August 1836. Defendants teams drew it away at that time, thinks the field would average twenty bushels to the acre

Willson Johnson, was then called by the Plaintiff, and stated that he knew the field of wheat in controversy thinks it would turn fifteen to twenty bushels per acre, in his judgment

The defendant then called the following witnesses which were duly sworn, to wit, John Garver, Augustine Busch, W. H. Bryon, William Bull & George Parker. And John Garver being first called & examined testified that he was on the 23^d of May 1856 a Justice of the Peace at Pecatonica in Winnebago County. I took the acknowledgment of the deed in evidence here from Griswold to Bull at the time it bears date May 23^d 1856 towards evening of that day. My best recollection is that the deed was not at that time delivered to Mr Bull. The parties disagreed something about some costs on an execution that Sheriff Taylor has against Griswold in favor of Bull, and they did not complete the trade in relation to the Land but they were to come to Rockford the next day & complete it. But I took the acknowledgment at that time because the Plaintiff's wife was there. I think the deed was not delivered to Bull at that time, nothing was ^{there} said about the crops on the Land.

On cross examination by the Plaintiff witness stated that he did not see the notes at the time of acknowledgment, it was then talked that notes towards

the land was to be surrendered towards the amount of the land, when this business was done, I gave the deed to Griswold, after I took the acknowledgment, at the time the deed was acknowledged, the parties had made their trade, except a dispute about some costs on an execution in the Sheriff's hands and the parties were to go to Rockford to see about that, I did not see any notes at that time I suppose the parties had not got along to that.

A few days after the trade I met Bull and asked him how he got along with his trade with Griswold, Bull said that Griswold allowed him the interest on the notes until the 1st of September, but nothing was said about the crops.

Augustus Budd being examined by the Defendant - says he knew the parties in the Spring & Summer of 1856, that he knows the land & knew the wheat in controversy when the same was growing on the land. There was about forty acres of it, that he broke about fifteen acres of ground for Mr Bull the Defendant on the eighty acre tract that Bull took back from Mr Griswold, on a portion of the eighty acres on which the wheat

in controversy, grew I kept up the fence while I was breaking for Mr Bull. It was in June 1856, I did not see Plaintiff about the premises to know him while I was there breaking the fence I put up was at the South East Corner of the field.

On cross examination stated that the wind blew down some of the fence on the north & west sides of the field. Saw men putting it up, do not know who they were. I did not know the Plaintiff at the time, This was while I was breaking there.

William Bull being called & examined by the defendant, says that the Land in question & the wheat grown on the same in 1856 my father had the wheat cut I cut it for him & stacked three stacks, the rest I drew to the threshing machine. The whole of it was threshed, There was I should think from thirty five to forty acres of it and I think it would turn about fifteen bushels to the acre.

I was present on the 16th of July when my father forbid Mr Grimbold cutting the wheat, I went to the Land with him & was present with him until he went away. I heard my father forbid him cutting the wheat.

twice at least, to which Mr Griswold said at each time, did I not allow you the interest on those notes to the first of September for the wheat or the use of the Land to that time

And my father at each time said he did not, and one time said no you rascal you have cheated me enough. I think the wheat on the Land that father bought back of Griswold was worth on the 16th day of July at the time the same was cut, worth from \$250, to \$300, as it stood in the field,

In the month of June 1856 the Plaintiff Griswold asked me when my father was coming down to cut his wheat, this wheat in question was nearer the Plaintiffs residence. My father had no other wheat that year. Father lived about two miles from there

On cross examination witness says, it was worth two dollars per acre to cut bind & stack the wheat and worth two dollars per acre to draw & thresh the wheat & a dollar per load to draw to Peconica, wheat was worth about Eighty ^{four} cents per bushel at Peconica

That my basis of receiving was that it was worth 85 cents per bushel

George Parker was then examined on the part of the Defendant

He states that he knows the parties that he knows the Land Defendant bought back of Mr Griswold & the field of wheat on the same in 1856

That he had for Mr Brill, some breaking done on the Eighty acre tract described in the Deed, That he threshed the wheat which grew on the same about the 18th day of August 1856

There was about forty acres of it

There was three stacks of it when he commenced threshing & William Bull drew the rest of it to the machine while ~~he~~ ^{me} was threshing, That he measured the wheat and there was of it six hundred & sixty five or seven bushels as he measured but by weight it fell short about five bushels

The wheat as it stood in the field at the time it was cut by Defendant Bull, was worth three hundred & forty two dollars, I judge it to be worth that from the price of wheat at Pecatonica Station, The average of price of wheat being in my judgment Eighty five cents per bushel at Pecatonica Station, and in my reckoning I calculated what it was worth to cut, harvest, thresh, & take it to market & take that from the amount of Eighty five cents per Bushel

John Travis was then called and examined
and says I was in the wheat buying
business at Peatonica Station during
the summer of 1856. That the price of
wheat from the commencement of harvest
to the 18th of August was from seventy
five cents to ninety cents per bushel

On cross examination witness
was asked what was the highest
market price of wheat in Peatonica
from the commencement of harvest
to the 18th of August, which was
objected to, and the court overruling
the objection, allowed the question
to which the defendant excepted
which exception was allowed by
the court. In answer he stated
that the highest market price in
Peatonica Station was ninety five
cents per bushel

This Indenture,Made this Twentieth day of Aprilin the year of our Lord One Thousand Eight Hundred and Fifty five BETWEEN John BullAnd Jennett P Bull his wifeof the County of Winnebagoand State of Illinois of the first part, and Horace E Griswoldof the Countyand State Aforesaid of the second part, **WITNESSETH**, That the said party of the first part,for and in consideration of the sum of Seven thousand five hundred & fifty eightdollars & fifty cents to him in hand paid, the receipt of which is hereby acknowledged,

has granted, bargained, sold, conveyed and confirmed, and does hereby grant, bargain, sell, convey and confirm unto

the said party of the second part, and to his Heirs and Assigns FOREVER, all three tract or parcel of landsituate and being in the County of Winnebagoand State of Illinois and known and described as follows, to wit: The South East quarter of theSouth west quarter and the South west quarter of the South East quarter of Section twenty three (23)in Township twenty seven (27) North of Range ten (10) East containing eighty acres, and alsothe North East quarter of the South west quarter of said Section twenty three (23) containingforty (40) acres and also the North west quarter of the South west quarter of said Sectiontwenty three (23) containing forty (40) acres and also the North west quarter of the North westquarter of said Section twenty three (23) containing forty (40) acres, and also the South westquarter of the North west quarter of said Section twenty three (23) containing forty acresand also the East part of the North fractional half of the North East quarter of Section fifteen (15)in Township twenty seven (27) North of Range ten (10) East containing fifteen (15) acresand also the West part of the North fractional half of the North East quarter of saidSection fifteen (15) containing fifteen acres & 6/100 acres (15 6/100) and also the Northpart of the West part of the South fractional half of the North East quarter of saidSection fifteen (15) containing fourteen & 54/100 acres (14 54/100) and also the followingdescribed tract of land, to wit: A part of the East half of the North west quarter ofSection twenty three (23) in Township & Range aforesaid bounded as follows, to wit, Commencingat a post at the North west corner of the said half of the North west quarter of theSection aforesaid running thence East two chains & sixty two links to a post, thence SouthEasterly course until it strikes a post standing five chains & ninety four links East of theSouth west corner of the said East half of the North west quarter of said Section twentythree (23) containing seventeen & 12/100 acres All of said tracts of land mentioned to beconveyed containing three hundred & two 34/100 acres (302 34/100)This conveyance is made subject to a certain mortgage or trust deed on said landsexecuted by said John Bull in favor of William J Hall's to secure the paymentof one thousand dollars and interest which will become due January 1st 1859**Together with All and Singular**, the appurtenances thereunto belonging, or in any wise appertaining: **To Have and to Hold**the above described premises unto the said party of the second part, and to his Heirs and Assigns, FOREVER:and the said party of the first part, for himself and his Heirs, Executors and Administrators,do covenant and agree to and with the said party of the second part, his Heirs and Assigns, thathe do well seized of the premises above conveyed as of a good and indefeasible inheritance in the law

in fee simple, and that the said premises are clear of all liens, claims and incumbrances whatsoever, and of all taxes and

assessments for the present and past years.

And the said party of the first part the aforesaid premises unto the said party of the second part, and his

Heirs and Assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the

taxes and assessments aforesaid, do and will WARRANT AND FOREVER DEFEND by these presents.**In Witness Whereof**, The said party of the first part have hereunto set their hand and seal on the

day and year first above written.

Executed in Presence of

William LathropJohn Bull

SEAL

Jennett P Bull

SEAL

STATE OF ILLINOIS, Winnebago County, ss. I William Lathrop Notary Public in
and for the City of Rockford in the said County
in and for said County do hereby Certify that John Bull & Jennett P. Bull

personally known to me to be the person whose name are subscribed to the foregoing Deed as having executed
the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same as his
free and voluntary act and deed, for the uses and purposes therein set forth.

And the said Jennett P. Bull personally known to me
to be the wife of the said John Bull and as the person who subscribed
said Deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and
examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower,
and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily,
freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and Notarial seal
at Rockford this 14th day of April A. D. 1855

Seal

William Lathrop
Notary Public

WARRANTY DEED.

John Bull and
wife
Horace C. Groszold

STATE OF ILLINOIS,
Winnebago COUNTY.

Recorder's Office.

Filed for Record on the 14th
day of April A. D. 1855
at 5 1/2 o'clock P. M.
Recorded in Book 20 of DEEDS,
page 2446 and examined.

C. H. Sheppard
Recorder.

This Indenture, Made this twenty third day of April

in the year of our Lord one thousand eight hundred and fifty six BETWEEN Thorace E. Griswold & Jennett H. Griswold his wife

of the _____ County of Winnebago
and State of Illinois of the first part, and John Bull of the
Town of Peatonica

of the _____ County of Winnebago
and State of Illinois of the second part, **WITNESSETH**, That the said party of the first part, for and in consideration of the sum of two thousand one hundred & eighty five dollars to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his Heirs and Assigns FOREVER, all those tract or parcels of land situate and being in the Town of Lynden County of Winnebago and State of Illinois and known and described as follows, to wit:

36 Page The South East quarter of the South west quarter and the South west quarter of the South East quarter of Section twenty three (23) Township twenty seven (27) Range ten (10) East of the fourth principal meridian containing eighty acres more or less and also the East part of the north fractional half of the north East quarter of Section fifteen (15) in Township twenty seven (27) North of Range ten (10) East containing fifteen acres (15)

Together with all and Singular, the appurtenances thereunto belonging, or in any wise appertaining: **To have and to hold** the above described premises unto the said party of the second part, and to his Heirs and Assigns, FOREVER: and the said party of the first part, for himself and his Heirs, Executors and Administrators, do covenant and agree to and with the said party of the second part, his Heirs and Assigns, that he is well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple, and that the said premises are clear of all liens, claims and incumbrances whatsoever, and of all taxes and assessments for the present and past years.

And the said party of the first part the aforesaid premises unto the said party of the second part, and his Heirs and Assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the taxes and assessments aforesaid, do and will WARRANT AND FOREVER DEFEND by these presents.

In Witness Whereof, The said party of the first part have hereunto set their hand and seal on the day and year first above written.

Executed in Presence of

N. E. Griswold



J. H. Griswold



37 Pay

STATE OF ILLINOIS, Winnebago County, ss.

I, John Garver, a Justice of the Peace
in and for the said County, do hereby certify that H. E. Griswold & J. H. Griswold
his wife are

personally known to me to be the person whose name are subscribed to the foregoing Deed as having executed the
same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same, as their
free and voluntary act and deed, for the uses and purposes therein set forth.

And the said J. H. Griswold personally known to me
to be the wife of the said H. E. Griswold and as the person who subscribed
said Deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and
examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower
and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily,
freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and seal,
at Lynden this 23rd day of May A. D. 1856

John Garver
J. P. (Seal)

Warranty Deed.

STATE OF ILLINOIS,

Winnebago County.

Recorder's Office.

Filed for Record on the May 24

day of A. D. 1856

at 4 o'clock P. M.

Recorded in Book 38 of Deeds,

page 60 and examined.

C. W. Spafford

Recorder

Whereupon, upon the evidence herein before and the instructions herein after given to the Jury the cause was submitted to the Jury

The Plaintiffs Counsel asked the following instructions to be given to the Jury by the Court, And to the giving of the first, second, fourth & fifth of which said instructions, the defendants Counsel objected, which objection was overruled by the Court, to which ruling of the Court and the giving said instructions the Defendant excepted, which Exceptions were allowed by the Court, and the same were given to the Jury by the Court

Plaintiffs Instructions

No 1

Instructions asked by the Plaintiff

That the Law is, that growing wheat is personal property; and the subject of sale by parol agreement, and that if the Jury believe from the evidence that the Defendant Bull, after the execution and delivery of the Seed to him from Griswold, stated that the wheat or crop in question, belonged to the Plaintiff Griswold. That such statement by said Bull, is Evidence of a Sale of the wheat in question from said Bull to said Griswold

Given

No 2

That a Lease of Land by Parol for a Term not exceeding one year is valid & lawful

And if the Jury believe from the evidence, that some time in the latter part of May or first of June AD 1856

And after the execution & delivery of the Deed from Griswold to Bull - The defendant Bull by agreement with said Griswold, took and received of said Griswold the interest on the amount of certain notes, from that date until the first September then next, for the use of the premises in question to that time, that such agreement constituted a valid Lease of the premises & entitled the Plaintiff Griswold to the possession of the premises from the date thereof until said first of September

3^d

That if the Jury believe from the evidence that, the wheat in question was the property of the Plaintiff Griswold and that the Defendant Bull cut and carried the same away or procured the same to be done, that then the Plaintiff is entitled to recover in this action the value of the wheat taken but may award the Plaintiff such sum by way of Damages as in their discretion they may deem just

4 That if the Jury believe from the evidence that the wheat in question was the property of the Plaintiff and that the Defendant wilfully and maliciously cut and carried away the same. The Jury in assessing the ^{Plaintiff's} damages are not confined to the actual value of the wheat taken, but may award the Plaintiff such sum by way of damages, as in their discretion they may deem just.

5th That if the Jury believe from the evidence that the wheat in question was the property of the Plaintiff Gridwold and that the Defendant wilfully cut and carried away the same. That then the Defendant is not entitled to recoup or deduct from the value of the wheat so taken, the expense of harvesting the same, but the Plaintiff is entitled to recover the full value thereof the same as if he had harvested the same himself -

Given

That if the Jury believe from the Evidence that the field of Wheat in question was the property of the Plaintiff. The Plaintiff by virtue of such ownership, had to the exclusion of all other persons the right to enter upon the premises for the purpose of cutting & harvesting the same

And that if the Defendant Bull entered upon the premises and cut & carried away the wheat in question the Plaintiff is entitled to recover against the defendant therefor, for breaking and entering the close of the Plaintiff —

Whereupon the Defendants Counsel asked the Court to give the Jury the following instructions in behalf of the Defendant, whereupon the Court refused to give to the Jury the third & eighth instructions asked by the Defendant, to which refusal of the Court to give to the Jury said third & eighth instructions asked by him, the defendant excepted, which exception was allowed by the Court

Defendants Instructions

Instructions asked by the Defendant

1st The Court instruct the Jury, in order for the plaintiff to maintain this action against the Defendant for cutting and carrying away the wheat in question the Plaintiff must show himself in possession actual or constructive of the Lands upon which the wheat in controversy was growing or standing at the time defendant committed the acts complained of

2^d That the Action of Trespass for injuries done to Land is a possessory action and the Plaintiff in order to recover in such action must show himself in the possession of the Lands on which the trespasses are alleged to have been committed at the time the same were committed, and if the Plaintiff fails to show such possession in himself he is not entitled to recover in this form of action on the first Count

Refused

3^d That the Law is in this case that if the Jury believe from the evidence that the ~~Plaintiff~~ Defendant Cut & Carried away the Standing wheat of the Plaintiff from the premises of the Plaintiff described in the declaration

That the Rule of Damages Therefor is the value of the wheat as it stood on the said Land at the time of the trespass and that in addition thereto the Jury are authorized to give such exemplary damages as in their judgment is right & just, considering the circumstances under which the same was done

4th That the Law is that, an absolute Deed of conveyance of Land, as the Deed in evidence herein from the Plaintiff to the Defendant, conveys all the interest in the Lands that the Grantor has at the time of the execution & delivery of such Deed, and that such a Deed of conveyance passes all interest in the Crops, such as wheat growing on the premises

Given

5th
Given

That a Deed of conveyance of Lands takes effect from & after delivery of the Deed

6th That the Law is that all negotiations relative to the Sale of Lands and concerning the Crops growing thereon prior to and at the time of the delivery of the Deed of Conveyance thereof, are merged in Such Deed, and any parol reservation of Crops growing on the Said Lands, is void and of no binding force or effect between the parties to the Deed

Given

7th That the Court instruct the Jury that the Deed offered & read in evidence, from the Plaintiff Griswold to the defendant Bull, Conveys the title of Said Lands and all interest that the Said Griswold had in and to the Said Lands, to the Said Defendant Bull, and that Said Deed passed all the interest that Said Griswold had to all Crops growing thereon, at the time of the delivery of Said Deed to Said Bull and that all negotiations between the Said parties, prior to, and at the time of the delivery of Said Deed to Said Bull, in regard to Said Lands & the crops thereon, are merged in Said Deed and of no validity between the parties

Given

8th That in the absence of evidence of the time of the delivery of a Deed of conveyance of Lands the time the Deed was filed for Record in the County where the Land lies is, prima facie, the time of the delivery of the same between the parties

Refused

9th That in order to make a valid Sale
of growing wheat, there must be a good
and sufficient Consideration therefor
passing from the purchaser to the seller

10th That nothing that was said or done
between the said parties prior to, or at
the time of the delivery of the Seed in
evidence from Plaintiff Griswold to
Defendant Bull, is evidence from which
the Jury can find a Sale of said wheat
in controversy or a leasing of the
premises on which the said wheat
was growing, by Defendant Bull to
Griswold

Whereupon the Cause having been
submitted to the Jury upon the proofs &
instructions as herein before

The Jury returned into court with the
verdict, "We the Jury find the Defendant
guilty and assess the damages at the
sum of seven hundred & sixty dollars,

Whereupon the Defendants
Counsel moved the Court for a new
trial of said Cause and files his
motion therefor, as follows, to wit,

John Bull

ads

H. E. Griswold

Winnebago County Court
June Term 28 1857The Jury having in said cause
returned into Court their verdictThe defendant by his Counsel
L. F. Warner enters his motion for
a new trial of said cause, and
assigns as reasons

- 1st That the Court on the trial of said
cause allowed improper testimony
to be given to the jury
- 2^d That the Court erred in giving to
the jury the first, second, fourth &
fifth instructions asked by the plaintiff
- 3^d That the Court erred in refusing to
give to the jury the third & eighth (3^d & 8th)
instructions asked by the Defendant
- 4th That the verdict of the Jury was
Contrary to the Law and the Evidence
and should have been for the Defendant
- 5th That the Damages were excessive

L. F. Warner atty for Def.

Upon the hearing of the argument
Counsel on said Motion the Court
overruled said Motion, so the overruling
of which Motion the Defendant by
his Counsel excepted, which exception
was allowed by the Court

Whereupon it is ordered by the
Court that this bill of exceptions, be
signed & sealed by the Court and made
a part of the records in said Cause
and filed therewith, which is accor-
dingly done

Whereupon the Defendant by his
Counsel prays an appeal in said
Cause to the Supreme Court of said
State of Illinois which appeal ~~by~~
~~the Court~~ was allowed by the Court
upon the Defendant & John Garver &
Asel Dale or the Defendant and L. J. Warner
~~entering~~ entering into bonds in said
Cause in the sum of twelve hundred
dollars in the usual form within
forty days from the rising of
this Court

(L. S.) Selden M. Church

And afterwards, to wit, on the thirtieth day of June 1857 the said Defendant herein filed in the office of the clerk of the County Court of Winnebago County his appeal Bond, in the words and figures following, to wit,

Know all men by these presents, that we, John Bull Principal and John Garver and Abel Dale, Securities, all of Winnebago County - State of Illinois, are held & firmly bound unto Horace - C. Griswold of said County in the Penal sum of, twelve hundred dollars lawful money of the United States, for the payment of which well & truly to be made, we bind ourselves our heirs & administrators, jointly severally & firmly by these presents, Witness our hands & seals, this Eleventh day of June A.D. 1857. The condition of the above obligation is such, to-wit, whereas, the said Horace - C. Griswold did, on the Eighth day of June A.D. 1857 before the County Court of the County of Winnebago, recover a judgment against the above bounden, John Bull, for the sum of seven hundred & sixty dollars, and costs of suit from which said judgment the said John Bull had taken an appeal to the Supreme Court of the State of Illinois, Now if the said John Bull, shall pay the judgments, costs, interest & damages in case the said judgment shall be affirmed, and also shall prosecute said appeal with effect, and shall pay whatever judgment may be rendered by the Court, upon dismissal or trial of said appeal, then the above obligation to be void otherwise to remain in full force and effect.

In Presence of

William Hulin as to Bull

Geo. S. Parker as to Garver

Geo. S. Parker as to Dale mark

John Bull

John Garver

Abel Dale
his
mark

Seal

Seal

Seal

State of Illinois, }
County of Winnebago, } ss:

I, William Hulin, Clerk of the
County Court for said County, do
certify, that the foregoing is a full
and true copy of the papers, records
and proceedings in said Court in the
above entitled cause.

Given under my
hand and the Seal of
said Court, at my office
in the City of Rockford,
this First day of April,
A.D. 1858.

William Hulin
Clerk

In the Supreme Court of the State
of Illinois of the
April Term 1858

John Bull

vs
Horace E. Griswold } Appeal

And the said Appel-
lant by L. F. Warner his attorney
comes and says that in the Record &
proceedings in this cause there is
manifest error in this Court,

That the Court erred in allowing
improper evidence to be given to the jury,

That the Court erred in refusing tes-
timony offered by appellant to be
given to jury,

That the Court erred in disallowing questions
propounded to witnesses by Appellant
to be answered

The Court erred ^{severally} in giving the 1st
2^d, 4 & 5 instruction asked by
Appellant

That the Court Erred severally in
refusing to give the third & eighth in-
structions asked by appellant

That the verdict was contrary to the
evidence

That the verdict was contrary to the
Law,

That the damages were excessive

That the Court erred in denying the
motion for a new trial,

That the Court erred in entering
judgment on the verdict,

And the said appellant prays
that the said judgment & proceedings
may be vacated reversed annulled
set aside and for costs taxed
& awarded

L. L. Kerner
Clerk for
Appellant

That the Court erred in allowing
it to admit a witness examined by Appel

to answer the questions objected as
shown by the bill of exceptions

The Court erred in allowing the ques-
tion and answer of John Gould a writing
examinated by appellee showing the
highest market price of wheat at
Peatonies Station during the time of
harvesting & threshing the wheat in
question as no bill of exceptions

The Court erred in allowing the
question and answer of said John Gould
as to what the value of the wheat
was when it first came into market
in Peatonies in 1856, as per bill of exceptions

That the Court erred in disallowing
the question put by appellant to said
John Gould on crop examination as
to what it was worth to cut harvest & thresh
and take to Peatonies station the
wheat in controversy

~~and the said Appellant prays that~~
~~by L. F. Warner his attorney~~

And the said Appellant prays
that the said judgment & proceeding may be
vacated reversed annulled set aside
and for nought held and extant
L. F. Warner Atty for Appellant

200
Supreme Court
John Bull

vs.
Horace E. Griswold
"

Error Assigned

Filed April 26 1858
L. Leland
Clk

L. J. Warner

In Supreme Court.

Abrae E Guinold }
 ad } Appral from
John Bull } Winnebago

And the said Appeller by
Loof & Lathrop his Attorns comes
and says, that there is no such
Error in the Record & proceedings
in this cause as the said Appellant
in that behalf, has above alleged—
Loof & Lathrop
For Appeller—

Super Court

200

Abrae & Enkold

ad

John Bull

Primer in
Errors

Filed April 22, 1858

L. Leland
clerk

Scop & Luffin of
Atty. for Appellants

In Supreme Court:

Horace E. Griswold,

Appellee,

vs.

John Bull, Appellant }

Argument.

This was an action of Trespass brought by the Appellee against the Appellant in the Winnebago County Court.

The declaration contained three Counts.

The first is in trespass quare Clausum, charging the breaking of self's Close, and, in aggravation, the Cutting, Carrying away & Converting plaintiff's wheat.

The second Charges the taking, Carrying away & Converting 150 Loads of unthrashed wheat of the plaintiff.

The third Charges the Cutting and Carrying away and Converting wheat & Straw of the self's grown on 43 acres of Land.

All of the Evidence in the Case is preserved in the bill of ~~instruction~~, Exceptions, And the instructions, for greater Convenience are attached hereto.

The main facts in the Case are, that Griswold had previously purchased a farm from Bull, and finding himself unable promptly to pay for the whole land so purchased, after having put in the wheat in Controversy, by an arrangement with Bull he reconveyed to him a portion of the land, including that upon which the wheat in question was growing.

That the notes were not then due which had been made by Griswold to Bull for a part of the purchase price of the land.

That after the reconveyance to Bull it was agreed between Bull & Griswold that Griswold should pay Bull the interest on said notes until the first of September, then next, and that in consideration

thorof Griswold should have
the possession of the land until
September for the purpose of harvesting
the wheat in question.

That this was the subsequent
agreement between the parties is proven
by the testimony of H. D. Adams,
Orin Veto, Benj. Robins & Calvin Johnson

It further appears that before
September, when the wheat was ripe,
Griswold went on with his men and
machine and commenced harvesting
the wheat, and had cut from one
to three acres when Bull came to
the wheat field and forbid his
harvesting it. That Griswold
his men departed, and that Bull
went on and harvested the wheat,
drew it off, thrashed it and
converted it to his own use.

It is, in view of these facts, insisted upon on the part of Griswold,

- 1 That a verbal Contract for the sale of growing Crops is good and valid in law; and that the evidence shows such sale of said crop of wheat by Bull to Griswold -
- 2 That a verbal agreement for the use and occupation of land is good and valid in law for a period not exceeding one year; and the testimony clearly shows ^{that} such agreement was made between the parties in relation to the land upon which the wheat in question was grown.
- 3 The wheat in question having been conveyed by Griswold to Bull as belonging to the land conveyed, it was necessary for Griswold in order to establish his claim to the wheat to show a subsequent Contract or agreement in relation thereto. That subsequent agreement the evidence clearly establishes, and that evidence

Shows either a subsequent sale of the wheat to Griswold with the right to harvest and secure the same; or it shows a complete verbal leasing of the land until September - in either view of the case the right of Griswold to the wheat in question is equally clear.

The 1st, 2^d & 3^d Errors assigned are in relation to the admissibility of testimony, and the Exceptions taken by Appellant were from in number.

The first three are to questions to, and answers ^{of} the first witness H. D. Adams, and are in relation to the interest allowed on notes to 1st Sept. paid by Griswold for the use of the land upon ^{which} the wheat was grown. (1 page of abstract.)

It is believed that that evidence was admissible to show the right of Griswold to the use and occupation of the land, and to show his right to the wheat; and ~~the~~ the questions are not objectionable on account of form.

The 4th & 5th Exceptions were to questions propounded to Witness John Indd. (2 pag of Abstract.) as to the value of the wheat in question in Market at that time.

That Evidence was proper. The proof shows that Peatonica Station was the nearest wheat Market to the place where the wheat in question was grown, and that was the Market in regard to which the inquiry should have been directed.

The questions were not objectionable on account of inquiring what was highest price at the time of the harvesting and threshing of the wheat in question.

Iniswold was entitled to recover the highest and best price which could have been obtained for his wheat at that time; and the then defendant had the privilege of Cross Examination, and might have shown the lowest price in that Market, if he was not satisfied that the Witness's estimate was fair.

The 6th Exception is to the overruling of a question of the Appellant to the Witness Indd (2 pag of Abstract).

The inquiry was "What was it worth to cut, harvest thresh and take to Peatonica Station the wheat in Controversy?"

The question was properly overruled. Trespassers do not acquire right to property by the act of trespass, and cannot, by such trespass, entitle themselves to pay or compensation for doing the act of trespass complained of.

The 7th Exception is to a cross question put by Appellee to Appellants witness John Travis (3 page abstract). This question is as to Market price; it is a fair question upon Cross Examination, and would have entirely proper had the question been direct to Appellants own witness. The Statements in regard to the 4th & 5th, are applicable also to this.

The 4th Error assigned is that the Court Erred in giving the 1st, 2^d, 4th & 5th instructions on the part of the Appellee.

The Abstract does not show the instructions given which are not excepted to; and believing that the whole of the instructions on both sides should be critically examined by the Court we have Appended them in full to this argument.

As to the first instruction its doctrine, are all law, and the only proposition it contains which the most technical view of it could conceive to be doubtful is that portion which declares Pull's Statements that the wheat in question belonged to Griswold Evidence of a sale of the wheat to Griswold.

A moment's examination will show it not faulty in that respect, when considered with reference to the proof -

1st. The proof showed a Conveyance of the land by Griswold to Pull, while the wheat was growing thereon. And such Conveyance carried the wheat, as belonging to the land -

2nd. After that Conveyance Pull owned the wheat by virtue of it, and it could only become the property of Griswold

by a Sale by Bull; hence, Bulls
subsequent Statments and admission
that Griswold was the owner of the
wheat was, as the instruction states,
evidence of a sale.

Austin vs. Sawyer 9 Cowen 40.

The 2nd instruction it is not conceived
requires any defence or explanation.

The 4th instruction submits to the Jury
the question whether the wheat in
controversy was Wilfully & Maliciously
cut & carried away by Bull, and whether
it was the property of Griswold, and if the
Jury so find they are instructed that in
assessing damages they are not confined
to the actual value of the property
taken.

That the instruction is correct as
the Courts in this State hold the law
to be, we think is not questionable -

That it is correct in principle and
Morals in cases of Wilful & Malicious
trespasses we think is true, and we think

that the position is abundantly sustained by the follow authorities, and the cases and authorities cited in these several cases.

Grable vs. Margrave	3 Seam.	372
McNamara vs. King	2 Gil.	436
Blanchard et al. vs. Morris	15 Ill.	36
Nyler vs. Smithman	8 Ordell N.C.	236
Duncan vs. Stalcup	1 Dev. & Bat. N.C.	440
Korrt vs. Jenkins	14 Johns. R.	352
Cummings vs. Maddox	8 T. Monroe	430
Anthony vs. Gilbert	4 Blackford	348
Allen vs. Craig	1 Green's Rep.	294

The 5th instruction is based upon the principle that the appellant could not officiously, and as a mere wilful trespasser, entitle himself to compensation for doing the act of trespass.

That unless the instruction is correct the law is chargeable with that inconsistency and absurdity.

The 5th Error assigned is the refusal of the Court below to give the 3^d and 8th instructions asked by the Appellants.

The 3^d instruction attempts to ^{lay down} a rule for ~~the~~ ^{the} assessment of damages, and by reference to the pleadings & evidence it will be found wrong.

The Second Count of the declaration does not charge a breach of the plaintiff's close, and the cutting of the wheat, but merely charges the taking and converting of 150 Loads of unthreshed wheat belonging to the Appellee.

That being so, it would certainly have been error in the Court to have instructed the jury that the plaintiff was only entitled to recover the value of the wheat standing.

The Counsel in drawing the instruction must have supposed it applicable to the first Count only; and it may be that if that Count had stood alone it would have been correct; but it was not so limited in its application, and as applied to the Second Count it was clearly wrong, and was properly refused.

The instruction is also based upon a wrongful assumption of the legal rights of a wilful trespasser. The wheat in this case always remained the property of the plaintiff, and no matter what changes were wrought in it by the defendant; when it was growing it was his; when cut it was his; when thrashed it was his, and the law authorizes him to claim it in any shape ~~it~~ ⁱⁿ which it may be found, and in ~~the~~ ^{the} Second Court he claimed it in its unthrashed condition.

The 8th instruction, the refusal to give which is assigned for error, states that in the absence of proof of the time of delivery of a deed the date of filing for Record is prima facie the time of delivery. He can't see the applicability of the instruction to the case, if it correctly stated the law; but the rule is not the true one. The date of the deed, ~~or~~ is, prima facie, the date of the delivery.

The 6th Error assigned is that the
Verdict is Contrary to ^{the} Evidence.
The 7th that it is Contrary to Law.

These assignments we think require
no argument from us. The evidence
shows that the wheat in question belonged
to the Appellee, and that the Appellant
Wilfully & Maliciously Trespasped upon
and Converted it; And the Law
declares that in such case the
injured party is entitled to recover
damages. So we think that the Verdict
is both Consistent with the Evidence and
with the Law.

The 8th Error assigned is that the
Damages are Excessive.

Upon this proposition very little need
be said by us.

The power of the Court over Verdicts.
in such cases is not denied; but that
such power is seldom exercised the
decisions of all the Courts most
clearly demonstrate, and the reasons
upon which such decisions are based
ought to be completely satisfactory ^{to all} of the

Correctness of the practice thus so generally adhered to.

It was the peculiar province of the Jury to find the fact, and extent, and Character of the trespass, including the quantity and value of the grain in question, and the evidence as to quantity & value is conflicting.

In view of the facts found by them they have fixed upon the amount of damages to which the appellee was entitled, and the Court before whom the cause was tried was satisfied that the verdict was right.

All the Authorities referred to in support of the Appellee's 4th instruction are here again cited, and in addition -

Allen vs. Craig 1 Ginn's Rep. 294
Drake et al vs Palmer et al. 4 Cal. 11.

Upon the last error assigned, that the Court erred in not granting a new trial, we have only to say that if the verdict was correct, as we insist it was, it was not error to refuse the motion for a new trial.

In the testimony it will be perceived
the witnesses in estimating the quantity
of the wheat give it from 15 bushels
to 25 Bushels per acre; and in
estimating its value they make it
from 75 cents to \$1.03 per bushel.

It was the peculiar province
and duty of the Jurors to reconcile
this conflict in their own minds, and
to find the quantity and value from
the testimony before them;

J. L. Loop &
Jm Lathrop
for Appellee

Instructions. asked by Appeller.
~~Defendant in error~~

1- That the Law is, that growing wheat is personal property, and the subject of sale by parol agreement, and that if the jury believe from the evidence, that the defendant Bull after the execution and delivery of the deed to him from Griswold, stated that the wheat or crop in question belonged to the Plaintiff Griswold. That such statement by said Bull is evidence of a sale of the wheat in question from said Bull to said Griswold

That a Lien of Land by parol for a term not exceeding one year is valid & lawful.

And if the jury believe from the evidence, that sometime in the latter part of May or first of June AD 1856 (and after the execution and delivery of said deed from Griswold to Bull) the defendant Bull by agreement with said Griswold took & received of said Griswold the interest

On the Amount of Certain notes, from that date
until the first September then next for the
use of the premises in question to that time
that such agreement constituted a valid
lease of the premises & entitled the Plaintiff
his heirs to the possession of the premises
from the date thereof until said first
of September

3- That if the Jury believe from the
evidence, that the Wheat in question
was the property of the Plaintiff his heirs
and that the defendant Bull cut
and carried away the same or
procured the same to be done
that then the Plaintiff is entitled
to recover in this action

That if the Jury believe from the evidence that
the Wheat in question, was the property of the
~~defendant~~ Plaintiff, and that the defendant
Wilfully and Maliciously cut & carried
away the same. the Jury in assessing
the Plaintiff damages, are not con-

4. found to the actual value of the
Wheat taken, but may award the
Plaintiff such sum by way of damages
as in their discretion they may deem
just.

5. That if the jury believe from
the evidence, that the Wheat in
question was the property of the
Plaintiff Gismold, and that the
defendant willfully cut and carried
away the same, that then the
defendant is not entitled to
recompence or deduct from the value
of the Wheat so taken the expense
of harvesting the same, but the Plaintiff
is entitled to recover the full value
thereof the same as if he had har-
vested the same himself.

6. That if the jury believe from the
evidence that the field of Wheat in
question, was the property of the Plaintiff
the Plaintiff by virtue of such own-
ership, had to the exclusion of all
other persons, the right to enter

upon the premises for the purpose of
Cutting and Hauling the same.

And that if the defendant Bull
Entered upon the premises and cut
and carried away the Wheat in
question, the Plaintiff is entitled to
recover against the defendant therefor
for breaking and entering the close of the
Plaintiff.

Instructions asked by the
~~Plaintiff in Error~~ Appellant.

The Court instructs the jury,
in order for the Plaintiff to maintain
this action against the defendant
for Cutting and Carrying away the Wheat
in question, the Plaintiff must show
himself in possession actual or Constructive
of the Land upon which the Wheat
in question Controversy, was growing
or standing, at the time defendant
committed the acts complained
of.

2 That the action of Trespass for injuries done to Land, is a possessory action and the Plaintiff in order to recover in such action must show himself in the possession of the Land on which the trespasses are alleged to have been committed, at the time, the same were committed, and if the Plaintiff fails to show such possession in kind he is not entitled to recover in this form of action on the first count;

3 That the Law is in this case that if the Jury believe from the Evidence that the Defendant Cat and Canine drove the Standing grain Wheat of the Plaintiff from the Premises of the Plaintiff described in the declaration, That the Rule of Damages therefore is the value of the grain Wheat as it stood on the said Land at the time of the trespass; and that in addition thereto the Jury are authorized to give such exemplary damages as in their judgment is right & just. Considering the circumstances, under which the same was done

That the Law is That an absolute
Deed of Conveyance of Land: as the
Deed in Evidence herein from the
Plaintiff to the defendant, Conveys all
4 the interest in the Land that the grantor
has at the time of the execution and
delivery of such Deed, And that
such a Deed of Conveyance passes
all interest in the Crops, such
as Wheat growing on the premises

5- That a Deed of Conveyance of Land
takes effect from & after delivery of the
Deed

6 That the Law is That all nego-
tations Relation to the Sale of
Land and Concerning the Crops growing
thereon prior to and at the time
of the delivery of the Deed of Convey-
ance thereof, are merged in
such Deed, And any parol
~~agreement~~ reservation of Crops
growing on the said Land is void
and of no binding force or effect
between the parties to the Deed -

That the Court instruct the jury
that the deed offered & read in evidence
from the Plaintiff known to the
defendant Bull, conveys the title of
said lands, and all intent that the
said Griswold had in and to the
said lands to the said defendant Bull

And that said deed passed
all the intent, that said Griswold
had to all crops growing thereon
at the time of the delivery of said
deed to said Bull, and that all
negotiations between the said parties
prior to, and at the time of the delivery
of said deed to said Bull in regard
to said lands & the crops thereon are
merged in said deed and of
no validity between the parties

Referred
That in the absence of evidence
of the time of the delivery of a deed
of conveyance of lands, the time the
deed was filed for Record in the
County where the land lies is, prima
facie, the time of the delivery of the
same between the parties

That in order to make a valid
9 Sale of growing Wheat, there must
be a good and sufficient Consideration
therefor passing from the purchaser to
the seller

That nothing ~~was~~ that was said
or done, between the said parties prior
to, or at the time of the delivery of
the Deed in Evidence from Plaintiff
10 Griswold to Defendant Bull, is
Evidence from which the Jury
can find a Sale of said Wheat
in Controversy, or a leasing of the
premises on which the said Wheat
was growing, by Defendant Bull to
Griswold

Sup. Court.

200

21

Griswold

ad.

Pull

Argument.

Look & Lathrop
For Appellu

In the Supreme Court.

JOHN BULL, APPELLANT,
ads.

HORACE E. GRISWOLD, APPELLEE.

} Appeal from Winnebago County Court.

TRESPASS.

NARR. filed November 1st, A. D. 1856, for Trespases to Real Estate of Appellee, with counts, for cutting and carrying away unthreshed wheat.

PLEAS filed December 3d, 1856, Demurrers to first and third counts, and issue upon the second.

PLEAS filed to first and third counts December 3d, 1856.

REPLECATIONS filed March 12, 1857.

REJOINDER filed March 12, 1857.

JUNE TERM, 1857; Cause tried. Verdict for Appellee in \$760.

BILLS OF EXCEPTIONS taken to rulings of Court on the trial.

Bill of Exceptions allowed to the giving of the first, second, fourth and fifth instructions asked by the Appellee, and to the refusal of the Court to give the third and eighth instructions asked by the Appellant.

Motion for new trial, heard and denied.

Bill of Exceptions taken to the ruling of the Court on the motion.

Appeal taken and Appeal bond filed.

BILL OF EXCEPTIONS SHEWS

Deed introduced by Appellee from Appellant to Appellee, among which lands, is the land on which the trespasses are alleged to have been committed, date April 20, 1855.

Deed conveying title by Appellee to Appellant to the land on which the wheat in controversy was growing (date April 23d, 1856.)

Witness sworn and examined on the part of the Appellee, (viz.) H. D. Adams, John Garver, Orrin Pate, B. Vannetting, William Judd, C. Johnson and Benjamin Robins.

H. D. Adams, a Witness, for the appellee testifies in substance, that the parties came to his office in Rockford, May 24, 1856, about noon, to transact some business in relation to the land in the deed from Griswold to Bull, here in evidence.

Question and answer excepted to by appellants attorney.

Question.—Was there anything said at that time about some notes, or interest on notes that defendant held against plaintiff, Griswold. (Answer.) There was.

Question and Answer, excepted to by Appellant's Attorney.

Was any thing in that conversation said in regard to any subsequent interest accruing on any of those notes, and if so what. (Answer.) Something was said concerning it, when the parties came in I asked them if they wanted a deed drawn, Bull said they had a deed, that they wanted him to compute the interest on some notes from that time to 1st September next, but cannot say on how many I cast it, nor how much the amount was.

Witness testifies—the parties wanted Sheriff Taylor, before they could complete their business, and one of the parties went after him, and soon came back with him. Taylor had an execution in favor of Bull against Griswold, the amount of which was to be applied towards the payment of the land in deed from Griswold to Bull; the deed was there at the time.

Question and answer excepted to by Appellant.

Question.—If there was any reason given in that conversation, for computing the interest up to September 1st, 1856, what was said?

Answer.—To the best of my recollection the interest reckoned on the notes from that date to Sept. 1st, 1856, was allowed to Bull by Griswold for Crops on the Land, or the use of the Land to September 1st, 1856—the Land described in the Deed.

CROSS EXAMINED BY APPELLANT.

Witness says in substance as in the direct, and that Bull had a large amount in notes against Griswold.—Cannot state the amount, nor the amount on which he cast interest, but thinks it \$1,500 or \$2,000. Some of the notes were given up by Bull to Griswold towards payment for the Land in Deed from Griswold to Bull. Taylor had an execution against Griswold in favor of Bull, which was to be applied towards payment for the Land. The Deed from Griswold to Bull was on the table among the papers at the time the business was done. My best impression is, that Bull brought the Deed, but am not certain. I do not know whether the Deed was signed or acknowledged at that time, nor whether it was there delivered to Bull or not. I think the crops were spoken of, and that they were the consideration for the interest. The business was finished soon after Taylor came in, and the parties left together.

Orrin Pate, a witness for Appellee testifies—He heard Bull say he had bought back a part of his old farm from Griswold; he met Bull and said to him I hear you have bought back a part of the old farm from Griswold. Bull said he had; witness said you have made money in the operation, for I hear you have bought it back for less than you sold it; Bull said Griswold has the crops, or he pays me, or has paid me for the Crops, or the use of the Land; I mean to be understood the use of the Land. He said Griswold had the crops; I have no particular ill or good feelings towards Bull.

Benjamin Van Etten, witness, examined by Appellee testifies—I know the Land in controversy on which the wheat in controversy grew; It was the Land bought back by Bull from Griswold; there was about forty acres of wheat growing on it in the spring of 1856; saw the wheat frequently; think it would turn out fifteen to twenty bushels per acre.

Record Page 1 to 3
Page 3 to 5

Page 5 to 6
Page 7 to 8

Page 9
Page 10

Page 11 to 13
Page 16, 17, 18, 25, 26, 27, 33 -

Page 38 + 41

Page 13 46

Page 47

Page 48

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Page 16

Page 16

Page 16 - - -

Page 18

Page 19 + 20

Page 21

Page 22

Page 22 + 23

Benjamin Robins, witness for Appellee testifies—He heard a conversation between Bull and Dr. Richings, at Dr. Richings' office, Rockford, in May or June, 1856, heard Bull say he had bought back a part of his old farm from Griswold, and wanted Richings to guess what he paid. Richings guessed he paid \$15 per acre. Bull said he paid \$23 or 23 1-2, and Griswold was to have the wheat or crops, did not hear the whole conversation.

Page 23 + 24

Calvin Johnson, witness examined by Appellee—That on the 16th or 17th of July, he with others was working for Griswold in the field of wheat in question, they had reaped about two acres when defendant, Bull, his son William and two other men came to the field. Bull was in his wagon, his son William was by and in hearing, Griswold was inside of the field, Bull said he forbid Griswold harvesting the wheat and told him to leave the field, heard Griswold say, did I not pay you the interest on the notes up to 1st September to have or harvest this wheat? Bull said, you did. William Bull might have heard it; he was by his father, and John Judd was within two rods, and I went away. The crop I think would turn twenty or twenty-five bushels per acre. Griswold and his hands left the field.

John Judd, witness for Appellee says—He knows the land on which the wheat in controversy grew, that he was present on the 16th July, 1856, when Bull forbid Griswold harvesting the wheat, he was at work for Griswold in the field when Bull came. Bull said he would prosecute us all if we did not leave the field, would pay us for what we had done, and did pay me. Griswold had seven men with himself at work in the field and had cut about one acre and a half when Bull came and forbid the cutting. Griswold wanted me to hear what he and Bull would say about the wheat. Griswold said to Bull, did I not allow you the interest on those notes up to September 1st, to harvest this wheat. Bull said no, you rascal, you have cheated me enough, leave the premises. Griswold told Bull to leave. Bull and his son William were outside of the field. Griswold and his hands left the field, thinks the field would turn from fifteen to twenty bushels per acre. The nearest wheat market was Pecatonica Station and about two miles distant. (Question and Answer excepted to by Appellant.) Question—What was the highest market price paid for wheat at Pecatonica Station during the time of harvesting and threshing the wheat in question. (Answer.) The highest market price of wheat at Pecatonica Station was one dollar per bushel.

Page 25

Page 26

Question and Answer excepted to by Appellant—What was the value of new wheat when it first came into market in Pecatonica, 1856. (Answer.) The highest value was one dollar or one dollar and three cents per bushel.

Witness testified—That after Bull forbid Griswold from harvesting and he went away, Bull commenced harvesting forthwith.

CROSS EXAMINED.

Page 26

Question disallowed and excepted to by Appellant—What was it worth to cut, harvest, thresh and take to Pecatonica Station the wheat in controversy. Objected to by Appellee and objection sustained. Witness then testifies—that the wheat as it stood in the field at the time Bull forbid Griswold cutting it was worth \$5.53; that his basis of reckoning was, there was forty-three and thirty one hundredths acres and would produce seventeen and a half bushels per acre.

Page 27

Almon Benton, witness examined by Appellee testifies—That he knows the field in question, that Mr. Parker threshed the wheat in question in August, 1856, and Bull's teams drew the wheat away and thinks the field would average twenty bushels per acre.

Page 27

William Johnson, witness examined by Appellee testifies—That he knows the field of wheat in controversy and thinks it would turn from fifteen to twenty bushels per acre.

Witnesses on the part of the defendant, sworn and examined (viz.) John Garver, Augustus Reed, W. H. Bryon, William Bull and George Parker.

Page 28 + 29

John Garver, witness examined by Appellant testifies in full—That he was on the 23d of May, 1856, a Justice of the Peace at Pecatonica, in Winnebago County, and took the acknowledgment of the deed in evidence here, from Griswold at the time it bears date, towards evening of that day, May 23d, 1856, that his best recollection was, that the deed at that time was not delivered to Bull. That the parties disagreed something about some costs on an execution that Sheriff Taylor had against Griswold in favor of Bull, and they did not complete the trade in relation to the land, but they were to come to Rockford next day and complete it. But I took the acknowledgment at that time, because the plaintiff's wife was there, I think the deed was not delivered to Bull at that time—nothing was there said about the crops on the land.

CROSS EXAMINED.

Testifies—He did not see the notes at the time of acknowledgment, it was talked that notes towards the land were to be surrendered towards the amount of the land when the business was done. I gave the deed to Griswold after I took the acknowledgment. At the time the deed was acknowledged the parties had made their trade except a dispute about some cost on an execution in the Sheriff's hands, and the parties were to go to Rockford to see about that; I did not see any notes at that time, I supposed the parties had not got along to that. A few days after the trade I met Bull and asked him how he got along with his trade with Griswold, Bull said that Griswold allowed him the interest on the notes until the first of September. But nothing was said about the crops.

Augustus Rudd, witness examined by Appellant testifies in substance—That he knew the land and wheat in controversy, there was about forty acres of it that in June, 1856, he broke for Bull, about fifteen acres on the eighty acre tract that Bull bought back of Griswold, and that the wheat in question grew on a portion of that eighty acre tract, that he kept the fences up for Bull while breaking, and did not see plaintiff to know him while there.

CROSS EXAMINED.

The wind blew some fence down on north and west sides of field, and saw men putting it up, did not then know the plaintiff.

Page 29

Page 30,

William Bull, witness examined by Appellant, testifies that he knew the land in controversy, and the wheat grown on it in 1856; my father had the wheat cut; I cut it for him, and stacked three stacks; the rest I drew to the threshing machine; the whole of it was threshed; was about thirty-five or forty acres of it, and would turn about fifteen bushels per acre. I was present on the 16th July, when my father forbid Griswold cutting the wheat; went with him, was with him until he went away. He forbid him twice, and each time Griswold said 'Did I not allow you the interest on those notes to the first of September, for the wheat or use of land to that time?' Father said at each time, 'no you did not,' and once said, 'no, you rascal, you have cheated me enough.' The wheat was worth, on the 16th July, at the time the same was cut, as it stood in the field, \$250 or \$300.

The wheat in question was near plaintiff's residence; Father lived about two miles from there; in the month of June, Griswold asked me when my father was coming down to cut his wheat; father had no other wheat.

CROSS EXAMINED.

Page 31 & 32

It was worth two dollars per acre to cut, bind and stack the wheat, and two dollars per acre to draw and thresh the wheat, and a dollar per load to draw to Pecatonica. Wheat was worth eighty-four or five cents per bushel at Pecatonica; my basis of reckoning was, that it was worth eighty-five cents.

Page 32,

George Parker, witness examined by Appellant, testifies, he knows the parties and the land, defendant Bull bought back of Griswold, and the field of wheat on the same in 1856; that he had some breaking done for Bull on the eighty acre tract, described in the deed from Griswold to Bull, and that he threshed the wheat which grew on the same, about the 18th of August, 1856; was about forty acres of it; was three stacks of it when he commenced threshing, and William Bull drew the rest of it to machine while he was threshing; he measured the wheat, and there was of it, six hundred and sixty-five or seven bushels by measure; by weight it fell short about five bushels. The wheat, as it stood in field, at the time cut by defendant, was worth three hundred and forty-two dollars; I judge it to be worth that, from the price of wheat at Pecatonica Station; the wheat was worth about eighty-five cents per bushel, and in my reckoning, I calculated what it was worth to cut, harvest and take it to Pecatonica Station, and take that from the amount of eighty-five cents per bushel.

Page 33

John Travis, witness, testifies—I was in the wheat buying business at Pecatonica Station in Summer of 1856; the price of wheat from commencement of harvest to first of August, was from seventy-five cents to ninety cents per bushel.

On Cross-Examination—The highest market price there was ninety-five cents. Excepted to.

Page 36 & 37

Deed from Griswold to Bull conveys the land described in Declaration, viz: The south-east quarter of south-west quarter and south-west quarter of south-east quarter, section twenty-three, township twenty-seven, north, range ten east of fourth principal meridian.

Page 38

Bill of Exceptions allowed to the giving 1, 2, 4 and 5, instructions asked by Appellee:

- 4th. The Court erred in giving the 1st, 2d, 4th and 5th instructions asked by Appellee.
- 5th. The Court erred in refusing to give the 3d and 8th instructions asked by Appellant.
- 6th. That the verdict was contrary to the evidence.
- 7th. That the verdict was contrary to the Law.
- 8th. That the damages were excessive.
- 9th. That the Court erred in overruling and denying the motion for a new trial, and entering judgment on the verdict.

Other Errors assigned

200-9
John Bull

Deane Snowball

Abstract

Filed April 22, 1838

Le Belmont

Calab

L. M. Mason

on the record.
2d. That the Court erred in overruling and granting the motion for a new trial, and entering judgment.
3d. That the damages were excessive.
4th. That the verdict was contrary to the law.
5th. That the verdict was contrary to the evidence.
6th. That Court erred in refusing to give the 84 and 85th instructions asked by Appellants.
7th. The Court erred in giving the 1st, 2d, 3d, 4th and 5th instructions asked by Appellees.

John Bull Appellant

vs

Horace E. Griswold Appellee

Supreme Court State of
Illinois April Term 1858

The declaration in above case contains
three counts

1st Count declares for breaking
and entering the plaintiffs close to wit
S E $\frac{1}{4}$ of the S W $\frac{1}{4}$ & the S W $\frac{1}{4}$ of the S W $\frac{1}{4}$ of
Section 23. Town 27, North Range 10 East of
the 4th P. M. Containing eight acres

2 & 3 Counts claim for cutting
& carrying away matured wheat,

To the first Count is pleaded the general
issue, and special plea that the close
was the close soil freehold &c of the defendant

Upon the same the plaintiff took issue
To the 2 & 3 Counts is pleaded the general
issue

Under the above issues the plaintiff in
Court below proves that the defendant cut
and harvested growing wheat on from 40
to 43, acres of the 80 acre tract and no
other wheat,

The Defendant Bull shows title to the whole eighty acre tract by deed from plaintiff Griswold to defendant Bull, in May previous to the cutting said Wheat by Deft.

That the plaintiff Griswold in order to have maintained this action should have shown himself in the possession of the Land in question, as there is no evidence in regard to any other wheat.

That to the special plea of the deft Bull. The plaintiff if he intended to claim possession or right of possession to the Land in question under Defendant Bull he should have specially replied setting up such claim.

2 Sanders Plendings	635
1 Chitty Plendings	503
	595
1 East Rep	203
4 John "	150
8 Moul Rep	477
16 D ^o D ^o	663

That the plaintiff below shows no to any portion of the said Land, nor no single act of authority over the same, nor any possession of the same by him until the day that Bull forbade him

harvesting the wheat, when immediately Griswold
and his hands left the field & Bull went
to harvesting the same ~~uninterruptedly~~ That
single act of ~~authority~~ being the only act of
authority Griswold ever exercised over
said land from the time of the sale by him
to Bull or previous

Whereas the defendant Bull
shows title to the whole of said land by deed
from Griswold to him May 24, 1856, and
in the actual occupancy of the ^{same} by breaking
on the same in June 1856 of fifteen acres
and keeping up peace

That there is no evidence showing
a sale of the growing wheat in question
or a lease of the said land by Bull to
Griswold after the deed from Griswold
to Bull,

That the testimony of H. D. Adams,
Orrin Pate, R. Robins and what took place
at said field on the 16th ^{between the parties} July 1856 in
presence of John Gould & William Bull, &
also the testimony of John Currier

shows conclusively that all that
ever took place between the parties in
relation to growing wheat on the land
or otherwise was prior to and at the

Time of the execution and delivery of deed
from Griswold to Bull

And insists that all negotiations in
relation to the Land in question or wheat
growing on the same prior to and at the
time of the execution & delivery of the deed
from Griswold to Bull were merged in
the deed and not subjects of Parole
proofs and the Court below ought to have
sustained the objection to that portion of
the testimony.

That the verdict was contrary
to the evidence and the Law of the Case

That the Damages assessed by the
Jury were excessive.

I That the Deft Bull ~~was~~ cut &
harvested the wheat in the supposed
exercise of his right, and would be only
liable, if liable at all, for the damages
sustained To wit: the value of the wheat
at the time cut & harvested

That the value of the wheat, at the
time cut by defendant was as shown by
George Parker witness who threshed &
harvested it was \$342.00
the amount when threshed being
six hundred & six six bushels

The verdict of the Jury being \$760.⁰⁰

That the Court allowed John Judd to answer improper questions and refused to allow him to answer on cross-examination proper question as fixing the rule of Damages shown by Bill of exceptions.

That instruction No 1, 2, 4, & 5, asked by Appellee and given by the Court was not the Law of the case

That Instruction Number 3 & 8, asked by Appellant and refused by the Court was the Law & ought to have been given by the Court.

That the Law of the case as regards the rule of damages, is the value of the wheat, at the time of the Cutting and Harvesting the same and not the value of the wheat when threshed and taken to Peatonville Station by the bushell,

11	Park Repts	453	20	Conn Rept	211
"		78	"		204
		³ 284	19	Do	319 + 30
10	Map	"	12	"	578
		128 + note			

Fixing rule of damage as above
By reason the Court below should have given
on the motion of Def Bull a new Trial

L. T. Warner

Att'y for Appellant

John Bull
" 200
Norris E. Groszold

Appellant's Brief
"

L. F. Warner

John Bull

vs
Hiram E. Griswold

In Supreme Court State
of Illinois April Term 1858
It is agreed between the attorneys for the
respective parties that the above cause
when called in order may be submitted upon
written arguments to be filed,

L. T. Warner atty for
Plff

Loop & Lathrop
for deft

200
John Bull

3
Horse Chrome

Lepidation

Filed April 22, 1858

L. Leland
clerk

John Bull Appellant
vs
Horace E. Griswold Appellee }

In Supreme Court State of
Illinois April Term 1858

Written Argument of S F Warner Atty
for Appellant,

This is an action of Trespass, brought
by Appellee against Appellant. The decla-
ration contains three counts. The first Count
for Trespass to an Eighty-acre tract of
Land & wheat growing thereon. The
second and third counts, charge for tres-
passes in Cutting and carrying away and
threshed Wheat. The defendant pleads
first, the general issue to the declaration
& to the first Count, a special plea. That
the claim, was the close soil & freehold of
the defendt. To which special plea, the
Plaintiff took issue. A trial was had,
and resulted in a verdict in favor of the
plaintiff in the sum of \$760.

The Appellant insists to the
Court, that the plaintiff in the court below
in order to have maintained this action

Should have shown

1st The possession of the Land in question Whence came in kind, or that he was the owner of and entitled to the possession of Wheat, as in the second & third counts alleged.

2^d That defendant done the acts complained of as in the declaration alleged

3^d The damages to the plaintiff in consequence of the same.

And firstly did the plaintiff show himself in the possession of the Eighty acre tract of Land in question.

The evidence now shows him, as ever having been in the actual possession of the said Land, or any part thereof, until the day that defendant Bull forbade him Harvesting the wheat thereon, in the presence of John Gould & William Bull & that the plaintiff immediately left the field, upon being so forbade to harvest the same by Bull, and in no manner had he exercised any control over the same or any part thereof.

True it is however, that the plaintiff acquired ^{title} to the Lands in

question, sometime in the year 1855, among
other Lands by deed from Defendant Bull
to him. But on the 24th of ~~April~~^{May} 1856,
he sold & reconveyed by deed the eighty
acre tract of Land in question to Defendant
Bull, and from and after that date, &
exercised no control over any part of said
Land.

Whereas on the contrary, the
said Defendant Bull, went into possession
of said Land, and done breaking on the
tract, to the amount of about fifteen acres
As by the testimony of Augustus Rudel &
George Parker in June 1856, & remain from

showing neither title, nor possession
in the plaintiff's world, but showing
both title & possession in the defendant
Bull,

Now then had the plaintiff the right
to the possession of the Land in question
as against Defendant Bull the rightful
owner,

¶ After the special plea of the defendant
to the first count, if Plaintiff of the plaintiff
intended to set up and show title ^{possession}
^{or right of possession} under Defendant Bull, he should have
replied, setting up such claim see
Authorities in Brief

But supposing that Plaintiff might have shown a subsequent right to possession under said Bull. He has shown no such right. The whole evidence in the case shows that no other wheat ~~in controversy~~ except the wheat growing on a portion said Eight-acre tract was in controversy between the parties. Consequently unless the Plaintiff is entitled to recover under the first Count, he is not entitled to recover.

The Plaintiff has no where shown, any right to the wheat or Land in controversy subsequent to the sale of the Land by him to Bull of date May 24, 1856. There is no evidence of sale of the growing wheat by Bull to Griswold after that date.

Nor any evidence of a leasing of the said Land, nor any evidence that anything ever occurred between the said parties, after the sale of the same to Defendant Bull, either in regard to the Land, or the wheat growing thereon, up to the 16th July 1856 when Bull perjured Griswold harvesting the same. That the testimony of H D Adams John Gurver, Orrin Pate John Julel, & C Johnson, shows conclusively, that all that did take place between the parties in regard to the wheat or Land was

prior to and at the time of the execution and delivery of the deed from Griswold to Bull

That John Curran testifies that he took the acknowledgment of the said deed on the 23^d day of May near night, that the deed was not then delivered to Bull at that time, the parties ~~was~~ disagreed something about some costs on an execution, in favor of Bull against Griswold in the hands of the Sheriff at Rockford, and the parties were to go to Rockford next day, and see about it before they could complete the trade, that he did not see the notes at that ^{time} ~~place~~, it was talked that notes were to be surrendered towards the amount of the loan when the business was done that he took the acknowledgment at that time because the plaintiffs wife was present, and gave it to Griswold,

The testimony of H D Adams shows that in accordance with the talk of the parties sworn to by John Curran, that the parties went to Rockford on the 24th of May 1856 the day after the conversation sworn to by John Curran,

That the parties wanted him to do some business in regard to some Land. I wanted him to compute some interest on some money up to the first of Sept next thereafter, That Bull had notes against Breswold and that the parties wanted Sheriff Ingles before they could complete their business, his best recollection is that the interest ~~was~~ on the notes was allowed to Bull by Breswold for crops on the Land or use of the Land to Sept 1. 1856. The deed was on the Table among the papers while the business was being done, soon after the Sheriff came in the business was finished and the parties left together.

Showing conclusively, that all that did take place between the parties was prior to delivery of the said ^{deed} and thereby became merged in the deed and is not susceptible of parol proof.

That the testimony of Orrin Pate, is only as to what he heard Deft Bull say and if ~~not evidence~~ true is not evidence of a sale of the wheat, or a lease of the Land after the delivery of said deed.

That Benj Robins testimony is in relation to a portion of a conversation of

Bulls which conversation has direct
reference to the sale of the Land from
~~Ree~~ Griswold to Bull and is also merged
in the deed

That the testimony of Calvin Johnson
John Judel, & William Bull show clearly,
that from what took place between the
parties on the 16th July 1856, when Bull
forbade Griswold Harvesting the wheat;
That plaintiff Griswold never bought
the crops or leased the Land after
the delivery of the deed of Land, Beecher
he says in that conversation and wanted
Judel to remember what he said "did
I not allow you the interest on those
notes up to the 1st Sept to have or harvest
this wheat," and was informed by Bull
that he did not,

The said observation must
have had reference to the time in
Mr Adams office the 24th May 1856
when Mr Adams says that notes were
given up when the business in regard
to the Land was done. They having come
Rockford from the testimony of John
Garver to complete said trial

That the said evidence if admissible does
not prove a sale of the wheat or a loss
of the Land subsequent to delivery of
Seed from Griswold to Bull,

That the verdict was contrary to the
Law and the evidence,

But had the plaintiff been entitled
to a verdict. The damages were excessive
and so excessive that the court should
on that ground alone, have granted
a new trial. And although this court
may be ~~able~~ ^{now} to remand a case for
a new trial on the grounds that the
damages returned by the ^{jury} are excessive
yet I apprehend that when a plain
palpable wrong has been perpetrated
as we insist there has in this case that
this Court will interfere that justice may
be done the party. That in this case
the only damages attempted to be shown was
to about forty acres of wheat standing.
That by the testimony of the plaintiffs ~~witnesses~~
who only testified that they saw the wheat
while standing and from their testimony
it would produce about $17\frac{1}{2}$ bushels
per acre, But from the testimony of
William Bull who cut & drew the same

to the threshing machine on the field,
and from George Parker who threshed
the said wheat, that there was of it
six hundred & six ^{bushels} seven ~~bushels~~ of measure
& that it fell short by weight about five
lb. And that it was worth as it stood in the
field at the time same was cut by Dejen
ant Bull three hundred & fort, two ³⁴¢
dollars.

That the Law in this case is
that if the defendant committed the
trespasses complained of in the exercise
of what he considered his right, that
the plaintiff should only recover such
damages as he sustained. And that
the Rule of damage would have been
the value of the wheat as it stood at
the time of the act complained of with
interest on that amount from that
date, & nominal damage for the wrong
ful act, That the rule of damages
was not ^{what the wheat would bring} ~~the value of the wheat~~ after
it was harvested & threshed & and
taken to Pease Corn Station of the
bushel. As the Court below allowed value
of to be given of and as the instruction
shows, Authorize no Pledge

And further that the first instruction asked by appellee and given to the Jury is not the Law that the case in Wendell's reports referred to does not authorize the instruction. That the facts as stated in the instruction is only evidence tending to prove a sale and not evidence of a sale. The Case referred to is the 9th Cow is different from the present.

That instructions Number two & four asked by appellee are not supported by the evidence.

That instruction Number five asked by appellee is not the Law in this case and ought not to have been given, That the rule of damages in this case is as before stated for the authorities referred to in Brief show.

That the instructions so many & eight asked by appellant and refused by the Court were the Law of the case & should have been given by the Court.

And that the said Co Court should have granted a new trial in the case.

That if the rights Acquired by Deed
to crops grown on Land conveyed are
subject to be taken from the grantee
by testimony as in this case ~~the~~^a grantee's
rights by ~~the~~ deed to growing crops are
but slight if any, and ~~he~~ is subject
to be deprived of the benefit of them
without any consideration.

The Record in this cause contains
the whole evidence of the case and
as we insist shows no right to the ~~to~~
Wheat in question in plaintiff below
That if any right to wheat in question
was shown that the damages were ~~expressed~~
That the court allowed in ~~proper~~ ~~order~~
as fixing the rule of damages and gave
improper instructions to that end
and refused proper instruction
asked by Appellant tending to
fix the rule of damages.

That therefore & for other reasons
in the errors assigned the cause should
be remanded for a new trial

L. F. Warner
Atty for Appellant
Bill

John Bull
200-21
Horace E. Emerson

Argument
of
L. F. Warner
for Appellant
Bull

L. F. Warner

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X
Referred

X
Referred