

12454

No. _____

Supreme Court of Illinois

Anderson

vs.

Norton

71641  7

~~Self~~
Albert S. Chanderhals
Q. 292
Hiram Norton State

Common
Providence

12454

1858

1
The People of the State of Illinois - By the grace of
God free and Independent. To all to whom these pres-
ents shall come Greeting - Know ye that we having
caused to be inspected the Records and proceedings
now remaining in the Office of our Clerk of our Circuit
Court in and for our County of Will do find there
certain Records of Proceedings of said Court in words
and figures following to wit

Will County Circuit Court
September Term A.D. 1852

United States of America

State of Illinois

Will County

} Pleas before the Hon-
orable Hugh Henderson
Judge of the Eleventh Judicial Circuit of said
State of Illinois at the September term of the Will
County Circuit Court began and held at the
Court house in said County in the City of Joliet
on the first Monday of September the same being the eight
day of said month of September in the year of our Lord
one thousand eight hundred and fifty two
Present

The Hon Hugh Henderson Judge as aforesaid
Sherman W. Bowen States Attorney "Judicial Circuit
Robert A. Cunningham Sheriff Will County
Michael McEoy Clerk Will County Circuit Court

And therefore a certain writ was issued by the
Clerk of said ^{County} in the words and figures following
to wit.

State of Illinois

Will County & The People of the State of Illinois to
the Sheriff of said County - Greeting -
I command you that you Summon ^{William Norton}
Lemuel D Norton and Samuel W Norton if
they be found in your county personally to be and ap-
pear before the our Circuit Court of our said County
on the first day of the next term thereof to be holden
at the Court house in Solist in said County on
the first Monday of September 1832 to answer
Albert S Anderson, John F Daggett, Rollin ^{in right of his wife} W Parks
Mary S Parks wife of Rollin W Parks, Althea Hawley
Oscar S Hawley, Warner Hawley, Walter B Hawley
Henry S Hawley, Edward C Bush, Wm J C Bush
John W Felter Maria K Felter Faniel C Hay-
wood, Orpha A Haywood, John Mulligan, John
Griffin, Cynthia C Griffin, Samuel S Dewey
Julia A Dewey, Martin S Bridge, Fiske C Bridge
Charles Finch, Hannah C Finch and Joseph
Mc Hawley in an action of Covenant to the dam-
age of them the said Plaintiffs one thousand dollars
as is said. And have you then thus this writ



Witness Merichael Mc Eoy Clerk
of said Court and the seal thereof here-
unto affixed at the Office in Solist
in said County this 18th day of Aug-
ust AD 1832.

Mc Eoy Clerk
By R E Barber Dep Clerk

And on the Back of said writ is endorsed the following Return by the said Sheriff in the words and figures following to wit)

"I return the within
Summons served by reading the within to each
of the within named defendants this 26th day of
August 1832

"By fees three Leinases

\$ 11.50

"15 Miles travel

75-

"Return of Summons

10

\$ 1.35

"R A Cunningham

"Sheriff of Mid County"

And afterwards to wit

On the 7th day of September
A D eighteen hundred and fifty two. It being one of
the regular days of said term of said court for
the year last aforesaid certain proceedings were
had and entered of Record in the words and fig-
ures following (to wit)

Albert S Anderson John G Dagget Rollin B Parke in right of his wife
Mary B Parke wife of Rollin B Parke. Althea A Hawley Oscar L Hawley
Nathan Hawley Walter B Hawley, Henry S Hawley Edward C Bush Harrier
E Bush, John H Felter Maria R Beller, Gerrit C Haywood Alpha A
Haywood, John Mulligan John Giffen, Cynthia C Giffen Samuel S
Dewey Julia A Dewey Martin S Burdge, Thebe C Burdge Charles
Smith Hannah E Smith and Joseph M Hawley

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Abraham Norton Lemuel S Norton and Samuel W Norton

Defendant
Now come the
said Plaintiffs

By Messrs Parke and Elwood their Attorneys on motion it is or-
dered by the court that said Defendants plead to said Plaintiffs

"declaration herein by Monday Morning at 8 o'clock."

And afterwards to wit on the 13th day of September AD Eighteen hundred and fifty two. It being one of the regular days of said term of said Court for the year last aforesaid certain proceedings were had and entered of Record in the words and figures following to wit,

Albert S. Anderson	John F. Daggett	Rollin W. Parke	Y
in right of his wife, Mary L. Parke	wife of Rollin W. Parke	Althea A.	Y
Hawley	Abner L. Hawley	Warren Hawley	Y
Walter B. Hawley	Henry S.		Y
Hawley	Edward E. Bush	Harriet C. Bush	Y
John H. Gilder	Meana H.		Y
Gilder	Lemuel Haywood	Orpha A. Haywood	Y
John Mulligan	John		Y
Giffen	Lynthia Giffen	Lammell S. Dwyer	Y
Julia A. Dwyer	Maria S.		Y
Bridge	Philebe Bridge	Charles Finch	Y
Annah E. Finch	Joseph M. H.		Y
196,			Y
Amos Norton	Lemuel D. Norton	Lammell W. Norton	Y

Y Rosemont
Y Now come
the parties

to this suit as heretofore entered on whose agreement it is ordered that the rule to plead heretofore entered in this cause be and the same is extended to the Fifteenth day of November next. And afterwards by agreement of the parties it is ordered that the rule last entered in this cause be and the same is vacated."

And afterwards to wit

On the 16th day of March AD Eighteen hundred and fifty three. It

5.

being one of the regular days of ^{the} said March term
of said Court for the year last aforesaid certain
proceedings were had and entered of Record in the
words and figures following to wit

Albert I Anderson, John I Daggett, Rollin B Parke in right of his wife, Mary I
Parke wife of Rollin B Parke Althea A Hawley Oscar L Hawley Warren Hawley
Walter B Hawley Henry L Hawley Edward E Bush Harriet D Bush John H Gelter
Martha H Gelter Derrell A Haywood Orpha A Haywood, John Neulligan John
Giffen Samuel D Dwyer Julia A Dwyer Martin D Bridge Thebe L Bridge
Charles Finch ^{husb} E Finch and Joseph M Dwyer

" v 72,

" Brian Norton Lemuel D Norton and Samuel W Norton

} Covenant
} And now

comes on to be

" heard the arguments of Counsel upon the said de-
fendants' Answer to said Demurrer herein and after
being fully advised in the premises it is ordered
by the Court that the said Defendants' Demurrer
herein heard the same is sustained and that they
said Defendants have Judgment against the
said Plaintiffs for the costs of said Demurrer
in thereupon the said defendants by order of the
Court have and Record ^{per} Judgment against the
said Plaintiffs for their costs and charges of their said
Demurrer and that they have Execution therefor
and thereupon the said Plaintiffs enter their motion
for leave to amend their said declaration herein
and to file an additional Count, and it is ordered
by the Court that said Plaintiffs have such leave
to amend and file additional Count on or be-
fore the first day of August next

(Over)

And afterwards to wit

On the 26th day of August
A.D. 1853 a certain Amended Narr was filed in
the Office of the Clerk of said Court in the words and
figures following (to wit)

"State of Illinois

Mill County of Hiram Norton Samuel D

Norton and Samuel M. Norton were
summoned to answer John F. Daggelt Rollin
G. Parks in right of his wife Mary L. Parks and
Mary L. Parks his said wife Althea Hawley Oscar
L. Hawley Warren Hawley Walter B. Hawley Henry
S. Hawley Edward E. Bush Harriet A. Bush John
H. Feltz Maria K. Feltz Luciel C. Haywood
Orpha A. Haywood John Mculligan John
Giffen Cynthia C. Giffen Samuel S. Dewey
Julia A. Dewey Martin S. Burge Phebe C. Burge
Charles Finch Hannah C. Finch Joseph Mc
Hawley and Albert S. Anderson of a plea of
breach of covenant whereupon the said Plain-
tiffs by their Attorneys Parks and Elwood and Ran-
dall complain for that whereas heretofore
to wit.

On the fifth day of September in the
year of our Lord one thousand eight hundred and
fifty one at Lockport in the County of Mill afore-
said ^{by} a certain Indenture then and there made
Between Mary L. Gooding who has since the ma-
king of the said Indenture intermarried with the
above named Rollin G. Parks and was at the
commencement of this suit and still continues
to be the lawful wife of the said Rollin G. Parks

John F. Daggett. Althea Hawley (dear L. Hawley)
 Warren Hawley Walter B Hawley who executed the
 same in the name of W B Hawley Henry S Hawley
 who executed the same in the name of H S Hawley
 Edward E Bush who executed the same in the name
 of E E Bush Harriet A Bush John H Felter
 who executed the same in the name of J H Felter
 Maria R Felter who executed the same in the
 name of M R Felter Samuel C Haywood who ex-
 ecuted the same in the name of S C Haywood Orpha
 A Haywood John Mulligan John Giffen Legathia
 C Giffen Samuel S Drey who executed the same
 in the name of S S Drey Julia A Drey Martin
 S Burdge Thos C Burdge Charles E Finch Fran-
 nak E Finch and Joseph M Hawley all of which
 above mentioned persons executed the said inden-
 ture by A S Anderson their Attorney in fact and
 Albert S Anderson who executed the same in
 his own proper person by the name of A S Anderson
 on the one part and the said defendants on the other
 part which said indenture sealed with their seals
 was and is in words and figures following that
 is to say

" This Indenture made this Fifth day of
 " September in the year of our Lord one thousand
 " Eight hundred and fifty one. Between Mary L
 " Gooding of the County of Niagara and State of
 " New York. John F. Daggett Althea H Hawley
 " widow of Lyman Hawley deceased Walter B
 " Hawley Henry S Hawley Edward E Bush and
 " Harriet A his wife John Felter and Maria R
 " his wife Samuel C Haywood and Orpha his wife
 " John Mulligan John Giffen and Legathia his
 " wife of the County of Will and State of Illinois

"Ed S Dewey and Julia Ann his wife also of
 "the County of Will and State of Illinois Ed Martin
 "Bridge and Phoebe his wife and Charles F. Rich
 "and Hannah E his wife of the County of Kane and
 "State of Illinois and Joseph M Hawley of the
 "State of California and Albert S Anderson of the
 "County of Will and State of Illinois of the first part
 "And Hiram Norton Lemuel D Norton and Samuel
 "W Norton of the said County of Will and State
 "of Illinois of the second part. Witnesseth that the
 "said party of the first part for and in consideration
 "of the covenants and agreements hereinafter men-
 "tioned to be kept and performed by the said party
 "of the second part his Executors Administrators
 "and assigns have demised and leased to the said
 "party of the second part all those premises situate lying
 "and being in the Town of Lockport and County of
 "Will known and described as follows to wit

"Lots numbered three (3)
 "four (4) and five (5) in Block eighty three 83 in the
 "Village of West Lockport according to a plat and
 "survey of said West Lockport on Record in the Office
 "of the Clerk of the Circuit Court of Will County aforesaid
 "also such portion of the West fractional the
 "South East quarter of Section twenty two (22) in
 "Township thirty six (36) North of Range ten (10) East of
 "the third principal Meridian as are not ^{embraced} ~~embraced~~
 "in the Village of ^{West} Lockport and is situated on the
 "South East side of the Mill race now constructed on
 "said land embracing all the property commonly
 "called the Lockport Mill property with the Mills
 "~~same~~ ^{same} races flumes and all the buildings fix-
 "tures and other improvements and appurtenances

ces thereto appertaining. To have and to hold the said above described premises with the appurtenances unto the said parties of the second part their executors administrators and assigns from the first day of August last past for and during the term of one year therefrom and until the first day of August A.D. 1832

And the said party of the second part in consideration of the leasing of the premises above said by the said party of the first part to the said party of the second part do covenant and agree with the said party of the first part their heirs and representatives to pay them as rent for said demised premises the sum of nine hundred dollars payable quarterly that is to say. Two hundred and twenty five dollars on the first day of November next two hundred and twenty five dollars on the first day of February next two hundred and twenty five dollars on the first day of May next and two hundred and twenty five dollars on the first day of August next

And the said parties of the second part further covenant with the said party of the first part that in case they the said party of the second part shall fail to pay any one of the said quarterly annual payments above specified on the day when they and each of them become due or within ten days after the same may be due, payable at said Norton & Co Office in Lockport then the said term shall be ^{deemed} ~~terminated~~ and taken to be and the same shall be ended at the option of the said party of the first part or their authorized Attorney administrators executors heirs or assigns and the said party of the first part may with or without process of law re-enter upon and

"into the said demised premises and distrain for
 "any rent that may be due thereon upon any property
 "belonging to the said party of the second part and
 "further that at the expiration of the ~~of~~ term ⁱⁿ this
 "lease mentioned they the said party of the second part
 "will yield up the said demised premises to the said
 "party of the first part in as good condition as when
 "the same were entered upon by the said party of
 "the second part less by fire or inevitable accident
 "or ordinary wear excepted.

"It is further agreed by the said party of the
 "second part that neither they nor their legal represen-
 "tatives will underlet said premises or any part thereof
 "or assign this lease without the written assent of the
 "party of the first part had and obtained thereto

"It is hereby agreed by the said party of the
 "first part that as soon as the same can conveniently
 "be done they will cause to be made in said Mill and
 "premises the following repairs at their own proper cost
 "and charges to wit: a new step for the large upright
 "driving shaft to repair the bolt cloths estimated
 "to be required for that purpose twenty six yards of new
 "cloth to put a new rack in the flume to put ⁱⁿ a new
 "Smelt Mill a new screw a new curb to the water wheel
 "wheel and to repair the bulk head gates - all other
 "ordinary repairs to be done by the party of the second
 "part

"It is further expressly understood and agreed
 "by and between the parties hereto that upon the
 "determination of said term by the expiration thereof
 "or by the non payment when due of any quar-
 "ters rent as aforesaid the said party of the second
 "part are to immediately deliver up and surren-

"der the said demise premises to the said party of
 "the first part and if they shall remain in possession
 "of the same ten days after the expiration or termination
 "of their said term they shall be deemed guilty of a
 "forcible detainer of said premises under the Statute
 "and shall be subject to eviction and removal for-
 "cibly or otherwise with or without process of Law as
 "above stated

"In testimony whereof the said parties have hereunto
 "set their hands and seals the day and year first above
 "written"

"May L Gooding Seal	"John F Daggett Seal
"Altha Hawley Seal	"Oscar L Hawley Seal
"Helen Hawley Seal	"W B Hawley Seal
"A S Hawley Seal	"E G Bush Seal
"Harriet Bush Seal	"J H Sutter Seal
"M H Sutter Seal	"H W Woodward Seal
"Sophia A Woodward Seal	"John Mulligan Seal
"John Griffen Seal	"Lyathia C Griffen Seal
"S S Leroy Seal	"Julia A Leroy Seal
"M B Burdige Seal	"Thos L Burdige Seal
"Charles Finch Seal	"Hannah E Finch Seal
"Joseph M Hawley Seal"	

"All the above by A S Anderson "Seal
 "their Atty in fact "Seal

"A S Anderson Seal
 "Abram Norton Seal
 "Samuel D. Norton Seal
 "Samuel N. Norton Seal

"Which said Indenture the said Plaintiffs
 "now bring into court) the said Plaintiffs did de-
 "mise and lease unto the said defendants certain
 "tenements with the appurtenances particularly
 "mentioned and described in the said Indenture

situate in the County of Will aforesaid from the first day of August then last past for and during the term of one year therefrom and until the first day of August A.D. 1832. And they the said defendants in and by the said Indenture did covenant and agree to and with the said plaintiffs their heirs and representatives to pay to them the said plaintiffs as rent for said demised premises the sum of Nine hundred dollars payable quarterly that is to say two hundred and twenty five dollars on the first day of November then next two hundred and twenty five dollars on the first day of February then next two hundred and twenty five dollars on the first day of May then next and two hundred and twenty five dollars on the first day of August then next.

And they the said defendants in and by the said Indenture did further covenant & agree to and with the said plaintiffs that they the said defendants would on the determination of the said term in the said Indenture mentioned yield up the said demised premises to the said Plaintiffs in as good condition as when the same were entered upon by the said defendants less by fire or inevitable accident or ordinary wear or crept.

And the said Plaintiffs aver that the said Covenants in the said Indenture mentioned binding upon them the said Plaintiffs they the said Plaintiffs on their part fully and entirely kept and performed and they said plaintiffs did make at their own cost and charge all the repairs in the said Indenture mentioned.

which are in and by the same stipulated to be made done and performed by them the said plaintiffs in such reasonable time as was required in order to give them the said defendants the full benefit and enjoyment of said ^{the} time and the full profits which could arise from the occupancy and use thereof.

And although the said Plaintiffs have always from the time of the making of the said indenture hitherto well and truly performed full filled and kept all things ^{therein} contained on their part and behalf to be performed ^{and kept} according to the tenor and effect true intent and meaning thereof (to wit)

At Lockport in the County of Mill aforesaid yet the said Plaintiffs say that after the making of the said indenture and during the said term thereby granted at Lockport aforesaid a large sum of Money (to wit) the sum of two hundred and ~~forty~~ ^{four} dollars of the rent aforesaid became and was due and still is in arrears and unpaid to the said plaintiffs contrary to the tenor and effect true intent and meaning of the said indenture and of the said covenants of the said defendants by them in that behalf made as aforesaid (to wit) At Lockport in Mill County aforesaid

And the said Plaintiffs in fact further say that the said Defendants did not nor would at the expiration of the said term yield up the said demised premises to the said Plaintiffs in as good condition as when the same were entered upon by the said Defendants according to the form and effect true intent and meaning of the said indentures in

that behalf but on the contrary thereof the said defendants displaced and removed portions of the fixtures and machinery belonging to the said demised premises and left the said demised premises in a bad and untenable condition contrary to the tenor and effect of the said Indenture in that behalf and of the said covenants of the said defendants so made as aforesaid to wit at Lockport in the County of Will aforesaid.

And ^{so} the said Plaintiffs in fact say that the said Defendants although after requested so to do have not kept the said covenants so made by them as aforesaid but have broken the same and to keep the same with the said Plaintiffs have hitherto wholly neglected and refused and still do neglect and refuse to the damage of the said Plaintiffs of one thousand dollars and therefore they sue

Parks Ed Elwood Ed Randall
Plffs Attys 77

And afterwards to wit

On the 5th day of September in the year of our Lord one thousand eight hundred and fifty three. At being one of the regular days of said September term ^{of said court} for the year last aforesaid certain proceedings were had and entered of record in the words and figures following to wit.

(Over)

Albert S. Anderson John F. Daggett Rollin W. Parke in right of his wife Mary S. Parke
 wife of Rollin W. Parke Althea A. Hawley Edward S. Hawley Warren S. Hawley Walter B. Hawley
 Henry S. Hawley Edward C. Bush Harriet C. Bush John W. Feltner Maria K. Feltner Samuel
 Kaywood Sophia A. Kaywood John Menthigan John Kiffin Cynthia C. Kiffin
 Samuel D. Dwyer Julia A. Dwyer Martha S. Bridge Phoebe W. Bridge LeCharles
 Finch Hannah C. Finch And Joseph M. Hawley

vs
 Hiram Norton Lemuel S. Norton And Samuel W. Norton

"Comes the said
 Plaintiffs by Parks & Elwood Ed Randall their At-
 torneys and enter their Motion for a Rule on the said
 Defendants to plead to their ~~to their~~ said Amended
 declaration. Whereupon it is ordered by the
 Court that the said defendants do plead to
 to their said Amended declaration by eight o'-
 clock on Wednesday morning next."

And afterwards to wit,

On the 7th day of Septem-
 ber A.D. 1833 All being one of the regular days of
 said term of said Court for the year last aforesaid
 certain proceedings were had and entered of
 Record in the words and figures following to wit
 A summons was filed in said Cause in following form

Albert S. Anderson John F. Daggett Rollin W. Parke in right of his wife Mary S. Parke
 wife of Rollin W. Parke Althea A. Hawley Edward S. Hawley Warren S. Hawley Walter B. Hawley
 Henry S. Hawley Edward C. Bush Harriet C. Bush John W. Feltner Maria K. Feltner Samuel

vs

Hiram Norton Lemuel S. Norton

And Samuel W. Norton

vs

John F. Daggett Rollin W. Parke
 Mary S. Parke and others

Will be Court
 Sept Term 1833

Dismissed
 And

the said Defendants by Agood and Paddock
 their Attornies come and defend the wrong and
 injury when &c and say that the Declaration
 and the matters therein contained in manner
 and form as the same are above stated and set
 forth are not sufficient in law for the said
 plaintiffs to have or maintain their aforesaid
 action thereof against the said defendant and
 that they the said defendants are not bound by
 law to answer the same and this they are ready
 to verify wherefore by reason of the insufficiency
 of the said Declaration in this behalf the said de-
 fendants pray judgment ^{and} that the said
 plaintiffs may be barred from having or main-
 taining their aforesaid action thereof against
 them &c

Agood & Paddock
 Attornies for Defendants //

And afterwards to wit,

On the 9 day of September
 A.D. 1853. It being one of the regular days of said ^{September} term of
 said Court for the year last aforesaid certain proceed-
 ings were heard and entered of Record in the words and
 figures following to wit

Albert Anderson John F Daggett Rollin S Parke in right of his wife Mary S Parke wife of
 Rollin S Parke Althea A Hawley Leonard Hawley Warren Hawley Walter B Hawley Henry S
 Hawley Edward C Bush Hamlet Bush John H Peter Maria H Peter Lucile H Hayward Sophia
 A Hayward John Mentigan John Kiffin Cynthia Kiffin Samuel S Dewey Julia S Dewey
 Martin S Bridge Phoebe S Bridge Charles Finch Maria C Finch & Joseph M Hawley
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 Heram Norton Lemuel S Norton and Samuel W Norton
 (over)

Remnant
 And now

17.

"come the said Parties to this suit by their Respective
 "Attorneys. And now comes on to be heard the Ar-
 "guments of Counsel upon the said Defendants
 "Demurrer to Narr herein and the Court being fully
 "advised in the Premises it is ordered that the said
 "Demurrer be Sustained and thereupon the said
 "Plaintiffs say that he will abide by his said Narr.
 "And thereupon the said Defendants enter their
 "Motion for Judgment upon said Demurrer.

"Whereupon it is ordered by the Court that the said
 "Defendants have Judgment against the said
 "Plaintiffs for their costs and charges herein.

"It is thereupon considered by the Court that the
 "said Defendants do recover of the said Plaintiffs
 "their costs and charges by them about this suit
 "in this behalf expended and that they have execu-
 "tion therefor."

State of Illinois

Will County

I, Royal E Barber Clerk of the said
 Court do hereby Certify the preceding to be
 true correct & perfect copies of the Summons
 issued, and of the Sheriff returns thereon, of the Amended
 Narr & of the demurrer thereto filed, and of the Records
 of the proceedings of the said Court including all orders
 & judgments made & entries of Records by said Court
 in the aforesaid entitled Cause

Given under my hand & the
 seal of said Court hereto
 affixed at office in the
 City of Joliet in said
 County this 12th day of
 June A.D. 1884

R. E. Barber
 Clerk

And now come the plaintiffs in error of Randall
& Cook their atty & say that in the ~~recitation~~
record & proceedings aforesaid and in the ~~reci~~
diction of the Judgment aforesaid there is man
ifest error in this Court

1st The Court erred in sustaining the demurrer
of defendants to the amendment (addition) of
the plaintiffs

2^d The Court erred in rendering the Judgment
aforesaid in manner & form aforesaid

For which error & otherwise in said record
manifest they pray that said Judgment be
Randall & Cook
attys

24 2

A. S. Anderson et al.

William Norton et al.

Record

Inc 54 fol \$5.40

Cost Real 35 = \$5.75

Filed June 13. 1884.
S. Seland Clk.

1 The People of the State of Illinois by the Grace of God
Free and Independent - to all to whom these presents shall come
Greeting - Know ye that we having caused to be inspected the Records and
proceedings now remaining in the Office of our Clerk of our Circuit
Court, in and for the County of Will. do find there certain Records and
proceedings of said Court in words and figures following to wit:

Will County Circuit Court
September Term A.D. 1852

United States of America

State of Illinois

Will County

Sh. Pleas before the Honorable Hugh
Henderson Judge of the Eleventh Judicial
Circuit of said State of Illinois at the September Term of the Will County
Circuit Court - began and held at the Court House in said County in the
City of Solist on the first Monday of September, the same being the
Sixth day of September in the year of our Lord one thousand Eight
hundred and fifty two

Present the Hon Hugh Henderson Judge as aforesaid
Sherman W. Bowen State Attorney 11th Judicial Circuit
Robert J. Cunningham Sheriff Will County
Michael W. Crox Clerk Will County Circuit Court.

And heretofore to wit August 18th 1852 the following Security for
costs specific for Summons, was filed in the Office of the Clerk of our
said Circuit Court in words and figures following

Will Circuit Court of September Term A.D. 1852

Albert S. Anderson John S. Daggett, Rollin G. Parks, in right of wife
Mary E. Parks, wife of Rollin G. Parks, Althea A. Hawley, Oscar E. Hawley
Warren Hawley, Walter B. Hawley, Henry S. Hawley Edward E. Bush
Harriet J. Bush John H. Selter Maria R. Selter Emily E. Hayward
Alpha A. Hayward, John Muligan, John Giffen Cynthia E. Giffen

Samuel J. Dewey, Julia A. Dewey, Martin S. Bridge, Phoebe
 G. Bridge, Charles Finch, Hannah E. Finch, Joseph M. Hawley

versus

Hiram Norton, Samuel S. L. Samuel W. N.

We hereby enter
 ourselves security for costs in this cause and acknowledge ourselves
 bound to pay or cause to be paid all costs which may accrue in this
 action either to the opposite party or to any of the Officers of this Court,
 in pursuance of the Laws of this State

Dated this 16th day of August 1852

For parties see above.

Parks & Elwood

So Clerk of Will Circuit Court

Please issue in the above entitled cause a Summons to the Shff. of
 Will County to execute, settle at next Term of the Court, set the form
 of the action by covenant and fix damages at \$1000.

Dated 16th August 1852.

Parks & Elwood

Atty for Shff

And afterwards to wit August 18th in the year aforesaid the
 following summons was issued by our Clerk of our said Circuit
 Court in the words and figures following

State of Illinois

Will County Ill

The People of the State of Illinois to the Sheriff of said County
 Greeting:- We command you that you Summon Hiram Norton, Samuel
 S. Norton, & Samuel W. Norton if they be found in your County personally to be
 and appear before our Circuit Court of our said County on the first day of
 the next Term thereof to be holden at the Court House in Joliet, in said
 County on the first Monday of September 1852. to answer Rollins & Parks

Albert S. Anderson, John F. Daggett, Rollin G. Parks in right of his wife Mary S. Parks, wife of Rollin G. Parks, Althea Howley, Oscar S. Howley, Warren Howley, Walter B. Howley, Henry S. Howley, Edward C. Bush, Harriet S. Bush, John H. Fetter, Maria R. Fetter, Luciel G. Haywood, Ophelia A. Haywood, John Mulligan, John Giffin, Cynthia G. Giffin, Samuel S. Dewey, Julia A. Dewey, Martin S. Burdage, Phebe G. Burdage, Charles Finch, Hannah E. Finch & Joseph M. Howley in an action of covenants to the damage of them the said plaintiffs One Thousand dollars, as is said, and have you then there this writ.

Witness Michael Mc Coy Clerk of our said Court, and the Seal thereof here affixed, at Office in Joliet in said County this 18th day of August A.D. 1852.

M. Mc Coy Clerk

By R. E. Barber Dep. Clerk

And on the back of said Summons is the following return endorsed by said Sheriff in following words & figures writ:

I Return the within summons served by reading the within to each of the within named defendants this 26th day of August 1852,

R. S. Cunningham

Sheriff of Will County

And afterwards Court 27th August in the Year aforesaid the following declaration was filed in the Office of our said Clerk of said Circuit Court, in the words and figures following:

State of Illinois

Will County ss.

In the Will Circuit Court Ill. September Term A.D. 1852
John F. Daggett, ^{Mary S. Parks} Rollin G. Parks, in right of his wife said Mary S. Parks, Althea Howley, Oscar S. Howley, Warren Howley, Walter B. Howley, Henry S. Howley, Edward C. Bush, Harriet S. Bush, John H. Fetter, Maria R. Fetter, Luciel G. Haywood, Ophelia A. Haywood, John Mulligan, John Giffin, Cynthia G. Giffin, Samuel S. Dewey

4 Julia a Sney, Martin S. Burdge, Phoebe A. Burdge, Charles
Sinch, Hannah C. Sinch, Joseph. Mc. Hawley, Albert S. Anderson
The Plaintiffs in this suit, by G. D. P. Parks and N.
D. Elwood their Attorney; complain of Hiram Norton, Samuel D. Norton
and Samuel W. Norton, the defendants in this suit Summons &c of a plea of
breach of covenants; for that whereas heretofore to wit: on the fifth day of
September, in the year of our Lord one thousand eight hundred and fifty one
at the Town of Lockport, in the County of Will aforesaid by a certain Indenture
then and there made, between the said plaintiffs (except the said Rollin &
Parks, who intermarried with said Mary S. Parks after the execution of said
Indenture, of the one part; and the said Defendants of the other part
(one part of which said Indenture, Sealed with the Seals, of the said
defendants; the said plaintiffs now bring into Court, the date whereof is
the same day, and year aforesaid, the said plaintiffs did demise &c
Lease unto the said defendants, certain tenements with the appurtenances
particularly mentioned and described in the said Indentures. Situate in
the County of Will aforesaid - To have and to hold said tenements
with the appurtenances unto the said defendants, their executors, ad-
ministrators and assigns, from the first day of August, then last past
for and during the term of one year therefrom and until the first day
of August, A.D. 1852. - and the said defendants did covenant and
agree with the said plaintiffs their heirs and representatives to pay
them as rent for said demised premises the sum of nine hundred
dollars, payable quarterly that is to say - Two hundred and twenty five dollars
on the first day of November then next - Two hundred and twenty five
dollars on the first day of February then next - Two hundred and twenty
five dollars on the first day of May then next - and two hundred and
twenty five dollars on the first day of August then next. And the said
defendants did in and by the same Indenture, covenant with the said
Plaintiffs amongst other things, in manner following that is to say that
they the said defendants at the expiration of the term in said
Indenture mentioned would yield up the said demised premises

4 So the said plaintiffs in as good condition as when the same were entered upon by the said defendants, loss by fire or inevitable accident or ordinary wear excepted, — And although the said plaintiffs have always from ~~time~~ the time of the making of the said Indenture hitherto well and truly performed, fulfilled and kept all things therein contained on their part and behalf to be performed, fulfilled and kept according to the tenor and effect, true intent and meaning thereof to wit at Lockport, in the County of Will aforesaid, yet the said plaintiffs say that after the making of the said Indenture and during the said term hereby granted at Lockport aforesaid a large sum of money to wit the sum of Two hundred and forty dollars of the rent aforesaid became and was due and still is in arrears, and unpaid to the said plaintiffs contrary to the tenor and effect, true intent and meaning of the said Indenture, and of the said covenants of the said defendants by them in that behalf so made as aforesaid, Suit at Lockport in Will County aforesaid, — and the said plaintiffs in fact, further say that the said defendants did nor would at the expiration of said term leave the said ^{deprived} premises in such good condition as when the same were entered upon by the said defendants, loss by fire or inevitable accident or ordinary wear excepted, according to the form and effect, true intent and meaning of the said Indenture, in that behalf, but on the contrary thereof the said defendants displaced and removed portions of the machinery and fixtures belonging to the said demised premises, ^{and left the said demised premises} in a bad and untenable condition contrary to the tenor and effect of the said Indenture in that behalf and of the said covenants of the said defendants so made as aforesaid Suit at Lockport in the County of Will aforesaid. and so the said plaintiffs in fact say that the said defendants (although often requested, so to do) have not kept the said covenants, so by them made as aforesaid but have broken the same, so keep the same with the said plaintiffs have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of the said plaintiffs of one thousand dollars and therefore they bring this suit.

Park & Elwood
attornies for plffs

The instrument on which this action is founded is herewith filed Marked "A"

And on the day and year last aforesaid the following copy of Deed was filed in the Office of our Clerk of said Circuit Court in the words and figures following to-wit:

This Indenture made this fifth day of September in the year of our Lord one thousand Eight hundred and fifty one. Between Mary S. Gooding of the County of Niagara and State of New York, John H. Daggett, Abner H. Hawley widow of Lyman Hawley deceased, Walter B. Hawley, Henry S. Hawley, Edward C. Bush and Harriet S. his wife, John Selter and Maria K. his wife, Samuel L. Haywood and Orpha his wife - John Mulligan, John Giffen, and Legithia his wife of the County of Will and State of Illinois and J. S. Dewey, and Julia Ann his wife also of the County of Will and State of Illinois, Martin J. Burdge and Phoebe his wife, and Charles Finch, and Hannah E. his wife of the County of Kane, and State of Illinois and Joseph M. Hawley of the State of California, and Albert S. Anderson of the County of Will and State of Illinois of the first part, and Hiram Norton, Samuel D. Norton, and Samuel W. Norton of the Said County of Will and State of Illinois of the Second part: Witnesseth that the Said party of the first part for and in consideration of the Covenants and agreements hereinafter mentioned to be kept and performed by the Said party of the second part, his executors, administrators and assigns have demised and leased, to the Said party of the second part - all those premises Situate lying, and being in the Town of Lockport and County of Will known and described as follows to-wit: Lots Numbered three (3) four (4) and five (5) in Block Eighty three⁸³ in the Village of West Lockport, according to a plat and Survey of Said West Lockport, on Record in the Office of the Clerk of the Circuit Court of Will County aforesaid - also such portion of the West fraction of the South East quarter of Section twenty two (22), in Township thirty six (36) North of Range ten¹⁰, East of the Third principal Meridian as are not embraced in the Village of West Lockport, and is Situated on the

6 South East Side of the Mill Race now constructed on Said Land, - embracing all the property commonly called the Lockport Mill property, - with the Mills, Dams, Races, Flumes, and all the buildings fixtures and other improvements and appurtenances thereto appertaining. To have and to hold the Said above described premises with the appurtenances unto the Said parties of the second part their executors, administrators and assigns from the first day of August, last past for and during the term of one year - thenceforth and until the first day of August A.D. 1852.

And the Said party of the second part, in consideration of the Leasing of the premises aforesaid by the Said party of the first part, to the Said party of the second part, do covenant and agree with the Said party of the first part their heirs and representatives to pay them - as rent for said demised premises the sum of Nine hundred dollars payable quarterly that is to say Two hundred and twenty five dollars on the first day of November next, Two hundred and twenty five dollars on the first day of February next, Two hundred and twenty five dollars on the first day of May next, and Two hundred and twenty five dollars on the first day of August next.

And the Said party of the second part further covenant with the Said party of the first part, that in case they - the Said party of the second part shall fail to pay any one of the Said quarter annual payments above specified on the day when they and each of them becomes due or within ten days after the same may be due payable at Said Notary & Co. Office ^{in Lockport} then the Said term shall be forfeit and taken to be - and the same shall be ended, at the option of the Said party of the first part or their authorized Attorney, administrators, executors, heirs or assigns, and the Said party of the first part may with or without process of Law re-enter upon and into the Said demised premises and distrain for any rent that may be due thereon - upon any property belonging to the Said party of the second part - and further that at the expiration of the term in this Lease mentioned - they the Said party of the second part will yield up the Said demised premises to the Said party of the first part in as good condition as when the same were entered upon by the Said party of the second part, less by fire, or inevitable accident

7
 Or ordinary wear excepted: It is further agreed by the Said party of the second part; that neither they - nor their Legal representatives will undercut Said premises - or any part thereof - or assign this Lease without the written assent, of the party of the first part; first had and obtained thereto. It is hereby agreed by the Said party of the first part that as soon as the same can conveniently be done they will cause to be made in Said Mill and premises the following repairs at their own proper costs and charges, to wit: a new Step for the large upright driving Shaft - to repair the Bolt cloth estimated to require for that purpose twenty six yards of new cloth; to put a new Rack in the flume; to put in a new smut mill, a new Screen, a new curb to the water wheel - and to repair the Bulk head gate - all other ordinary repairs to be done by the party of the second part. It is further expressly understood, and agreed by and between the parties hereto, that upon the determination of said term by the expiration thereof, or by the non payment when due of any quarters rent, as aforesaid, the Said party of the second part, are to immediately deliver up, and surrender the said demised premises to the said party of first part: and if they shall remain in possession of the same ten days after the expiration or termination of their Said term: they shall be deemed guilty of a forcible detainer of Said premises - under the Statute and shall be subject to eviction and removal, forcibly or otherwise - with or without process of Law, as above stated. In Testimony whereof the Said parties have hereunto, set their hands and seals, the day and year first above written

Mary L Gooding Seal John F. Waggott Seal Altham Hawley Seal (Seal) Warren Hawley Seal W. B. Hawley Seal H. L. Hawley Seal E. E. Bush Seal (Seal) Harriet A. Bush Seal J. H. Selter Seal M. L. Selter Seal W. L. Hayward Seal (Seal) Ophelia A. Hayward Seal John Mulligan Seal John Siffen Seal Cynthia Siffen Seal J. S. Druey Seal Julia A. Druey Seal M. S. Kedge Seal (Seal) Phil. G. Brudge Seal (Seal) (Seal) Maria E. Smith Seal Joseph M. Hawley Seal all the above by W. L. Anderson their atty in fact Seal A. S. Anderson Seal (Seal) Herman Norton Seal Samuel C. Norton Seal Samuel W. Norton Seal

And afterwards sheweth on the Seventh day of September in the year aforesaid it being one of the days of the September Term of said Circuit Court for the year aforesaid the following motion was heard, and entered of Record in the words and figures following to-wit.

Abel S. Anderson, John S. Daggett, Rollin G. Parks in right of his wife
 Mary S. Parks, wife of Rollin G. Parks. Altha A. Hawley, Oscar,
 L. Hawley, Warren Hawley Walter B. Hawley Henry S. Hawley
 Edward C. Bush, Francis S. Bush, John H. Selter, Maria R.
 Selter, Merrill C. Hayward, Cypha A. Hayward John Mulligan
 John Giffen, Cynthia C. Giffen, Samuel S. Dancy Julia W. Dancy
 Martin S. Burdge Phoebe C. Burdge Charles Finch
 Hannah S. Finch and Joseph M. Hawley

Coverants.

Hiram Norton, Samuel D. Norton, and Samuel W. Norton.

Now come the
 said Plaintiffs by Messrs. Parks & Elwood their attorneys, on motion it
 is ordered by the Court that said Defendants, plead to said Plaintiffs
 declaration herein by Monday morning at 8. o'clock.

And afterwards sheweth on the 13th day of September in the Year aforesaid
 it being also one of the ^{Regular} days of said Term of said Circuit Court, ^{at the said place,} being
 duly organized and open for ^{transacting} dispatch of business the following demurrer was
 filed in said Court in words and figures following.

Well Circuit Court

Hiram Norton, Samuel D. Norton, Samuel W. Norton.

vs

Abel S. Anderson, John S. Daggett, Rollin G. Parks
 in right of his wife &c, &c.

And the said Defendants by
 Reginald S. Paddock their attorneys come and defend, the wrongfulness whereof
 say that the said declaration & the matter therein contained, in manner & form
 as the same are above stated, set forth, are not sufficient in Law for the
 said Plaintiffs to have, or maintain their said action thereof, against the

Said Defendants, that they the Said Defendants are not bound by Said Law, to answer the same, and this they are ready to, verify - wherefore they pray Judgment &c

Osgood & Paddock
attys for Defendants

And afterwards to wit on the same day and year last aforesaid, it being one of the regular days of Said Term of said Circuit Court, for the year aforesaid, the Court being open for the transaction of business the following rule to plead was had and entered of Record by Said Court in the words and figures following.

Albert S. Anderson, John F. Daggett, Rollin S. Parks in right of
his wife, Mary S. Parks, wife of Rollin S. Parks, Althea A. Howley,
Wesley S. Howley, William Howley, Walter W. Howley, Henry
S. Howley, Edwards E. Rush, Harriet S. Rush, John H. Selter,
Marion H. Selter, Terril C. Hagwood, Stephen A. Hagwood,
John Mulligan, John Giffen Cynthia C. Giffen Samuel
S. Dewey, Julia A. Dewey, Martin S. Bridge, Phebe C.
Bridge, Charles Finck, Hannah C. Finck and Joseph M. Howley

(Counsel)

vs
Hiram Norton, Samuel D. Norton, and Samuel H. Norton.

Now comes the
Said parties to this suit as heretofore entered on whose agreement it is
ordered that the rule to plead heretofore entered in this cause be and the
same is extended to the fifteenth day of November next, and afterwards
by agreement of parties it is ordered that the rule last entered in this
cause be and the same is vacated -

And afterwards to wit

On the Sixteenth day of March A.D. 1853 it being one of the regular days of said March Term ^{of said Circuit Court} for the year last aforesaid. Said Court being open and ^{adjudging} sitting for the transaction of business the following ^{proceedings} ~~arguments~~ were had and entered of Record by Said Court in the words and figures following to-wit:

Alfred S. Anderson, John S. Daggett, Rollin G. Parks, in right of his wife Mary S. Parks wife of Rollin G. Parks, Althea Hawley, Oscar S. Hawley, Warren Hawley, Walter B. Hawley, Henry S. Hawley, Edward E. Rush, Harriet S. Rush, John H. Tilton, Manah T. Tilton, Jennie L. Haywood, Orpha A. Haywood, John. Mulligan, John Kiffin, Samuel S. Dewey, Julia A. Dewey, Martin S. Fridge Phelps, Fridge, Charles Finch, Hannah Finch & Joseph M. Hawley.

vs
Hiram Norton, Samuel D. Norton, and Samuel W. Norton.

Covenant

And now

comes on to be heard the arguments of counsel upon the said Defendant's Demurer to said Plaintiffs' Narr. herein - and after being fully advised in the premises, it is ordered by the Court, that the said Defendant's Demurer herein be and the same sustained - and that they said Defendants have Judgment, against the said Plaintiffs for their costs of said Demurer herein. thereupon the said defendants by order of the Court have recover Judgment against the said Plaintiffs, for their costs and charges, of their said Demurer, and that they have execution therefor and thereupon the said Plaintiffs enter their motion for leave to amend their said declaration herein, and to file an additional count and it is ordered by the Court that said Plaintiffs have such leave to amend and file additional counts, on or before the first day of August Next.

And afterwards Court on the 26th day of August in the year last aforesaid the following Amended Narr was filed in the Office of our Clerk of said Circuit Court in the words and figures following

State of Illinois,
Will County ss

Hiram Norton, Lemuel D. Norton, and Samuel W. Norton were summoned to answer John S. Daggett, Rollin E. Parks in right of his wife Mary S. Parks, and Mary S. Parks his said wife, Althea Hawley, Oscar S. Hawley, ~~Warren~~^{James} Hawley, Walter B. Hawley, Henry S. Hawley, Edward E. Rush, Harriet S. Rush, John H. Selter, Maria E. Selter, Lemuel C. Haywood, Alpha A. Haywood, John Mulligan, ^{John} ~~Lynethia~~ C. Giffen, Samuel S. Dewey, Julia A. Dewey, Martin S. Burge, Phelps C. Burge, Charles Finch, Hannah E. Finch, Joseph M. Hawley, and Albert S. Anderson of a plea of Breach of Covenant whereupon the said plaintiffs by their Attorney Parks, Elwood & Randall, complain for that, whereas heretofore to-wit, on the fifth day of September in the year of our Lord, One thousand Eight hundred and fifty one, at Lockport in the County of Will aforesaid by a certain Indenture then and there made, between Mary S. Gooding who has since the making of the said Indenture intermarried with the above named Rollin E. Parks, and was at the commencement of this suit, and still continues to be the lawful wife of the said Rollin E. Parks, John S. Daggett, Althea Hawley, Oscar S. Hawley, Warren Hawley, Walter B. Hawley who executed the same in the name of W. B. Hawley, Henry S. Hawley, who executed the same in the name of H. S. Hawley, Edward E. Rush who executed the same, in the name of E. E. Rush, Harriet S. Rush, John H. Selter, who executed, the same in the name of John H. Selter, Maria E. Selter, who executed the same in the name of M. E. Selter, Lemuel C. Haywood who executed the same in the name of L. C. Haywood, Alpha A. Haywood, John Mulligan, John Giffen, Lynethia C. Giffen, Samuel S. Dewey who executed the same in the name of S. S. Dewey, Julia A. Dewey, Martin S. Burge, Phelps C. Burge, Charles Finch, Hannah E. Finch, and Joseph M. Hawley, all of which above mentioned persons executed the said Indenture, by A. S. Anderson their Attorney in fact, and Albert S. Anderson who executed the same in his own proper

12 Person, by the name of A. S. Anderson, on the one part, and the said
Defendants on the other part, which said Indenture sealed with their
seals, was, and is in words and figures following that is to say:
This Indenture made this fifth day of September in the year of our Lord
one thousand eight hundred and fifty one. Between Mary L. Gooding of the County
of Niagara and State of New York. John L. Daggett, Abigail H. Hawley widow of
Lyman Hawley, deceased, Walter B. Hawley, Henry S. Hawley, Edward C. Bush
and Harriet S. his wife, John Fetter and Mariah K. his wife, Lucius C.
Hagwood, and Alpha his wife, John Mulligan John Liffow, and Cynthia
his wife of the County of Will and State of Illinois, and J. S. Deary and Julia
Ann his wife also of the County of Will and State of Illinois Martin A. Ruedge
and Phoebe his wife, and Charles Finch, and Hannah C. his wife of the County
of Kane and State of Illinois, and Joseph M. Hawley of the State of Cali-
fornia, and Albert S. Anderson of the County of Will and State of Illinois of
the first part and Hiram Norton, Samuel B. Norton, and Samuel W.
Norton, of the said County of Will and State of Illinois, of the Second part,
Witnesseth that the said party of the first part, for and in consideration of the
covenants and agreements hereinafter mentioned to be kept and performed by the
said party of the second part, his executors, administrators, and assigns - have
demised and leased to the said party of the second part - all those premises, sit-
uate lying and being in the Town of Lockport and County of Will, and known
and described as follows to wit: Lots numbered three (3) four (4) and five (5),
in Block eighty three (83) in the Village of West Lockport, according to a plat of
Survey, of said West Lockport on Record in the Office of the Clerk of the
Circuit Court of Will County aforesaid, also such portion of the west fraction of
the South East quarter of Section twenty two, 22, in Township thirty six, 36, North
of Range Ten (10) East of the Third principal Meridian, as are not embraced
in the Village of West Lockport, and is situated on the South East side of
the Mill Race now constructed on said land, embracing all the property
commonly called the Lockport Mill property, with the Mills Dams Races
Flumes, and all the buildings, fixtures, and other improvements and
appurtenances thereto appertaining, To have and to hold the said
above described premises with the appurtenances unto the said parties of
the second part, their executors, administrators and assigns from the first

"Day of August last past, for and during the term of one year therefrom
 "and until the first day of August A. D. 1852. And the Said party of the
 "Second part in consideration of the leasing of the premises aforesaid, by the
 "Said party of the first part to the Said party of the second part do covenant
 "and agree with the Said party of the first part their heirs, and representatives
 "to pay them as rent for said demised premises, the sum of nine hundred
 "dollars, payable quarterly that is to say Two hundred and twenty five
 "dollars on the first day of November next. Two hundred and twenty five
 "dollars on the first day of February next. Two hundred and twenty five
 "dollars on the first day of May next. And Two hundred and twenty five
 "dollars on the first day of August next. And the Said party of the second
 "part further covenants with the Said party of the first part that in case they
 "the Said party of the second part, shall fail to pay any one of the Said quarter
 "annual payments, above specified on the day when they and each of them become
 "due - or within ten days after the same may be due - payable at said Norton
 "His Office in Lockport - then the said term shall be deemed and taken to be
 "and the same shall be ended, at the option of the Said party of the first part
 "or their authorized attorney, administrator, executors heirs or assigns, and the
 "Said party of the first part, may with or without process of Law: re-enter upon
 "and into the said demised premises, and distrain for any rent that may be due
 "thereon upon any property, belonging to the Said party of the second part, and
 "further that at the expiration of the time in this Lease mentioned they the
 "Said party of the second part will yield up the said demised premises to
 "the Said party of the ^{first} ~~second~~ part in as good condition, as when the same
 "were leased upon by the Said party of the second part, less by fire ~~and~~ inevitable
 "accident or ordinary wear excepted. It is further agreed by the Said
 "party of the second part, that neither they nor their legal representatives
 "will underlet said premises, or any part thereof - or assign this Lease
 "without the written assents of the Said party of the first part - first had
 "and obtained thereto - It is hereby agreed by the Said party of the
 "first part that as soon as the same can conveniently be done they will
 "cause to be made in said Mill and premises the following repairs at

their own proper cost and charge Suits: a new Step for the large up-
-right driving Shaft, to repair the belt cloths estimated to require for that pur-
-pose twenty six yards of New cloth, to put a new Rack in the Flume, to put
"in a new Smut mill - a new Screen - a new Comb to the water wheel, and to
repair the Bulk head Gates, all other ordinary repairs to be done by the party
of the second part; It is further expressly understood and agreed by and
between the parties hereto, that upon the determination of Said Term by the
expiration thereof - or by the non payment when due, of any quarters rent as aforesaid
the Said party of the second part are to immediately deliver up and surrender the
Said demised premises to the Said party of the first part; and if they shall re-
-main in possession of the Same ten days after the expiration or termination of
their Said term they shall be deemed guilty of a forcible detainer of said premises
under the Statute - and shall be subject to eviction and removal, forcibly or otherwise
with or without process of Law. as above Stated.

In Testimony whereof the Said parties have hereunto set their
hands and Seals the day and year first above written.

Mary S. Gooding	Seal	John S. Daggett	Seal	Althea Hawley	Seal
Oscar S. Hawley	Seal	Warren Hawley	Seal	W B. Hawley	Seal
H. S. Hawley	Seal	E. E. Bush	Seal	Harriet F. Bush	Seal
J. H. Selter	Seal	M. K. Selter	Seal	S. C. Hayward	Seal
Alpha A. Hayward	Seal	John Mulligan	Seal	John Ciffin	Seal
Synthia C. Ciffin	Seal	L. S. Dewey	Seal	Julia A. Dewey	Seal
M. S. Burdges	Seal	Phebe C. Burdges	Seal	Charles Finch	Seal
Hannah C. Finch	Seal	Joseph W. Hawley	Seal		

All the above by A. S. Anderson their attorney in fact Seal

A. S. Anderson Seal

Hiram Norton Seal

Samuel D. Norton Seal

Samuel W. Norton Seal

Which said Indenture, the Said plaintiffe now bring into Court,
the Said plaintiffe did demise and Lease unto the Said defendant
certain tenements with the appurtenance particularly mentioned and

Described in the said Indenture, Situate in the County of Will aforesaid from the first day of August then last past-for and during the Term of one Year, therefrom and until the first day of August A.D. 1852. And they the said defendants in and by the said Indenture-did covenant and agree to and with the said plaintiffs their heirs and representatives to pay to them the said plaintiffs as rents, for said demised premises the sum of Nine hundred dollars payable quarterly: that is to say Two hundred and twenty five dollars on the first day of November then next, Two hundred and twenty five dollars on the first day of February, then next Two hundred and twenty five dollars on the first day of May then next, and Two hundred and twenty five dollars on the first day of August then next,

And they the said defendants in and by the said Indenture did further Covenant and agree to and with the said plaintiffs that they the said defendants would, on the determination of the said Term in the said Indenture mentioned yield up the said demised premises to the said plaintiffs, in as good condition-as when the same were entered upon, by the said defendants, Loss by fire or inevitable accident or ordinary wear excepted. And the said plaintiffs aver that the said Covenants in the said Indenture mentioned-binding upon them the said plaintiff- they the said plaintiffs on their part, fully and entirely kept and performed-and they said plaintiffs did make at their own cost and charge, all the repairs in said Indenture mentioned-which are in and by the same, Stipulated to be made done and performed-by them the said plaintiffs in such ^{reasonable} times as was required-in order to give them the said defendants, the full benefit and enjoyment, of the said Term and the full profits which could arise from the Occupancy, and use thereof. And although the said plaintiffs ^{have} ~~were~~ always from the time of the making of the said Indenture, hitherto well and truly performed fulfilled, and kept all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof. Now at Lockport, in the County of Will aforesaid. Yet the said plaintiffs say that after ^{the} making of the

16 Said Indenture, and during the said Term thereby granted at Lockport
aforesaid, a large sum of money lent: The sum of Two hundred and forty
dollars of the rent, aforesaid became, and was due and still is in arrear and
unpaid, to the said plaintiffs - contrary to the tenor and effect, true intent
and meaning of the said Indenture, and of the said covenants of the said
defendants, by them in that behalf so made as aforesaid, suit at Lockport in
Will County aforesaid. And the said plaintiffs in fact further say
that the said defendants did not, nor would at the expiration of the said
Term yield up the said demised premises to the said plaintiffs in as good
condition as when the same were entered upon by the said defendants: ac-
-cording to the form and effect true intent and meaning of the said
Indenture in that behalf. But on the contrary thereof the said defendants
displaced and removed portions of the fixtures and machinery belonging
to the said demised premises and left the said demised premises
in a bad and untenable condition contrary to the tenor and effect
of the said Indenture in that behalf - and of the said covenants of the
said defendants so made as aforesaid suit at Lockport, in the County of
Will aforesaid. And so the said plaintiffs in fact say - that the said
defendants, although often requested so to do, have not kept the said
covenants, so made by them as aforesaid - but have broken the same, and
to keep the same with the said plaintiffs have hitherto wholly ne-
-glected, and refused - and still do neglect and refuse, do the damage of
the said plaintiffs of One thousand dollars, and therefore they sue

Parker v. Elwood & Randall
Plffs attys

And afterwards To-wit. on the 5th day of September in the year last
aforesaid, it being of the regular days of said September Term of said
Circuit Court for the year last aforesaid, said Court being ^{duly organized} open for the
transaction of business, the following rule to plead was had and
entered of record by said Court in the words and figures following

Albert S. Anderson, John S. Daggett, Rollin G. Parks
 in Right of his wife Mary S. Parks, wife of Rollin G. Parks
 Althea A. Hawley, Oscar L. Hawley, ^{Walter} ~~Horace~~ Hawley
 Walter B. Hawley, Henry S. Hawley, Edward G.
 Bush, Harriet S. Bush, John H. Selter, Maria S. Selter,
 Merrill G. Haywood, Alpha A. Haywood John Mulligan
 John Liffen, Leontine G. Liffen, Samuel S. Dewey, Julia
 A. Dewey, Martin S. Burdige, Phebe G. Burdige, Charles
 Linch Hannals & Linch and Joseph M. Hawley.

^{vs}
 Hiram Norton, Lemuel D. Norton, & Samuel W. Norton

Covenants.

And now.

come the said plaintiffs by Parks & Edwards & Randall their
 Attorneys, and enter their motion for a Rule on the said Defendants to
 plead to their said amended declaration. Whereupon it is ordered by
 the Court, that the said defendants do plead to their said amended de-
 -claration by Eight O'clock, on Wednesday morning next,

And afterwards about on the 4th day of September in the year last
 aforesaid it being also one of the regular days of said Term of said
 Circuit Court for the year last aforesaid, said Court being then open
 and sitting for the transaction of business the following demurrer was
 filed in said Court in words and figures following

Hiram Norton, Lemuel D. Norton & Samuel W. Norton } Will this Court
 do

John S. Daggett, Rollin G. Parks, Mary S. Parks & others } Sept Term 1853
 Demurror.

And

the said defendants, by Asgood & Saddle their attorneys, come and
 defend the wrong and injury ~~therein~~, and say that the declaration
 and the matter therein contained, in manner and form, as the same
 are above stated, and set forth, are not sufficient in Law for the said

plaintiffs to have or maintain their aforesaid action thereof against the said defendants - and that they the said defendants are not bound by Law, to answer the same, and this they are ready to verify, wherefore by reason of the insufficiency of the said declaration in this behalf, the said defendants pray, Judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against them &c.

Algood & Saddock
Attorneys for Defendants,

And afterwards Court, on the 9th day of September in the year last aforesaid it being also one of the regular days of said Term of said Circuit Court, for the year last aforesaid, said Court being ^{duly organized and} open and sitting for the transaction of business the following arguments of counsel ^{and proceedings of Court in said case} were made and entered of Records by said Court in the words and figures following

Albert S. Anderson John S. Daggett, Rollin G. Parks
in Right of his wife, Mary S. Parks, wife of Rollin G. Parks,
Albion A. Hawley, Oscar S. Hawley, Warren Hawley, Walter
B. Hawley, Henry S. Hawley, Edward C. Bush Hamlet
Bush, John H. Selter Mariah S. Selter, Lemuel C.
Haywood, Alpha A. Haywood, John Mulligan John
Liffen Cynthia C. Liffen, Samuel S. Dewey, Julia A. Dewey,
Martin S. Bridge Phoebe C. Bridge, Charles Finch Hannah
Finch & Joseph W. Hawley.

vs
Heiram Norton, Samuel D. Norton & Samuel W. Norton

Covenant.

And now come the said parties to this suit by their respective attorneys, and now comes on to be heard, the arguments of counsel upon the said defendants Demurrer to amended Narr herein, and the Court being fully advised in the premises it is ordered that the said Demurrer be sustained, and thereupon the said plaintiffs Says that they will abide by their said amended Narr, and thereupon

The said defendants enter their motion for judgment, upon said Verdict. Whereupon it is ordered by the Court, that the said defendants have judgment, against the said plaintiffs for their costs and charges herein.

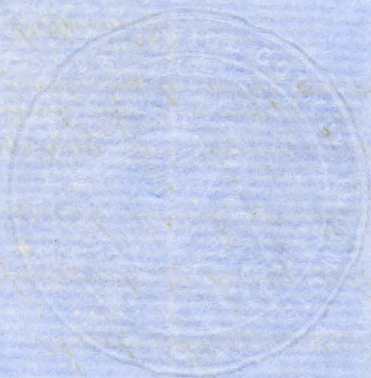
It is thereupon considered by the Court that the said defendants do recover of the said plaintiffs their costs and charges by them about their suit, in this behalf expended, and that they have execution therefor.

State of Illinois
Mill County

I Royal E. Barber Clerk of the Circuit Court of said County in said State do certify the preceding to be a true correct and perfect Abstract of said Cause and of the Records of the proceedings of said Court therein as this day examined and compared by me.

In attestation whereof I have hereto subscribed my name and affixed the Seal of said Court at office in Solicitor in said County this 7th day of June A.D. 1833

R. E. Barber Clerk



Hill County Circuit Court

Albert C. Anderson et al.

vs Covenant

Abram Norton et al.

Cert. Record of Cause

76 fol \$7.00

Cert. + Seal

.33

\$7.33

21

John F. Dazett, Rollin G. Parks in
right of his wife, Mary S. Parks; Mary
S. Parks his said wife; Althea Hawley;
Oscar S. Hawley; Warren Hawley;
Walter B. Hawley; Henry S. Hawley;
Edward C. Bush; Harriet J. Bush;
John N. Fetter; Maria R. Fetter; Juril
C. Heywood; Orpha A. Heywood;
John Mulligan; John Giffin;
Cynthia C. Giffin; Samuel S. Dervey;
Julia A. Dervey; Martin S. Burge;
Phoebe C. Burge; Charles Finch;
Hannah E. Finch; Joseph M. Hawley
and Albert S. Anderson,

Plaintiffs in Error,

vs.

Hiram Norton; Samuel D. Norton; and
Samuel W. Norton,

Defts in Error.

Afterwards on the Tenth day of June in the
year of our Lord one thousand eight hundred and
fifty five, before the Justices of the Supreme Court
sitting at Ottawa in and for the Third Division, come
the said plaintiffs in Error, in the above entitled suit
by Parks & Elwood their attorneys and say that in
the rendering of the judgment aforesaid there is
manifest Error, as follows:—

I. The ^{amended} declaration aforesaid sufficiently set forth and
manifested the interest of said plaintiff Mary S.
wife of said plaintiff Rollin G. Parks.—

II. The said amended declaration sufficiently avers

the performance by said plaintiffs of the covenants in the lease on which this suit was brought, on their part to be kept and performed.

III. There is no repugnancy in said declaration in the fact, that all of the said plaintiffs including said Parks (who acquired an interest in the cause of action, subsequently, to the execution of said lease, by marriage with said Mary S. Gooding,) are stated without any distinction, as covenantees; because the fact of marriage and the ^{consequent} relation of said Parks to the suit were stated in the commencement of the declaration, and the subsequent statements were to be construed with reference and subject thereto. -

And they the said plaintiffs pray, that for these and other errors in said record, the said judgment may be reversed, annulled and of no effect, and that they may be restored to all things which they have lost by occasion of said judgment.

Parks & Elwood
Attornies for Jeffs in Error,

2

Error to Will County.

Albert S. Anderson, et al

Defts in Error

vs.

Hiram Horton, et al

Defts in Error.

Assignment of Errors.

"B"

Will Mr. Barker
look this to record,

Record within

Filed June 11. 1885.
L. Leland Clk.

This is the record filed
in sum should be
with drawn sum

State of Illinois - Supreme Court
Hiram Norton, Lemuel D Norton &
Samuel W Norton Defts in Error
ads Error to Will

Albert S Andersen, John F Baggett
Rollin G Parks & others Plfs in Error

The Plaintiffs in Error here brought their suit in the Will County Circuit Court against the Defendants in Error, for an alleged breach of Covenant. The said was founded on a lease which was incorporated into & made a part of Plaintiffs amended declaration. The Defendants demurred to Plaintiffs amended declaration in the Court below, & the Court sustained the demurrer & the plaintiffs standing by their declaration, the Court rendered judgment against them, & they brought the case to this Court by Writ of Error -

The question here is as to the sufficiency of the Plaintiffs amended declaration in the Court below. The defendants below contend that Harriet J Wife of Edward E Bush

Maria K. wife of John H Felter

Orpheus A wife of Tynell L Haywood

Eynthia L wife of John Griffin

Julia A wife of Saml. S Dewey

Phoebe L wife of Martin L Burdgo

Harriet E wife of Charles Frick

were all improperly made parties Plaintiffs in said

1 Chitty Plds
P 33,

suit & the same being apparent upon the record might be taken advantage of by Demurrer - See Chitty Plds Vol 1, P, 33, - where the following language is held: "But where a feme improperly sues alone having no legal right of action, she will be nonsuited; and if she improperly join in an action with her husband who ought to sue alone, the Defendant may demur, or the judgment will be arrested on a Writ of Error."

The lease being incorporated into & made a part of the declaration, it appears affirmatively upon the face of the declaration that the above named Harriet G, Maria K, Orpheus A, Lynetia L, Julia A, Phebe L & Harriet E, at the time of the commencement of the suit & filing ^{amended} said declaration were married women, that their husbands were living & Plaintiffs in the suit with them, & there is no allegation in the declaration, showing that they (the said married women) had any interest in the case, or that they were the meritorious cause of action, -

1 Chitty Plds
P. 30

It is a well settled rule of Law that "In general the wife cannot join in an action upon a contract made during coverture," 1 Chitty Plds P. 30

Ido

"It is some times the case however that when the wife can be considered the meritorious cause of action, as if a bond or other contract under seal, or promissory note be made to her separately & so she may join with her husband, or he may sue

"alone" Id

Id

"Where however the wife is joined in the action in these cases, the declaration must distinctly disclose her interest, & show in what respect she is the meritorious cause of action, & there is no indictment to this effect." Id

Id

Although it is laid down in the same work (1 Chittys, Pld, P, 30) that "In case a bond or note payable to her, or to her husband & herself, it will sufficiently appear from the instrument itself as set out in the declaration, without further averment, that she had a peculiar interest justifying the use of her name as Plaintiff & c" and that "for rent or other cause of action accruing during the marriage or a lease or demise or other contract relating to the land, or other real property of the wife whether such contract were made before or during the coverture, the husband & wife may join or he may sue alone & c" - Yet the doctrine as thus laid down by Chittys, that "in case of a bond or note payable to her, or to her husband & herself, it would sufficiently appear from the instrument itself as set out in the declaration, without a further averment that she had a peculiar interest justifying the use of her name as Plaintiff & c" is not sustained by authorities. -

Even if this doctrine as laid down by Chittys were fully sustain-

ed, in regard to forming, the wife as party with her husband, where a note or bond is payable to her or to her husband & herself & where rent is payable to her &c without averment of her interest &c it cannot be successfully contended in a case of mutual covenants between husband & wife of the one part, & another person of the other part, that those covenants are ^{at} all binding on the wife, or that the wife can join with her husband & maintain a suit on those covenants; certainly not without discovering & specifically averring that she had a peculiar interest in the agreement (& showing what that interest is) containing such covenants justifying the use of her name as Plaintiff & showing where-in she is the meritorious cause of action. The wife cannot make a valid binding covenant during coverture, & a suit cannot be maintained against her & her husband, on any such covenant; nor can she alone, or with her husband maintain a suit on any such covenant or covenants thus made during coverture.

"The effect of marriage, at least in Courts of Law is to deprive the wife of all separate legal existence" &c. 1 Chittys Plds P. 287

By the rule of the common law a married woman has no power to bind herself by contract or to acquire to herself & for her exclusive benefit any right by a contract.

1 Chittys
Plds p 287

"made with her &c"

This is the doctrine of the common Law of England, as laid down by all the elementary writers, & sustained by the decisions of the Courts of England & of this Country, where the common law prevails, & I need not remind the Court that in this State the Common Law has been adopted by the Legislature -

The lease of a married woman is not valid in Law - she has no legal capacity to make contracts & covenants made by her during coverture are void -

The following language is held in Bacon Abridgt. Vol 5 page 443 under the head of "Leases made by husband & wife"

"It is clearly ag-

5 Bacons Abr "need that if a husband seised of land in right
443. of "of his wife, make a lease thereof, by Indenture,
lease made "or deed poll, reserving rent, that this is a good
by Husband & "lease for the whole term, unless the wife by some
wife "act after the husband's death, shows her dissent
"thereto &c" The reason whereof is, "that the wife after
"her intermarriage, being by law disable to con-
"tract for or make any disposition of her own
"possessions, as having subjected herself & her
"whole will to the will & power of her husband, the
"law thereupon transfers the power of dealing &
"contracting for her possessions to the husband" &c

In Taylors Land Lord & Tenant, it is laid down
Taylors Land that "by the Common law of England the lease of
Land & Tenant a married woman is absolutely void, her free
23 agency & ability to contract, being entirely sus-
pended during the marriage - The husband has
sole dominion over his wifes lands, & a right to
lease &c Taylors Land Lord & Tenant P 23.

In Smiths Land Lord & Tenant at P. 48, the
following language is held - "A lease made by a
Smiths Land married woman is absolutely void, unless indeed
Land & Tenant it were made of her sole & separate property, in
48 which case, though it would confer no right at
Law, Equity would enforce it & compel the Trustee
to execute one which would stand good at Law"

In Saunders on Pleading & Evidence, Part 1,
Saunders on Pb, Vol. 2, P. 188, the doctrine is held that "The wife can-
& Emi. Part 1, not be joined in an action upon any contract made
Vol. 2, P. 188 with her during coverture, unless in some cases,
where she can be considered as the meritorious
cause of action, as in the case of a bond or other
contract under seal, or note made to her -

In 17 Johns Rep, 167, in the case of Jackson
Jackson Ex. adm Ex. den Bowles vs Catharine Vanderheyden, the Court
Bowles say - "It is a settled principle of Common Law
that coverture disqualifies a feme from entering
into a contract or covenant personally binding upon
her - She may, at common law pass her real prop-
erty by a fine duly levied" &c

2. W Blackstone
Reps. 1236
Bloodgood
Way & wife

The same doctrine is laid down in the case of Bloodgood vs Way & wife in Id. W Blackstone Reps. 1236 - This was a case in which the Defendants in Error (being Plaintiffs below) brought an action in the case against the Plaintiffs in Error Bloodgood & declared for the occupation of a messuage & land at Fiverton, & for money had & received to the use of Way & wife, on which was founded the judgment - to both way & his wife - judgment by default -

The Error assigned was, that judgment was given for Thomas Way & Sarah his wife to recover their damages, whereas it appears on the record that Sarah was the wife of Thomas & could not sustain the damages by reason of any things contained in the declaration -

The Court in P. 1238 say - "We are of opinion that this judgment is erroneous, because no contract can be made with a married woman -"

"No promise either express or implied gives any interest to her; the whole results to the husband & the action must be brought in his name only &c"

On page 1239, - in the same case the Court say - "It has been insisted, that the Court may intend, the estate in question to have been the wife's - But there can be no intendment contrary to the plain meanings of the words &c - neither can the insertion of the wife be surplusage"

In the case of Aldridge vs Burlison & wife 3^d
3. Blackford: Blackford (da) Rep P 201, the Court uses the following
da. Rep 201. language - The declaration is substantially de-
fective - The action is against husband & wife found
ed on a personal covenant, averred to have been
made by them jointly - such an action cannot be
sustained - A feme covert can enter into no such
covenant &c - The declaration is therefore bad on
general demurrer -

Other authorities might be cited,
but it seems to me to entirely unnecessary - The suit
was brought, not only to recover rent, but to reco-
ver damages for alleged breaches of covenants in
not keeping & performing the other covenants
contained in the lease set out in the declara-
tion -

The Declaration contains distinct allega-
tions of breaches of covenants in said lease for the
non delivery of possession of the premises therein
described, at the end of the term in as good
condition as when the same were entered upon,
also for displacing & removing the fixtures &
machinery belonging to said premises, & for
leaving the same in a bad & untenable con-
dition &c, and claims damages for said
breaches - The married women named in
said lease, were incompetent to make the
said lease & their covenants therein contained

have no bindings forced upon them whatever —
They can maintain no suit either alone, or
with their husbands, for breaches of said cove-
nants, nor can any suit be maintained
against them for breaches of the same — The
finder of said married women is fatal to the
declaration & the judgment of the Court below
should be sustained —

There are other objections to the Decla-
ration but the law is so well settled upon the
foregoing point that I do not deem it neces-
sary or proper to extend the argument fur-
ther. —

Dated May 5th 1858

Uri Osgood Atty & of
Counsel for Defs
in Error,

No 1

State of Illinois

Supreme Court

Hiram Norton, General D.

Norton & Saul W. Norton

Depts in Error
ads.

Allen S. Anderson John

J. Sargent & others Pls

in Error

Argument of Depts
in Error -

Wm Osgood atty

of counsel for

Depts in Error
filed June 11 1858
Sullivan
clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *Will* *-----* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Will* *-----* county, before the Judge thereof, between *Albert V. Anderson, John F. Daggert & others plaintiffs in an action of Covenant*
& Airam Norton, Lemuel D. Norton
& Samuel W. Norton *-----*

defendants, it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Airam Norton, Lemuel D. Norton & Samuel W. Norton*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Nortons* *-----*

notice, together with this writ.

WITNESS, the Hon. **Samuel H. Treat**, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *20th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty *four*.

S. Leland
Clerk of the Supreme Court. *Do*

I have Executed the Within
 writ by reading the same to Hiram
 Norton & Samuel W. Norton this
 26th day of May 54 I returne Samuel
 W. Norton nat. bond in my Co.
 this 11th day of June 1854 Black
 Geo 2 Service \$1.00 JHT
 " 30 M. bond 1.50
 " 100 " 2.60

24
 Albert S. Anderson sh. b.
 Hiram Norton et al.
 Sci. Ha.

Filed June 13. 1854.
 L. Ireland
 Clk.

J. O. Wilson office with Mr. W. Miller

State of Illinois - Supreme Court - 3d Division

Albert S. Anderson, John F. Dagg & others

April Term
A.D. 1858

vs.

Plffs in error

Wm Norton, Samuel D. Norton &

Samuel W. Norton Dfs in error

It is hereby stipulated & agreed
by & between the Parties to this suit that the same
be submitted on written or printed arguments
& that said arguments be filed during the
present April Term 1858 of said Court

Randall with Parks & Elwood
atty for Dfs in error.

Supreme Court

Albert S. Audenren
+ others

Hiram Norton
+ others

Stipulation to
submit on written
argument

Filed April 20, 1858.

L. Leland
Clerk.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Will* ~~in~~ **Greeting:**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Will* ~~in~~ county, before the Judge thereof, between *Albert V. Anderson, John F. Sazgett, Rollin G. Parks & others*

plaintiffs ~~in~~ in an action of Covenant - and *William Norton, Samuel S. Norton & Samuel H. Norton*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid *plaintiffs*

as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *2nd Monday in June* - next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT,** Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *20th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-four.

L. Leland Clerk of the Supreme Court.

Albert S. Anderson et als.

vs
Miriam Norton et als.

Wit & vic
Will County

Filed June 13. 1854
Shelton Ch.

STATE OF ILLINOIS

vs.

The People of the State of Illinois

MANAGED BY SAMUEL H. ALBERT

Shelton Ch.

STATE OF ILLINOIS,
SUPREME COURT,

ss.

The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF

Cook

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Willb* county, before the Judge thereof, between *Albert S. Anderson John & Daggett & others* plaintiffs in an action of *covenant* & *Hiram Norton, Lemuel S. Norton, & Samuel W. Norton*

defendants; it is said that manifest error hath intervened, to the injury of the said

plaintiffs

as we are informed by *this* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *Hiram Norton, Lemuel S. Norton & Samuel W. Norton*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Tuesday after the* *third* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Hiram Norton, Lemuel S. Norton & Samuel W. Norton* notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *28th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty- *Seven*

L. Leland
Clerk of the Supreme Court.

By J. B. Rice Deputy

Chief of the Supreme Court

Chief of the Supreme Court
Eighty-
Cent of One Thousand Eight Hundred and
Others, this 3rd day of April in the
Justice of our said Court and the Seal thereof at
MADISON, The Hon. JUSTICE B. SCATES, Chief

notice together with this writ
shall give the said writ
shall order in this behalf; and have you then there the names of those by whom you
errors assigned; if any be assigned, it shall be your duty to hear the same and proceed as follows: and the
in
to hear the same and proceed as follows: and the
to be held at Ottawa, in said State, on the 1st day of May, 1857, Monday,
that you and appear before the Justice of our said Supreme Court at the next

Albert L. Anderson &
others vs
Hiram Norton &
others

Scin facias

To Sheriff
Served the within named Samuel
D. Norton by reading to him this
writ this 3rd day of April A.D. 1857 -
other dependants not appearing in court -
John L. Wilson

Sheriff of
Cook County
Illinois

Fees paid

Filed April 4, 1857

A. L. Leland
Clerk

TO THE SHERRIFF OF THE
SAID COUNTY, JEFFERSON
STATE OF ILLINOIS

SUPREME COURT.

ABSTRACT.—ERROR TO WILL.

JOHN F. DAGGETT, ROLLIN G. PARKS, in right of his wife, Mary L. Parks, and MARY L. PARKS, his wife; ALTHEA HAWLEY, OSCAR L. HAWLEY, WARREN HAWLEY, WALTER B. HAWLEY, HENRY S. HAWLEY, EDWARD E. BUSH, HARRIET J. BUSH, JOHN H. FELTER, MARIA K. FELTER, TURIEL C. HEYWOOD, ORPHA A. HEYWOOD, JOHN MULLIG, JOHN GIFFIN, CYNTHIA C. GIFFEN, SAMUEL S. DEWEY, JULIA A. DEWEY, MARTIN S. BURGE, PHEBE C. BURGE, CHARLES FINCH, HANNAH E. FINCH, JOSEPH S. HAWLEY & ALBERT S. ANDERSON,

Plffs. in Error,

HIRAM NORTON, LEMUEL D. NORTON & SAMUEL W. NORTON,
Defts. in Error.

AMENDED DECLARATION.

Action of Covenant on a lease. The declaration contains but one count, and is as follows in substance. It first avers the identity of the plaintiffs with the parties who executed the lease, some of whom signed by their initials, and one of whom afterwards intermarried with Rollin G. Parks, who is made a party to the suit. It then sets forth the lease *in hac verba*, with the usual profert. The demised premises was a certain flouring mill in the village of Lockport, Will County. Term for one year, ending 1st August, 1853. Rent \$900; payable quarterly.—The lease contains the usual covenants as to surrendering up the demised premises in good condition on the expiration of the term. It also contains an agreement on the part of lessor to make certain repairs and improvements, as soon as it can be done conveniently. All other ordinary repairs to be done by lessees. The declaration then sets forth the legal effect of said lease:—

Avers generally the performance by lessors of all covenants by them to be performed;

Alleges non-payment of rent;—

And that lessees removed portions of the fixtures and left demised premises in bad condition.

Damages laid at \$1000.

GENERAL DEMURRER.

Demurrer sustained. Plffs. stand by their declaration, and judgment for defendants.

Points for Plffs in Err.

1. The interests of the plffs below in the cause of action for which suit was brought were sufficiently stated. 1 Ch. Hy. Pleading 30. 9th am. Ed. 24 Eng. Com. Law R. 322. *Nurse v. Wells* 1 Willson 224. *Quoten + wife v. Burwell et al*
2. The averment of performance on the part of the plffs was sufficient. 3^d Scam 234. 2 Hil m 427 - 24 Wend 153 -

Record Page 6.

P. 12. 6.
" 7 & 11.

P. 12. 12.

P. 13.

P. 14.

P. 15 & 16.

vs.
Hiram Norton, Etal
Defts in Err.

abstract & formal

THE OT HOUSE - TO THE A

RESERVING COLLECT

[illegible]

YABZDDEE DECEYBATION

As to generally the performance by lessors of all covenants by them effect of said lease:—

repairs to be done by lessee. The declaration then sets forth the legal covenants, as soon as it can be done conveniently. All other ordinary covenants an agreement on the part of lessor to make certain repairs and improvements in good condition on the expiration of the term. It also contains the lease contains the usual covenants as to surrendering up the demised premises at the term ending (at Ayrick, 1893. Rent \$200; payable quarterly.— term bearing still in the village of Lockport, Allen County. Term for 10 years, with the usual proviso. The demised premises was a certain lot, with a house and a barn, to the said. It then sets forth the lease by their initials, and one of whom afterwards intermarried with Rollin, and is as follows in substance:— It first sets the identity of the parties, and is as follows in substance:— The declaration contains but one factor of Government on a lease. The declaration contains but one

Error to Mill County.

John H. Daggett, Rollin G. Parks in right of his wife Mary
S. Parks, and Mary S. Parks his wife; Althea Hawley,
Oscar S. Hawley, Warren Hawley, Walter B. Hawley, Henry
S. Hawley, Edward E. Bush, Harriet J. Bush, John H. Felter,
Maria K. Felter; Turil C. Heywood; Orpha A. Heywood;
John Mulligan; John Giffin, Cynthia C. Giffin; Samuel S.
Dewey, Julia A. Dewey, Martin S. Burge, Phoebe C. Burge,
Charles Finch, Hannah E. Finch, Joseph W. Hawley, and
Albert S. Anderson, Plaintiffs in Error

vs.

Hiram Norton, Samuel D. Norton and Samuel
W. Norton, Defendants in Error.

To L. Leland Esq.,
Clerk, Supreme Court,
Third Division, Ottawa,
Origi.

Please file accompanying
transcript of the record in this cause, and issue Rece
facias to the Shff of Mill County, returnable according
to law, Dated 5th June 1855.

Yours Truly
Parks & Elwood
for plaintiffs in Error.

2

Error to Mill County.

Albert S. Anderson Etal

Defts in Error

vs.

Hiram Holen Etal

Defts in Error.

Præfer Sci fa.

Parks & Elwood

for Defts in Error.

Filed June 11th 1855.
S. Leland Clk.

SUPREME COURT.

ABSTRACT.—ERROR TO WILL.

JOHN F. DAGGETT, ROLLIN G. PARKS, in right of his wife, Mary L. Parks, and MARY L. PARKS, his wife; ALTHEA HAWLEY, OSCAR L. HAWLEY, WARREN HAWLEY, WALTER B. HAWLEY, HENRY S. HAWLEY, EDWARD E. BUSH, HARRIET J. BUSH, JOHN H. FELTER, MARIA K. FELTER, TURIEL C. HEYWOOD, ORPHA A. HEYWOOD, JOHN MULLIG, JOHN GIFFIN, CYNTHIA C. GIFFEN, SAMUEL S. DEWEY, JULIA A. DEWEY, MARTIN S. BURGE, PHEBE C. BURGE, CHARLES FINCH, HANNAH E. FINCH, JOSEPH S. HAWLEY & ALBERT S. ANDERSON,

Plffs. in Error,

vs.

HIRAM NORTON, LEMUEL D. NORTON & SAMUEL W. NORTON,
Defts. in Error.

Record Page ~~xx~~ 6.

AMENDED DECLARATION.

Action of Covenant on a lease. The declaration contains but one count, and is as follows in substance. It first avers the identity of the plaintiffs with the parties who executed the lease, some of whom signed by their initials, and one of whom afterwards intermarried with Rollin G. Parks, who is made a party to the suit. It then sets forth the lease *in hac verba*, with the usual profert. The demised premises was a certain flouring mill in the village of Lockport, Will County. Term for one year, ending 1st August, 1853. Rent \$900; payable quarterly.—The lease contains the usual covenants as to surrendering up the demised premises in good condition on the expiration of the term. It also contains an agreement on the part of lessor to make certain repairs and improvements, as soon as it can be done conveniently. All other ordinary repairs to be done by lessees. The declaration then sets forth the legal effect of said lease:—

Avers generally the performance by lessors of all covenants by them to be performed;

Alleges non-payment of rent;—

And that lessees removed portions of the fixtures and left demised premises in bad condition.

Damages laid at \$1000.

GENERAL DEMURRER.

Demurrer sustained. Plffs. stand by their declaration, and judgment for defendants.

Points for Plffs in Error.

1. The interests of the plffs below in the cause of action for which suit was brought were sufficiently stated.
 1. Chitty's Pleading 30-9th am Ed -
 24. Eng. Com. Law R. 322 - nurse - miles
 1. Wilson 224 - Dustin's wife - Bunwell
2. The averment of performance on the part of the plffs was sufficient.
 - 38 am 234 -
 2. Gilman 427 - 24. Wend 153 -

Supreme Court, Err. to Hill

John H. Daggell et al
Defts in Err.

vs.
Heram Norton et al
Defts in Err.

Abstract & Bonds.

SUPREME COURT.

ABSTRACT.—ERROR TO WILL

AMENDED DECLARATION.

HERAM NORTON, EMUEL D. NORTON & SAMUEL W. NORTON,

Pls in Error.

vs.

JOHN H. DAGGELL,
JAMES H. DAGGELL, JOSEPH E. HAWLEY & ALBERT
DEWEY, MARTIN B. BURGE, ETHEL C. BURGE, GEORGE
GEMIN, CYRILIA C. GEMIN, SAMUEL E. DEWEY, JULIA V.
BELLWOOD, ORPHA A. BELLWOOD, JOHN MULLIG, JOHN
KAY, JOHN E. BELLER, MARY K. BELLER, JORIEL C.
TAY, HENRY E. HAWLEY, EDWARD E. BUSH, HARMON J.
DEGAR, E. HAWLEY, WARREN HAWLEY, WALTER E. HAW-
LEY, PARKER and MARY L. PARKER, his wife; ALTHEA HAWLEY,
JOHN E. DAGGELL, ROLLIN G. PARKER, in right of his wife, MARY

for defendants.
Demurrer sustained. Pls stand by their declaration, and judgment
damages laid at \$1000.
Premises in bad condition.
And that lessees removed portions of the fixtures and left demised
premises non-payment of rent;—
to be performed;
Avers Generally the performance by lessors of all covenants by them
effect of said lease;—

premises to be done by lessees. The declaration then sets forth the legal
provements, as soon as it can be done conveniently. All other ordinary
falls an agreement on the part of lessor, to make certain repairs and im-
provements in good condition on the expiration of the term. It also con-
tains the lease contains the usual covenants as to subletting up the demised
one year ending 1st August, 1852. Rent \$300; payable quarterly. The
term running will in the village of Lockport, Will County. Term for
to be done, with the usual profit. The demised premises was a cer-
tain lot, who is made a party to the suit. It then sets forth the lease
by their interest, and one of whom afterwards intermarried with Rollin
plaintiffs with the parties who executed the lease, some of whom signed
rent, and is as follows in substance. It first avers the identity of the
Avers of Government of a lease. The declaration contains but one

Handwritten notes in the right margin, including dates like 1852-1853 and various names and dates.

Error to Mill County.

Albat S. Anderson, et al, plaintiffs in error.

vs.

Hiram Norton et al, defendants in error.

To S. Silas Esq, Clerk Sup. Court.

Dear Sir,

Please come Alias Sci fa in above entitled
cause to Shff of Mill County and much oblige yours

July 9. 1855.

Yours Truly
Brooks and Glover,
attorneys, with whom
are Father & Church

9

Emor to mii la

Anderson Etal

peff in Em

21.

Heram Anten Etal

defts in Emor.

me for alias la fa.

Filed July 10. 1855.
S. Leland Clk.

State of Illinois - Supreme Court - 3d. Division

Hiram Norton, Samuel D. Norton

and Samuel W. Norton

vs.

In Error

Albert S. Anderson, John H. Duggitt
Rollin B. Parks in right of his wife
Mary L. Parks, Althea Hawley
Oscar L. Hawley, Wm. Hawley, Walter B. Hawley
Henry L. Hawley, Edward E. Bush, Hamlet J. Bush
John H. Feltner, Maria K. Feltner, Lyndell C. Haywood
Orpha A. Haywood, John Mulligan, John Giffen
Cyrtia C. Giffen, Samuel S. Drury, Julia A. Drury,
Martin S. Burdge, Phebe C. Burdge, Charles Finch,
Hamlet E. Finch James M. Hawley

And hereupon afterwards, to wit:-
At the April Term of said Supreme Court A.D.
1858, the said Hiram Norton, Samuel D. Norton,
+ Samuel W. Norton Defendants, in Error, by Mr
Osgood their Attorney, Come here into Court & say that
there is no error, either in the record & proceedings aforesaid,
or in the rendition of the judgment aforesaid;
and pray that the justices of the said Supreme Court
now here may proceed to examine as well the rec-
ord & proceedings aforesaid as the matter aforesaid
above assigned for error, & that the judgment aforesaid
in favor aforesaid given may be in all things
affirmed & -

Mr Osgood Attorney
& of Counsel for Defs
in Error

Supreme Court
Hiram Norton & Others

vs

Albert S. Anderson, John
H. Daggitt and Others

Finders in Error

Wm Osgood Atty
for Defs in Error

Albert S. Anderson et al
vs
Hiram Norton et al

Finders in Error

Filed April 26, 1858
S. Leland
clerk.

Supreme Court Error to
the Circuit Court

Albert S. Anderson, John F. Daggett, Rollin
G. Parks in right of his wife, Mary S. Parks,
wife of Rollin G. Parks, Arthur A. Hawley
Oscar S. Hawley, Warren Hawley, Walter
B. Hawley, Henry S. Hawley, Edward E. Burk,
Harriet J. Burk, John W. Fetter, Maria B.
Fetter, Fennell C. Haywoods, Orpha A. Haywoods,
John Mulligan, John Giffin, Cynthia C. Giffin,
Samuel S. Deroy, Julia A. Deroy, Martin S. Birge
^{Phelia C. Birge}
Charles Finch, Harriet E. Finch and Joseph M.
Hawley, Plffs in Error Plffs below

vs.

Hiram Norton, Samuel D. Norton and Samuel
W. Norton, Dfts in Error Dfts below

I do hereby enter myself security for costs in
this cause and acknowledge myself bound to pay
or cause to be paid all costs which may accrue in this
action either to the opposite party or to any of the
officers of this court in pursuance of the laws of this
State. Dated this 20th day of May 1854.
W. E. Barber

2 24
About S. Anderson states,
or
Dirian Norton states.

Baro. for Cms

Fils May 20. 1854,
V. Veland Ch.

Albert S. Anderson	Supreme Court
John F. Daggett	
Rollin S. Parks	
in right of his wife	
Mary L. Parks wife of	Issue writ of error
Rollin S. Parks	to the Clerk of the Will
Althea A. Hawley	Circuit Court, to return
Mary L. Hawley	the record of an action
Mary Hawley	of Covenant from that
Walter B. Hawley	Court in which the within
Henry S. Hawley	named plaintiffs are
Edward E. Bush	plaintiffs below and
Harriet E. Bush	the within named defendants
John H. Felter	on defendant below,
Maria K. Felter	in which judgment was
Terrill C. Haywood	rendered against the
Orpha A. Haywood	within named plaintiffs,
John Millegan	returnable as the law
John Giffin	directs. Also issue
Cyrillus C. Giffin	semparces for the within
Samuel S. Dewey	named defendants to
Julia A. Dewey	the Sheriff of Will County
Martin C. Burdge	returnable according
Phoebe C. Burdge	to law
Charles Finch	
Harriet C. Finch	Wm Candall
Joseph M. Hawley	Atty
Atty in error, Atty below	
Hiram Norton	S. Ireland Esq. Clerk
Samuel D. Norton	
Samuel M. Norton	
Atty in error Atty below	

24
Albert S. Anderson stat.

William Clinton stat.

Receipt

Filed May 20, 1854.
N. Nelson CLK.

Supreme Court. Error to Will

John H. Daggell, Etal

Plffs in Error

vs.

Hiram Norton, Samuel D. Norton

& Samuel M. Norton,

Defts in Error.

This was an action of Covenant brought by
plffs in Error vs defts in Error upon a lease of a
flouring mill in Lockport Will County. An amended
declaration was filed, to which defts demurred
generally. Demurrer sustained, and judgment for
defts below.

The lease, which is set out in the declaration
in haec verba, was executed by numerous parties, several
of the covenantees being named as the wives of others.
Mary L. Gording, one of the lessors, afterwards and
before the commencement of the suit, was married
to Rollin G. Parks, who was made a coplff in right
of his wife.

The suit was brought in the names of all the
lessors and of Parks, stating the fact of marriage.
The nature of the interests of the several femes
covert in the demised premises was not particularly
specified. It was argued in support of the
demurrer that this should have been done. It was
also argued that the avowment of the performance
by the plffs of the covenants devolving on them to
perform was too general. These were the main
objections urged. We think neither of them
tenable.

First. It was unnecessary to set out more particularly

the interests of those of the lessors and covenantees named in the lease, who appeared to be married women.

1. It was clearly not requisite for any purpose to set forth their estate in the demised premises. The incursion of the lease inter partes was an admission by the covenantors of some title in all the lessors who were parties to it; and the lessees were estopped from denying title. The peculiar character of their estate or the peculiar relations of interest existing between them or any of them, are considerations quite unimportant, not appertaining to this suit. The incursion and acceptance of the lease by the defendants is an admission that each lessor had some title, and that he or she was a proper party to the lease. Beyond this the Court has no occasion to look.

2. Whether any one of the several lessors had or had not any interest in the demised premises, or ^{whatsoever} ~~whether~~ his or her interest may have been, — here was an express covenant to pay rent to all the lessors jointly, including the females covenanted named. Where an express contract is made with husband and wife jointly, whatever may be the nature of the consideration, whether it be of such a character as would make the cause of action survive to the wife, or not, the husband and wife may sue jointly.

Quarta & wife vs. Bennett et al. } 1. Chitty's Pl. p. 30. 9. Am. Ed.

2. Wilson 224

} 24. E. L. S. R. p. 325. *Sturges vs. Mills*.

The rule that the declaration should disclose the interest of the wife in the cause of action, when she is joined with her husband as a co-plaintiff refers only to cases on assumption

upon implied or simple contracts, and not to cases upon sealed instruments which are set out in the count ^{and abide} ^{on their face} thus showing her right to join as a party to the suit ^{from} the fact that she is a party to the contract upon which suit is brought.

We conclude then, that inasmuch as the covenants to pay rent was made to the several joint covenant as well as to their heirs and others, they were rightfully joined as co-plaintiffs on the record.

Second

The averment of performance of the conditions or covenants on the part of the lessors was sufficient.

1. They were not in the nature of conditions precedent.

The making the repairs mentioned in the lease was not designed to precede the occupation of the mill by the defendants. No definite time was fixed, but they were to be done in a reasonable time. Neither the structure of the lease nor the nature of the subject matter justifies the idea that they were precedent conditions. A breach of them could be compensated for by a deduction from the damages. And if not in the nature of conditions precedent, no averment of performance was necessary.

2. But a general averment was sufficient. A special averment of the quo modo of performance is only requisite, where, from the nature of the thing in question, the sufficiency of the performance may be a question of law.

2 Gil. 427. 3 Scam. 234. 24 Wend 153.
Here the making of the repairs and proposed improvements, and whether made according to the requirements of the lease, must in any imaginable

case have been pure questions of fact for a jury.

S. M. Randall,
with Parker Elwoods
for Defts in Error.

1.
Supreme Court: Error to Wad

John H. Daggett, Etal
Defts in Err

vs.

Hiram Worlton Etal

Defts in Err.

Argument for Defts. in Err.

Filed March 31, 1858

S. M. Randall
et al