No. 12695

Supreme Court of Illinois

Armour

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vs.

Buell

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192 = 193

David Buel

vs

George Hunn

1869

United States of America
State of Illinois } ss.
Cook County . . . .

Pleas before the Honorable John. M. Wilson Sole Judge of the Cook County Court of Common Pleas, within and for the County and State aforesaid, at a regular Term of the Cook County Court of Common Pleas, begun and holden at the Court house, in the City of Chicago, in the County of Cook, and State of Illinois, on the Second Monday being the Thirteenth day of September in the year of our Lord one thousand eight hundred & fifty Eight and of the Independence of the United States of America the Eighty third

Present John. M. Wilson . . . . . Judge
Carlos Haven . . . . Prosecuting Attorney
John. L. Wilson . . . . . Sheriff

Attest, Walter Kimball - Clerk.

Be it Remembered that heretofore to wit on the Sixth day of July in the year of our Lord One thousand Eight hundred and fifty Seven there

was filed in the Office of the Clerk of the Cook County Court of Common Pleas a certain Declaration and Notice in Ejectment, wherein George Armour is Plaintiff and David Buel is defendant which said Declaration & Notice is in the words and figures following, that is to say.

"State of Illinois } In the Cook County Court of
County of Cook } ss. Common Pleas - Of the July
Term A. D. 1857.

George Armour Plaintiff by Scates, McAllister & Bennett his Attorneys complains of David Buel Defendant of a Plea of Trespass in Ejectment.

For that whereas the said George Armour on the first day of May in the year of our Lord one thousand eight hundred and fifty three was possessed of a certain lot, piece or parcel of land with the appurtenances, situate lying and being in the City of Chicago in the said County of Cook known and described as follows, to wit: Sublot No five (5) of lot Number Nine (9) in Block Number forty six (46) in the original Town of Chicago in said County of Cook and State of Illinois, Which said premises the said George Armour claims as owner thereof in fee simple. And being so possessed thereof, the said David Buel, Defendant, afterwards to wit, on the day and year aforesaid Entered into said —

premises and unlawfully withholds from the said George Armour the possession thereof.

To the damage of the said George Armour of Five hundred dollars and therefore he brings this. Suit &c.

Scates, McAllister & Jewett
Attys for Plt.

To David Buel

Sir,

You will please take Notice that a Declaration in Ejectment, a Copy of which is above given will be filed in the Cook County Court of Common Pleas, on the first day of the next Term thereof, to be begun and holden in the Court house in the City of Chicago on the first Monday of July next, to wit, the 6th day of July 1857, and that upon the filing of the same, a rule will be Entered in said Court, requiring you to appear and plead to said declaration, within Twenty days after the Entry of such rule, And that if you neglect so to appear and plead a Judgment by default will be Entered against you, and the said George Armour will receive possession of the premises in said declaration described

Scates, McAllister & Jewett
Attys for Geo. Armour - Plf

Chicago
June 10. 1857

$12.75

To which said Declaration there was appended a certain Affidavit in the words and figures following that is to say.

"State of Illinois }
County of Cook } ss.

John N. Dart being first duly sworn deposes and says that he served the foregoing Declaration & Notice upon David Buel the Defendant therein named by delivering to him a true and correct Copy thereof on said premises in said Declaration described on the third day of July A. D. 1857

Subscribed & sworn to before me this 6th day of July A.D. 1857 } John N. Dart

William L. Church
Clerk of Circuit Court of said Co."

Fees for Serving Declaration
Mother $1.40 paid by Plts Atty.

And thereafter to wit on the Sixteenth day of July in the year of our Lord one thousand eight hundred and fifty seven the said defendant, filed in the office of the Clerk of said Court, his plea to said Declaration; which said plea is in the words and figures following, that is to say.

"David Buel } In the Cook County Court of
"Defendant } Common Pleas. In Vacation
George Armour } July A. D. 1857.

And now comes the said defendant by Arthur N. Windett his Attorney and defends the wrong & injury when &c and says that he is not guilty of the said supposed trespass and Ejectment above laid to his charge or of any part thereof, in manner and form as the said George Armour hath above thereof complained against him, and of this, he puts himself upon the country.

Arthur N. Windett

July 17th 1856. Atty for Deft.

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And afterwards to wit on the fourth day of October (being one of the days of the September Term of said Court) in the year of our Lord one thousand eight hundred and fifty eight, the following, among other, proceedings were had and entered of record in said Court, to wit:

"George Armour
vs
David Buel & Augustus L. Hakley
Ejectment

This day comes said Plaintiff by Scales, McAllister, Demett & Peabody his Attorneys, and the said defendant by A. N. Windett his Attorney also comes, and issue being joined herein, it is Ordered that a Jury come, Whereupon comes the Jury of good and lawful Men to wit.

Lorenzo Snow- George Stevens. A. T. Clark. A. S. Fay- Joseph Spades- A. A. Gardner- M. S. Nichols- M. Claxton- A. Sutton

D. F. Hoyt. James Youngs and G. Delmater.
who being duly Elected tried and Sworn to try the issues
joined aforesaid, after hearing the testimony adduced, arguments
of Counsel and instructions of the Court retire to Consider of
their Verdict and afterwards come into Court and say We
the Jury find the said Defendant guilty in manner & form
as alleged in said Plaintiffs declaration of withholding
from said Plaintiff the possession of the Premises
described therein as follows. Namely. Sublot Number
five (5) of lot Number Nine (9) in Block Number
Forty six (46) in the original Town of Chicago in
said County of Cook and State of Illinois, with the
privileges and appurtenances thereunto belonging or in
anywise appertaining.

Therefore it is considered that the said Plaintiff
do have and recover of the said defendant the
possession of the premises described in his said Declaration
and hereinbefore described and that he have a Writ of
possession therefor, and that he also recover of the said
defendant his Costs by him about his suit in this behalf
Expended and have Execution therefor.

And thereafter to wit on the Seventh day of October
in the year of our Lord one thousand eight hundred & fifty
Eight; there was filed in the Office of the Cook County Court
of Common Pleas, a certain Affidavit of said defendants
Counsel; Which said affidavit is in the words & figures
following, that is to Say,

State of Illinois } ss.
County of Cook }

David Buel
ats
George Armour

In the Cook County Court of Common Pleas.
September Term A. D. 1858.

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Arthur H. Windett being first duly sworn doth depose and say that he is and for a year past has been the Attorney of the above named defendant in this cause, that he had fully prepared and was ready for Trial at this Term, and personally was desirous of having said cause tried - that he was absent on Saturday last, from the City to fulfil an Engagement made three weeks before; and fixed for Saturday as he this affiant supposed that by that time, said cause would have been reached and tried -

Affiant further saith that he made arrangements to return to the City by the Night Express train, upon the Burlington Road, by which he hoped to arrive in this City on Sunday morning - that with purpose he stopped by the Depot Saturday Night, and especially Engaged a Man to sit up to call affiant in time for said Express Train, and to Signal the train, that train not stopping unless specially signalled. That through the Negligence or Stupidity of the Man so Engaged by affiant, altho' affiant was ready to take the cars when they approached, he had neglected to provide himself with a Lamp to signal the Train and was unable to make the signal and in consequence the Train did not Stop and affiant

Dawson

was left. Affiant further saith that he then hoped to
6 return to Chicago Monday Morning, by the Mendota
morning accommodation Train arriving here at 11 A.M.
of Each day, and was ready to take the same at half
past Seven on Monday Morning. the usual hour of its
reaching the Bristol Station, where Affiant was. That affiant
then learned for the first time that said Mendota train
had been withdrawn on Saturday. and would be run no
more this season, leaving no means whatever by which
affiant could possibly return to this City, before the arrival
of the Monday day Express Train from Burlington, arriving
at said Station at half past three o'Clock of the after
noon of each day or thereabouts and reaching Chicago
between six and seven o'Clock in the Evening, by which
train affiant returned to this City Monday Evening. Affiant
was extremely anxious to return to this City by Sunday
morning and made every exertion in his power to do so
and should have done so but for the neglect of the
person employed by him to stop the Train as aforesaid
That affiant was expressly informed on Saturday as he
went out, by the Conductor of the Morning Express
Train, that the accommodation train from Mendota
would be run on Monday as usual. Affiant has not
then or afterwards till he was informed on Monday
morning as aforesaid that a change had been made
Affiant used his utmost endeavours in Entire good
faith by every means in his power to return to Chicago
first by Sunday morning then by Monday from all

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fruitlessly. Since his return to Town affiant has been confined to his room by severe cold & illness, till this morning, whereby he has been prevented from making Earlier application to the Court. Affiant has diligently & thoroughly as he believes prepared himself for trial of said cause. and that the necessary deeds & muniments of title without which defendant could not possibly defend said suit were in affiants possession, were solely accessible to him not to Defendant during affiants absence as aforesaid, has examined the same and believes that the defendant has a perfectly solid and good title to the premises in question in this cause that he deems the case one of great importance in point of value, and of the legal character of the title. And he thinks that great hardship and injustice will be suffered by the Defendant unless the Court grant a New trial. Affiant will if required by the Court be ready to try said cause at any day of this term.

Arthur W. Wundett

Subscribed & sworn to before me this 8th October 1858

Jno: Summerfield. Not: Pub.

And afterwards to wit on the said sixteenth day of October (being one of the days of the September Term of said Court) A. D. one thousand eight hundred & fifty eight, the following, among other proceedings, were had and entered of record in said Court, to wit:

"George Armour
vs
David Buel ...

And now at this day come the said

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parties to this cause, by their Attorneys aforesaid, And the said defendant by his Counsel, upon the Affidavit of said defendants Counsel filed herein this day, Submits his Motion to set aside the Judgment hereinbefore rendered by the Verdict of the Jury in this Cause and entered of record and for a New Trial herein.

And afterwards to wit on the twenty ninth day of October (being another of the days of the said September Term of said Court) A.D. one thousand eight hundred and fifty Eight, the following among other proceedings were had and entered of record in said Court, to wit.

"George Armour
vs
David Buel ..

And now again come the parties to this cause by their Attorneys aforesaid, and the Court upon the reading the Affidavit of said defendants Counsel heretofore filed upon the Motion then Submitted to set aside the said Judgment entered of record in this cause and for a New trial herein, and after hearing arguments of Counsel, having fully considered the premises and being fully advised, overrules & denies the Motion of said Defendant, To which then and there Excepted to the said ruling of the Court

And afterwards to wit on the thirteth day of October (being another of the days of the said September term of said Court A.D. one thousand eight hundred and fifty eight) the following further proceedings were had in said cause and entered of

record in said Court to wit.

" George Armour
(vs)
David Buel ..} And now comes again the said
Defendant by his Counsel and prays an Appeal of this
cause to the Supreme Court of this State of Illinois, which is
allowed to him, upon Condition that he file his Appeal Bond
within fifteen days in the penal Sum of Four hundred
dollars, Signed by William St. Stow as Surety by agreement
of parties.

And thereafter to wit on the Ninth day of November in
the year of our Lord one thousand eight hundred & fifty
Eight, the said Defendant filed his Appeal Bond in the
office of the Clerk of said Court; which Appeal Bond is in
the words & figures following, that is to say.
" Know all Men by these Presents That we David
Buel and William St. Stow of the County of Cook and State
of Illinois are held & firmly bound unto George Armour
also of the same County and State, in the penal Sum
of Four hundred dollars, lawful Money of the United
States; for the payment of which well and truly to be
made, we bind ourselves, our heirs, Executors & administrators
jointly severally & firmly by these Presents. Witness our
hands and Seals this Eighth day of November A. D 1858.
The Condition of the above Obligation is such that
whereas the said George Armour did on the fourth day
of October A.D. 1858 in the Cook County Court of
Common Pleas in and for the County and State aforesaid

and of the September Term thereof A. D. 1858 recover a Judgment against the above bounden David Buel for the recovery of Sublots five in Lot Nine in Block Forty Six in the Original Town of Chicago in Cook County Illinois besides Costs of Suit, from which said Judgment of the said Cook County Court the said David Buel has prayed for and obtained an Appeal to the Supreme Court of said State. Now therefore if the said David Buel shall duly prosecute his said Appeal with Effect, and moreover pay the Amount of the judgment, Costs, interest & damages rendered, and to be rendered, against him in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue."

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(signed) "David Buel [L.S.]
W. H. Blow" [L.S.]

And afterwards to wit on the day of A. D. one thousand eight hundred and fifty eight, the said Defendant files in the Office of the Clerk of said Court his Bill of Exceptions in said Suit; Which said Bill of Exceptions is in the words & figures following that is to say

"George Armour } In the Cook County Court of Common
vs } Pleas. September Term A. D. 1858.
David Buel } Ejectment.

Be it remembered that on the Sixteenth day of October in the year of our Lord one thousand

eight hundred & fifty eight, after the trial and verdict and judgment in the Verdict in said cause, but during the term at which the trial was had, the said defendant by Arthur W. Wrindett his Attorney, came and moved the Court to set aside the same; and to grant him a New Trial; not under the Statute but for reasons apropos, which

13 Motion duly filed in said cause is as follows, Namely.

State of Illinois }
Cook County } ss. In the Cook County Court of
David Buel } Common Pleas.
als } September Term A. D. 1858.
George Armour }

Arthur W. Wrindett being first duly sworn doth depose and say that he is and for a year past has been the Attorney of the above named defendant in this cause, that he has fully prepared and was ready for Trial at this term, and personally was desirous of having said cause tried - that he was absent on Saturday last from the City, to fulfil an Engagement made three weeks before, and fixed for Saturday, as he this affiant supposed, that by that time said cause would have been reached & tried. Affiant further saith that he made arrangements to return to the City by the Night Express train upon the Burlington Road, by which he hoped to arrive in this City on Sunday Morning, that with purpose he stopped by the Depot, Saturday Night, and especially engaged a Man to sit up to call affiant in time for said Express train, & to signal the train - that train not stopping unless specially signalled, that through the negligence or stupidity of the man

or stupidity of the Man so engaged by affiant, although affiant was ready to take the cars when they approached - he had neglected to provide himself with a Lamp to signal the train and was unable to make the signal and in consequence the train did not stop, and affiant was left, Affiant further saith that he then hoped to return Chicago Monday Morning by the Mendota Morning accommodation train arriving here at 11. A. M. of Each day and was ready to take the same at half past Seven on Monday Morning - the usual hour of its reaching the Bristol Station where affiant was; That affiant then learned for the first time that said Mendota train had been withdrawn on Saturday and would be run no more this Season, leaving no means whatever by which affiant could possibly return to this City before the arrival of the Monday day Express train from Burlington arriving at said Station at half past Three o'Clock of the afternoon of Each day or thereabouts and reaching Chicago between Six & Seven o'Clock in the Evening, by which train affiant returned to his City Monday Evening - Affiant was extremely anxious to return to this City by Sunday morning & made every exertion in his power to do so, and should have done so but for the neglect of the person Employed by him to stop the train as aforesaid. That affiant was expressly informed on Saturday as he went out, by the Conductor of the Morning Express train, that the accommodation train from Mendota would be run on Monday as usual. Affiant had not then or afterwards till he was informed on Monday morning

as aforesaid that a change had been made. Affiant used his utmost endeavours in entire good faith, by every means in his power to return to Chicago, first by Sunday morning then by Monday noon, all fruitlessly. Since his return to Town, affiant has been confined to his room with severe cold & illness til this morning, whereby he has been prevented from making application to the Court. Affiant has diligently & thoroughly as he believes prepared himself for trial of said cause. and that the necessary deeds and

15. muniments of title, without which defendant could not possibly defend said suit, were in affiants possession, & solely accessible to him and not to defendant during affiants absence as aforesaid. has examined the same and believes that the Defendant has a perfectly valid & good title to the premises in question in this case, that he deems the case one of great importance in point of value, and of the legal character of the title. And he thinks that great hardship & injustice will be suffered by the defendant unless the Court grant a new trial. Affiant will if required by the Court be ready to try said cause at any day of this term."

"Subscribed & sworn to before me this 8th October 1858 } "Arthur W. Windett."

(Seal) Jno. Summerfield
Noty Pub."

" David Buel } "Cook County Court of Common Pleas
als } Of September Term 1858
George Armour" } And now comes the said defendant by Arthur W. Windett his Attorney and moves to set

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aside the Verdict and Judgment rendered in said cause, and
16 that the Court grant him a New Trial, upon the grounds
set forth in the Affidavit herewith filed."

"Arthur H. Wendell. Attorney for Defs".

Which Motion the Court being advised of the same,
then and there overruled, and refused to grant the said
defendant, a New trial upon his said Motion & Affidavit
therewith filed and above set forth. But did not refuse the
Defendant a New trial under the Statute, nor did defendant
pay or offer to pay the Costs or any of them. To which
opinion and ruling of the Court the said defendant by his
said Attorney, then and there excepted; and then and there
requested the said Court to sign seal and allow this his
Bill of Exceptions, which is accordingly done.

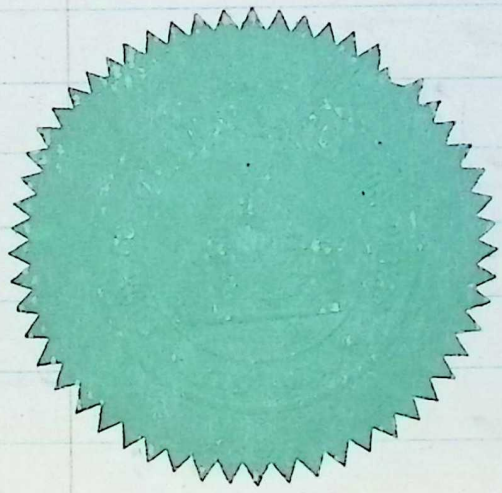
John M. Wilson [Seal]

State of Illinois }
Cook County ... } ss

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the County and State aforesaid Do hereby Certify That the foregoing is a true and correct Transcript of the papers now on file in my office, and of all proceedings Entered of Record in said Court, in a certain suit wherein George Armour is Plaintiff and David Buel defendant.

17.

In witness whereof I the said Walter Kimball have hereunto set my hand, and affixed the Seal of said Court at Chicago, in said County this Thirteenth day of January in the year of our Lord one thousand Eight hundred and fifty nine. Walter Kimball Clerk



In the Supreme Court.

Third Grand Division.

April Term. A.D. 1859

Appeals.

David Bunt
vs
George Ammer

Augustus L. Walker
vs
George Ammer

Elizabeth Krippen
vs
George Ammer

It is hereby agreed by and between Arthur W. Windett counsel for the Plaintiffs in Error in these three causes as thus entitled and Scates McAllister & Jewett for deft[s] that the said cases being in all respects similar as well the facts as the law thereof. the same shall be heard and argued upon one Abstract and Brief as being one case.

~~and that~~

March 31. 1859.

Arthur W. Windett.
Counsel for Plff. in Error.

Scates McAllister & Jewett
Attys for Appellee —

In the Supreme Court of Illinois
Third Grand Division.
April Term A.D. 1857.

David Bard }
vs }
George Ammon }

And now comes the said David Bard plaintiff in error by Arthur N. Waddell his Attorney. and says that in the record of Judgment and Proceedings of the Court below in the above entitled cause there is great and manifest error in this to wit.

First — The Court erred in trying said cause without a Replication being filed to the Plea.

Second — The verdict of the jury is insufficient informal contrary to Law & void

Third — The judgment of the Court upon the verdict is insufficient, informal, contrary to Law and void

Fourth — The Court erred in overruling the motion to set aside the verdict and for a new trial. and in entering said judgment upon said Verdict

Arthur N. Waddell
Atty for Appellant

And the said defendant in error by Scales McAllister & Jewett his attorneys Comes & says that there is no error in the Record & proceedings or in giving the judgment aforesaid Wherefore he prays that said judgment may be in all things affirmed &c

Scales McAllister & Jewett
Defts Attys

[illegible]

999 199

In the Cook County
Court of Common Pleas.

George Armour
ats.
David Buel

Record.

Filed Apl. 19. 1859.
L. Leland Clk.

Trans. 4.60
Cert. & Seal 35
$4.95 pd by W H Stow
W Kimball Clk

In the Supreme Court.

David Bull
vs
George Summers } 97. 8. 9.

April Term A.D. 1859.

I respectfully submit to the Court that the amended Records in these three cases, were illegally made.

I They were made by the Clerk without any order of Court for that purpose; without any notice to the opposite parties or their counsel: and without any thing in the Record itself, or memoranda or entries in either the Docket of the Judge, or Clerk.

See the affidavit of Riley, and Boyd. Clerks. on file - and see also, the affidavit & copy of entries of the Docket of Summerfield, also on file.

II Records of judgment when once made up, and entered at length on the Rolls, cannot be altered in any material, or substantial part, after the end of the term at which the final judgments were rendered.

"When a final judgment is given and entered,
"no amendment is permitted at
"any subsequent term."

3 Black. Com. 407. Coughran v Gatchell.
Co. Lit. 260. 18 Illinois 390.

The amendments made in these Cases were made by the Clerk, without even the sanction of an order of the Court, either voluntarily of his own motion - or upon ex-parte statements, or personal intimation of the Ld. Judge below: we submit, that whatever motive led him to make these alterations in this way, was most culpable - and the alteration unauthorized and illegal - If he might add - he might strike out. Suppose, the Record made up Correctly at first, and that, the Clerk took Blanks out, or erased the words interlined: in what way could it be justified: it was done big months after the Term of Court Closed: the suit was at an end: final judgment was rendered - and recorded: if the Judgment could be changed in its most vital part now, it could be changed next year: if so, what guarantee is there?

the truth of Records - about validity
in judgments: - about safeguard
to titles: or estates - if one
Clerk can change a Record
and a judgment & verdict
of the Jury to let in what he
may pretend is the truth,
another may to let in false-
-hood under the same
excuse - if one may do it
innocently as alleged, an-
other may do it under the
same colour, but for guilty
purposes - If allowed, it
destroys, the inscrutable truth
and sanctity of Records of courts:
and makes them dependent
upon the personal character
of Clerks, and open to all
the tricks and artifices,
and frauds of wicked and
unscrupulous men & parties.

XXII The alterations were not a merely
formal kind - not to supply
slips of the pen - palpable er-
-rors - where the contradiction
or error, is apparent on
the face of the Record - and
where the Record supplies the cor-

-rection from its own recitals -
It is not like a Clerk re-
-ducing an informal verdict
to form - for there the substance
of the verdict is kept - and
implies its own more formal
expression - Upon action for
damages. the Jury simply
say, we find the defdt.
guilty - and by no means
the Clerk cannot from this
enter a verdict for the
amount which the plaintiff
claims in his writ. such a verdict
is a nullity - and without
support a judgment - how
the amount of damages cannot
be inferred from the verdict
actually given - the Jury have
not passed upon the question
of how much damages the Plff -
is entitled - so here - the
~~verdict~~ verdict of guilty does
not say what title Plff has
established - it may be some
proprietary - a term of years, or
a freehold - or a fee simple -
the Clerk from a true verdict
of Guilty, cannot draw out

the Estate or title established of the proof: for that is a question for the Jury — if they omit to decide it — the Court itself cannot, no matter what the proof may be, decide the question. If the Jury render a verdict wholly insufficient, it only shows that either a new trial must be granted, or judgment arrested — If when the Jury have rendered a verdict of guilty in Ejectment, omitting to specify the Estate, or title found by the proof, the Court or Clerk, or even both together can supply the missing, there is an end of Jury trials in Ejectments — they are superseded by the Court ~~and~~ which cannot decide a question of fact: only the Clerk, which is a mere form, and cannot decide any question — I mean as a judicial function —

[12695-19]

I venture to submit to the Court. that the attempt to introduce these amended Records, is an alarming feature in this case-

It shows a practice of tampering with Records, which calls for prompt interference-

It is a question vital to the public safety- to the truth of titles- and the sanctity of the Court-rolls- If not this erasure & falsification of Records is not stopped. instead of Records being the muniments of title, and the protection of Estates- they will be regarded as unworthy of Credit or a "lying Bulletin" and the same place where dangers to every man's title & rights will lurk till they leap forth, and overwhelm him with ruin-

I respectfully submit these observations upon this most important subject to the grave Consideration of the Court-

May 17. 1877.

Arthur M. Hinsdell.
of Counsel appellant.

197-198-199
No. 191 192 193
Filed May 18. 1877
[illegible] Clerk

Supreme Court of Illinois
Third Grand Division
April Term 1859

George Amoun
ads
G. L. Walker
Appeal from Cook County
Court of Common Pleas

Same
ads
E. Kniffen
Same

Same
ads
D. Buell
Same

II The first point made by the appellants has no foundation in fact. as is shown in the amended records now filed.

The jury did in fact pass upon and find the quantum of estate as declared for in the declaration

III The second point is based upon a Common Law right to a new trial.

I have a familiar Knowledge of the ground of diligence as a reason ~~as a reason~~ for Setting aside a default. But it is new as a ground for Setting aside a regular trial of an issue joined upon the ground that the attorney of one party had accidentally been unable to be present at the Trial

Old and these

S/2695-1

affidavits beni presented on a motion to continue the cause while the attorney could attend - I do not believe any court would refuse the opposite party an immediate trial for any fact or reason stated in this affidavit.

Much less will the Court interpose here. and attempt to exercise a Common law power of granting a new trial — which could only be upon terms of paying costs — when the party is entitled to a new trial under the Statute. at any time, within one year from the trial, and as a matter of course. and of right upon payment of the costs.

There is. therefore. no rhyme nor reason for such an appeal to the Common Law power of the Court.

Work Stat. p. 218 Secto 30-1-2

III

The third point made by plaintiff that the Similiter was not added is even technical to frivolity.

There can be but one reply to the general issue of not guilty. Indeed to all intents that is regarded as an issue

There can be no doubt that it is aided by a verdict in any case. and under all circumstances. where a trial and verdict may be had or rendered

Believing that there is nothing in the assignment of errors meriting discussion now that the record is so amended as to show the true facts as they transpired. I submit these suggestions to the court for what they may be worth

W. B. Scales for Appellee

[12-15-15]

Nos 197. 198 & 199

G. Amow. vs G. L. Walker
" " E. O'Kiffen
" " O. Buell
" "

Defendants Argument

W. B. Scales
For appellee

IV

The record as duly certified by the clerk "imports incontrollable credit and verity". The plaintiffs have no right to introduce the minutes of the Judge or clerk - nor the affidavits of deputy clerks or others to contradict a record. more especially to incorporate into it thereby an error - when it contains the truth and is fair and correct on its face.

Croswell v Byrnes 9 John R. 287
Dew v Dorman et.al. 1 Green N.J.R 142-3.

The rule as deduced from authorities is correctly stated in Bowen v Hicks notes 4 Phil. Ev. ~~note 550~~ page 272 - note 112 (p. 127 ord. 2)

If words have been struck out of a record. So as to render it erroneous. witnesses may be examined to show such words were improperly struck out. but not to falsify the record by showing that an alteration whereby the record was made correct. was improperly made"

2 Evans Pothier ~~137~~ 132
Dickson v Fisher 1 Black. R. 664
4 Binneys R. 22267
Adams v Bels 1 Watt R. 425)

I therefore object to the admissibility of the affidavits. and all such practices to falsify the records. and incor-

1/12495-167

State of Illinois
County of Cook ss.

Supreme Court
April Term A.D. 1859.

David Buel
vs.
George Armour

And John Summerfield being first duly sworn deposes and says. That on the tenth day of May in the present year one thousand eight hundred and fifty nine, he carefully examined the Dockets of both the Clerk and of the Judge of the Cook County Court of Common Pleas of the September Term of said Court A.D. 1858. and made exact and full copies of all the entries, memoranda, and minutes therein contained relating to the cases of Armour & Buel, Armour & Walker & Armour & Knippen, being three cases in Ejectment. That the following is a true and exact copy of all the endorsements, orders & minutes as contained in said Clerk's Docket in words & figures, namely

"George Armour, Act. 4th Jury - verdict defendant
"David Buel, } guilty just for suspicion of fraudulent
"& Writ of Perpetion. Oct. 16. Mo. to set aside jud. & for
"new trial & dep. Oct. 29. Mo. to set aside just for mistake
"overruled. Oct. 30. Appeal prayed allowed on filing bond
"in $ — with security to be approved by Judge of Court
"in 10 days." And the following is an exact true copy of all
"George Armour entries & memoranda in the Judge's Docket
"David Buel } in said cause.

"Act. 4. Jury and verdict. guilty."
"Motion for N. T. overruled."

Appoint further states. that, there is no entry, minute, or memorandum in either the Clerks or Judge's Docket relating to what if any title an entry of the plff in trial, was relating to Plff's title in any suit in said cases or either of them. And this Appoint further states. that the minutes, entries, memoranda, orders, and records above copied and herein set forth are in every respect identically the same with those in the cases of Summers vs Walker, and Summers vs Knippen, in Ejectment, and are pending in the Supreme Court on appeal. Appoint having seen and examined the above copy with the original minutes on index K.G. and compared the same with said originals, states that they are true copies thereof.

Subscribed and Sworn to before me this 10. th day of May 1854.

Wm. Summerfield

Walter Kimball Clk of the Superior Court of Chicago

porate an error into it – with a view to re-
verse it.

W. B. Scates for Appellee

Nos 197. 198. & 199

G. Armour & Co. E. Kniffen

Same " G. L. Walker

Same " O. Buell

"

Defendts Arguments

Filed May 26, 1859

L. L. Leland
Clerk

W. B. Scates
For Appellee

State of Illinois
Cook County } ss.
David Bird
vs
George Summers

In the Supreme Court of the
State of Illinois -
April Term A.D. 1879.

James Boyd being first duly sworn deposes and states, that he is a Clerk employed by Rotten Kimball Clerk of the Cook County Court of Common Pleas, and as such prepared and made up the Records, and Transcripts of Records of proceedings and judgment in the above entitled cause, and in the suit of Augustus L. Walker, and Elizabeth Kimball vs George Summers, and George Summers vs David Bird filed in the Supreme Court from the Pleadings and papers on file in said Causes in the said Cook County Court of Common Pleas, & from the Minutes, memoranda, and entries upon the Clerk's and Judge's Dockets: said Affiant states, that said Transcripts of said Records, and proceedings, are full, true and literal Copies and Transcripts of all orders, entries, memoranda, and judgments entered and of record in said above entitled causes in all respects at the time the same are prepared. That is none, ~~as aforesaid~~ said causes, was there any verdict of the Jury in writing on the files; nor any memoranda of verdict save as entered informally on the Clerk's and Judge's Dockets. This Deponent further states, that the ~~verdicts~~ Record of verdict and judgment in said Cause has been altered since the date of the original Transcripts filed in the Sup. Court save records, &

S12695-19

inserting the words "that the Plaintiff is the owner in fee simple of the Premises as described in the Declaration" ~~since~~ and as this deponent verily believes since the commencement of the present term of this Court - and that the words above set out formed no part of the original record, or any memoranda of verdict in either of said cases - on file.

Subscribed and sworn to before me this 10th May 1859.

Jno. Summerfield
Not. Pub.

James Lloyd

Supreme Court No. 196
David Bird
v
George Ammerman

Affidavit.

Filed May 11. 1859.
L. Leland
Clk.

Sup. Court.

David Bone
v
George Brown

Appeal from
Sacramento

Filed May 11. 1859.
L. Leland
Clk.

State of Illinois
Cook County } ss.

David Bird
&
George Manierre

Supreme Court of the State of Illinois.

April Term A.D. 1857

John C. Riley being first duly sworn, doth depose and say. That he is ~~deputy Clerk~~ employed by Walter Kimball Clerk of the ~~Circuit~~ Cook County Court of Common Pleas, and employed by him to write up the records in his office of said Court: Affiant states. That on or about the second day of May in this present year and within the last ten days, this affiant by the direction of said Kimball, added the words following towit, "That the plain-"tiff is the owner in fee simple of the premises "described in his declaration and", by interlining the same in the original record of the verdict of the Jury in the above entitled case: and also, added to the original record of the judgment in said case, by interlining the same, the words, following, " is the owner in fee "simple of the premises described in his dec-"-laration and that he." Affiant says, that previous to said alterations and interlineations, the original record of said verdict and judgment contained nothing relating to the plaintiff's title.

Affiant further states. That the same alterations additions and interlineations have been made and to the same extent precisely in both of the other cases of Armour vs. Kimbark and

Sumner v. Walker in Ejectment
now pending in this Court on appeal
and that at the time of making the
interlineations aforesaid, the
records of said Court in said
cause were not signed
by the Judge of said Court and that
said Records are not yet signed.

Subscribed &
Sworn to before
me this 10th day of
May 1859

John C Riley

Walter Kimball Clerk
Superior Court of Chicago

199

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David Buck

vs 199

George Ammons

avo - ylk.

Filed May 11. 1859.
L. Leland
Clk.

(11)

Monday Morning Oct. 11th 1858.

George Armour
vs. } Ejectment
David Buell.

This day comes said Plaintiff by Scates McAllister, Sweet & Peabody his Attorneys and the said Defendant by A. H. Wright his Attorney also comes and issues being joined It is ordered that a Jury come Whereupon comes the Jury of good and lawful Men to wit Lorenzo Snow, George Stevens, A. T. Clark, Co. S. Fay, Joseph Spades, H. Garner, M. S. Nichols, M. Claxton, A. Sutton, D. T. Wood, James Youngs, and G. Delmater, who being duly Elected tried and Sworn to try the issues joined aforesaid, after hearing the testimony adduced, arguments of Counsel and instructions of the Court retire to Consider of their Verdict and afterwards come into Court and say We the Jury find that the Plaintiff is the owner in fee simple of the premises described in his Declaration and the said Defendant guilty in manner and form as alleged in said Plaintiffs Declaration of withholding from said Plaintiff the possession of the premises described therein as follows, Namely, A certain lot piece or parcel of land Situate lying and being in the City of Chicago in the County of Cook, Known and described as follows, to wit, Namely, Subdot Number five (5) of Lot Number Nine (9) in Block Number Forty six (46) in the Original Town of

[illegible]

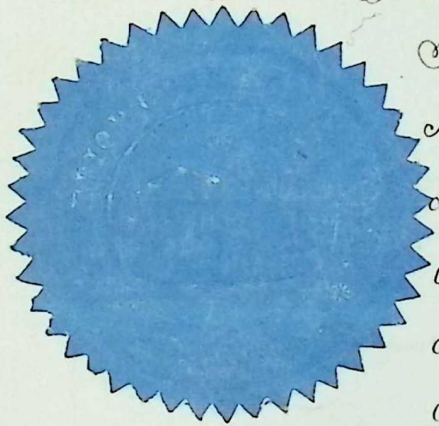
Chicago, in said County of Cook and State of Illinois, with the privileges and appurtenances thereunto belonging or in any wise appertaining.

Therefore it is Considered that the said Plaintiff is the owner in fee Simple of the Premises described in his Declaration and that he do have and recover of the said Defendant the possession of the Premises described in his said Declaration and hereinbefore described and that he have a Writ of Possession therefor, and that he also recover of the said Defendant his Costs by him about his suit in this behalf Expended and have Execution therefor.

State of Illinois }
Cook County . } ss

I Walter Kimball Clerk of the Superior Court of Chicago (late Cook County Court of Common Pleas) in the said County of Cook and State aforesaid Do hereby Certify the above and foregoing to be a true and correct Copy of the ~~Record~~ Verdict ~~Record~~ and judgment Entered of record in said Court in a certain suit heretofore pending therein, wherein George Armour was Plaintiff

and David Buck was defendant,



In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Superior Court at Chicago in said County this tenth day of May A.D. Eighteen hundred and fifty nine.

Walter Kimball Clerk

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State of Illinois
Cook County

George Armour
vs
David Buell

Certified Copy
Amended Order and
Judgment.

Filed May 16. 1859
L. Leland
Clerk

$1.00