

14447

No. _____

Supreme Court of Illinois

Dean

vs.

comstock

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 210

Dean
75
Comstock

14447

7863

Mr Rice

If this suit should
happen to be called in my
absence, please say for me
submittal by Appellee on
written argument to be filed.

Edwell Cook

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ALFRED DEAN, Appellant, } *Appeal from the Recorder's Court*
vs. } *of the*
JOHN COMSTOCK, Appellee. } *City of La Salle.*

ABSTRACT OF RECORD.

This was an action of Trespass, qu. cl., brought by appellee against appellant and one Willis M. Hitt, for an alleged breaking and entering of a certain close, claimed by appellee, and detaining the possession of the same for some length of time.

- Page 1 Prec. filed September 24th, 1862.
- 2 Summons issued September 24th, 1862.
- 4 Return of summons September 25th, 1862, served.
- 4 Narr. filed September 24th, 1862.
- 6 Demurrers, by deft. Dean, to the plf's declaration filed October 7th, 1862.
- 7 Demurrer by deft. Hitt, to same, filed October 7th.
- 8 Plea of general issue, by deft. Dean, filed October 7th.
- 9 Special plea, by deft. Dean, claiming title in himself, filed Oct. 7th.
- 10 Plea not guilty, by deft. Hitt, filed October 7th.
- 11 Special plea, by deft. Hitt, claiming title in himself, filed Oct. 7th.
- 12 Demurrer, by plf., to deft's second pleas, filed October 7th.
- 13 Replications to second pleas filed October 7th.
- 14 Order of Court, October 7th, overruling demurrers.
- 15 Jury empanelled October 8th.
- 16 Verdict of Jury, October 9th ; deft. Dean guilty, deft. Hitt not guilty ; damages assessed against Dean, \$85,00. Motion by Dean

for a new trial, overruled and exception. Appeal prayed to Supreme Court.

Page 17 Twenty days to file bond and bill of exceptions, from October 9th.

18 An appeal bond filed October 24th.

19 Bill of exceptions filed October 24th, 1862.

20 John W. Adgate, for plff, testified that in March, 1860, he took possession of the premises, under a lease from deft. Dean ; that a Mr. Fuller had been in possession, but at the time he took possession the premises were vacant ; how long they had been so he did not know ; he was placed in possession by deft. Dean ; at the time he took
21 possession, door of the house situated on the premises was unlocked ;
22 Mr. Dean put on a new lock and gave him the key ; he rented at \$4,00 per month until spring of 1862, when he commenced paying \$5,00, because it had been repaired ; part of the time he rented of Mr. Hitt, because Hitt had purchased the premises of Dean ; \$4,00 per month was a fair price ; premises were out of repairs ; Mr. Dean expended \$20,00 in repairs ; Mr. Hitt, \$15,00 ; when he first went to the premises, with Mr. Deau, he found the house open, entirely vacant, and no one in possession of premises ; that from December, 1861, until time of trial he had rented of deft. Hitt.

Arthur McGirr, for plff, testified that there was a house on premises, and a fence around the same ; that, in July, 1857, James H. Wilson was in possession of house and lots ; that his wife's name is Ann C. ; that he thinks they remained in possession until the summer of 1858 ; that plff. went into possession December, 1858 ; employed
23 him as his agent to take charge of premises ; as plff's agent, he leased the same to Mr. Fuller ; he issued policy of insurance on the house to Mrs. Wilson, which was assigned to plff ; that Fuller remained in possession until the spring of 1860, paying rent to him, as plff's agent ; when he left he brought the key to him ; that he did not go on the premises after Fuller left ; that Adgate went in after Fuller left ; that deft. Dean told him, about the time that Fuller left, that he was going to take possession ; that Dean knew he was plff's agent, and asked him for the key, which he refused to give
24 up ; that Dean sold the property to deft. Hitt, for \$70,00 ; the premises were worth about \$500,00 ; that when the key was returned to him they were worth from \$700,00 to \$800,00 ; that the premises were worth, on an average, from the spring of 1860, about \$6,00 per month ; that they were then worth \$5,00 per month ; that Dean knew of plff's claim of title to premises ; Mr. Comstock himself was

never in possession of property ; Mr. Fuller was the only one in possession, under plff, or under him as plff's agent ; that plff. paid taxes once or twice ; Mr. Dean the balance of the time, or else it went to sale for taxes, and was bid in by himself, for some one else ; don't know that plff. ever paid taxes on property ; that since he was agent for the property, he thinks the same went to sale, and was bid in by him ; he did not go up to Ottawa to pay taxes until time of sale, and bid it in ; that Dean asked him the year it went to sale, if plff. was going to pay the taxes ; that he expects that he told him he would ; that Dean said, if plff. would not pay the taxes he would ; that he might have told Mr. Dean that he would pay the taxes when he paid his own ; that he don't remember whether he ever told Mr. Dean he had paid the taxes or not ; that he told Mr. Dean that he always obeyed orders from his employers ; that he don't know whether he told Mr. Dean that he went according to orders in bidding in the property ; that the plff. was never in personal possession of the premises ; that the plff. is supposed to be well off.

26 Philetus Fuller, for plff., testified that he rented the premises through McGirr as agent, and went into possession in April, 1858 ; staid their either one or two years ; gave the key to McGirr ; the time Adgate went into possession the premises were worth about \$60,00 per year.

27 Warrantee deed, from James H. Wilson, and Ann C., his wife, for the premises in question, dated December 18th, 1858, in consideration of \$5,00, subject to bond from Baldwin to Ann C. Wilson. Read by plff. in evidence. Found from pages 27 to 29 inclusive. Objected to, and exception.

30 Motion by deft's, to exclude from consideration of jury the testimony of witnesses Adgate, McGirr and Fuller, except such portions thereof as show the value of premises. Deft's read, in evidence, to jury, deed, bearing date from June 6th, 1855, from trustees of Ill. and Mich. Canal, to Heman Baldwin, for lot 2, in block 74. Deed in the usual form, and found in pages 31 and 32 inclusive.

33 Deft's read, in evidence, a certified transcript of the record of a deed from the trustees of the Ill. and Mich. Canal to L. D. and W. W. Cavarly, for lot 1, block 74, La Salle, which bore date June 7th, 1853, and will be found on pages 33 to 35 inclusive.

35 Testimony of deft. Dean, that he had not got, or never had had the possession, custody or control of the above deed, or did not know where the same was.

- Page 36 Deft's read, in evidence, a warrantee deed, from L. D. and W. W. Cavalry to Heman Baldwin, dated August 3d, 1854, for lot 1, block 74, La Salle, which will be found on pages 36 to 38 inclusive.
- 39 Deft's read, in evidence, deed from Heman Baldwin and wife to Alfred Dean and Marvin Blanchard, dated March 15th, 1860, for lots 1 and 2, in block 74, La Salle, which will be found from pages 39 to 41 inclusive.
- 42 Deft's offered, in evidence, a deed from Alfred Dean and Marvin Blanchard to Willis M. Hitt, dated December 2d, 1861, for lots 1 and 2, in block 74, La Salle, which will be found from pages 42 to 43 inclusive.
- 44 David L. Hough, for deft's, testified that he knew the premises; that they were situated on Sect. 13, T. 33, N. R. 1, E. 3d P. M., being an odd section, and within five miles of the Ill. and Mich. Canal. Deft's also read, in evidence, a receipt for city taxes on the premises for the year 1854, to Heman Baldwin.
- 45 Proof, made by plff., of execution of bond from Heman Baldwin to Ann C. Wilson, for the conveyance of the premises in controversy. Objected to, and exception. Bond, in evidence, objected to, and exception. Bond will be found from pages 45 to 47 inclusive.
- 47 Note for \$200 being one of the payments mentioned in the bond, read in evidence by the plff.
- 48 Proof by plff. of signatures to note and endorsement on the same. Endorsement also read in evidence. Objected to, and exception.
- 49 Witness McGirr, for plff., testified that in July, 1857, Heman Baldwin resided in La Salle, and continued to do so for two or three years thereafter.

Motion, by deft's, to exclude bond and note from consideration of jury. Overruled, and exception.

The first instruction given by the court for plff. is as follows, viz: "If the jury find, from the evidence, that prior to March, 1860, the plff. had a tenant on the lots mentioned in the narr., that there was a house and substantial improvements on said lots, that there was a key to said house, that said tenant moved away from said premises and gave the key to the plff., or his agent, then the law is, that after his removal, and while no other person was in the actual occupancy of said premises, that the plff. was in the actual possession thereof."

The 2d instruction is as follows, viz: "If the plff. was in actual possession of said premises, and said deft's, or either of them, entered upon said premises, and continued thereon and detained the same from plff, without a better right of occupancy than the plff. had, then the plff. has a right to maintain this action of trespass against such deft., or deft's, and recover for all damages occasioned by such entry and detention, from thence to the commencement of this suit."

The 3d instruction, for plff, is as follows, viz: "Although the deeds offered in evidence show the legal title to the lots to be in the deft's, from H. Baldwin, still such title does not carry the right of occupancy, provided said Baldwin had parted with his right of occupancy to Wilson before his deed to said Dean, and such right of occupancy was still subsisting in said Wilson, or his grantee, with notice to said deft's."

Page 51 The 4th instruction, for plff., is as follows, viz: "The bond given by plff, in evidence, by H. Baldwin to Ann C. Wilson, from the time of its delivery, gave, in connection with actual occupancy, with consent of Baldwin, the right of occupancy to said Wilson, and is still a subsisting right of occupancy in said Wilson or her grantees, unless rescinded legally by the parties, or one of them, or their assignees, or unless the contract had been abandoned by said Wilson and her grantees, or in some other way annulled."

The 5th instruction, given for plff, is as follows, viz: "Such contract could be rescinded by agreement of the parties and their assigns; but said Dean could not alone rescind it, without paying back, or offering to pay back, the consideration received by Baldwin or his assigns, (if any, shown by the testimony to have been received.)"

52 The 6th instruction, for plff, is as follows, viz: "Dean had not a right alone to rescind said contract, without he or Baldwin first performed, or offered to perform, what Baldwin agreed to perform; that is to say, without offering to Ann C. Wilson, or to her grantee, a good and sufficient deed of general warranty, by said Baldwin, or some one having title under said Baldwin, by virtue of a good and sufficient deed of general warranty, by said Baldwin to be delivered on the payment of all the purchase money still remaining unpaid."

7th instruction, for plff, is general as to the finding of the jury.

8th instruction, for plff, is to the form of the verdict of the jury.

53 Deft's objected to the giving of each of the above instructions, and excepted to the ruling of the court in giving the same.

The deft's asked the court to instruct the jury ; 1st, "The plff. cannot recover in this cause, unless the testimony shows that he was rightfully in the actual possession of the premises, described in the declaration, at the time of the commission of the trespasses complained of, if any were committed, or else that the premises were vacant and unoccupied, and the plff. was the owner of the premises, by an absolute title in fee simple." Which instruction the court refused to give, as asked, but modified and gave the same to the jury as follows, viz: "The plff. cannot recover in this cause, unless the testimony shows that he was rightfully in the actual possessson of the premises described in the declaration, at the time of the commission of the trespasses complained of, if any such were committed, or else that the premises were vacant and unoccupied, and the plff. was the owner of the premises, by an absolute title in fee simple. *Actual occupation, however, is not necessary to constitute actual possession.*" Which said instruction, as modified and given, will be found on page 58 of record.

The 2d instruction, asked by deft's, is as follows, viz: "The jury are instructed that the possession of the premises by a tenant of the plff., is not such a possession as will entitle the plff. to recover in this action." Which instruction the court refused altogether to give.

Page 54 3d instruction, as asked by deft's, and given by the court.

54 4th instruction, as asked by deft. The same instruction, as modified and given by the court, will be found on page 58 of record.

55 The 5th instruction, as asked by deft's, and given by the court.

The 6th instruction, as asked by deft's, and given by the court.

56 The 7th instruction, as asked by deft's, is as follows, viz: "If the jury believe, from the evidence, that the deft's, or either of them, had the title in fee simple to the premises at the time of the commission of the trespasses complained of, if any were committed, and that the said premises were vacant and unoccupied, then they must find the deft's not guilty." But the court refused to give the same as asked, but modified and gave the same as follows, viz: "If the jury believe, from the evidence, that the deft's, or either of them, had the title in fee simple to the premises at the time of the commission of the trespasses complained of, if any were committed, and that the said premises were vacant and unoccupied, then they must find the deft's not guilty. *But the jury are instructed that neither actual occupancy or residence are necessary to constitute actual possession.*" Which instruction, as modified, will be found on page 59 of record.

The 8th instruction, asked by deft's, is as follows, viz: "Under a simple bond for a deed, providing that upon certain payments being made, the obligor will convey the premises described in the bond to the obligee, the obligee has no right to enter upon or into the possession of the premises; but the obligor has the right to retain the possession of such premises, until the payments are made, according to the terms of the bond." And the court refused to give said instruction, as asked, but modified and gave the same as follows, viz: (To be found on page 59 of record.) "Under a simple bond for a deed, providing that upon certain payments being made, the obligor will convey the premises described in the bond to the obligee, the obligee has no right to enter upon or into the possession of the premises, without the consent of the obligor; but the obligor has the right to retain the possession of such premises, until the payments are made, according to the terms of the bond. *The jury are to judge, from all the circumstances in evidence, whether the plff. in this cause was in the possession of the premises described in the declaration, with the assent and permission of the deft's grantor.*"

- Page 56 The 9th instruction, as asked by deft's and given by the court.
- 57 The 10th instruction, as asked by deft's and given by the court.
- The 11th instruction, asked by deft's, was refused by the court, and is as follows, viz: "The plff. is not entitled to a deed until the purchase money, mentioned in the bond, had been paid, and Baldwin or the deft's were not bound to tender or execute a deed until such purchase money had been paid, and that under a bond of the kind, offered in evidence by the plff., from Baldwin to Mrs. Wilson, neither the obligee of the bond, Mrs. Wilson or her assigns were entitled to the possession, without an express agreement to that effect."
- 58 Deft's 1st and 4th instructions, as modified and given by the court.
- 59 Deft's 7th and 8th instructions, as modified and given by the court.
- 60 Exceptions of deft's to ruling of the court, in refusing to give their instructions that were asked and refused, and in modifying the instructions modified.
- 61 Certificate and seal of Clerk.

E. F. BULL, Appellant's Att'y.

ERRORS ASSIGNED:

1st. The court erred in allowing improper evidence to go to the jury, on the part of the Appellee.

2d. The court erred in refusing to exclude improper testimony from the jury, on motion of Appellant.

3d. The court erred in giving erroneous instructions to the jury, for Appellee.

4th. The court erred in refusing instructions for Appellant.

5th. The court erred in refusing to give Appellant's instructions, as asked, and in modifying the same.

6th. The verdict was against the law and the evidence.

7th. The court erred in overruling motion, by Appellant, for a new trial.

E. F. BULL, Att'y for App't.

210-73

SUPREME COURT.

ALFRED DEAN, Appellant,
^{vs.}
JOHN COMSTOCK, Appellee.

ABSTRACT OF RECORD.

E. F. BULL, for Appt.

Filed April 23, 1863

J. L. ...
CM

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ALFRED DEAN, APPELLANT,

vs.

JOHN COMSTOCK, APPELLEE.

} APPEAL FROM RECORDER'S COURT
OF THE CITY OF LASALLE.

APPELLANT'S POINTS AND AUTHORITIES.

I.

In order to maintain the action of trespass *quare clausum fregit*, the plaintiff must have the actual possession or occupation of the *locus in quo*; or if vacant and unoccupied, he must have the legal title of the same, which, in that case, draws to it the possession.

Halligan v C. & R. I. R. R. Co., 15 Ill., 558.
Campbell v. Arnold, 1 Johns., 511.
Austin v. Sawyer, 9 Cow., 39.
Wickham v. Freeman, 12 Johns., 183.
Stuyvesant v. Tompkins, 9 " 61.
Chatham v. Brainard, 11 Conn., 60.
Kempton v. Cook, 4 Pick., 305.
Shepard v. Pratt, 15 " 32.
Daisey v. Hudson, 5 Harrington (Del.), 320.
Vance v. Beatty, 4 Richardson, 104.
Shipman v. Baxter, 21 Ala., 456.

II.

After the expiration of the tenancy, and the vacation of the premises by the tenant, the possession of the premises does not revert to the landlord, so as to enable him to bring this action, unless he actually resumes the possession of the premises, or is the owner of the legal title thereto.

Wickham v. Freeman, 12 Johns., 183.
2 Rolle Ab., 553.
6 Bac. Ab., 566.

III.

The mere fact that the plaintiff has exercised acts of ownership over vacant and unoccupied premises, by leasing the same, is not sufficient proof of such title as draws to him the constructive possession of the premises.

Wickham v. Freeman, 12 Johns., 183.

Todd v. Jackson, 2 Dutcher, (N. Y.) 525.

IV.

A mere executory contract or agreement for the conveyance of real estate, does not confer, upon the party receiving the same, a right to enter; and if one enter under such a contract, even with the consent of the person executing the same, such entry will be considered a holding or tenancy at will, liable to be terminated at any time; and the person giving the contract, if the owner of the legal title, will not be liable to the person receiving the same, in this action, for a re-entry, particularly where the premises are vacant and unoccupied at the time of such re-entry.

Ives v. Ives, 13 Johns., 235.

Gatewood v. Head, 2 Litt., 60.

Suffern v. Townsend, 9 Johns., 35.

Cooper v. Stower, 9 " 331.

Chandler v. Edson, 9 " 362.

Erwin v. Olmstead, 7 Cowen, 229.

Todd v. Jackson, 2 Dutcher, (N. Y.) from 529 to 533.

Henderson v. Grewell, 8 Cal., 581.

Lyford v. Putnam, 35 N. H., 563. and cases cited on page 567.

Hyatt v. Wood, 4 Johns. Rep., 157, 158 & 159.

Wilde v. Cantillion, 1 Johns. Cases, 124.

V.

A tenant at will or sufferance is liable to be ejected by his landlord at any time,—2 Black. Com., 145; 1 Watts and Serg., 90; Co. Lit., 55; and cannot maintain an action of trespass against his landlord even for a forcible entry.

Wilde v. Cantillion, 1 Johns. Cases, 124.

Hyatt v. Wood, 4 Johns., 150.

E. F. BULL,

Appellant's Attorney.

No 210-73

Alfred Dean

vs;

John Lemistock

Appt Poins & Authorities

Filed Apr. 23-1863-

L. Leland
Clerk

F. H. Bull

Appellate & Vice

and is filed in view of the construction of the provisions
and the provisions of the act of the 1st of March 1863
The more the said act is explained and its meaning is

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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

April Term, A. D. 1863.

ALFRED DEAN, }
vs. } APPEAL FROM THE RECORDER'S COURT OF LA SALLE.
JOHN COMSTOCK. }

APPELLEE'S POINTS AND AUTHORITIES.

Heman Baldwin owned the lots in 1854.

In 1857, 13th July, (see Record, p. 46,) he gave a bond to Mrs. Ann C. Wilson, in the usual form, to make her a deed of General Warranty, on payment of certain moneys, \$200, in hand, \$200 the next Dec., for which a note was given and 10 per cent interest, (and other sums to be paid, all past due in March, 1860,) recorded July 14, 1857.

James H. Wilson and his wife Ann C. (Record, p. 23,) were in possession in July, 1857, and remained till 1858.

Wilson and wife, (Record, p. 27,) by warrantec deed, conveyed, subject to this bond, to plaintiff, Dec. 18, 1858, when (Record p. 23,) plaintiff, by himself, or his agent, or tenant, went into possession. This tenant, Mr. Fuller, (Record, p. 23-26—Abstract, p. 2,) took the key of McGirr, agent, and when he left, March, 1860, he returned the key to McGirr. In March, 1860 defendant called for the key of McGirr, the agent; did not get it; threatened to take possession, and did in March, 1860 put Adgate, as his tenant, in possession. There was a fence around the house. Baldwin was a banker and lived in La Salle.

Baldwin conveyed by quit claim deed, (Record, p. 39,—Abstract, p. 4,) to Alfred Dean and Marvin Blanchard, as assignees, for \$1,00, March 15, 1860.

Dean and Blanchard (Record, p. 47—Abstract, p. 4,) received payment of said note of \$200, and interest, as assignees.

Plaintiff insists that the question whether Wilson and plaintiff were in possession of the premises with consent of Baldwin, or not, was submitted to the jury and settled in his favor, and is not questioned here.

1. The plaintiff was in the actual possession of the premises after his tenant left. The fence and buildings themselves were a possession. The tenant had been gone but a few days. The house was locked, and the key with the plaintiff's agent, with knowledge of

II.

defendant. This was an actual possession of the landlord, under his bond and deed.

22 Ill. 610. *Morrison vs. Kelley*.

2. This case stands, not on any of the points raised by appellant; but on this. Can the obligor in a bond to convey, after having received part of the purchase money, and having let the obligee into possession, or can his assignee take violent possession of the premises, and thus abrogate the contract without notice—without offering to perform on his part—without tendering back the consideration received, and restoring the party to the state in which he found him? Appellee insists he cannot, and if he does he can be treated as a trespasser, and the law is correctly stated in plaintiff's instructions, (Abstract, p. 45.)

24 Ill. 163, *Smith vs. Doty*.

26 Ill. 488, *Gehr vs. Hagerman*.

14 Ill. 91, *Prentice vs. Wilson*.

5 Wis. 206, *Hall et. al. vs. Desplaine et. al.*

1 Sme. & Mar. Ch. 530, *Hines vs. Baine*.

1 Dev. & Bat. Equity, 237.

3. The cases quoted by appellant on his first point, appellee does not controvert; but they and the point made are inapplicable, as there was no tenant on the place at the time of the trespass.

4. Appellant's 2d, 3d, 4th & 5th points and authorities all go together. They are not based on the case made by the evidence. In all the cases cited, some constituents of the case at bar are wanting, either part payment—no proof of paper title, occupancy with knowledge and consent of grantor, &c. To say that a landlord is out of possession after

III.

the house is locked up and the key returned to him—to say that a vendor can call on a purchaser, though delinquent, and receive a considerable part of the purchase money, thus recognising a contract as still subsisting, and yet can expel him the next day by violence, actual or constructive, and “leave him out in the cold” without first having made some offer of “compromise, peace and justice,” is a proposition so absurd as to refute itself.

5. The refusal of defendant's 2d instruction (Abstract, p. 53) was right, as it was not based on the evidence. There was no tenant. The court's modifications of the other instructions were necessary to make them conform to the evidence, and such modifications constitute no error. But I perceive appellant makes no point on the instructions, and as to his objections on trial to plaintiff's evidence, it is to be observed that they were general only, not specific.

18 Ill. 449, *Newkirk vs. Cone*.
26 Ill. 81, *Schwarz vs. Schwarz*.
18 Ill. 510.

E. S. HOLBROOK,
Attorney for Appellee.

No 210
Dear
per
Winstock
Appelles Point
Santhroules

Filed ~~Apr~~ May 1st 1923
L. Leland
Clk

State of Illinois }
County of La Salle } ss.
City of La Salle }

Pleas Proceedings Judgments
and decrees held and taken in and before
the Recorders Court of the City of La Salle
in La Salle County in the State of Illinois
at a Regular Term thereof commenced
and held at the Recorders Court Room
in the City of La Salle in said County and
State on the Sixth day of October in the
year of our Lord one thousand eight hun-
dred and Sixty two - and of the Indepen-
dence of the United State of America
the Eight Seventh.

Present His Honor William Chumers, Judge
Charles S. Miller, Clerk
Epi. L. Waterman, Sheriff

Be it remembered that heretofore to wit
on the Twenty fourth day of September
in the Year of our Lord one thousand
eight hundred and Sixty two. there was
filed in the Office of the Clerk of the Recor-
ders Court of the City of La Salle a certain
Precipe in the suit wherein John -

Constock is plaintiff and Alfred Dean and Willi. M. Witt is defendant- which said Praecipe is in the words and figures following to wit:

State of Illinois, La Salle county }
City of La Salle } In the
records kept for the October Term
A.D. 1862.

John Constock
vs

Alfred Dean &
Willi. M. Witt

Trespass. qu. cl.

Damages \$50000

The clerk will issue Summons
as above entitled, and Subpoena Arthur
McGinn, Philetus Fuller and John Adair
as Witnesses.

E. S. Holbrook, plaintiff atty.

And on the back of said Praecipe is
following to wit: Filed this 24th day
of September A.D. 1862- L. S. Miller clerk

And afterwards on the said twenty fourth
day of September A.D. 1862- there did issue

3.
out of said Court: a certain Summons
which said Summons is in the words and
figures following to wit:

⁶⁶⁷
State of Illinois. La Salle County, City of
La Salle, ss. The People of the State of Illinois
to the Sheriff of our County of La Salle, or to
any Constable of said County residing in
said City = Greeting.

We command you that you sum-
mon Alfred Deane and Willis M. Witt
if they shall be found in the City of La Salle
personally to be and appear in our Recorder's
Court of said City, before our Judge thereof,
on the first day of the next term of said
Court to be holden at the Recorder's Court
room in said City in La Salle County, on
the first Monday in October next, at ten
o'clock in the forenoon, then and there to
answer unto John Bonstetter in a plea
of Trespass. Damages Five Hundred
dollars. And have you then and there
to write, and the manner in which you
shall have executed the same. In Witness
Whereof, we have caused the seal of our said
Court to be hereto affixed and attested by
Charles S. Miller our Clerk thereof, at La Salle

on this 24th day of September 1862
Charles S. Miller Clerk

And on the back of said Summons is the following to wit: "John Comstock vs Alfred Dean and Willis M. Witt - Summons Oct. 7. 1862 - Served by reading to the within named Alfred Dean and Willis M. Witt this 25th day of September 1862. Service + return 110. Mileage 10. \$1.35. W. Stenstadt, Constable residing in the City of La. Salle."

And afterwards to wit on said twenty fourth day of September in the year of our Lord one thousand eight hundred and Sixty two. there was filed in the office of the Clerk of said Court in said cause a certain declaration which said declaration is in the words and figures following to wit:

State of Illinois La. Salle County City of La. Salle,
In the Recordss Court for the October Term
1862, John Comstock plaintiff by C. S.
Comstock his attorney complains of Alfred
Dean and Willis M. Witt, defendants, being
summoned, etc of a plea of trespass.
For that the said defendants on to wit:

5. The twentieth day of March A.D. 1860 and
on several other days between that day and
the time of the Commencement of this Suit, with
force and arms to broke and entered a
certain close of the said plaintiff to wit:
Lots one and two of Block Seventy four of
said City of La Salle and County of La Salle
(excepting ten feet off the South end of said
Lots) and the Houses and Improvements
thereon, and removed the said plaintiff
from the possession and occupation thereof,
and he, and continued said plaintiff to
be removed for a long space of time to wit:
from said twentieth day of March hitherto - and
during that time took and received to the
use of said defendants all the issues and prof-
its of said Tenements which are of great yearly
value to wit: the Value of One Hundred and
fifty Dollars per year and hindered the
plaintiff from receiving the same, or
enjoying the said premises as he otherwise
might and would have done, whereby the said
plaintiff for and during all that time, lost
and was deprived of the use and benefit of
said premises. To wit: at the City and County
aforesaid. And other wrongs to the ^{said} plaintiff

ten and there did and against the peace
of the People of the State of Illinois - and to the
damage of said plaintiff of Five Hundred
Dollars, and therefore he sues.

E. S. Kolbrook, attorney for plaintiff

And on the back of said declaration is the
following writ: Filed Sept 24th 1862
C. S. Miller, Clerk

And afterwards to wit on the 2th day of
October AD 1862. there was filed in said
Cause two separate demurrers - one for each
of said defendants - (which said demurrers are
in the words and figures following to wit:
State of Illinois vs. Salle County & City
Recorders Count for said City October Term
AD 1862. John Cornstock vs Alfred Dean
and Willis M. Witt Trespass gr. Cl.

And now comes said def. Dean and says
said declaration is not sufficient in law
and he prays judgment. Special cause of
demurrer 1st No Venue laid, 2nd Nothing
now this court has jurisdiction, 3rd No
writelicet, 4th Many other causes.

E. F. Bull deft Deans atty.

7
And on the back of said return is
the following. To wit: "Filed Oct 7th 1862
L. B. Miller Clerk."

"
State of Illinois La Salle County & City & Rec. Recorder
Court for said City October Term A.D. 1862
John Constock vs Alfred Dean and William Witt.
Trespass gr. cl. And now comes said deft
Witt and says said plaintiff declaration is
insufficient in law & he pray judgment.
C. F. Bull for deft Witt."

And on the back of said return is the
following. To wit: "Filed Oct 7th 1862
L. B. Miller Clerk."

8
And after words to wit: on said ~~seventh~~
day of October A^d 1862 said defendant
Dean filed in said cause his several pleas
which said pleas are in the words and figures
following, to wit:

¹⁶⁶
State of Illinois. La Salle County & City ^{3/4} Recorders
Court for said city October Term A^d 1862.
John Comstock vs Alfred Dean and Willis McKittrick
Trespass gr. cl. And now comes said def^t
Alfred Dean by E. F. Bull his Attorney and
defends ^{se} and says that he is not guilty of
the said several supposed trespasses mentioned

9 in said plaintiffs declaration, and of this he puts himself upon the country *vs.* E. J. Bull atty for A. Dean. "Plaintiff doth the like *E. S. Noalbrook atty.*"

And on the back of said plea is the following:
 Filed Oct 7th 1862. *E. S. Miller clerk.*"

"State of Illinois La Salle County & City ^{of Ill.}
 Recorders Court for said City October Term A.D.
 1862, John Comstock *vs.* Alfred Dean and
 Willis M. Witt } Trespas. *gr. ch.*

And for a further plea in the behalf said
 Defendant Alfred Dean by leave *vs.* says, active
 non because he says, that the said close in said
 declaration mentioned, and in which *vs.* now is,
 and at the said several times when *vs.* was the
 close, soil, and free-hold of the said Alfred Dean
 to wit - at the city aforesaid, wherefore the said
 Alfred Dean in his own right, at the said
 several times when *vs.* committed the said several
 supposed trespasses in the said declaration mentioned
 in the said closes, in which *vs.* so being the
 closes soil and freehold of the said Alfred Dean
 as he lawfully might, for the causes aforesaid,
 which are the said several supposed trespasses
 whereof the said plaintiff hath above thereof

complained against him. And this said defendant Alfred Dean is ready to verify wherefore he pray judgment &c.

E. J. Bull Atty for deft Dean."

And on the back of said plea is the following to wit: "Filed Oct 7th 1862. l.s. Miller. l.entr."

And afterwards to wit on the said seventh day of October A.D. 1862. the said defendant Willis. M. Witt. filed in said cause his several pleas. which said pleas are in the words and figures following, to wit:

"John Loumstock vs Alfred Dean and Willis M. Witt. In the records Court of the City of La Salle, La Salle County Illinois, October Term A.D. 1862.

And now comes said defendant Willis. M. Witt and defends &c and says actio non because he says he is not guilty of the said several supposed trespasses mentioned in said plaintiff declaration, and of this he puts himself upon the country &c. E. J. Bull. Atty for Witt."

And on the back of said first-plea is the following, to wit: "Filed Oct 7th 1862. l.s. Miller l.entr"

And his second pleas as follows, to wit:

"State of Illinois La Salle County & City vs."

"Plaintiff & the like" "E. J. Bullbrook Atty"

Recorder's Court for said City. October Term
A.D. 1862. John Comstock vs Alfred Dean
and Will. McKitt } Trespass. gr. cl.

And for a further plea in this behalf said
defendant Will. McKitt (by leave &c says
actio non. because he says, that the said close
in said declaration mentioned, and in which
&c, now is, and at the said several times when &c
mer the closes, soil and freehold of the said
Will. McKitt. to wit: at the City of onesaid, where
fore the said Will. McKitt. in his own right
at the said several times when &c, committed
the said several supposed trespasses in the
said declaration mentioned, in the said
closes, in which &c so being the closes soil
and freehold of the said Will. McKitt. as he
lawfully might for the causes aforesaid, which
are the said several supposed trespasses, whereof
the said plaintiff hath above thereof complained
against him. And thus the said defendant
Will. McKitt is ready to verify. wherefore
he prays judgment &c. E. F. Bull. aty for def. McKitt.

And on the back of said second
plea is the following. to wit:
"Filed Oct. 7th 1862. L. S. Miller Clerk."

And afterwards to wit- on the said seventh day of October A.D. 1862- said plaintiff filed in said cause his demurrer to the second pleas of the said defendants- (which said demurrer is in the words and figures following, to wit:-

John Comstock vs Alfred Dean and Willis Dr. Witt. In the Records Court of the City of Lo Salle, County of Lo Salle, State of Illinois, Oct. Term 1862.

The plaintiff comes and says, that the second plea of the said Dean and the second plea of the said Witt, by them severally above pleaded are not sufficient in Law, and he is not bound to answer the same.

And for cause of demurrer plaintiff shows that said several pleas are equivalent to the 1st pleas, the general issue on file."

"G. S. Walbrook - plffs Atty."

And on the back of said demurrer is the following to wit:-

"Filed Oct- 7th 1862. G. S. Miller Clerk"

And afterwards, to wit- on the said seventh day of October A.D. 1862- said plaintiff filed in said cause his replication to the second

pleas of the said defendants, (which said replication is in the words and figures following. To wit:-

"In the Recorder Court of the City of La Salle County of La Salle - State of Illinois Oct^r Term 1862. Comstock vs Dean & Witt. Now comes the said Plaintiff By Kolbrook his Attorney, and as to said several pleas of said Witt and said Dean by them severally above pleaded, says preclusi non. Because he says, that said Closes in said declaration mentioned, over the loses soil and freehold of said Plaintiff - as by him in said declaration alleged, and not the closes of said defendants or either of them as they have by their said pleas severally set forth. And Plaintiff prays that the same may be enquired of by the Country &c"

"G. S. Kolbrook atty of Plaintiff"

And on the back of said Replication is the following. To wit:-

Filed Oct^r 9th 1862 G. S. Miller Clerk."

And Be it further Remembered that afterwards. To wit: ON the Seventh day of October A^d 1862. said day being one of the

144
days of the October term of said Court for
said year and said term being one of
the regular terms of said Court. certain
proceedings were had and entered of record
in said Court in said cause, in the
words and figures following, to wit:

10
"John Comstock } Tuesday Oct. 7th 1862
vs } Trespas.

Alfred Dean and
Willie M Witt }

This day comes the plaintiff
by E. S. Wolbrook his attorney
and the said defendants each by E. F. Bull their
attorney, and the said defendants by their said
attorney, file a demurrer to said plaintiff's
declaration, which is overruled by the Court.
And the said defendants having each filed
their separate pleas, the plaintiff files his
demurrer to each of the 2nd pleas of the said
defendants, which demurrers are overruled
by the Court. And thereupon came a jury.
To wit: E. H. Spalding, Jessie A. Cummings,
N. W. Hodson, Andrew Brown, John McCallahan
J. V. Robinson, E. B. Chummers, O. N. Adams,
Charles Cary, Thomas V. Rake, L. L. Balthus,
and Daniel Coline, who were empanelled
and sworn the truth to speak upon the issues

15

joined between the parties, and the evidence not being closed, was adjourned until tomorrow morning at 9 o'clock."

And afterwards to wit: on the Eighth day of October AD 1862 - being one of the days of said Term of said Court - other proceedings were had and entered of record in said court in said cause in the words and figures following, to wit:

15
John Cowstack }
vs }
Alfred Dean & }
Willie Smith }
} Wednesday October 8th 1862
} Trespas.

This day again comes the parties by their said attorney, and thereupon appeared the jury empanelled and sworn herein on yesterday, and the evidence being closed and argument heard, the jury retire to consider of their verdict, and by an agreement of Council the jury are, if agreed upon their verdict, to present the same to the court at the opening of court tomorrow morning, sealed.

And afterwards to wit: on the 9th day of October AD 1862 - said day being one of the days of said Term of said Court - other proceedings were

had and entered of record in said court, in said cause, in the words and figures following, to wit:

15 " John Comstock } Thursday October 9th 1862
vs. } Trespas.

Alfred Dean + } This day again comes the
Willi. Dr. Witt } parties by their said attorney
and also the jury empan-

elled and sworn herein on Tuesday, and the jury aforesaid upon their oath do say that the said defendant Alfred Dean is guilty in manner and form as the plaintiff hath complained against him, and they assess the damage of the plaintiff by reason thereof to Eighty five dollars.

And the jury do further say that the said defendant Willi. Dr. Witt. is not guilty in manner and form as the said plaintiff hath in his said declaration ^{hath} complained against him. And now the said defendant Alfred Dean moves the Court for a new trial - which said motion is overruled, for the overruling of said motion said defendant septs. and provs an appeal to the Supreme Court. and upon his further request, It is ordered that a Bill of Exceptions

made during the trial of this cause. Be filed
 within twenty days, also a bond in two
 thousand dollars, Willm. M. Keim. H. B. Chapman
 or E. F. Bull as security be filed within said
 twenty days. And now it is considered
 by the court that the said defendant Willm
 M. Keim go hence without day, and recover
 of the Plaintiff his costs herein to be taxed.
 And it is further considered that the said
 Plaintiff have and recover of the said defen-
 -dant Alfred Dean the said sum of Eighty
 five dollars for his damage aforesaid
 assessed. and also his costs and charges
 by him herein expended to be taxed, and
 that he have Execution therefor."

And afterwards to wit: on the 24th day of
 October AD 1862 - there was filed in the
 office of the Clerk of said Court. a certain
 Bond in said Court. which said Bond
 is in the words and figures following. To wit:

"Know All Men by these presents
 that we Alfred Dean and E. F. Bull are
 held and firmly bound unto John Courtman
 in the penal sum of Two thousand dollars
 for the payment of which, well and truly

to be made, we do hereby bind ourselves our heirs, Executors and administrators, jointly severally, and firmly by these presents, sealed with our seals and dated the twenty second day of October A.D. 1862

The condition of the above obligation is such, that, whereas, at the October term of the Recorder's Court of the City of La Salle for the Year A.D. 1862, in an action of Trespass then pending in said Court, (wherein the above named John Comstock was plaintiff and the above bounded Alfred Dean and Willis M. Koil were defendants) the said Comstock recovered a judgment against the said Dean for the sum of Eighty five dollars damages, besides costs of suit: from which said judgment the said Dean has prayed an appeal to the Supreme Court of the State of Illinois, which appeal has been granted. Now therefore if the said Dean shall pay the judgment, costs, interest and damages, in case the judgment shall be affirmed, and shall also duly prosecute his ^{said} appeal - then this obligation to be void else to be and remain in full force virtue and effect.

"Alfred Dean
vs
E. J. Bull"
H

And on the back of said Bond is the following, to wit: Filed Oct 24. 1862.
C. S. Miller Clerk. By Wm Witt Deputy"

And afterwards to wit - on the said 24th day of October A.D. 1862 - there was filed in the office of the Clerk of said Court, a certain Bill of Exception in said Cause - which said Bill of Exception is in the words and figures following, to wit:

State of Illinois to a Ball County
City &c. Records Court for said City
October Term thereof A.D. 1862.

John Comstock vs Alfred Dean and
Willis M. Witt. Trespass.

Be it Remembered that on this Seventh day of October A.D. 1862 the same being one of the days of said Term of said Court, this cause was called for trial, whereupon the plaintiff to maintain the issue on his part, called as a witness one John W. Adgate, who being first duly sworn as a witness in said Cause, deposed in substance

as follows, viz:

Have been a tenant on one of the lots in Court House
-sq. think I went in in March A.D. 1860, could not
say what time in March. I leased the property
of Mr Dean. Mr Fuller was in before I moved
there. He was not there when I moved. Don't
know how long he had been absent. The place
was vacant when I went there. I saw Mr
Dean upon the premises at the time I went
in. Had not seen him there before. He
put me in possession. He went and got a
lock and put it on and gave me the key.
I had made a bargain with Mr Dean for
the premises before I went there. He came to
me and asked if I wanted a house. I said
I did. He said he had one the bill he would
rent me for four dollars per month - went up
with him to see it - told him I would take
it - that was the time I went with him to
see it. and then it was me put a lock on
the door - he wanted me to do so. He did
not say anything at that or any other time
as to who had had possession of the place, - nor
how long he had had possession. nor anything
about old lock on the door - except that he
had to put on a new lock, as he had not the key.

At the time I went with him the clove was uncracked - don't know how it became so. He did not tell me. I rented at \$4. per month - have been there ever since. I think I commenced last spring to rent at \$5. per month as it had been repaired somewhat. Have not rented of Mr Dean all the time. I rented of Mr Koitz because he bid it off at public sale. It was sold by Mr Dean. Think the sale was some-time last December. I went to Mr Koitz and said - I suppose you will let me stay in the house on the same terms Mr Dean did - he said yes. I afterwards spoke to Mr Dean about it, and he said it was right. After that I paid rent to Mr Koitz. I told Mr Koitz the house was uncomfortable, and must be fixed up. He said he would do so if I would pay more rent. At the time I rented the house of Mr Dean \$4. per month was a fair price. The house was uncomfortable and out of repair. The fence was bad - no garden. For two or three months the fence was badly out of repair - and a great deal of it gone. I fixed it up. Mr Dean told me to do so - it was taken out of the rent. Should think it was worth twenty dollars to fix the fence.

after I rented of Mr Keitt he put on repairs worth about \$15.00. When I first went with Mr Dean to look at the house I found it open and entirely vacant: no one in possession.

The plaintiff further to maintain the issues on his part, called as a witness, one Arthur McSinn - who being first duly sworn deposed in substance as follows: - I am acquainted with the parties to this suit, - have known the locality of the premises for the last eleven years. There was a house on N. 110 feet of lots one & two Block 74. - There was a fence around the lots, there were four rooms on the lower floore: the house is a story and a half high. Two rooms on upper floore; no garden garden that I know of. Mr James W Wilson was in possession of these lots in latter part of July 1857. 17th I believe; His wife's name was Ann L, ~~don't~~ know how long they remained in possession, think however until sometime in Spring or Summer of 1858. They then moved to Peoria. After they moved away John L Conrath had possession. - he went into possession, sometime in Dec. 1858. He directed me to act as agent for him for that property sometime in that month.

23. I acted as agent and leased the property to Mr. Philetus Fuller. I put him in possession as plaintiff agent. I issued policy of insurance to Wilson in July AD 1857. It was assigned to plaintiff some time in Decr 1858. Mr. Wilson sent up policy to me to have it assigned to Plaintiff and I did so. Fuller remained there until sometime in the Spring of 1860, should think about the first of April. He was paying rent to me all the time as agent. When he left he brought me the key of the house. Think I have it yet. Think I did not go on the premises after Fuller left. and but once or twice before. Can't tell much about it since. Don't know anything about title. Adgate went in after Fuller left. and for all I know lives there yet. Mr. Dean told me he was going to take possession of the premises - either just before or just after Fuller left. Dean knew I was Comstock's agent. asked me for the key. refused to give it to him. Know that Dean exercised act of ownership over the property since. One of those acts was advertising and selling the property as assignee of Norman Baldwin. Don't recollect the time. It was here

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in La Salle. heard the purchaser, ^{who} was the
defendant Witt. say he gave \$70.00 for it
This was in conversation between him and
Conrstock not long since. Don't think the pre-
-mises worth over \$500.00 now. Should think
they were worth that at time of sale. The value
of the premises was a little more when they
were returned to me - say from \$700 to \$800.
Should think the average rent of premises in
the spring of 1860 to this time about \$6.00 pr
month. Not worth more than \$5.00 now.
Mr Dean knew of plaintiff's claim of title
to the lots. Mr Conrstock himself was never
in possession of the property. Mr Fuller was the
only one in possession under Conrstock,
or under me as Conrstock's agent. Think
Fuller went out about the 1st of April - mi-
ght have gone out a short time before.
Think Mr Conrstock paid taxes once or
twice. Mr Dean the ballance of the time,
or else it went to sale for taxes and was
bid in by myself for some one else. Don't
know that Mr Conrstock ever paid taxes
on property. Think since I have been agent
the property went for sale for taxes and was
bid in by me. I did not go up to Ottawa

to pay taxes until time of sale - and I bid it in. Mr Dean asked me the year it went to sale if Mr Bonstock was going to pay the taxes. I said I told him he would. Mr Dean was acting as agent for Herman Baldwin, said if Bonstock did not pay the taxes he would, might have told Mr Dean that I would pay the taxes when I paid my own. Don't remember whether I ever told him I had paid the taxes. Told Mr Dean I always obeyed orders from my employer - don't know whether I told him I went according to orders in bidding of this property. I paid the city taxes for 1858. Mr Bonstock was never in personal possession of the property - has been on the lots but never lived there - don't tell the time when Mr Dean asked me if I had paid the taxes. Have known Mr Bonstock a long time, he is supposed to be well off. He told me he would purchase of Mr Dean the lots in controversy - but he did not believe he could give a good title.

The plaintiff further to maintain the issue on his part called as a witness Philetus Fuller who being duly sworn deposed in substance as follows. Have rented certain lots in town

of plaintiff through McGinn as agent. Commenced in April 1858. Stayed there about a year. McGinn put me in possession - got the key of him - gave it to him when I left - and locked the house - the premises were in tolerable good condition - it was a common sort of a house - fence was poor. Never gave key to McGinn but once - can't tell whether it was one or two years after I got it. From the time Adgate went into possession, the premises were not worth over \$60 a year. I could do better than that - left him - ply because I could do better. Think there was a board on back door - it had been taken off - think it was put on again. Can't tell.

The plaintiff further to maintain the issues on his part - introduced in evidence a deed from James W. Wilson, and Ann E. his wife in her own right to the plaintiff for lots one (1) and two (2) in Block 74 La Salle Dec^r 18th 1858. to the reading of which deed in evidence the said defendants (by their counsel then and there objected - which objection was then and there by the court overruled, and said deed was permitted to be read in evidence to which said ruling of the court, the said

defendants by their counsel then and there
 accepted. which said deed above referred to
 was in the words and figures following to wit:

This Indenture, made this Eighteenth day of
 December in the year of our Lord one Thousand
 Eight Hundred and fifty Eight, between James
 H. Wilson and Ann L. Wilson his wife in her
 own right, of the city & County of Peoria Illinois por-
 ties of the first part, and John Comstock of
 same City County and State, ^{party} of the second part.
 Witnesseth, that the said parties of the first part
 for and in Consideration of the Sum of
 Five Dollars, to them in hand paid by the
 said party of the second part, the receipt of which
 is hereby acknowledged, have granted, bargained,
 sold and Confirmed, and by these presents
 do grant, bargain, sell, convey and Confir-
 m unto the said part of the second part, his heirs
 and assigns, two certain Tracts or parcels of land
 situated in La Salle County and State of Illinois
 known and described as follows, to wit:
 Lots Number One (1) and Two (2) in Block
 Number Seventy four (74) in the City of La Salle
 as known and designated by the Recorded
 Plat of said City of La Salle, Reserving thereout
 ten 10 feet off the South end of said Lots

and running back one hundred and ten feet, the length of the Alley seat adjoining thereto, Subject nevertheless to the Bond of Helen and Baldwin to Ann L. Wilson the Grantor above named, Together with all and singular the Hereditaments, rights, Privileges and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises, as above described, with the appurtenances, to the said party of the second part, his heirs and assigns for ever. And the said parties of the first part, for themselves and their heirs, Executors, and administrators, do hereby Covenant to and with the said party of the second part, his heirs, Executors, administrators and assigns, that they are well seized of the premises above conveyed, as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claims of all persons whomsoever, will warrant and forever defend.

In Witness whereof, the said parties of the

first part have herewith set their hands and seals the day and year first above written signed, sealed and delivered James W. Wilson in Presence of Ann L. Wilson

Lewis Keyon.
John L. Murrill

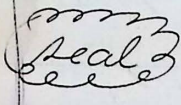
James W. Wilson (Seal)
Ann L. Wilson (Seal)
Seal
Seal

State of Illinois, Peoria City and County } ss.

I Lewis Keyon a Notary Public in and for said City in said County, do certify that on this day personally appeared before me, James W. Wilson and Ann L. Wilson his wife, whose names appear subscribed to the foregoing Deed of Conveyance as having executed the same, who are personally known to me to be the real persons who and in whose names the acknowledgement is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed, for the uses and purposes therein expressed. And the said Ann L. Wilson, wife of the said James W. Wilson, having been by me made acquainted with the contents of said deed, and by me examined separate and apart from her said husband, whether she had executed the same, and relinquished all claim to the lands and tenements therein mentioned, acknowledged that she had done so voluntarily and freely

and without compulsion of her said husband and does not wish to retract.

Given under my hand and seal of office at Peoria the Eighteenth day of December AD 1858



Lewis Tespon. Notary Public²³

And hereupon the said plaintiff rested his said cause. And thereupon the said defendants by their said Counsel, then and there moved the Court to exclude from the consideration of the jury, each and every part of the testimony of said witnesses Asgatt, McSparr, and Fuller, and each of them - except such part thereof as tended to show the value of the premises, which said motion was by the Court then and there overruled, to which said ruling of the Court - said defendants by their Counsel then and there excepted.

And thereupon the said defendants to maintain the issues on their part offered in evidence and then and there read to the jury, a deed bearing date from Sixth AD 1855, to Herman Balch from the Trustees of the Illinois and Michigan Canal - for lot two (2) in Block Seventy four (74) in La Salle, which deed was in the words and figures following, to wit:

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"Illinois and Michigan Canal
Know all men by these presents, That the Board
of Trustees of the Illinois and Michigan Canal,
under the authority vested in said Board, by
the act of the Legislature of the State of Illinois, of
February 21, 1843, entitled "An Act to provide
for the completion of the Illinois and Mich-
igan Canal, and for the payment of the Canal
debt," has sold to Norman Baldwin the follow-
ing described lot of land, to wit: Lot two (2) in
Block number seventy four (74) in the City
of La Salle. Said Lot being a portion of
the land granted by the United States, by the
Act of March 21-1827, and the 29th of August
1842 to the State of Illinois to aid said State in
opening a Canal to connect the waters of the
Illinois River with those of Lake Michigan,
and by said State granted to the said Board of
Trustees of the Illinois and Michigan Canal for
the purpose set forth in the said act of said State
of Feb. 21, 1843.

Know ye Also, that the said Norman
Baldwin paid to the Treasurer of the said Board
of Trustees the sum of one hundred (100) dollars
and cents. Being in full payment of the
purchase money for said land, and made according

to the condition set forth in the Act of January 9, 1836, entitled "An Act for the construction of the Illinois and Michigan Canal."

In Consideration, thereof, and the premises, the said Board of Trustees of the Illinois and Michigan Canal, has granted, bargained, and sold, and by these presents, does grant, bargain and sell unto the said Herman Baldwin the said Lot of Land above designated and described. To have and to hold the same together with all the rights, privileges, immunities, appurtenance thereunto belonging unto the said Herman Baldwin his heirs and assigns forever.

In witness whereof, the said Board of Trustees of the Illinois and Michigan Canal has caused the Corporate Seal of said Board to be affixed hereto, and the Names of the President and the Secretary of said Board to be hereunto subscribed this Sixth day of June in the year of our Lord one thousand eight hundred and fifty five.

Seal

Wm Gooding President

Wm Gooding Secretary?

On the back of which is the following.

State of Ill. }
 Co. Sale Co. Ill. } No 1549. I hereby certify that
 this deed was filed for Record June 9, 1855, at
 2 1/4 P.M. and duly Recorded Book No 42 Page

33. 600. 601. of F. Nash to Lent,⁵⁰

And the said defendants further to maintain the issues on their part introduced and read in evidence a certified transcript of the record of deed from the Trustees of Illinois and Michigan Canal to L. D. and W. W. Lavoory for lot one (1) in Block Seventy four (74) in La Salle which bore date June seventh AD 1853, and which was in the words and figures following, to wit:

Illinois and Michigan Canal

Trustees of Illinois
Michigan Canal
Deed
L. D. & W. W. Lavoory

Know all Men by these Presents, that the Board of Trustees of the Illinois and Michigan Canal under the authority invested in said Board by the Act of the Legislature of the State of Illinois of February 21. 1843 entitled, "An act to provide for the completion of the Illinois and Michigan Canal and for the payment of the canal debt," has sold to Seymour D. Lavoory, and William W. Lavoory, the following described lot of Land, to wit: Lot Number one (1) in Block Number Seventy four (74) in the Town of La Salle. = said lot being a portion of the land granted by the United States by the act of March 21. 1827, and the 29th August 1842 to the State of Illinois to aid said State in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan

and by said State granted to the said Board of Trustees of the Illinois and Michigan Canal for the purposes set forth in the said Act of said State of Feb. 21 1843.

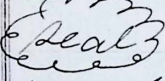
Know ye also that the said Solomon D. Cavanaugh and William D. Cavanaugh paid to the Treasurer of the said Board of Trustees, the sum of One Hundred dollars - and - cents. being in full payment of the purchase money for said land, and made according to the conditions set forth in the Act of January 9. 1836. entitled "An Act for the construction of the Illinois and Michigan Canal.

In consideration thereof and the premises, the said Board of Trustees of the Illinois and Michigan Canal has granted, bargained and sold - and by these presents do grant, bargain and sell unto the said Solomon D. Cavanaugh and William D. Cavanaugh the said lot of land above designated and described.

To have and to hold the same together with all the right, privilege, immunities, appurtenances thereunto belonging, unto the said Solomon D. Cavanaugh and William D. Cavanaugh, their heirs and assigns forever.

In witness whereof the said Board of Trustees of the Illinois and Michigan Canal, has caused the Corporate seal of said Board to be affixed hereunto and the names of the President and the Secretary

of said Board to be herewith subscribed, the 7th day of June in the year of our Lord Eighteen Hundred and fifty three.



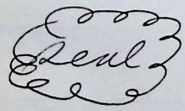
W. H. Swift - President

Wm Gooding Secretary.

(Filed June 13th 1853 at 7 1/2 o.c. a.m.)

State of Illinois }
Seale County } ss. I Absalam B. Moore clerk of
the Circuit Court in and for
said County - do hereby certify that the above and
foregoing instrument, is a true, full and
complete copy of a deed from the Canal Trust
tees to Lyman D. Cawley and Wm. W. Cawley as
appears of record in my office in Book No. 34 on
page 32 of the Seale County Records.

Witness my hand and the seal of said court at
Ottawa this second day of October A.D. 1862



Absalam B. Moore clerk

Charles W. Hoak deputy

Before the introduction of said identified copy of
of said deed last above referred to, said defen-
dant was duly sworn and stated orally in
court, that the original of said deed was not
and had not been in his possession, custody
or contrall, that he did not know where the same
was, that he had made diligent search for the

same among his own papers - and among the papers of Norman Baldwin which were in his possession. That he did not know L.D. or W.W. Leavely to whom said deed runs - and that he did not know where they resided.

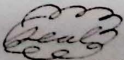
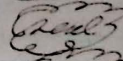
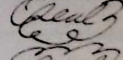
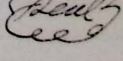
The ^{said} dependants further to maintain the issue on their part introduced and read in evidence a deed from L.D. + W.W. Leavely and wife to Norman Baldwin - dated August third A.D. 1854 which deed was in the words and figures following, to wit:

⁶⁶ This indenture made the third day of August in the year of our Lord one thousand eight hundred and fifty four, Between Lyman D. Leavely and Julia E. Leavely his wife, and William W. Leavely - and Julianna W. Leavely his wife. — of the County of La Salle and State of Illinois, party of the first part; and Norman Baldwin of the County and State aforesaid — party of the second part.

Witnesseth, that said party of the first part, for and in consideration of the sum of Seven Hundred Dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, Grant, Bargain, Sell and convey unto the said party of the second part his heirs and assigns, the following described, Tracts or parcel

of lands, situated in the County of So Salle and State of Illinois - viz: Lot Number one (1) in Block number seventy four (74) as described on the original plat, of the Town, now city of So Salle. — Together with all and singular the hereditaments and appurtenances thereto belonging, or in any wise appertaining; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Lyman D. Caverly and William W. Caverly, do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the premises thus conveyed, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, they will forever warrant and defend, against any person whomsoever, lawfully claiming the same or any part thereof.

In testimony whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written

Lyman D. Caverly 
 Wm. W. Caverly 
 Juliana W. Caverly 
 Julia P. Caverly 

State of Illinois }
 La Salle County } ss. On this fourth day of August.
 A.D. 1854, before the Subscriber, Solomon D. Cavanaugh
 and Julia C. Cavanaugh his wife, and William W.
 Cavanaugh and Julianna C. Cavanaugh personally appeared
 all and each of whom (men to me personally known
 to be the persons described in, and who executed the
 foregoing deed, and severally acknowledged that
 they executed the same for the uses and purposes
 therein expressed. And the said Julia C. wife of said
 Solomon D. and Julianna C. wife of said William W.
 Cavanaugh, having been by me examined, separate and
 apart, and out of the hearing of their said husbands
 and the content and meaning of said deed having
 been by me fully made known and explained
 to each of them, acknowledged that they had free
 ly and voluntarily executed the same, and
 relinquished their right in dower to the premises
 therein described, and without fear or compul-
 sion of their said husbands.

In witness whereof, I have hereunto set my hand and
 seal the day and year last aforesaid

Abner A. Fisher J.P.

Seal

And on the back of said deed is the following
 "State of Illinois } No 2523. Filed for record Sept 4th 1854
 La Salle County } at 3. O.C. P.M. and recorded Book 39

of deeds. page 162. P. Lindly. Resorden?

The defendants further to maintain the issues on their part, introduced and read in evidence a deed from Herman Baldwin and wife, to Alfred Dean and Marvin Blanchard assignees, for lots one (1) and two (2) in Block Seventy four (74) Sea Ball. dated March 15th 1860 which deed was in the words and figures following to wit:

"This Indenture made this fifteenth day of March in the year of our Lord one thousand Eight-hundred and Sixty, Between Herman Baldwin and Mary E. Baldwin his wife, parties of the first part, and Alfred Dean + Marvin Blanchard assignees party of the second part:

Witnesseth, that the said party of first part, for and in consideration of One Dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed and quit-claimed, and by these presents do remise, release convey and quit-claim unto the said party of the second part their heirs and assigns, forever, all the right, title, interest, claim and demand, which the said

part of the first part ha in and to the follow-
ing described lot, piece, or parcel of land, to wit:

lots one (1) and two (2) in Block seventy four
(74) in the City of So. Salle, County of So. Salle, and
State of Illinois, reserving ten feet off South
end of said lots, to the extent of one hundred
and ten feet west from Bucklin Street, and
adjoining Ally lot number seven in same
Block. =

To have and to hold the same
together with all and singular the appurtenan-
ces and privalegs thereto belonging, or in any
wise appertaining, and all the estate, right, title,
interest and claim (whatever, of the said party
of the first part, either in law or equity, to the only
proper use, benefit and behoof, of the said party of
the second part, their heirs and assigns forever.

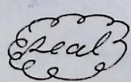
In Witness whereof. The said parties of the first part
hereunto set their hands and seals the day and year
first above written.

"Signed, sealed, and deliv- } Herman Baldwin Seal
-ered in presents of" } Mary E. Baldwin Seal

"I, State of Illinois, So. Salle County City of So. Salle, So.
J. Willie Dr. Witt, a Notary Public in and for said
City in the State and County aforesaid, do hereby
certify, that Herman Baldwin, and Mary E. Bal-
dwin, personally known to me as the same persons

111 whose names are subscribed to the foregoing instru-
-ment of writing, appeared before me this day, in
person, and acknowledged that they signed, sealed and
delivered the said instrument of writing as their
free and voluntary act, for the uses and purpo-
-ses therein set forth. And the said Mary E. Bald-
-win, wife of the said Thomas Baldwin, having
been by me examined, separate and apart, and
out of the hearing of her said husband, and the
contents and meaning of the said instrument of wri-
-ting having been by me made known to her,
acknowledged that she freely and voluntarily
executed the same, and relinquished her dower
to the lands and tenement therein mentioned, with-
-out compulsion of her said husband, and that
she does not wish to retract the same.

Given under my hand and seal, this fifteenth
day of March A.D. 1868?



“Willis Van Hook, Notary Public.”

(And on the back of said deed is the following.)

“State of Illinois }
La Salle County } 977

“I hereby certify that this
instrument was filed for record

March 17th 1868. at 12 O.C. M., and duly recorded
in Book 73 Page 13. J. T. Ash, Clerk”

The defendants further to maintain the

43 issues on their part, introduced and read in evidence, a deed to the defendant Witt for Lots one (1) and two (2) in Block Seventy four (74) La Salle. from Alfred Dean and Marvin Blanchard Assignees. dated December 2nd 1861, which deed reads in the words and figures following, to wit:

This Indenture, made the second day of December in the Year of our Lord one thousand eight hundred and sixty one, between Alfred Dean and Marvin Blanchard Assignees of Norman Baldwin of the County of — and State of Illinois, parties of the first part. And Willie Smith of the County of La Salle and State of Illinois, party of the second part. Witnesseth, that the said parties of the first part, for and in consideration of the sum of Sixty Dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, Release, Transfer and Quit-claim unto the said party of the second part his heirs and assigns, the following described tract or parcel of Land, situated in the County of La Salle and State of Illinois, to wit: Lots Number one (1) and two (2) in Block Number Seventy four (74) in the City of La Salle, Excepting ten (10) feet off from the South end of said Lots. Together with all and singular the hereditaments and appurtenances thereto

43 Belonging, or in any wise appertaining; to have and to hold the said premises, ^{as} above described, with the appurtenances, unto the said party of the second part - his heirs and assigns forever.

In Testimony whereof, the said parties of the first part have herewith set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of { Alfred Dean Assignee of Herman Baldwin Seal
Marvin Blanchard Assignee Seal

"State of Illinois, }
Co. of Lake County } ss.
Town of Lombard } On this Eighteenth day of July

AD 1862, personally appeared before me, a Notary Public in and for said Town, Alfred Dean to me personally known to be the person whose name subscribed to the above deed as having executed the same, ^{and} acknowledged that had freely executed the same for the uses and purposes therein expressed -

Given under my hand and Seal Notarial the ~~20th~~ day and year aforesaid. To J. Bull. Not. Pub."

"State of Illinois County of Cook & City of Chicago }
On this seventh day of October AD 1862 person-ally appeared before me a Notary Public in and for said City of Chicago and County, Marvin

44. Blanchard, personally known to me to be the person whose name is subscribed to the above deed - as having executed the same, and acknowledged that he had freely executed the same, for the uses and purposes therein expressed,

Given under my hand and seal Notarial
the 7th day of October 1862

Peter W. Witt Notary Public

The defendants further to maintain the issues on their part, called as a witness on D. L. Waugh, who being first duly sworn deposed in substance as follows, viz: that he knew location of Lots one (1) and two (2) in Block Seventy four (74) La Salle. That they were situated on Section Thirteen, Town thirty three (33) North Range One East of 3rd P.M. being an odd section - and within five miles of the Illinois and Michigan Canal.

The defendants further to maintain the issues on their part, introduced and read in evidence a receipt for City taxes to W. B. Baldwin on Lots 1 & 2 in Block 74 La Salle for year AD 1854.

And hereupon the defendants rested their cause.

46. And thereupon the plaintiff again resumed his cause, and further to maintain the issues on his part, recalled the witness Wm. Ginn, who testified that the signature of to a paper shown him was the genuine signature of W. Baldwin; whereupon the said paper was offered in evidence by the plaintiff, and the defendants objected thereto, which objection was overruled by the Court, and the paper was allowed to be read in evidence to the jury, to which ruling of the Court, the defendants then and there excepted; which said paper was a bond for a deed from W. Baldwin to Ann C. Wilson for Lots One (1) and Two (2) in Block 74 La Salle, dated July 13th 1857 and is in the words and figures following, to wit:

Know all Men by these Presents that I Wernand Baldwin of the County of La Salle and State of Illinois am held and firmly bound unto Ann C. Wilson of the same place in the personal sum of Thirteen Hundred Dollars, for the payment of which well and truly to be made I bind myself, my heirs, Executors and Administrators firmly by these presents. Sealed with my Seal and dated this thirteenth

46 day of July A.D. 1857.

The Condition of the above obligation is such that whereas I the above bounden Herman Baldwin have on the day of the date hereof, Bargained to the said Ann G. Wilson the following described Tract or parcels of Land situated in said La Salle County, to wit: Lots Nos. one (1) and two (2) in Block No. Seventy four (74) in the City of La Salle as known and designated by the recorded plat of said City of La Salle (Excepting thereout ten (10) feet off the South end of said Lot, and running back one hundred and ten feet, the length of the Alley lot adjoining thereto) Upon the terms and conditions following, to wit: Two hundred (200) dollars cash in hand the receipt whereof is hereby acknowledged, Two hundred dollars to be paid on or before the first day of December next, and Four hundred and fifty dollars one year from the date hereof, and the still further sum of Four hundred and fifty dollars two years from the date hereof, Each of the said deferred payments to bear interest at the rate of ten per cent per annum. Now if upon the payment of the aforesaid deferred payments or

77. installment being made punctually at the times aforesaid, with interest as aforesaid, I shall make execute and deliver to the said Aaron L. Wilson a good and sufficient deed of general warranty for the above described premises, then these presents to be void, otherwise to be and remain in full force and effect."

"Neman Baldwin Esqr" ^{Esqr}
(And on the back of said Bond is the following to wit:)

"State of Illinois }
La Salle County } 2591. "I hereby certify that
this bond was filed for
record July 14 1857. at 4 o'clock p.m. and
only recorded in Book No 53 pages 767+768.
J.F. Nash Clerk"

The plaintiff also offered in evidence a note which is in the words and figure following, to wit:

\$2000 La Salle Ills July 16th 1857.
On or before the first day of December
next-for value received I promise to pay to
the order of Neman Baldwin Esqr at his banking
office in La Salle the sum of Two thousand

40 Dollars with ten per cent interest per annum.

Anne L. Wilson.

And also offered in evidence the endorsement on said note, which is in the words and figures following, to wit: "Received payment: Deane + Balanchard Assignees." And in connection with said note and endorsement called as a witness Arthur W. G. Orr who testified that he was acquainted with Anne L. Wilson the maker of said note and somewhat acquainted with her hand writing. That he believed the signature to be genuine signature of said Anne L. Wilson. The said witness also testified that he was also acquainted with the hand writing of the defendant Deane and that the endorsement on said note was in his Deane hand writing. The defendant objected to the reading of said note and the endorsement thereon in evidence, which objection was overruled by the court to which ruling of the court the defendant then and there excepted, and the said note and endorsement was read in evidence to the jury.

The plaintiff further to maintain the issues on his part, again called the witness

49 Arthur McGinn, (who testified that in July 25
1857 Herman Baldwin was a banker and
resided in La Salle. He continued in the bank-
ing business until Nov 25th 1857- and contin-
ued to reside in La Salle for two or three years
thereafter. Thereupon the plaintiff closed
his cause and no other or further testimony
was offered or produced by either party.
And the defendant moved the court to
exclude from the consideration of the jury
said Bond and Note - which motion was over-
ruled by the court; to which ruling of the
court the said defendant then and there
accepted. And the court thereupon on motion
of the plaintiff. Instructed the jury as fol-
lows. To wit:

The court instructs the jury on behalf
of the plaintiff as follows.

1- If the jury find from the evidence, that
prior to March 1860, the plaintiff had a tenant
on the lots named in the declaration, that there
was a house and substantial improvements
on said lot - that there was a key to said
house, that said tenant moved away from
said house premises, and gave the key to the
plaintiff or his agent - then the law is, that

20 after his removal and while no other person was in the actual occupancy of said premises - that the plaintiff was in the actual possession thereof.

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2. If the plaintiff was in the actual occupancy of said premises, and said defendants or either of them entered upon said premises and continued thereon and detained the same from plaintiff - without a better right of occupancy than the plaintiff had; then the plaintiff has a right to maintain this action of Trespass against such defendants or defendants, and recover for all damage occasioned by such entry and detention from the time of the commencement of this suit.

3. Although the deeds offered in evidence show the legal title to the lots to be in the defendants, from Norman Baldwin, still such title does not carry the right of occupancy provided said Baldwin had parted with his right of occupancy to Wilson before his deed to said Deau; and such right of occupancy was still subsisting in said Wilson or his grantee with notice to said defendants.

4. The bond given by plaintiff in compliance

51. By Herman Baldwin to Ann L. Wilson, from the time of its delivery gave, in connection with actual occupancy with consent of Baldwin, the right of occupancy to said Wilson, and is still a subsisting right of occupancy in said Wilson - or her grantee, unless rescinded legally by the parties, or one of them or their assigns, or unless the contract had been abandoned by said Wilson and her grantee or in some other way annulled.

Given

5. Such contract could be rescinded by agreement of the parties and their assigns. But said dean could not alone rescind it, without paying back, or offering to pay back the consideration received by Baldwin or his assigns (if any shown by the testimony to have been received).

Given

6. Dean had not a right alone to rescind such contract - without he or Baldwin first performed or offered to perform what Baldwin agreed to perform, that is to say: without offering to Ann L. Wilson or her grantee a good and sufficient deed of general warranty by said Baldwin or some one having title under said Baldwin.

Given

By virtue of a good and sufficient deed of general warranty by said Baldwin to be delivered on the payment of all the purchase money still remaining unpaid.

7. The jury may find against both of the defendants or one of them only, as they shall find the trespasses (if any) committed by both or only one of them.

In actions of trespass the jury may find (where there is more than one defendant) one guilty and the others not guilty - but in finding a general verdict of guilty against all of the defendants, the jury ought to be satisfied from the evidence that they are jointly guilty of the trespass.

8. In rendering their verdict in the case if they find for the plaintiff, the jury will say, we find the defendants guilty and assess \$xxx damages or such amount as they believe he has sustained in consequence of the defendants acts.

If they find one of the defendants not guilty, they will say which they find guilty and which not guilty. And if they find for defendants they will say - not guilty.

83.

To the giving of each and every of said instructions, and each and every part thereof, the said defendants then and there accepted, and the Court then and there was asked by defendants to give to the jury the following instructions on the part of the defendants.

The jury are instructed on the part of the defendants as follows, viz:

1st The plaintiff cannot recover ⁱⁿ ~~under~~ this cause - unless the testimony shows that he was rightfully in the actual possession of the premises described in the declaration at the time of the commission of the trespasses complained of, if any were committed, or else that the premises were vacant and unoccupied and the plaintiff was the owner of the premises by an absolute title in fee simple.

2nd The jury are instructed that the possession of the premises by a tenant of the plaintiff, is not such a possession as will entitle the plaintiff to recover in this action.

3rd That a bond to convey is not a title - but is a mere contract to make

Refused

54 a title - and the plaintiff cannot recover
in this action upon such a contract for
a title, if the testimony shows the premises
to have been vacant and unoccupied at
the time of the Commission of the trespasses
complained of if any were committed.

Hth. If the jury believe from the evidence
that the plaintiff had abandoned the posses-
sion of the premises in the declaration
mentioned, to the defendant Dean, that
Dean by his tenants had been in possession
thereof for a long space of time and then
delivered the possession of the same to the tenant
of defendant Witt, then they must find the
defendant Witt not guilty. Notwithstanding
the original entry of Deft. Dean may have
been unlawful, and the fact that the Deft.
Dean, if proven found the premises vacant
and by his tenants remained in possession
thereof for several years without any distur-
bance of the possession, or claim thereto
being made by the plaintiff, may be
considered by the jury as evidence tending
to show that the Plaintiff had abandoned
the possession to said Defendant Dean.

50. 5th The defendant Witt cannot be held responsible for the tortious acts of the defendant Dean if any such were committed, unless such acts were committed by his authority. And if the jury should find from the evidence that defendant Dean had committed a trespass, but that the defendant Witt had not, then they must find the defendant Witt, not guilty. The jury have the right to find one of the parties defendants guilty and the other not guilty, if they so find from the evidence.

6th Even if the jury should find from the evidence, that the defendant Dean did commit a trespass by placing the witness Adgate in possession of the property as his tenant, and that such tenant afterwards paid rent for said premises to the said defendant Witt; the bare receipt of such rent by the defendant Witt in the manner indicated would not of itself be sufficient to constitute the defendant Witt a trespasser.

7th If the jury believe from the evidence that the defendants or either of them, had the title in fee simple to the premises at the time

56 of the Commission of the trespasses complained of, if any were committed, and that the said premises were vacant and unoccupied, then they must find the defendant not guilty.

8th. Under a Simple Bond for a deed providing that upon certain payments being made the obligor will convey the premises described in the bond to the obligee the obligee has no right to enter upon or into the possession of the premises - but the obligor has the right to retain the possession of such premises, until the payments are made according to the terms of the bond.

9th If the jury believe from the evidence that the plaintiff knowingly permitted the premises described in his declaration to go to sale for the tax of the year AD 1858 and that the same was sold for taxes in September 1859, and were afterwards in Sept-1861 redeemed from such sale by the defendant Dean - the jury have a right to take such fact into consideration in determining whether or not the plaintiff had abandoned the possession of said

Given.

57 premise to the defendant Deam.

10th If the defendant Deam had the right to enter into possession of the premises described in the declaration, or to bring an action of Ejectment therefor then he would have a right to enter into the possession of the premises, peaceably if he found the same vacant and unoccupied: And if the defendant Deam at the time of entry had the title in fee simple to the said premises, he had the presumptive right of entry.

11th The Plaintiff was not entitled to a deed, until the purchase money mentioned in the Bond had been paid. And Mrs Baldwin or the defendants were not bound to execute or execute a deed until such purchase money had been paid: And that under a Bond of the kind offered in evidence by the Plaintiff from Baldwin to Mrs Wilson, the obligee of the Bond, Mrs Wilson nor her assigns were not entitled to the possession without an Express agreement to that effect.

But the Court refused to give the said Affirmant 3rd and 11th instructions as asked, and modified the said 1st, 4th, 7th, + 8th instructions as follows,

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The Jury are instructed on the part of the
defendants as follows:

1st The plaintiff cannot recover in this
cause, unless the testimony shows that he
was rightfully in the actual possession
of the premises described in the declaration
at the time of the commission of the Trespass
as Complain'd of, if any such were commit-
ted, or else that the premises were vacant and
unoccupied, and the plaintiff was the
owner of the premises by an absolute title
in fee simple. Actual occupation however
is not necessary to constitute actual
possession.

4th. If the jury believe from the evidence
that the plaintiff had abandoned the possession
of the premises in the declaration mentioned, to
the defendant Dear, that Dear by his tenant
had been in possession thereof for a long
space of time, and then delivered the
possession of the same to the tenant of the
defendant Witt, then they must find the
defendant Witt, not guilty: notwithstanding
the original entry by defendant Dear may
have been unlawful: And the fact that
the defendant Dear, if proven found the

59 premises vacant, and by his tenants
remained in possession thereof for
several years without any disturbance
of the possession, or claim thereof being
made by the plaintiff, if the jury believe
from the evidence that there was no claim
made, may be construed by the jury as
evidence tending to show that the plaintiff
had abandoned the possession of said
premises to defendant deav.

7th. If the jury believe from the evidence
that the defendants, or either of them, had
the title in fee-simple to the premises at
the time of the commission of the trespass
complained of, if any were committed,
and that the said premises were vacant,
and unoccupied, then they must find the
defendants - not guilty: But the jury are
instructed that neither actual occupa-
cy or residence are necessary, to constitute
the actual possession.

8th. Render a Simple Bond for a deed
providing that upon certain payments
being made, the obligor will convey
the premises described in the bond, to the
obligee, the obligee has an right to enter

60. upon - or into the possession of the premises
without the consent of the obligor, but the
obligor has the right to retain the possession
of such premises until the payments are
made according to the terms of the bond.
The jury are to judge from all the
circumstances in evidence whether the
plaintiff in this cause, was in possession
of the premises described in the declaration
with the assent & permission of the defen-
dant's trustee."

And gave said 1st, 4th, 7th +
8th instruction to the jury as modified
as aforesaid, and gave the rest of said
instructions as asked. To which said ruling
of the court in refusing to give said 2nd
and 11th instruction, and in modifying
said 1st, 4th, 7th, + 8th instructions, and in
refusing to give the same to the jury as
asked, said defendants by their counsel
then and there objected. And ask that
this their bill of exceptions, may be signed
sealed and made a part of the records of
said court in said cause, which is accor-
dingly done.

Wm. Chambers
Judge of the Recorder's court of the city of La. Sale.

State of Illinois La Salle County }
And City of La Salle } ss.

I Charles S. Miller Clerk
of the Recorder's Court of the City of La Salle
in said County and State do hereby
certify the above and foregoing Trans-
cript to be a ^{full} true and correct copy
of all the orders made and entered of
record in said cause. And also a
full, true and correct ^{copy} of all the
papers on file in said cause. as the
same are on file - and appear of
record in my office.

Witness my hand and the
seal of said Court at my office in
said City of La Salle, this 13th day
of April A.D. 1863.

Charles S. Miller
Clerk

Fees. \$13.75. Paid by applets attys.

State of Illinois 288 Third Grand Division
Supreme Court } April Term 1863 -

Alfred Dean, Apppt. }
vs: } Apppt from Recd Court
John Leunstock Apple. } of Laballe

And now comes the said
Appellant by E. F. Bull, his attorney and
assigns the following causes for error on
the above and foregoing record viz:

- 1st The Court erred in allowing improper evidence
to go to the jury on the part of Appellee -
- 2nd The Court erred in refusing to exclude improper
testimony from the jury on motion of Appellant.
- 3rd The Court erred in giving erroneous instructions
to the jury for Appellee -
- 4th The Court erred in refusing to give instructions
for appellant.
- 5th The Court erred in refusing to give Appellants
instructions as asked and in modifying the same.
altho the verdict was against the law and the
evidence
- 6th The Court erred in overruling ^{said} motion of Ap-
pellant for a new trial and in rendering judgment
as aforesaid in manner & form aforesaid E. F. Bull

for Appt

The Appellee John Leunstock, by his attorney
erred & says that there is no error in said
verdict & judgment, and prays that the said judgment be affirmed.

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Supreme Court

Alfred Dean

Appellant
vs:

John Comstock

Appellee

Transcript of Record
and Assignment of Errors.

Filed Mar 23, 1863

L Seland
Clerk

C. F. Bull
for app't