

No. 12667

Supreme Court of Illinois

Wright.

vs.

Chapman.

298

1858

1858

Chapman

X

Papine

In Supreme Court of the State of Illinois
Appeal from the Cook County Court of Common Pleas.

Emily Chapman
Appellant
vs.
Timothy Wright
Appellee

And now, the said Emily Chapman, Appellant in the above entitled cause, by Doug. Sullivan her Attorneys, comes and says, that in the record and proceedings aforesaid, and also in giving Judgment aforesaid, there is manifest error in this, to wit:—

I That the Court erred in giving Judgment in any amount for double value.

II That the Court erred in admitting proof of demand and notice, and in admitting any evidence to establish the Plaintiff's claim to double value under the common counts of the declaration of the Plff. below.

III That the Court erred in allowing the Plaintiff below to introduce evidence after he had rested his case.

IV

That the Court erred in giving Judgment for any sum due on a prior lease, there being evidence that there was such a lease, but such lease not having been produced, and no proof being introduced of its loss, or if so, of its contents.

V

That the Court erred in admitting the papers of the suit of unlawful detainer pending in this Court, on appeal from the Justice, as evidence.

VI

That the Court erred in giving Judgment for the Plaintiff below for any part of the sum claimed by him, under the common counts of his declaration.

VII

That the Court erred in not confining the Plaintiff below to his bill of particulars, and in admitting any evidence as to indebtedness on the part of the Defendant below, prior to the lease filed and declared upon in this cause by said Plaintiff below, referred to by him in his bill of particulars.

VIII

That the Court erred in giving Judgment in any part for any indebtedness on the part of the Defendant below, prior to the execution of the lease on file in this cause, on the evidence that one Atkins had admitted such indebtedness to exist, there being no proof that said Atkins was the Agent of said Defendant below, ^{or} ~~and~~ that such admission of Atkins was in any manner by authority of, or binding upon said Defendant below.

IX

That the Court erred in giving Judgment in any part for double value of said premises for nine months from the first day of September A.D. 1855 to the first day of June A.D. 1856, the lease introduced in evidence by Plaintiff below having expired on the first day of May A.D. 1856, and this suit having been brought on the 20th day of May of the same year.

X

That the Court erred in giving Judgment before the disposition of the Demurrer filed by said Defendant below to the replication of said Plaintiff below to said Defendant's Special plea

XI

That the Court erred in giving Judgment ~~before~~ in any part for the assessment claimed by the Plaintiff below to be due to him upon the premises occupied by said Defendant.

XII

That the Court erred in giving Judgment in any part for double value, there being no proof what the value of the premises was.

XIII

That the Court erred in giving Judgment for damages alone, the action being in debt.

XIV

12667-2

That the Court erred in overruling the motion for a new trial.

That the Court erred in entering Judgment
for the Plaintiff below.

Whereupon the said Emily Chapman, Appellant
as aforesaid, prays that the Judgment aforesaid, for the er-
rors aforesaid and other errors in the record and proceedings
aforesaid, may be reversed, annulled and altogether held
for nothing, and that she may be restored to all things she
has lost by reason thereof; and that the said Emily
insight may rejoin to the errors aforesaid; and she prays
that the Court here may proceed to the examination, as
well of the record and proceedings aforesaid, as of the said
matters above assigned for error.

Doro & Fuller, Attorneys for
Emily Chapman, Appellant.

In Supreme Court of the State of Illinois.

Emily Chapman	}	Appeal from Cook County Court of Common Pleas
Appellant		
vs.		
Timothy Wright		
Appellee		

And the said Timothy Wright now comes, by Bond & Seaton his Attorneys, and says, that there is no error, either in the record & proceedings aforesaid, or in giving the judgment aforesaid; and therefore ~~for~~ he prays that the said judgment may be affirmed, and that his costs may be adjudged to him &c

Bond & Seaton
attys for Appellee

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The Supreme Court of the
State of Illinois

Emily Chapman,
Appellant
vs
Timothy Wright
Appellee

Appignment and
Joinder in error

Filed Apl. 29. 1858.
L. Ward Clk.

1.

United States of America
State of Illinois
County of Cook

S.S.

Pleas before the Honorable John
M. Wilson Judge of the Cook County Court of
Common Pleas within and for the County of Cook
and State aforesaid. At a Special Term of the
Cook County Court of Common Pleas, begun and
held at the Court House in the City of Chicago
in said County in pursuance of an Order of the
Judge thereof And to public notice given in
accordance with the Statute in such case made
and provided On the first Tuesday being the
second day of June in the year of our Lord
One Thousand Eight Hundred and fifty seven
and of the Independence of the United States the
Eighty first—

Present The Honorable John M. Wilson Judge.

Carlos Heaven Pros^r Att^y of Cook C^y.

John L. Wilson Sheriff of Cook C^y

Attest.

Walter Kimball. Clerk.

Be it remembered that heretofore to wit
on the twentieth day of May in the year of our
Lord One Thousand Eight Hundred and fifty six
Timothy Wright by Bond & Seaton his Attornies
filed in the Office of the Clerk of the Court
aforesaid his certain process for process, which
said process is in the words and figures following
to wit—

1
State of Illinois } Court of Common Pleas
County of Cook } ss of the June Term A.D. 1856.

Timothy Wight }
vs } Debt
Emily Chapman } Damages \$ 200.

Walter Kimball Clerk.

Please issue process in
the above entitled Cause returnable accor-
-ding to law And oblige

Yours V.
Bond & Sealon
Pltffs Attys.

And afterwards to wit on the same
day and year last aforesaid there issued
out of the Office of the Clerk of said Court
a Writ of Summons in the words and figures
following. to wit.

State of Illinois }
County of Cook } ss.

The People of the State of Illinois
To the Coroner & Acting Sheriff of
said County - Greeting

We command you that you summon
Emily Chapman if she shall be found
in your County personally to be and appear
before the Cook County Court of Common Pleas
of said County on the first day of the next
Term thereof to be holden at the Court

House in the City of Chicago in said County on the first Monday of June next to answer unto Timothy Wright in a plea that she undertakes the said Timothy Wright her debt in the sum of One hundred and seventy six dollars & thirty Cents which she owes to and unjustly detains from him - to the damage of the said Plaintiff as he says in the sum of Two Hundred Dollars And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same -

Witness Walter Kimball Clerk of our said Court and the seal thereof at the City of Chicago in said County this 20th day of May A.D. 1856.

(L.S.)

Walter Kimball Clerk

Sheriff's Return thereon.

Served by reading to the within named Emily Chapman May 22^d 1856.

James S Beach Coroner & Ex. Officio

Acting Shff By

F S Buckley Dy Shff.

And afterwards writ on the twenty third day of May in the year last aforesaid the said Timothy Wright by Bond & Seaton his Attornies aforesaid filed in the office of the Clerk of the said Court, his Declaration and Copy of Account, which said Declaration and Copy of Account are in the words and figures following writ.

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State of Illinois } Cook County Court of
County of Cook. } Common Pleas of the June
Term 1856.

Timothy Wright

vs
Emily Chapman

Timothy Wright Plaintiff in this
suit by Bond Seaton his Attorneys Complain
of Emily Chapman defendant in this suit
in a plea of debt for that whereas hitherto to wit
on the sixth day of July in the year One
Thousand Eight Hundred and fifty four
at the County of Cook State of Illinois
aforesaid by a certain indenture then and
there made between the said Plaintiff of the
one part and the said Defendant on the other
part the counterpart of which said indenture
sealed with the seal of the said Defendant
the Plaintiff brings now here into Court, the
said Plaintiff did demise and lease unto
the said Defendant a certain messuage
lands and tenements situate in the County
aforesaid to wit Lot "C" in the subdivision
by said Plaintiff of lots five and six in
Block ninety three of School Section addition
to Chicago to have and to hold the said
premises with the appurtenances unto the
said Defendant her Executors Administrators
and assigns from the sixth day of July
for during and until the first day of May
One Thousand Eight Hundred and fifty six
and the said Defendant agreeing to pay therefor
the yearly Rent of Fifty Dollars payable in
quarterly payments on the first days of August

November February and May in each year
also to pay all taxes and assessments against
said property during the existence of said
Lease and said Defendant further agreeing to
and with said Plaintiff not to underlet said
premises or assign said Lease without the
written assent of said Plaintiff first had
thunto, and also that if said rent or any part
thereof be not paid on the day of payment
or of default ^{be made} by said Defendant in any of the conditions
of said Lease that then and in that case said
Plaintiff might at his Election declare
said term ended and reenter and take
possession of said premises so demised as afore-
said by virtue of which said demise the said
Defendant entered into the said demised
premises with the appurtenances and was
possessed thereof from thenceforth until and
upon the first day of September in the year
One Thousand Eight Hundred and fifty five
when a large sum of money to wit the sum of
fifty nine dollars of the rent aforesaid from the
said sixth day of July to and until the first
day of August One Thousand Eight
hundred and fifty five together with the
sum of twenty six $\frac{75}{100}$ Dollars assessment
against said lot became due and payable
from the said Defendant to the said
Plaintiff and still is in arrear and unpaid
to the said Plaintiff to wit at the County of
Cook aforesaid and the Plaintiff in fact
saith that the said Defendant having
refused and neglected to pay said Rent
as aforesaid and having broken the

Covenants of said Lease as aforesaid he did
enter and take possession of said premises
according to the terms of said Lease and that
on the tenth day of September A.D. 1855 said
Plaintiff brought his action of unlawful
detainer to recover possession of said premises
against said Defendant before one Jasper
A. Herring Now a Justice of the peace And that
on the trial of said Cause on the sixth day of
October A.D. 1855 judgment was rendered
against said Defendant and in favor of said
Plaintiff but that said Defendant refuses to
give up the possession of said premises and
retained and still retains the possession of the
said premises and retained and still retains
the possession of the said premises without the
consent of the said Plaintiff Court at the
County aforesaid contrary to the statute in
such case made and provided and the said
Plaintiff avers that the said premises during
the said time of — holding over the same
were of great yearly value to wit of the
yearly value of seventy five Dollars and by
reason of the premises and by force of the
statute in such case made and provided
the said Defendant became liable to pay to
the said Plaintiff a large sum of money
to wit the sum of ninety one $3\frac{1}{2}$ Dollars
being at the rate of double the yearly value of
said premises from the said sixth day of
October up to and until the commencement
of this suit to wit at the County aforesaid
Whereby and by force of the statute in such
case made and provided an action hath accrued

to the said Plaintiff to demand and have of and from the said Defendant the sum of One hundred and twenty seven $\frac{86}{100}$ Dollars parcel of the said sum above demanded -

And Whereas also heretofore to wit on the said sixth day of July A.D. 1854 at the County aforesaid by the said instrument of lease as aforesaid the said Defendant entered into and took possession of said premises and so continued in possession of said premises during the whole of said Term so to her thereof demised as aforesaid when a large sum of money to wit the sum of One hundred and fifty five $\frac{34}{100}$ Dollars for the rent and assessment aforesaid for the whole of said Term became and due and payable from the said Defendant to the said Plaintiff and still is in arrear and unpaid to the said Plaintiff to wit at the County aforesaid whereby an action hath accrued to the said Plaintiff to have of and from the said defendant the sum of One hundred and fifty five $\frac{34}{100}$ Dollars.

And Whereas also heretofore to wit on the sixth day of July A.D. 1854 aforesaid at the County aforesaid by virtue of the said Indenture of lease and the demise thereby made the said Defendant to wit on the said sixth day of July entered into all and singular the said demised premises with the appurtenances and became and was possessed thereof up to and until the first day of August A.D. 1855 when a large sum of money to wit the sum of fifty nine $\frac{44}{100}$ Dollars of the rent aforesaid from the said sixth day of July to the said

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first day of August became due and was due and payable from the said Defendant to the said plaintiff and still is in arrear and unpaid to the said Plaintiff to wit at the County aforesaid whereby an action hath accrued to the said Plaintiff a demand and have of and from the said Defendant the sum of fifty nine ⁴⁴/₁₀₀ Dollars -

And whereas also the said Defendant afterwards went on the first day of May A.D. One Thousand Eight Hundred and fifty six - at the County aforesaid was indebted to the said Plaintiff in the sum of Two Hundred Dollars for money then and there paid by the said Plaintiff for the use of the said Defendant at her request.

And in the sum of Two Hundred Dollars for money then and there received by the Defendant for the use of the Plaintiff

And in the sum of Two Hundred Dollars for money found to be due from the Defendant to the Plaintiff on an account then and there stated between them which said several sums of money were to be respectively paid by said Defendant to said Plaintiff on request - Yet the Defendant hath not paid the same or any part thereof to the Plaintiff's damage of two Hundred Dollars and therefore he brings his suit &c.

Bond & Seaton

Plffs & Atys.

Mrs E Chapman

To Timothy Wright Dr.

1855-

May 1. To Rent on Lease of Lot "C" of 5th & 6th.

in Block 99 S.P. as H. Account recd^d \$ 121 00

Interest 44

\$ 121 44

May 22^d By Cash paid in A/c. recd^d \$ 75. 00.

Balance due - 44 44

August 1. To Interest -

51

" " 1 Dr. Rent.

12 50

" 30 Building side walk (apartment)

26 75

1856.

May 16. To double Rent on Value of premises (\$75)

from time of breaking Lease to present time 91 66

\$ 177 86

And afterwards to wit on the fourth day of June in the year aforesaid the said Emily Chapman by Wilkinson Dow & Pearson her Attorneys filed in the Office of the Clerk of the said Court her plea with affidavit annexed, which said plea and affidavit are in the words and figures following to wit

Emily Chapman

vs

Timothy Wright

In the Cook County

Court of Common Pleas

June Term A. D. 1856.

And the said Defendant by Wilkinson Dow & Pearson her Attorneys comes and defends the wrong and injury when to and says that she does not owe the said sum of money above demanded or any part thereof in manner and form as the said Plaintiff hath above thereof

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complained against her and of this the said
Defendant puts herself upon the Country &
Wilkinson Now & Herein
Defds Atty.

State of Illinois {
Cook County { S.S.

Personally comes George L
Chapman of the City of Chicago County &
State aforesaid Agent of said Emily Chapman
Defendant in the above entitled Cause and
says on Oath that he has been informed
by said Emily Chapman that she has a
good defence to the above entitled cause
of action on its merits and such this Deponent
verily believes to be the fact.

Subscribed and sworn to {
before me this 4 day of { G. L. Chapman
June A.D. 1856 {
W Kimball Clk

And afterwards to wit on the tenth
day of March in the year of our Lord One
Thousand Eight Hundred and fifty seven
the said Defendant by her Attornies filed
an additional plea and affidavit in the
above Cause which said additional plea
and Affidavit follows in these words and
figures to wit.

State of Illinois {
Cook County { S.S. In Cook County Court
Emily Chapman { of Com. Pleas
at
Trinity Wright { Feb Term A.D. 1857.

And for a further plea in this behalf as to so much of the writ of said Plaintiff as regards the first, fourth fifth and last Counts of the said Declaration founded thereon, and as to the first fourth fifth and last Counts of said Declaration the said Defendant by Now & Fuller her Attys by leave of the Court &c prays judgment of so much of the said writ as regards the 1st 4th 5th & last Counts of said Declaration and the said Declaration as to the 1st 4th 5th & last Counts thereof and that the same may be quashed because he says that before the commencement of this suit to wit on the 10th day of September A.D. 1855 the said Plaintiff brought his certain Suit of forcible detainer against the said Defendant before Jasper A. Horsington Esquire a Justice of the Peace within & for the County of Cook to obtain possession of the identical premises for the double value of which this action is brought in part, to wit, so much of the writ & Declaration therein as is by this plea prayed to be quashed. And that on the 6th day of October A.D. 1855 an appeal was taken by said Defendant from the Judgment of the said Horsington Justice of the Peace as aforesaid, which said Appeal is now pending & undecided in the Cook County Court of Common Pleas as by reference to the Records of said Court more fully appears. And the said Defendant further says that the parties in this and the said former Suit are the same & not other or different persons; and that the said

former suit so brought and prosecuted against
her the said Defendant by the said Plaintiff
as aforesaid is still depending in the said
Cook County Court of Common Pleas and
this the said Defendant is ready to verify
wherefore she prays judgment of the said
Court and of the said Declaration as to the 1st
4th 5th & last Counts thereof and that the
same may be quashed

Dow & Fuller
Defend^t Attys.

State of Illinois { ss.
Cook County }

Personally comes Melville W Fuller
& being duly sworn on oath declares & says
that he is the Attorney of the above named
Emily Chapman & that the foregoing Plea
is true in substance & matter of fact.

Melville W Fuller

Sworn to & subscribed before
me as of March 10th A D 1857.
(by Consent)

W Kimball Clk.

And afterwards to wit on the
same day and year last aforesaid the
said Timothy Wright by his Attorney's
aforesaid filed in the Office of the Clerk
of the said Court his Replication in the
above cause which said Replication is in
the words and figures following to wit

State of Illinois
Cook County ss }

Timothy Wright } Cook County Court of
vs } Common Pleas Feb Term
Emily Chapman } A.D. 1857.

And the said plaintiff saith
that the said Defendant ought not to be
admitted or received to plead the said
plea by her secondly & specially above pleaded
as to so much thereof wherein she alleges
that the first fourth fifth & last Counts of
said Declaration mentioned, for that
the said Suit originally brought before
the said Jasper A. Hoisington Esquire Justice
of the Peace commenced on the said tenth
day of September & pending in the said
Court of Common Pleas upon an appeal
from the judgment of the said Justice
Hoisington & that by reason of the same
the said 1st 4th 5th & last Counts ought to be
quashed -

Because he says that under & by
virtue ~~in virtue~~ of the Statutes in such case made &
provided the said Appeal from the said
Judgment of said Justice Hoisington ought
to be & that he is entitled to have the same
dismissed, the said Appeal having been
depending for a long time without
prosecution to wit since the said sixth
day of October A.D. 1855. & that the said
several promises & undertakings in the
said Declaration mentioned were not

nor was any of them or either, any of or
any part or one of the same identical
premises or undertakings as those in the
said plea mentioned & for & in respect whereof
the said Supposed Suit mentioned in said
plea was had in manner & form as the
said Defendant hath above in his said
plea alleged said suit being only for the
forcible detainer of said premises as before
set forth & declared upon & this he the said
Plaintiff is ready to verify. Wherefore he prays
judgment if the said Defendant ought to be
admitted or received against the said Record
to plead the plea by her lastly above pleaded
in this Suit that he ought not to be
precluded from having & maintaining his said
Suit upon the said first fourth fifth &
last Counts.

Bond & Seaton
Pliffs Atty's.

And afterwards to wit on the
same day and year last aforesaid the
said Defendant filed in the Office of
the Clerk of the said Court a demurrer
to the replication of the said Plaintiff in
the above Cause which said Demurrer
is in the words and figures following
to wit—

State of Illinois }
Cook County } ss.

In Cook Co Ct. of Com: Pleas
Feb; Term A.D. 1857.

Emily Chapman
advs.
Timothy Wright

And the said Defendant by Dow
+ Fuller her Attys says that the said Replica-
-tion of the said Plaintiff to the said second
plea of him the said Defendant and the
matters therein contained in manner and
form as the same are above pleaded and set
forth are not sufficient in law for the said
Plaintiff to have or maintain his aforesaid
action thereof against him the said Defendant
+ that he the said Defendant is not bound
by the law of the land to answer the same -
and this he the said Defendant is ready to
verify; wherefore for want of a sufficient
replication in this behalf, he, the said
Defendant prays judgment if the said
Plaintiff ought to have or maintain his
aforesaid Action thereof against him &c

By Dow + Fuller

Defds Attys

And afterwards court on the
fifth day of June in the year of our Lord
One Thousand Eight Hundred and fifty
seven the same being one of the days of
the June Special Term of the Cook County
Court aforesaid the following among other
proceedings was had in said Court and
entered of Record court

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Timothy Wright }
Emily Chapman } Debt

And now at this day comes the said Plaintiff by Bond & Seaton his Attorneys and the said Defendant by Dow & Fuller her Attorneys also come and issue being joined herein by Agreement of said parties this Cause is submitted to the Court for trial without the intervention of a Jury and after hearing the Evidence adduced and the Arguments of Counsel the Court now here being fully advised in the premises finds that the said Defendant is indebted and owing to the said Plaintiff as charged in the said Declaration to the sum of One Hundred and twenty nine Dollars and twenty five Cents.

And thereupon the said Defendant enters herein his motion for a new trial of this Cause And on Argument thereof the Court now here being fully advised in the premises It is Ordered that the Defendants said motion be overruled

Therefore it is Considered that the said Plaintiff do have and recover of the said Defendant his debt of One
#129. 25. hundred and twenty nine Dollars and twenty five Cents in his said Declaration mentioned And also his Costs and Charges by him about his Suit in this behalf

expended and have execution therefor.

And afterwards to wit on the ^{said} fifth day of June in the year last aforesaid the said Defendant by her Counsel aforesaid filed in the office of the Clerk of the said Court her motion for a new trial in the above cause which motion is in the words and figures following to wit. -

State of Illinois (In Cook C^o. Ct. of Com.
Cook County } Pleas June T. 1857.

Emily Chapman (
 vs
 Timothy Wright }

And now the said Def^t by Dow & Fuller her Attys comes & moves that the judgment rendered in the above entitled Cause be set aside & a new trial granted for the reasons following to wit

- 1st Said Judgment was rendered against the Law & the evidence -
- 2^d Said Judgment is against the Law
- 3^d Said Judgment is against the weight of evidence
- 4th The Court erred in giving judgment in any amount for double value
- 5th The Court erred in admitting proof of demand & notice, to establish the termination of the lease & in admitting any evidence to establish the Plaintiff's claim

for double Value under the Common Counts in the
Plaintiff's Declaration

- 6th The Court erred in allowing the Plaintiff to introduce evidence after he had used his case -
- 7th The Court erred in giving Judgment for any rent due on a first lease, there being Evidence that there was such a lease but such lease not having been produced and no proof being introduced of its contents and if so, of its contents.
- 8th The Court erred in admitting the papers of the suit of forcible detainer pending in this Court on Appeal from the Justice as Evidence -
- 9th The Court erred in giving judgment for the plaintiff under the Common Counts for any part of the sum claimed by him to be due.
- 10th The Court erred in not confining the Plaintiff to his Bill of particulars and in admitting any Evidence of indebtedness prior to the lease filed in this Cause by the Plaintiff and referred to by him in his Bill of particulars.
- 10½. The Court erred in giving Judgment before the disposition of demurrer to Plff's replication -
- 11th The Court erred in admitting the Check of Defendant as evidence to show that one Atkins was agent of the Defendant, said Check not having been put into the case by the Defendant.
- 12th The Court erred in finding judgment

in any indebtedness prior to the date of
the lease on file in the cause on the Evidence
that one Atkins had admitted such indebted-
ness to exist.

13th The Court erred in giving Judgment
for double value for nine months from
the 1st day of September A.D. 1856 to
the 1st day of June 1856. the lease
introduced by Plf having expired on the
1st day of May A.D. 1856. & this suit
having been brought on the 20th day of
May A.D. 1856.

14th The Court erred in giving Judgment
for the assessment claimed by plaintiff
to be due upon the premises occupied by
the Defendant.

Dow & Fuller
for Def^s.

And afterwards writ on the first
day of July in the year last aforesaid the
said Defendant by her Attorneys aforesaid
filed in the Office of the Clerk of the Court
aforesaid her Bill of Exceptions which said
Bill of Exceptions is in the words and
figures following that is to say.

State of Illinois { In Cook County
Cook County { Court of Common Pleas.

Timothy Wright

vs
Emily Chapman

Debt.

Be it remembered that on the 5th day of June A.D. 1857. said day being one of the days of the June Special Term of the said Court, the said Cause came on for trial upon the issue aforesaid and a jury being waived and the respective parties agreeing to submit the said Cause to the Court for determination without the intervention of a jury. The plaintiff offered in the Evidence a certain Lease in the words and figures following to wit

This Indenture made this sixth day of July in the year of our Lord One thousand Eight Hundred and fifty four Between Timothy Wright of Chicago Cook County Illinois ^{of the first part} and Emily Chapman by Geo T Pearson her Attorney ^{of the second part} Witnesseth That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the said party of the second part her Executors Administrators and assigns has demised and leased to the said party of the second part, all those premises situate lying and being in Chicago ^{in the County of Cook and the State of Illinois known & described as follows to wit.} Lot C. in the subdivision by said Wright of Lots 5 & 6 in Block 93 of School Section addition to Chicago - said Lot C being 25 feet front on Wells Street by 118 feet deep to an Alley 12 feet wide being the same premises lately occupied by the House of Widow Banks under lease to E P Hastings Trustee for L.C.P. Frazer Agent &c.

To Have and to Hold the said above described premises with the appurtenances

unto the said party of the second part her
heirs Executors administrators and assigns
from the Sixth day of July in the year of our
Lord One Thousand Eight Hundred and fifty
four for and during and until the first day
of May A D. One Thousand Eight Hundred
fifty six (1856.) and the said party of the second
part, in consideration of the leasing of the
premises aforesaid by the said party of the
first part to the said party of the second part
does covenant and agree with the said party
of the first part his heirs Executors Adminis-
trators and assigns to pay the said party of
the first part as rent for said demised
premises the sum of Fifty Dollars per annum
in quarterly payments of \$12⁵⁰ on the first
days of August November February & May
in each year of this Lease and also to pay
all taxes & assessments on the premises during
this Lease -

And the said party of the second
part further covenants with the said party of
the first part that at the expiration of the
time in this Lease mentioned he will yield
up the said demised premises to the said
party of the first part in as good condition
as when the same were leased upon by the said
party of the second part, less by fire, or inevitable
accident or ordinary wear excepted.

It is further agreed by the said
party of the second part that neither she
nor her legal representatives will re-let
said premises or any part thereof or assign
this lease without the written assent of said

party of the first part first had and obtained
thence.

It is expressly understood and agreed
by and between the parties aforesaid that if
the rent above reserved or any part thereof
shall be behind or unpaid on the Day of
payment whenon the same ought to be paid as
aforesaid or if default shall be made in
any of the Covenants herein contained to be
kept by the said party of the second part his
executors administrators and assigns it shall
and may be lawful for the said party of
the first part his heirs executors administrators
Agent Attorney or assigns at his election to
declare said term ended, and into the said
demised premises or any part thereof either
with or without process of law, to re-enter -
and the said party of the second part, or
any other person or persons occupying in or
upon the same to expel remove and put out
using such force as may be necessary in so doing
and the said premises again to repossess and
enjoy as in his first and former Estate and
to distress for any rent that may be due
thereon, upon any property belonging to the
said party of the second part whether the
same be exempt from Execution and distress by
Law or not. and the said party of the second
part in that case hereby agree to waive all
legal rights which he may have to hold or retain
any such property under any exemption laws
now in force in this State or in any other way
Meaning and intending hereby to give the
said party of the first part his heirs Executors

Administrators and assigns a valid and first
lien upon any and all the goods Chattels or other
property belonging to the said party of the
second part as security for the payment of
said Rent in manner aforesaid anything
heretofore contained to the contrary not-
withstanding - And if at any time said
term shall be ended at such election of said
party of the first part his Executors adminis-
trators or assigns as aforesaid or in any other
way, the said party of the second part his
Executors administrators and assigns does
hereby covenant and agree to surrender and
deliver up said above described premises and
property peaceably to said party of ^{the} first part
his heirs Executors Administrators and assigns
immediately upon the determination of said
term as aforesaid and if she shall remain
in possession of the same ten days after
notice of such default or after the termination
of this lease in any of the ways above named
she shall be deemed guilty of a forcible detainer
of said premises under the statute and shall
be subject to all the conditions and provisions
above named and to eviction and removal
forcibly or otherwise with or without process
of Law as above stated

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

Timothy Wright

(Seal)

Emily Chapman

(Seal)

Wm J Pearson her Atty

(Seal)

The Plaintiff then introduced in evidence a certain Order of the Common Council of the City of Chicago in the words and figures following to wit Which said Order was an order of the Common Council of said City for the construction of sundry sidewalks & among others for a walk along the premises in question in this case - said Order having been passed May 16th 1855 & filed City Documents N 449.

And afterwards to wit on the thirty first ^{in the year one thousand eight hundred and} day of March, ¹⁸⁵⁶ the said parties by their Attornies aforesaid filed in the Office of the Clerk of the said Court their certain agreement which is in the words and figures following - to wit

State of Illinois } In Com pless.
Cook County }
Timothy Wright }
12
Emily Chapman }

It is agreed by & between the Council of the parties to the above entitled Cause that in the Bill of Exceptions in said Cause in lieu of setting out the City Order mentioned therein shall be inserted the following words
" Which said Order was an order of the Common Council of said City for the construction of sundry sidewalks & among others for a walk along the premises in question in this Cause - said Order having been passed May 16th 1855 & filed City Documents N 449 -

Bond Section

Atty for Plaintiff

Dow + Fuller

Chicago March 31st 1858. Counsel for Deft.

And called as a Witness H. Kruessman who being duly sworn testified that he was the City Clerk of Chicago and that the order introduced was the original Order on file in the Office of the City Clerk for the City of Chicago and that that order embraced the Block between Adams and Monroe Streets

The Defendant by her Counsel admitted the proper publication of the order.

The Plaintiff then called ^{as} a witness D. R. Hawley who testified that he was now Street Commissioner for the South town of the City of Chicago and was a Deputy Street Commissioner for the same in the year 1855 and that the sidewalks specified were built partly by the property owners, partly by the tenants and partly by the City under his direction — That the Cost of building said Sidewalks was one Dollar per foot and that the other expenses attendant thereon made the Cost One Dollar and ten Cents per foot; that the sidewalk for the Section of the City included in the order was not built until after the regular time within which it should have been done had expired and was not reported back for nearly three months after the publication of the order.

The Plaintiff then called as a Witness L. L. Bond who being duly sworn

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testified that he was in company with the plaintiff when he settled with the parties who built the sidewalk upon the premises in question and that the plaintiff divided the expenses of so doing equally, upon four lots one of which was occupied by the Defendant and constituted the premises named in the lease. He also testified that he had presented a bill similar in part to the Bill of particulars filed by the plaintiff in this Cause and in words and figures following to wit.

"Mrs Emily Chapman

To Timothy Wright Dr.	
1855 May 1. To Rent on Lease of lot "C."	
of 5 + 6 in block 99 S.E.	
as per Account rendered.	121.00
Interest	26 14
	121 26 14
May 22. By Cash paid on Account rendered	75 00
	46 26 14
Aug 1. 1855. To interest	51
" " " " 1 Qr Rent	12 50
" 30 " " building side walk (a per cent)	26 75

to one Atkins who acknowledged the same to be correct; that Atkins was at that time the Agent of the Defendant and a member of the firm of Cooper & Co.; that Atkins paid the plaintiff seventy five Dollars on the bill presented but that nothing had been paid on the lease introduced in evidence; that the premises in question had increased in value since the expiration of the lease introduced in evidence; that there was a former

lease of the premises in question from the plaintiff to some other person than the Defendant but to whom the witness did not know of his own knowledge And that a part of the claim of the plaintiff was for Rent due ^{up} on said lease that the plaintiff had told him (the witness) that he (the Plaintiff) had destroyed that lease

On cross examination the witness said that he knew nothing personally of the payment of the sum of seventy five Dollars and that he had never had any dealings with Atkins except in relation to this matter.

The Plaintiff then offered in evidence certain papers of a suit of forcible detainer between the same parties before a Justice of the peace within and for the County of Cook.

The Defendant by her Counsel objected to the admission of said papers in evidence but the Court overruled the objection

To which ruling of the Court the Defendant by her Counsel then and there duly excepted

The papers were then introduced in evidence and are as follows being the transcript of the Justice before whom said cause was tried and the Appeal Bond filed in the same -

Timothy Wright (

vs
Emily Chapman)

In Justice Court before
J. A. Horsington Esquire J. P. 1855
Forcible Detainer.

Sept. 13th On complaint & affidavit of Timothy Wright made by his Agent & Attorney S. S. Bond being filed setting forth that on or about the 6th day of July A.D. 1854 the said Wright leased to Emily Chapman a certain Lot of Land situate in the City of Chicago in the County of Cook in the State of Illinois known and designated as Lot C. in the subdivision by said Wright of Lots 5 & 6 of Block 93 of school section addition Chicago, said Lot being twenty five feet front on Wells Street by 118 feet deep to an Alley for and until the first day of May, 1856 - And that on the first day of September 1855 - said Wright reentered on said Lot C. under the terms of said Lease for Covenants and Conditions broken by unauthorized without the consent of said Wright and non payment of Rent - And that the said Emily Chapman wilfully and without force after the reentry by said Wright held over and still continues in possession of the premises without the permission of said Complainant -

Notwithstanding demand has been made in writing by said Complainant upon the said Emily Chapman to quit and deliver up possession to him he therefore prays that the said Emily Chapman may be summoned to answer said Complaint.

Whereupon Summons was issued in due form of Law to Constable A. B. Wheeler of said County requiring him to summon

the said Emily Chapman to appear before me at my Office in South Chicago on the 21st day of September 1855 at 9 o'clock a.m. which summons was duly returned with an endorsement signed by said Wheeler "Served this writ by reading to the within named Defendant Emily Chapman this 14th September 1855" And on the said 13th day of September 1855 I issued a precept for a Jury to said Constable which precept was returned with the names of the Jurors on the back thereof and certified by him. On the 21st day of September aforesaid the parties appeared by their Attornies and by agreement of said Attornies the Case was continued to the 6th day of October 1855 at 2 o'clock P.M. and a precept was issued to said Constable commanding him to summon a Jury which precept was returned with the list of Jurors on the back thereof and certified by said Constable on the 6th day of October aforesaid.

October 6th In pursuance of the aforesaid continuance this case was called when the said Timothy Wright by his Attornies A S Seaton & L L Bond appeared and said Emily Chapman not appearing the Jurors of the Jury summoned as last aforesaid having been called tried & sworn did sit together before me, did hear the said Complaint read to them and the proofs and allegations of said Complaint which were publicly delivered in their presence.

And after hearing the said proofs and allegations the Jury were kept together in

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a convenient place by said Constable until they had agreed upon their Verdict and the said Jury having agreed on their Verdict came into Court and delivered the same publicly and they thereby found the said Emily Chapman guilty in manner and form as set forth in the Complaint.

And it being further proved that there was more than six Months Rent on said Lot past due and unpaid - It is therefore considered by said Justice that the said Timothy Wright recover and be restored to the possessions of the lands and possessions particularly described and designated in said Complaint and that he have a writ of restitution therefor.

October 7th Defendant by her Attorney gave notice of Appeal

October 12th Bond filed with the Justice for Appeal to the Court of Common Pleas and transcript ordered.

State of Illinois {
Cook County } J.S.

I the Subscriber a Justice of the Peace in and for the said County Do certify that the above Transcript and the papers annexed contain a full and perfect statement of all the proceedings before me and of the Judgment before me in the above entitled Cause.

Dated this 20th day of October 1858.

J. A. Horsington - J. P.

Appeal Bonds.

Know all men by these presents That We Emily Chapman and George T. Pearson of the City of Chicago County of Cook in the State of Illinois are held and firmly bound ^{unto} in the penal sum of Thirty Dollars and also for all rents that may accrue from and after the commencement of this suit lawful Money of the United States for the payment of which, well and truly to be made We bind ourselves our heirs executors and administrators jointly and severally, firmly by these presents.

Witness our hands and seals this
day of October A.D. 1855.

The Condition of the above Obligation is such That Whereas the said Timothy Wright did on the sixth day of October A.D. 1855 before J. A. Horsing Town Justice of the Peace for the said County of Cook recover a Judgment against the above bounden Emily Chapman for the sum of Eleven ³²/₁₀₀ Dollars, from which Judgment the said Emily Chapman has taken appeal to the Court of Common Pleas of the County of Cook aforesaid and State of Illinois. Now if the said Emily Chapman shall prosecute her appeal with effect and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal then the above Obligation to be void - otherwise to

remain in full force and effect.

Approved by me at
my Office this 12th day
of October 1855 — } Emily Chapman (Seal)
George J Pearson (Seal)
J A Horsing Town
Justice of the Peace.

By these papers it appeared that Judgment had been rendered on the 6th day of October A D. 1855 against the Defendant below by Default and that from said judgment she had prayed an appeal and that said Cause was still pending and undetermined in this Court.

The plaintiff here rested his case

The Defendant then introduced in Evidence a Check signed by the Defendant and payable to T Wright or Bearer in words and figures following to wit—

"Chicago May 23^d 1855 R R Swift & Co
Pay T Wright or Bearer Seventy five
Dollars and charge the same to account
of Emily Chapman" ^{\$75⁰⁰ on} & Endorsed as follows viz "Emily Chapman
"Corporation & Co."

The Defendant here rested her case

The plaintiff then offered to introduce other Evidence, to which the Defendant by her Counsel objected but the Court overruled the Objection ~ to which ruling of the Court the Defendant by their Counsel then and there duly excepted.

The Plaintiff then introduced a certain Notice in words and figures following to wit
"Mrs Emily Chapman

Madam. You will take notice that

Timothy Wright the Landlord of whom you hold by Lease under date of July 6th A.D. 1854 lot C in the subdivision of said Wright of lots 5 and 6 in Block 93 of School Section addition to Chicago, the same you are now in possession of, has elected under the terms of said Lease to declare the term for which it was granted, ended, and you are hereby required to deliver up the possession of said premises immediately - Dated this first day of September A.D. 1855.

Timothy Wright by
Bond & Seaton his Attys. "

and called as a witness A. J. Seaton who being duly sworn testified that he had served a notice of which the notice introduced by the Plaintiff was a copy, upon the Defendant Sept 1st A.D. 1855. but that she did not give up possession of the premises in question.

The Defendant by her Counsel then moved that the testimony of the Witness Seaton be excluded but the Court overruled the motion - To which ruling of the Court the Defendant by her Counsel then and there duly excepted.

The Defendant by her Counsel then moved to exclude the testimony of L. L. Bond in so far as related to the presentation of an account to Atkins; the Defendant also moved to exclude all the testimony introduced in behalf of the

Plaintiff under the common Counts in
Plf's declaration to sustain Plf's claim
for double Value - The Defendant also
moved to exclude all the testimony admitted
on behalf of Plaintiff under the common
Counts of his declaration - the Defendant
also moved the Court to give Judgment
for plaintiff if at all only for such amount
as was due according to the terms of the
Lease introduced in Evidence; but the Court
overruled the several Motions of the
Defendant to which several rulings of the
Court the Defendant by her Counsel then
and there duly and severally excepted.

And this being all the evidence
offered in said Cause the Court then found
the issue for the Plaintiff and assessed
damages in the sum of One Hundred
and Twenty nine Dollars and twenty five
Cents, said Judgment being in part for
double Value of said premises for nine
months from September 1st A D 1855 -

And the Defendant by her Counsel
thereupon entered a Motion for a new trial
of said Cause and the Court then and there
overruled said Motion for a new trial

To which several rulings and decision
of the Court the Defendant by her Counsel
then and there duly excepted and prayed
an appeal therefrom which was granted

And forasmuch as the
several matters and things herein
before stated do not otherwise appear
the Defendant by her Counsel

herby prays that this her bill of Exceptions
may be duly signed and sealed and made
a part of the record of said Cause —
which is done.

John M Wilson

(Seal)

Endorsed.

It is herby stipulated & agreed that
the within bill of Exceptions is correct and
may be signed as therein requested.

Bond & Seaton for Plff.

And afterwards to wit on the tenth
day of July in the year last aforesaid the
said Defendant filed in the office of the
Clerk of the Court aforesaid her Bond for
Appeal in the said Court which said Bond
is in the words and figures following to wit

Know all Men by these presents
that We Emily Chapman and Thomas
W Egan and Melville W Fuller of the County
of Cook and State of Illinois are held and
firmly bound unto Timothy Wright of the
same place in the penal sum of Three
hundred Dollars, which payment —
— truly to be made and performed We
do herby bind ourselves our heirs executors
and Administrators jointly and severally
by these presents.

Witness our hands and seals this
10th day of July A.D. 1857

The Condition of the above
Obligation is such that Whereas at the
June Special Term of the Cook County Court
of Common Pleas A.D. 1857. a judgment
was by said Court rendered in favor of
said Timothy Wright and against the
above bounden Emily Chapman in the sum
of One Hundred and twenty nine Dollars
and costs of suit And Whereas the
above bounden Emily Chapman has taken
an appeal from said judgment of said
Court to the Supreme Court of the State of
Illinois -

Now if the said Emily Chapman
her heirs executors administrators shall
well and truly pay or cause to be paid
such judgment Costs interest and
damages in case said judgment shall
be affirmed by said Supreme Court
And shall also duly prosecute her said
appeal then this Obligation to be void
otherwise to remain in full force and
effect -

Emily Chapman (Seal)
Thomas W Egwin (Seal)
Melville W Fuller (Seal)

Approved. by me
John M Wilson
Judge J.C.

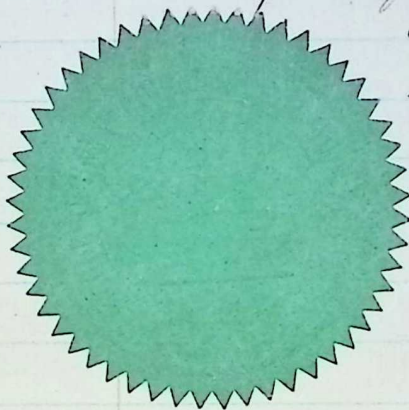
State of Illinois
County of Cook S.S.

J. Walter Kimball, Clerk
of the Cook County Court of Common Pleas, within
and for said County. Do hereby Certify that
the foregoing is a full and true transcript of the
papers on file in my office and the proceedings
entered of Record in said Court in the case wherein
Timothy Wright is plaintiff and Emily Chapman
Defendant. And I do further Certify that said
transcript contains a true copy of a transcript and
appeal Bond in a case wherein said Timothy Wright
is plaintiff and said Emily Chapman Defendant, filed
in my office on the Fourth day of February A.D.
1857, the same being an appeal suit, from J. A.

Hoisington a Justice of the Peace in and for said County

In Testimony Whereof I hereunto
subscribe my name and affix the
Seal of said Court at Chicago
in said County the 8th day of
April A.D. 1858

Walter Kimball Clerk



Book Entry

Timothy Dwight

Emily D. Dwight

Filed Apr. 29. 1858.
L. S. & Co.

Transcript

Fees Transcript

L. S. & Co.

\$10.00

Supreme Court,
State of Illinois.

Emily Chapman

Appellant

vs.

Timothy Wright -

Appellee

Appeal from the Cook County
Court of Common Pleas.

It is submitted on the part
of the Appellant.

II

That the Court erred in giving
judgment in any part for double value.

~~First~~ Judgment could not be rendered in any
part for double value under the special count
of the declaration in this cause.

(or)
Recovery for double value cannot be had
except under a special count. It is claimed
under the statute; and the facts which entitle
a Plaintiff to double value must be speci-
ally set forth. The special count in
the case at bar bases the claim of the Plaintiff
below to double value upon the fact that the
Plaintiff below has recovered judgment against
the Defendant below in an action of unlawful
detainer. The Plaintiff's own evidence shows

that that action of unlawful detainer was still pending and undetermined on appeal in Cook County Court of Common Pleas.

The special count therefore falls to the ground.

- (b) None of the proof which was subsequently introduced as "demand and notice" &c., to substantiate the Plaintiff's claim to double claim would justify judgment in any part for such value under the special count, as the proper allegations were not made therein to entitle the Plaintiff to such recovery. The only allegations there were in the special count based the claim for double value upon the recovery of judgment in the unlawful detainer suit, and that suit, as we have said, was shown to be still pending and undetermined.

Second. Judgment in any part for double value could not be rendered under the common counts of the Plaintiff's declaration, and no evidence to establish Plaintiff's claim for double value should have been introduced under said common counts.

- (a) Because, for the reason just stated, recovery for double value could only be had under a special count.

(b.) Because the common counts in this declaration are not good common counts in debt, and no recovery of judgment for a amount could be had under them.

(c.) Because, even if recovery for double value could be had under the common counts, it could only be in accordance with the allegations of the special count, and as has been just shown, the pendency of the suit of unlawful detainer cut off any such recovery, inasmuch as the alleged judgment in that suit forms the basis of the Plaintiff's claim for double value.

(d.) Because, waiving all other questions for the sake of argument, the proof in any event should have to be such as to entitle the Plaintiff to recovery in an action of unlawful detainer, and it is submitted that the proof here was not sufficient for that purpose.

Third Recovery for double value could not be had at all upon the proof in this case.

(a.) The lease had not "expired", and we contend that, according to the statute, recovery could not be had for double value until after "the expiration" of the term for which the premises were leased. The act

of the Landlord in declaring the term terminated is not sufficient in the contemplation of the Statute.

Prichett vs. Ritter 16. Ill. 96. and cases cited.

This is a penal Statute and should be construed strictly. 2 Camp. 453.

It is copied from 4 Geo. II. c. 28.

By considering the reason of the adoption of the English Statute we shall see that it was never intended to apply until the actual expiration of the lease, and our Statute falls within the reason of the rule.

The English Statute was enacted for the protection of Landlords in the City of London. With the growth of that city, and the consequent increase in value of property, great inconveniences and abuses arose from the wilful action of tenants in holding over possession of premises after the expiration of the term or terms for which they held. To protect correct these abuses, and to protect Landlords, by imposing a severe penalty upon tenants guilty of contumacious conduct in so holding over, this Statute was passed. It has no reference to the general custom of Landlords. It is a law based

upon the particular state of affairs in London. It has no reference to the ~~rent~~ paid by the tenant. It is not an action for double rent, but double value. It is a penalty in double the value of the premises while they are held over. It is obvious that a tenant can never be imenable to the Statute until after the expiration of the term.

It is not sufficient that the Landlord had declared the term ended and re-entered, and rightly so by the terms of the lease. We claim that even then he would not be entitled to double value.

(b.) The Statute extends only to cases in which the tenant has been guilty of fraud or contumacy, and not to cases in which the tenant maintains possession bona fide, or upon any fair ground of defense.

2 Stephens & P. Prins 1229.

Arch. Land. & Tenant 199.

marginal paging 208.

The evidence in this case clearly shows that the Defendant was not guilty of holding over at all — certainly not guilty of "fraud and contumacy"

As we have already said, the evidence must in any event be sufficient to sustain

the Plaintiff in a suit of unlawful detainer, which was not the case here. On the contrary, the evidence shows that the Defendant had a fair ground of defence. She claimed that she had fulfilled all the covenants and conditions of the lease, and there is positively no proof that such was not the fact. It was certainly so at the time of the alleged demand and notice.

Fourth. Judgment could not be rendered in any part for double value, because there was no proof what the value of the premises actually was.

(a.) The Court cannot guess at the value of the premises. And there was no proof at all of what they were worth. Nor is it perceived that it would be proper for the Court to give double value upon the basis of the rent which had previously been paid by the tenant. Construing the Statute strictly this would not be the legitimate way to make up a judgment for double value. Conjecture and assumption are not the proper bases of judicial decision.

II

The Court erred in giving judgment for double value for nine months from the first day of September A.D. 1855 to the first day of June A.D. 1856.

The lease expired on the first day of May A.D. 1856, and the suit was commenced on the 21st day of May A.D. 1856. Nine months double value was then one month too much.

III

Judgment could not be rendered for the Plaintiff under the common counts of his declaration.

These counts are not good counts in debt. They neither commence nor conclude properly. At the most they are very poorly drawn counts in indebitatusumpsit. Nor is the breach properly assigned.

We contend that no recovery could be had at all in debt under this declaration.

J. Gilman 75, 101. 12 Illinois 147.

See Chitty, Stephens, Gould and all works on Pleading, and Forms of declarations in debt.

Judgment could not be rendered in any part for any indebtedness on the part of the Defendant below, alleged or attempted to be proved to ~~be~~ ~~for~~ have accrued prior to the execution of the lease introduced in evidence.

The Court therefore erred in overruling the motion of the Defendant, that judgment should be rendered, if for anything, for such sum as appeared to be due upon the lease introduced in evidence, and also in entering judgment in any part for such prior indebtedness, as was evidently the case.

First. Because all the indebtedness of the Defendant to the Plaintiff was claimed in the declaration and by the bill of particulars to be due as rent on the premises in question, upon the lease declared upon.

Second. The testimony of S. S. Bond for the Plaintiff established that a portion of the Plaintiff's claim was in fact for rent due upon a prior lease of said premises by the Plaintiff to some person other than the Defendant, but to whom the witness did not

know; nor was there any proof to show.

If then the Defendant had ever assumed to pay the amount due on the prior lease, it was a promise to pay the debt of another person, and, falling within the Statute of frauds, must be in writing in order to be binding. No such agreement in writing was offered or introduced. On the contrary this part of the Plaintiff's claim rests wholly on the admission of one "Athins" that a certain account which included the item for rent due on the prior lease which was presented to him was correct.

Third. Because there was no sufficient proof that Athins was the agent of the Defendant and had authority to act for her, or that he could bind her by any admissions as to any indebtedness on her part.

Bond is the only witness on this point, and he says he knew nothing of Athins except in the presentation of the account in question. He had no other means of knowledge of the agency of Athins and his testimony was not sufficient to establish such agency on Athins' part as would make his admissions binding upon the Defendants.

The Court erred in giving judgment before the disposition of the demurrer filed by the Defendant below to the replication of the Plaintiff to Defendant's Special plea.

It is erroneous to proceed to the trial of issues of fact, while questions of law arising upon a demurrer remain undetermined.

Moore vs. Little, 11 Illinois 549. and cases cited.

It is true that a demurrer goes back to the first defective pleading, and it may be contended that the special plea, in this case was defective in praying judgment of the 4th, 5th and last counts, as well as the first, that is, of the common counts as well as the special count. But it has been held that a plea in abatement, though praying judgment of the whole writ, is good as against it in part and the Court may abate it in part only; [See 2 Saunders 210(c)] So although we pray judgment of four counts, the plea is good as to such counts as should be abated, as the special count certainly ought to be. And indeed the demurrer, if carried back to the declaration would assuredly be sustained, the declaration being exceedingly

defective and demurrable.

VII

Judgment in any part could not be rendered for the apportionment claimed by the Plaintiff below to be due him upon the premises occupied by said Defendant.

The evidence does not sustain this item of the Plaintiff's claim. It is true that it was shown that there was such an apportionment, but it was not proved that the Plaintiff ever paid said apportionment. This was necessary in order to entitle him to recover. On the contrary the evidence for the Plaintiff established that the sidewalks, for which these apportionments were made, were built partly by the property owners, partly by the tenants and partly by the city.

Non constat but that the Defendant built this sidewalk at her own expense, or paid for it. We were not obliged to show that that we had paid it, until the Plaintiff established our liability to him, which he did not do.

VIII

The judgment was in damages; the action is in debt. This is error.

In an action of debt, the verdict or judgment must not be in damages.

This is common learning, but see
3 Gilman. 433. 11 Illinois 57, 14 Illinois 248
and Ill. Rep. passim.

VIII

The Court erred in overruling the several motions of the Defendant to exclude ^{the testimony for double value under the common counts} the testimony of Seaton, and of Bond.

First. Seaton's testimony should have been excluded. It was irrelevant and improper. It was introduced for the purpose of sustaining the Plaintiff's claim to double value which, as we have shown, could not be done under the special counts, or the common counts.

Second. The testimony of Bond as to the presentation of an account to Atkins was incompetent and immaterial.

(a) It was with the design of maintaining Plaintiff's claim against the Defendant, in her promise to pay the debt of the former Sepee, which could not be done by parol.

(b.) Atkins was no agent so that his admissions would be binding.

Third. All the testimony to sustain the Plaintiff's claim for double value under the common counts in the Plaintiff's declaration should have been excluded. That claim, as we contend, could not be sustained

under the common counts.

Fourth. All the testimony admitted on behalf of the Plaintiff under the common counts should have been excluded. They were too defective to admit recovery under them.

Fifth. As we have already shown, the Court should have given judgment for the Plaintiff, if at all, only for such an amount as was due according to the tenor of the lease introduced in evidence, and the motion to that effect should have been sustained.

IX

It is impossible, by any known method of computation, to arrive at any conclusion as to the grounds upon which this judgment is based. It cannot be figured out.

We have shown that the item of double value, which it is admitted was included in the judgment, should have been disallowed. So also with the apportionment. So also with any amount due on prior indebtedness.

The Defendant contended that ninety one dollars and sixty seven cents was the total amount called for by the lease for one year and ten months, viz: from July 6th A.D. 1854 to May 1st A.D. 1856, the term

o granted by the lease. Upon this she had paid seventy five dollars, leaving a balance of sixteen dollars and sixty seven cents due at the time of the commencement of the suit.

In September A. D. 1855, when the demand and notice by the Plaintiffs is alleged to have taken place for non payment of rent, the Defendant had in fact overpaid the Plaintiff. The seventy five dollars was proved to have been paid the Defendant, the check she gave having been introduced and admitted in evidence without objection.

This attempt to compel the Defendant to pay rent for somebody else, and to apply what she did pay on her own account upon that somebody else's account, and then to claim double value for "holding over" contumaciously after a demand, notice based upon her alleged nonpayment of rent, when she had in fact paid the rent in advance, is reprehensible in the highest degree.

This record is full of error, and it is submitted that the judgment will have to be reversed and the cause remanded.

Wm. Fuller
For Appellants

In Sup. Ct. of Md.

Emily Chapman

v R98

Timothy Wright

Ag't. for Appellant

Filed May 25, 1878

S. Leland
clerk

In Supreme Court of Illinois

Emily Chapman

vs
Jimmie Wright

} Reply

In answer to the argument of
counsel for Appellee, it is
submitted that the assertion of
counsel in the context of his
remarks is (unintentionally)
untrue in fact as the case was
not heard by agreement but called
in its regular order upon the docket,
the term referred to being a Special
Trial term of the Common Pleas.
Unless the issue of law was
immaterial the 10th assignment
of error is good. We contend that
it was ~~not~~ material for this reason
that the Special Court was the
only one under which recovery for
double value could be had, that
that Special Court did not base
the Plf.'s claim upon the provisions
of the lease & the renting of the
Plf. for non payment of rent

but upon the fact that judgment
had been rendered in a writ of
habeas corpus by in favor of
the Rly. before against the Depts.
thereby determining the fact that
the Depts. had been guilty of
holding over - whether the Rly.
should have set this order in the
Special Court & claimed ^{double value} recovery
or not, it is not our business
to inquire - We affirm with
confidence that having done
so, the Rly. can not now say
that our plea was immaterial
to the issue when if that
plea were sustained, the
Special Court would be
abated - The Rly. could only
recover under or in accordance
with the allegations of his Special
Court & if he ~~does~~ did not
therein set out such facts as
entitled him to double value
he can not recover it - We
submit that neither the Special

Count or a jury under any
of the counts established the
Plf's claim to double value

As to the seventh & eighth assignments
the Appella's counsel inquiring
contends that the evidence ~~may~~
was admitted simply to show
upon what account the
payment by the Defendant of
seventy five dollars ^{was} applied
and not to establish a claim
against the Defs. under any
Count of Plf's declaration.

This is not the fact. The
Def. claimed no "set off".
He claimed that he had
paid seventy five dollars on
the rent. Bond testified that
the seventy five dollars was not
paid on the lease introduced
in evidence for cross examination.
Said that he "knew nothing
personally of the payment"
of the money - now there was
not the slightest evidence -
not a scintilla of proof
to show that the seventy five
dollars was paid on the
old account. We concluded
the presumption was, that
the money was paid on our
account from anybody else's
and then the Plf. introduced

the evidence, ~~to establish~~ ^{an additional} ~~an additional~~
claim against us, by reason
of our promise to pay the
debt of somebody else, over
^{above the rent due from his business the}
^{proof was that we had paid}

The assessment was allowed
and made a part of the
judgment as the Judge who
tried the case stated to me
although as it does not
appear in the record I am
compelled to raise this point
at the same time making the
assignment of error in order
to cut off so much from the
amount of the judgment -
Without this assessment the
Court never could have
figured up the amount
he did -

As to the 13th assignment of
error, it is stated, the record
shows the judgment to be in
error, of course that point
falls to the ground - It was
entered by the Court in
damages as the bill of
exceptions shows but surely
properly entered upon the record -

The Court does not fully
answer my argument as
to double value and as

Double value forms a large
part of the judgment, I am
of opinion that the judgment
will have to be reversed -

It seems to me that for a
~~small~~ case involving a small
amount, the record discloses
an unusual number of errors
in the -

Wm. Fuller
For Appellant

over. No. 1
298

In Sup. Ct. of Minn.

Emily Chapman
vs

~~James M. Dady~~
Jimmie Wright

Argument for
appellants
Reply to argt.
for appellee

Filed May 25, 1838
S. Leland
Clerk

In Supreme Court of Illinois
 Appeal from Kane County Court
 Emily Chapman
 Appellant
 v.
 Timothy Wright
 Appellee
 Common Pleas

It is hereby stipulated and agreed by the parties herein that the time to file the papers in the Supreme Court on the appeal in this cause together with an abstract of the record therein be the same is hereby extended to Monday, April 29th 1858

Bond & Seaton
 Attys for appellee
 Dow & Miller

Chicago, April 21st 1858

Attys. for Appellant

298
In Supreme Court of Illinois

Emily Chapman
Appellant

vs.
Simotey Wright
Appellee

Stipulation

Filed April, 29, 1858.
L. Selam Clerk.

In the Supreme Court of the State of
Illinois of the April Term A.D. 1858.

Timothy Wright }
 } Adds } Appeal from the Cook County
Emily Chapman } Court of Common Pleas.

This case is submitted on the part of
the Appellee; upon the record; and the following
remarks to wit:

This was an action of Debt.
for rent due upon a lease - and by holding
over after the termination of said lease - by a
breach of covenants therein contained - and after
notice to deliver the possession to the lessor.

The declaration contained six counts; three
special - for rent, three common counts ("indeb-
-tatas") To these counts the Defendant below plead
the general plea - "Non assumpsit" - (See Abstract)
and subsequently a plea - (Christened by Counsel
a "plea in abatement") to the first, fourth fifth
and last counts "That the action of unlawful
detainer" mentioned in the declaration was still
pending and undetermined (on appeal from the
judgment rendered by the Justice,) in the Cook
County Court of Common Pleas. To which the
plaintiff below replied - That said action of
unlawful detainer ought not to be pending, but
ought to be dismissed because &c. To this the Defendant
below demurred.

Upon this state of the case the
Cause was heard at the June Vacation term

of said Court by agreement of the parties - (as without such agreement or consent) the Court had no authority to try the Cause at such vacation term and in aid of the jurisdiction the agreement must be assumed,) by the Judge without the intervention of the jury - and upon the hearing the parties went into proofs of their respective allegations. It is true that the record does not show that a decision was made or judgment had upon the demurrer of the defendant below to the replication - and this is assigned as error (see 10th assign^t of error - abstract of record) The sufficient answer to this assignment may be found in the fact of the defendant below going voluntarily into a trial of the issues of fact at this vacation term without first bringing the Cause to a hearing upon the demurrer - and the further fact that the issue made by the plea and replication, and a proper traverse to them or either of them was wholly immaterial - The plea itself being neither a bar nor proper matter in abatement of the suit; the demurrer itself in law and fact overruled the plea - And the Court well might (as it probably did) disregard the plea replication and demurrer as nullities and proceed to hear the only matters properly before it to wit: the issue joined by the general plea. Although it is error for the Court to give judgment upon the issues of fact before disposing of the issues of law really existing and properly joined in the Cause - as is shown by the Case of Moore vs. Littel 11th Illinois 549 - Yet it by no

means follows that the Court is bound to try immaterial issues, or respect trifling and frivolous demurrers but the rule is that such issues, may be totally disregarded - Such demurrers Stricken from the Record by the Court on its own mere Motion without Challenge of the other party - and a party may so treat an issue or demurrer - I believe however that the record does not show a joinder of the issue presented by the Demurrer - (of this I am not certain, having only the abstract of the record before me) in this case then there was no issue of law joined and it was a virtual withdrawal or abandonment of the Demurrer by the defendant below ~~before~~ in going into a trial of the issue of fact before joined without taking the necessary order upon the plaintiff below to join the issue tendered.

I take therefore this position as to the 10th Assignment of Error - That the issue of law mentioned was an immaterial issue - and not properly joined - and the Court below was justified in so regarding it - And further that where the record shows no order or judgment in reference to an issue - it is presumed that the Court considered it immaterial - and this judgment of the Court must be shown to be erroneous by showing the materiality of the issue - ie the injury to the party complaining resulting from this judgment.

The fact set up in this special plea if found for the defendant - was against his own right. In this that it necessarily proves the fact of his still holding the proprietary

of the premises described after due notice to quit. Though it would seem that the pleader supposed that the pendency of the suit of Unlawful detainer would abate this suit inasmuch as a question is the holding over - was tried - or would be tried by it and was an incidental question in this suit. Where he got authority for this doctrine I am not able to see. That the pendency of a suit for the same cause of action - to enforce the identity - and which - whichever way it shall be decided will be a complete bar to another suit may be; and is a just and legal matter of abatement I am free to admit, although the authorities are not all in favor of the doctrine.

Yet I am bold to affirm that no case can be found in the books where the pendency of a suit the favorable issue of which would of a necessity lay the foundations of a right of action ~~by~~ has ever been held to be a matter of abatement to such action - The simple effect in such case being to conclude the facts in issue being common to both suits and the suit first determined would settle those facts. And such is this case. Upon the trial of the suit of Unlawful detainer & recovery of possession - the plaintiff below would have still his action of Debt for double rent, for the detention with this advantage that no proof of the fact ^{of pending over} other than of the former recovery would have been either necessary or admissible.

I remark further upon this point that although the pleader (perhaps under a similar mistaken view of the law) in drawing the first Count of the Declaration, alleged the bringing the action of Unlawful detainer and the recovery of a judgment therein - in this allegation plead a matter of evidence ^{only} which might be stricken out perhaps as surplusage or at most took upon himself the burthen of proving an unnecessary averment.

The defendant by the general plea put this in issue for all purposes - and under that plea might show that the fact of holding over had not been therein determined - by showing the pendency of the suit on appeal - and thus have compelled the plaintiff to establish the fact of holding over by fresh proof. These remarks apply to the replication to the plea.

From a careful examination of both it will be seen that the matters set up therein were facts properly admissible under the issue in fact joined by the parties and tried by the Court below; and were only evidence. and not real issues - upon the familiar principle that mere matters of evidence are not to be pleaded.

This (somewhat prosy I confess) consideration of the 10th Assignment of error properly brings me to the consideration of the first assignment and the remarks thereon of Counsel for Appellant, contained in the written argument herein submitted.

"That judgment could not be rendered *** for double value under the Special Count of the Declaration."

The reason stated - is that the plaintiff bases his right to recover double rent upon the fact of his recovery in the suit of unlawful detainer. Which was proved to be still pending - and that his right to demand double rent is not shown in the said Count.

In answer I reply: that the plaintiff below based his right to recover double rent upon the Statute, ^{and covenants in the lease} and fact of holding over after the expiration of the term - which fact is sufficiently averred in the first Count; inasmuch as the demand of the double value from a certain day therein named to the time of the commencement of the suit in accordance with the terms of the lease therein mentioned - which lease contains covenants as to payment of rent, ~~and~~ ^{and} statement of the amount of rent in arrear and unpaid - and determination of the term - and liability of defendant to pay the double value - may altogether after verdict be taken as a sufficient averment of the holding over. The further fact stated as to the detainer suit is an averment of holding over - and though undoubtedly bad on special demurrer is a sufficient averment to support the verdict and judgment.

But is it true that double rent could only be recovered under the first Count? Upon what ground could evidence of the holding over and double value - under the second Count, be excluded? Is there such a peculiarity of the statute or such force in the covenant of the party as to require a more specific averment than the second Count contains?

As to the question Whether it (the Lease or term rather) had expired - as Contemplated in the 2nd Section of the 60th Chapter Statute Title Landlord & Tenant It is sufficient to say that by express covenants of the defendant the term had expired - and by those covenants the defendant expressly agreed to pay in case of default &c - the double amount of rent reserved (see lease recited in record.) and that whether liable under the Statute or not is quite immaterial. These covenants will also answer all the argument as to the insufficiency of the first Count of the declaration.

The Case of Prickett vs Kitter cited by Counsel from 16th Illinois page 96 - does not sustain the position taken by Counsel in this case - That the lease had not terminated. The question there was whether a tenant from month to month was entitled to notice to quit - and held that he was entitled to notice and to a months notice - and further that the demand of possession required by the Statute could only be made after the right of possession in the plaintiff had become absolute - and being being made while the right of tenant existed was void. To the doctrine of the Case there is no objection, I only say it has no just application to the facts disclosed in the record of this case and is very far from establishing the doctrine that the ultimatum of the term of a lease must have been reached - before the Lessor may recover double rent as for holding over - The true rule upon this subject appears

to be that the tenancy should cease between the parties - and a demand of possession be made after the tenancy has expired &c.

The application of this rule - will destroy a tenancy at any time when by the terms of the lease the right of entry of the lessor is perfected - and he proceeds to enter - &c. and any withholding the possession thereafter is unlawful and the tenant liable under the statute for holding over.

I shall say this only upon the evidence that I believe the Court will find that the record fully warrants the finding of the Court below.

^{7th &}
As to the 8th point I have only to say that the evidence was admitted simply to show upon what account the payment of the defendant proved as a set off - was made - and not as a claim against the defendant under any count of plaintiff's declaration.

As to 11th no such claim was allowed although as I think it was improperly omitted in the finding of the Court. See amt of judgt. in record (\$129.25)

As to the 13 - The judgment is in debt - not for damages: (See order for judgment in record)

As to the other assignment of errors - they
are but repetitions of those already noticed
We here submit the Case upon the Record
with the foregoing observations - Confident
that there is no injustice done the Defendant
and no error in the record for which a
reversal of the judgment of the Court below
ought to be had -
Chicago May 18th 1858.

John E. Cone.
Of Counsel for Appellee

Supreme Court
April Term 1858.
Term No 298

Timothy Wright
ads

Emily Chapman

Submision of
Appellee

Filed May 25, 1858
S. Leland
clerk

J. G. Come of
Council for Appellee