

No. 13011

Supreme Court of Illinois

Brooks

vs.

Bruyn

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 165.

Bray

vs

Brown

13011

Be it remembered that heretofore to wit: on the
15th day of November AD 1856 an appeal was filed
in the office of the Clerk of the Circuit Court of
Warren County Illinois, as follows to wit:

State of Illinois }

Warren County } Zachariah Bruyn being duly
sworn deposes and says that,

he is now lawfully entitled to the possession of
the North West quarter of Section Nine (9) in
Township Nine (9) North in Range two (2) West
in Warren County in the State of Illinois that
he was & has been lawfully entitled to the pos-
session of the said land ever since the 26th
day of June AD 1856, that on or about the
second day of July AD 1856, the said Bruyn
was in the actual possession of the said land
claiming to be seized in fee thereof, that on
said day while he said Bruyn was in the
actual possession of said land, One Thomp-
son Brooks made an entry into said land
when entry was not given to him said Brooks
by law, that said Brooks continued in posses-
sion of said land & continues in possession
of said land, and now detains forcibly & wrong-
fully & ever since said day of said entry has
forcibly & wrongfully detained said land
from the possession of the said Bruyn, your
affiant, Your affiant further states that
the said Thompson Brooks entered on said

land wrongfully on or about said 2nd day of July AD 1856 and without right and kept the said Affiant J. Bruyn from regaining possession of said land, & now withholds & ever since said entry has withheld possession of the said land from the said defendant. Your affiant further avers that the said Brooks was not at the time of said entry lawfully entitled to the possession of said premises. Your affiant further states that on the day of the date hereof he did by his agent & attorney George H. Harding make a demand in writing for the possession of said premises from said Brooks & that said Brooks altogether refused to give up possession of the said premises

Zachariah Bruyn

Sworn to & subscribed

before me this 10th day of
September AD 1856

Elisha Nye J.P.

State of Illinois }

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Warren County }

vs. Pleas before the Honorable
John S. Thompson Judge of the
tenth Judicial Circuit of the State of Illinois, at
a Circuit Court begun and held at the Court
House in Marmouthe within and for the County
of Warren and State of Illinois, on the third
Monday in the Month of March in the year
of our Lord one thousand eight hundred and
fifty eight, it being the fifteenth day of said
Month.

Present Hon John S Thompson Judge
James H. Stewart State Attorney
William Laferty Clerk
Charles M. Mills Sheriff

19. Zachariah Bugar }
vs } Appeal
Thompson Brooks }

And afterwards to wit: On the 19th day of
March AD 1858 the following order was entered
upon the Record of said Court which is in
the words and figures following to wit:

19. Zachariah Bugar }
vs } Appeal
Thompson Brooks }

This day came the parties
by their attorneys and by agreement it is

And afterwards to wit: on the 22nd day of September AD1858, at the same term of said Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

12 Zachariah Bryan }
 75 } Appeal
 Thompson Brooks }

This day again came the jury empanelled herein on yesterday and after hearing part of the evidence was permitted to disperse under charge of the Court and required to meet the Court by 9 O'clock tomorrow Morning.

And afterwards to wit: on the 23^d day of September AD1858 at the same term of said Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

12 Zachariah Bryan }
 75 } Appeal
 Thompson Brooks }

This day again came the jury aforesaid empanelled herein heretofore at this term of this Court, and after hearing the evidence and arguments of counsel retired to consider of their verdict.

6

And afterwards to wit: on the 24th day of Sept^{ber} 1858 at the same term of said Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

12 Zachariah Bryan }
 75 } Appeal
 Thompson Brooks }

This day came the Jury empanelled herein and upon their oaths do say "We the Jury find the defendant Guilty as charged in the Complaint" then upon came the defendant by his Attorney and moves the Court for a new trial herein

And afterwards to wit: on the 30th day of September 1858 at the same term of said Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

12 Zachariah Bryan }
 75 } Appeal
 Thompson Brooks }

This day again came on this cause for hearing on the defendant's motion made herein heretofore for a new trial and

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after hearing the argument of counsel thereon and being sufficiently advised in the premises it is ordered by the Court that the motion be allowed, and that the verdict of the Jury read and remain at the present term of this Court be set aside and for naught held, and that a new trial be granted upon the defendant paying the costs that have accrued at the present term of this Court.

And afterwards to wit: on the 23rd day of March AD 1859, at a term of the Court then being held the following order was entered upon the Records of this Court which is in the words and figures following to wit:

12 Zachariah Bryan }
 vs } Appeal
 Thompson Brooks }

This day came the defendant by his Attorney and files his Affidavit and moves the Court for a rule on the Plaintiff to file security for costs herein, and after being advised in the premises it is ordered by the Court that the motion be overruled.

And afterwards to wit: on the 31st day of March AD 1859 at the same term of Court then being held the following order was entered upon

67

9

well and truly to try the issues joined herein
after hearing part of the evidence the jury are
permitted to disperse under charge of the Court
and required to meet the Court at 8 O'clock
tomorrow morning.

Afterwards to wit: On the 2^d day of April AD 1859
at the same term of Court then being held the
following order was entered upon the Records
of said Court which is in the words and fig-
ures following to wit:

12 Zachariah Bayne }
 vs } Appeal
Thompson Brooks }

This day again came the
parties and their Attorneys, and also came
the jury empannelled herein on yesterday and
after hearing part of the evidence were permit-
ted to disperse and required to meet the Court
on Monday next at 10 O'clock.

Afterwards to wit: On the 4th day of April AD 1859
at the same term of Court then being held the
following order was entered upon the Re-
ords of said Court which is in the words
and figures following to wit;

10

12 Zachariah Bruyn }
vs } Appeal
Thompson Brooks }

This day again came the parties and their Attorneys and also came the Jury empannelled herein and the evidence not being concluded, the Jury are permitted to disperse under charge of the Court and adjourn to meet the Court at 8 1/2 O'clock tomorrow morning;

And afterwards to wit: On the 5th day of April AD 1859, at the same term of Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:-

12 Zachariah Bruyn }
vs } Appeal
Thompson Brooks }

This day again came the parties and their Attorneys and also came the Jury empannelled herein and after hearing the conclusion of the evidence and argument of counsel the Jury retired to consider of their verdict;

Afterwards to wit: On the 7th day of April AD 1859 at the same term of Court then being held, the following order was entered upon the records of said

11 Court which is in the words and figures following to wit;

12 75 69
Zachariah Buey }
Thompson Brooks } Appeal

This day again came the jury empannelled herein heretofore and represented to the Court that it was impossible for them to agree upon a verdict, whereupon it is ordered by the Court that the jury be discharged from rendering a verdict herein.

Afterwards to wit: On the 2^d day of November AD 1859, at a term of the Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

9 75 69
Zachariah Buey }
Thompson Brooks } Appeal

This day came the parties and their attorneys and issue being joined for trial put themselves upon the Country, whereupon came a jury to wit: Josiah Martin, Samuel Graham, Allen Salisbury, Zachariah Parker, John M. Morris, Henry Keenan, J. J. Caldwell, John P. Terpenning, S. L. Munson, Elijah Miller,

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John Carson and J. A. McCoy who being elec-
-ted tried and sworn well and truly to try
the issue joined herein after hearing part of
the evidence are permitted to disperse and re-
-quired to meet the Court tomorrow morning
at 8 1/2 O'clock.

Afterwards to wit: On the 3rd day of November A.D. 1859
at the same term of said Court there being held
the following order was entered upon the Records
of said Court which is in the words and figures
following to wit:

9 Zachariah Bueyer }
75 } Appeal
Thompson Brooks }

On this day again came the
parties and their attorneys and also came the
Jury empanelled herein on yesterday and after
hearing the conclusion of the evidence and a
part of the argument of counsel were permitted
to disperse and required to meet the Court at
8 1/2 O'clock tomorrow morning.

And afterwards to wit: On the 4th day of November
A.D. 1859 at the same term of said Court there being
held the following order was entered upon the
Records of said Court which is in the words
and figures following to wit:

13 Zachariah Bryan ⁷¹
 9 vs Thompson Brooks } Appeal

This day again came the Jury empannelled herein, and after hearing the conclusion of the arguments of counsel retired to consider of their verdict.

Afterwards to wit: on the 5th day of November AD 1859 at the same term of said Court then being held the following order was entered upon the Records of said Court which is in the words and figures following to wit:

9 Zachariah Bryan ⁷⁵
 vs Thompson Brooks } Appeal

This day came the Jury empannelled herein and upon their oaths do say "We the jury find the defendant guilty in manner and form as charged in the Complaint" thenupon came the defendant by his attorney and moves the Court for a new trial herein,

Afterwards to wit: On the 14th day of November AD 1859 at the same term of said Court then being held the following order was entered upon the Records of said Court which is

14 in the words and figures following to wit;

9 Zachariah Bryan }
vs } Appeal
Thompson Brooks }

This day came on this cause for hearing on the defendants motion for a new trial herein, and after hearing the same it is ordered by the Court, that the motion be overruled, Thereupon it is considered by the Court that the defendant is guilty of wrongfully withholding the possession of the premises in manner and form as charged by the Plaintiff in his Complaint mentioned and described, and it further considered by the Court that the Plaintiff recover of the defendant his costs by him in this suit expended and may have execution therefor.

And afterwards to wit: On the same day of said term of Court then being held the following order was entered upon the Records of this Court which is in the words and figures following to wit;

9 Zachariah Bryan }
vs } Appeal
Thompson Brooks }

This day again came the defendant by his Attorney and prays an

15 Appeal to the Supreme Court, which is allowed by the Court upon the said defendant entering into Bond in the sum of One Thousand Dollars with Garland Ray as security Bond and Bill of Exceptions to be filed within thirty days;

16 State of Illinois County of Warren sp.
Circuit Court October Term AD 1859.

Zachariah Bryan }
vs } Forcible Entry & Detainer.
Thompson Brooks }

Be it remembered that on the trial of this case the Plaintiff in support of the issue on his part offered to read in evidence the following Deeds to wit:

John Brown Sheriff to Geo. W. Bernier -
Know all men by these presents that whereas at the May Term 1840 of the Circuit Court of Warren County (Illinois) a Judgment was obtained in said Court in favor of the State of Illinois, against the North West Quarter of Section Nine, Township Nine North of Range two West, containing one hundred and sixty acres of land for the sum of Two Dollars and seven cents being the amount of taxes, interest and costs, assessed upon said tract of land for the year 1839, and whereas on the Twenty Fifth day of May AD 1840, Ira F. M. Butler Sheriff of the County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid Dated the day of and to said Ira F. M. Butler directed did expose to Public Sale at the Door of the Court House in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of land above described for the satisfaction of the Judgment so rendered as aforesaid

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and Thomas at the time and place aforesaid George M. Berrian of the County of New York and State of New York having offered to pay the aforesaid sum of Two Dollars and Seven cents for One hundred and sixty acres, being the whole of the tract of land above described which was the least quantity bid for, the said tract of land was stricken off to him at that price. Now Therefore I, John Brown Sheriff of said Warren County for and in consideration of the said sum of Two Dollars and Seven cents to the said Dr F. M. Butler Sheriff in hand paid by the said George M. Berrian at the time of the aforesaid sale and by virtue of the Statute in such case made and provided have granted bargained and sold and by these presents do grant bargain and sell unto the said George M. Berrian and to his heirs and assigns, One hundred and sixty acres being the whole of said North West quarter of Section Nine, Township Nine North Range 2 West, To Have and To Hold (the said tract of land) unto him the said George M. Berrian and to his heirs and assigns forever subject however to all the rights of redemption provided by law. In Witness Whereof I, John Brown Sheriff of said Warren County by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this Twenty Eighth day of June A.D. 1842.

John Brown (Ss)
John Brown Sheriff Warren County Illinois

18.

State of Illinois

Warren County

I, S. J. certify that on the fifth day of July in the year of our Lord one thousand eight hundred and forty two personally appeared before me Elijah Davidson Clerk of the County Commission and Court County aforesaid John Brown Sheriff of said County of Warren who is personally known to me the said Clerk to be the identical person whose name is subscribed to the foregoing deed as having executed the same and acknowledged that he executed said deed for the uses and purposes therein mentioned.

In Testimony Whereof I have hereto subscribed my name and affixed the seal of said Court the day and year above written.

(Seal)

Elijah Davidson Clerk

Geo. W. Perriau to David Crawford

Quit Claim

Know all men by these presents, that We George W. Perriau "of the City and State of New York" "Land Agent" and Hannah my wife for divine good causes and considerations therunto moving especially for the sum of One Hundred and fifty Dollars received to our full satisfaction of "David Crawford" of Newburgh in the County of Orange and State of New York "Merchant" have united released and forever quit claimed and by these presents do for ourselves our heirs executors and administrators justly and absolutely receive release and forever quit claim unto the said David Crawford and to his heirs and assigns forever all such

(41)

19 right and title as in the said George W. Berrian and wife have or ought to have in or to "a certain tract, piece or parcel of Land situate lying and being "in the tract" appropriated for Military Bounties in the State of Illinois" and known and distinguished therein" as "The North West quarter of section Nine" of Township "Nine North in Range two West". Containing One hundred and sixty acres ("be the same more or less") To have and To Hold the above released premises unto him the said David Crawford his heirs and assigns and to his and their only proper use and behoof forever: so that neither we the said George W. Berrian and wife or any other person in our name and behalf shall or will hereafter claim or demand any right or title to the premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred In Witness Whereof we have hereunto set our hands and seals the Twenty sixth day of May in the year of our Lord one thousand eight hundred and forty nine.

Signed Sealed and Delivered
in the presence of

G. W. Berrian (Seal)
Hannah Berrian (Seal)

State of New York }
New-York City & County } S.S. ^{appeared} Personally, George W. Berrian
& Hannah his wife the signers
and sealers of the foregoing instrument and acknowledged the same to be their free act and deed before me Joseph C. Lawrence a Commissioner of Deeds in

20 and for the said ¹⁵¹ State duly appointed by the Governor of the State of Illinois with authority to take the acknowledgment and proof of Deeds and other Instruments of writing under seal to be used and recorded in said State of Illinois duly commissioned and sworn residing in the City of New York. And the said Hannah wife of the said George M. Berrian after having been by me made acquainted with the contents of ^{the} said Deed on an examination separate and apart from her said husband acknowledged that she had executed the same and relinquished her dower and right of dower in the lands and tenements therein mentioned voluntarily and freely and without any fear or compulsion of her said husband or any other person and was satisfied with what she had done and did not wish to recall the same. I further certify that the individuals who made the said acknowledgment are personally known to me to be the persons therein described. In Testimony Whereof I have subscribed my name and affixed my seal of Office at the City of New York this thirty first day of May 1849.

(Seal)

Joseph Lawrence
Commissioner of Deeds for the State of
Illinois in New York & Notary Public
65 Wall Street N.Y.

No 7201 State of Illinois }
Marion County } Recorder's Office Monmouth Aug 20th 1849.
J. Ephraim S. Swinney Recorder within
and for said County do hereby certify that the Deed

20 and for the said ¹⁵¹ State duly appointed by the Governor of the State of Illinois with authority to take the acknowledgment and proof of Deeds and other Instruments of writing under seal to be used and recorded in said State of Illinois duly commissioned and sworn residing in the City of New York. And the said Hannah wife of the said George M. Berrian after having been by me made acquainted with the contents of ^{the} said Deed on an examination separate and apart from her said husband acknowledged that she had executed the same and relinquished her dower and right of dower in the lands and tenements therein mentioned voluntarily and freely and without any fear or compulsion of her said husband or any other person and was satisfied with what she had done and did not wish to recall the same. I further certify that the individuals who made the said acknowledgment are personally known to me to be the persons therein described. In Testimony Whereof I have subscribed my name and affixed my seal of Office at the City of New York this thirty first day of May 1849.

(Seal)

Joseph Lawrence
Commissioner of Deeds for the State of
Illinois in New York & Notary Public
65 Wall Street N.Y.

No 7201 State of Illinois }
Marion County } Recorder's Office Monmouth Aug 20th 1849.
J. Ephraim S. Swinney Recorder within
and for said County do hereby certify that the Deed

2)

and Certificate to which this is attached were this day duly recorded in said office in Vol. 13 of Deeds pages 587 & 588.

Fees \$1.25

Ephraim S. Swinney

Recorder W. Co. Ill.,

- David Crawford to Nath^l Bruyn -

- Special Warranty -

This Indenture made the Twenty fifth day of June in the year of our Lord one thousand eight hundred and fifty two Between David Crawford and Fanny his wife of the Village of Newburgh Orange County & State of New York parties of the first part and Nathaniel Bruyn of the Town of Shawangunk Ulster County & State aforesaid party of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of Six Hundred & forty Dollars to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged have granted bargained sold aliened remised released enfeoffed and confirmed and by these presents do clearly and absolutely sell alien remise release enfeoff and confirm unto the said party of the second part and to his heirs executors administrators and assigns forever all the right title ^{and} interest (dower right title or claim of dower) claim or demand whatsoever in law or equity of the said parties of the first part of in and to all that certain tract piece or parcel of land situated lying and being in the State of Illinois in the tract appropriated for Military Bounties and known and

2)

and Certificate to which this is attached was this day
duly recorded in said office in Vol. 13 of Deeds pages
587 & 588.

Fees \$1.25

Ephraim S. Swinney

Recorder W. Co. Ill.,

- David Crawford to Nath^l Bruyn -

- Special Warranty -

This Indenture made the Twenty fifth day of June in
the year of our Lord one thousand eight hundred and
fifty two Between David Crawford and Fanny his
wife of the Village of Newburgh Orange County & State
of New York parties of the first part and Nathaniel
Bruyn of the Town of Shawangunk Ulster County
& State aforesaid party of the second part Witnesseth
that the said parties of the first part for and in con-
-sideration of the sum of Six Hundred & forty Dollars
to them in hand paid by the said party of the sec-
-ond part the receipt whereof is hereby acknowledged
have granted bargained sold aliened remised releas-
-ed enfeoffed and confirmed and by these presents do
clearly and absolutely sell alien remise release enfeoff
and confirm unto the said party of the second part
and to his heirs executors administrators and assigns
forever, all the right title ^{and} interest (dower right title or
claim of dower) claim or demand whatsoever in law
or equity of the said parties of the first part of in and
to all that certain tract piece or parcel of land situat
lying and being in the State of Illinois in the tract
appropriated for Military Bounties and known and

distinguished therein as the North West qr of section
 Nine township Nine North range two West (in the
 County of Warren) To Have and To Hold all and
 singular the said tract piece or parcel of land with
 the rights members and appurtenances therein
 belonging or in anywise appertaining unto the
 said party of the second part and to his heirs
 executors ~~and~~ administrators and assigns to him
 and their own proper use benefit and behoof forever
 And the said parties of the first part for themselves
 and their heirs executors and administrators hereby co=
 =venant promise and agree to and with the said party
 of the second part his heirs executors administrators
 and assigns that they the said parties of the first
 part have not done or committed and will not do or
 commit any act matter or thing whereby the right
 of the said party of the second part can in any ma=
 =ner or way be impaired to the said land hereby gra=
 =nted or conveyed; In Witness Whereof the said parties
 of the first part have hereunto set their hands and
 seals the day and year first above written,

Sealed and Delivered in the presence of C. A. Belknap } D. Crawford (Seal)
 } Fanny C. Crawford (Seal)

H. W. & N. B.

State of New York

Orange County, N. Y. On this 25th day of June 1852 before
 me came David Crawford and Fanny
 C. his wife to me known to be the same persons who are
 described in and who executed the within conveyance

23 and acknowledged¹⁸¹ they executed the same, and
the said Fanny C. being by me examined separate
and apart from her husband acknowledged she
executed the same freely & without any fear or
compulsion of her husband,

Chauncey H. Belknap
Justice of the Peace in & for
Orange County,

State of New York Orange County, ss

I, Nathan Prescott Clerk of
the County of Orange do hereby certify that Chauncey
H. Belknap whose name is subscribed to the Certificate
of the proof or acknowledgment of the annexed inst=
=ment and thereon written was at the time of taking
such proof or acknowledgment a Justice of the Peace
for said County, dwelling in said County, commissioned
and sworn and duly authorized to take the same
And further that I am well acquainted with the hand
writing of such Justice and only believe that the sig=
=nature to the said Certificate of Proof or acknowledgment
is genuine. And that according to the laws of the State of
New York the proof or acknowledgment is sufficient
to allow the same to be recorded in this State.

In Testimony Whereof I have hereunto set my hand
and affixed the seal of the said County the Eighth
day of July 1852.

(Seal)

John C. McConnell
Deputy Clerk

No 10162 Recorded in Hannu County Illinois December 3rd 1852

24 in Vol 17, Page 489 & 90

See 50th Exd

H. S. Hascall Clerk

to the introduction of which & each of them the def-
-endant objected and the Court sustained the objection
& refused to allow the Reads to be read to which deci-
-sion the Plaintiff then & there excepted,

For further support of the issue the Plaintiff produced
Nathaniel Bruyn who was sworn and testified that
he was the Father of Plaintiff, that he knew the
North West quarter of section nine in Township nine
North of Range two West of the fourth Principal Mer-
-idian, It is rolling Prairie Land having creek run-
-ning through it & with both stone & coal on it, First
saw it six or seven years ago, The first act of imp-
-rovement was done by the witness in September 1855
at which time he put a rail pen on the land, on
the 26th Sept 1855 he hauled a load of rails from his
home, fifteen miles on the corner of the quarter
near the house of Joshua Coats, got the assistance
of Coats & laid the load of rails in a square pen
with a floor & 3 or 4 rails high, On the next day
27th Sept hauled another load & threw them off
the waggon by the others, but dont recollect whe-
-ther they were laid up by the witness or not, He han-
-dled the rails then & built the pen to take possession
of the land & for Coats to put corn in to feed his
hogs, The Plaintiff then exhibited the following
Read from David Crawford to Nathaniel Bruyn

David Crawford to Nathaniel Bryan
Special Warranty

This Indenture made the Twenty fifth day of June
in the year of our Lord one thousand eight hundred
and fifty two Between David Crawford and Fanny
his wife of the Village of Newburgh Orange County &
State of New York parties of the first part and Nat-
=thaniel Bryan of the Town of Shawangunk Ulster
County & State aforesaid party of the second part.
Witnesseth that the said parties of the first part for
and in consideration of the sum of Six Hundred & forty
Dollars to them in hand paid by the said party of the
second part the receipt whereof is hereby acknowledged
have granted bargained sold aliene released
confermed and confirmed and by these presents do clearly
and absolutely sell alien release release confer and
confirm unto the said party of the second part and
to his heirs executors administrators and assigns for-
=ever all the right title and interest (dower right title
or claim of dower) claim or demand whatsoever in
law or equity of the said parties of the first part of in
and to all that certain tract piece or parcel of land
situate lying and being in the State of Illinois in the
tract appropriated for Military Bounties and known
and distinguished therein as the North West qr of
section nine Township Nine North Range two West
(in the County of Warren) To Have and To Hold all
and singular the said tract piece or parcel of land

26 with the rights, members, and appurtenances thereto belonging or in anywise appertaining unto the said party of the second part and to his heirs, executors, administrators and assigns to his and their own proper use benefit and behoof forever. And the said parties of the first part for themselves and their heirs, executors and administrators hereby covenant promise and agree to and with the said party of the second part his heirs, executors, administrators or assigns that they the said parties of the first part have not done or committed and will not do or commit, any act matter or thing whereby the right of the said party of the second part can in any manner or way be impaired to the said Land hereby granted or conveyed. In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered } D. Crawford (Seal)
 in the presence of C. F. Belknap } Fanny C. Crawford (Seal)
 H. N. & N. B.

State of New York

Orange County, N. Y. On this 25th day of June 1852 before me came David Crawford and Fanny C. his wife to me known to be the same person who are described in and who executed the within conveyance and acknowledged they executed the same, And the said Fanny C. being by me examined separate and apart from her husband acknowledged she executed the same fully & without any fear or compa-

26 with the rights, members, and appurtenances thereto belonging or in anywise appertaining unto the said party of the second part and to his heirs, executors, administrators and assigns to his and their own proper use benefit and behoof forever. And the said parties of the first part for themselves and their heirs, executors and administrators hereby covenant promise and agree to and with the said party of the second part his heirs, executors, administrators or assigns that they the said parties of the first part have not done or committed and will not do or commit, any act matter or thing whereby the right of the said party of the second part can in any manner or way be impaired to the said Land hereby granted or conveyed. In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered } D. Crawford (Seal)
 in the presence of C. F. Belknap } Fanny C. Crawford (Seal)
 H. N. & N. B.

State of New York

Orange County, N. Y. On this 25th day of June 1852 before me came David Crawford and Fanny C. his wife to me known to be the same person who are described in and who executed the within conveyance and acknowledged they executed the same, And the said Fanny C. being by me examined separate and apart from her husband acknowledged she executed the same fully & without any fear or compa-

(12)
-know of her husband.

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Chauncy F. Becknaap
Justice of the Peace in & for Orange County

State of New York Orange County ss.

I, Nathan Westcott Clerk

of the County of Orange do hereby certify that Chauncy F. Becknaap whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Justice of the Peace for said County dwelling in said County commissioned and sworn and duly authorized to take the same, And further that I am well acquainted with the hand writing of such Justice and verily believe that the signature to the said Certificate of Proof or acknowledgment is genuine, And that according to the laws of the State of New York the proof or acknowledgment is sufficient to allow the same to be recorded in this State.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said County the Eighth day of July 1852.

John C. McConnell Deputy Clerk

1101162 Recorded in Warren County Illinois December 3^d 1852.
in Vol. 17, Page 489 & 90

See 50 pbs. Exd

A. S. Nascaall Clerk,

& the witness testified that he was the grantee in that deed & that at the time he hauled the sails on the land he claimed the land under that deed.

(12)
-sion of her husband.

27

Chauncy F. Becknapp
Justice of the Peace in & for Orange County

State of New York Orange County ss.

I, Nathan Westcott Clerk

of the County of Orange do hereby certify that Chauncy F. Becknapp whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Justice of the Peace for said County dwelling in said County commissioned and sworn and duly authorized to take the same, And further that I am well acquainted with the hand writing of such Justice and verily believe that the signature to the said Certificate of Proof or acknowledgment is genuine, And that according to the laws of the State of New York the proof or acknowledgment is sufficient to allow the same to be recorded in this State.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said County the Eighth day of July 1852.

John C. McConnell Deputy Clerk

1101162 Recorded in Warren County Illinois December 3^d 1852.
in Vol. 17, Page 489 & 90

See 50 pbs. Exd

A. S. Nascaall Clerk,

& the witness testified that he was the grantee in that deed & that at the time he hauled the sails on the land he claimed the land under that deed.

The witness then testified that he leased the land at that time in writing, two papers drawn, he took one & Coats the other. The following paper was then exhibited to the witness to wit:

"Roseville Sept 27th 1855.

"I, this day agree to let Joshua Coats have the North
 "West of section gr 9, 9 N. 24, 4th Principal Meridian.
 "for the term of one year for the sum of one dollar
 "Cash in advance the receipt whereof I acknowledge
 "to have received,

(Signed) Nathaniel Bryner "

& the witness testified it was the lease executed by him & delivered to Joshua Coats that day.

The Plaintiff then offered to read the lease in evidence but the defendant objected and the Court reserved the question for the time being.

The witness further testified that immediately after the lease was signed & delivered & on the same day he stated to Coats that he wanted it understood that he should have the privilege of coming on the land with his hands the next spring to make further improvement, or if he let his Son the Plaintiff have the land, that he should have the privilege of entering on the land & making improvements as soon as he pleased, although the term fixed in the lease had not expired, and asked Coats if he would board the hands or his son to which Coats agreed.

Whereupon the defendant having before objected

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"I, this day agree to let Joshua Coats have the North
 "West of section 9, 9 N. 24, 4th Principal Meridian.
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Whereupon the defendant having before objected

29

to the Plaintiff proving the acts of the witness in building the pen, making the lease & the verbal arrangement with Coats & that the witness was in possession of the land, insisted upon his objections & asked the Court to exclude all such evidence and after argument of Counsel the Court sustained the objections so far as to exclude the case, the verbal arrangement of the witness with Coats & all evidence showing the witness or Coats in possession except the acts of improvement to which decision of the Court in excluding such evidence the Plaintiff then & then excepted & the defendant excepted then & then to the decision of the Court in admitting any of such evidence.

Then upon the Plaintiff offered a Deed from N. Bruyn to Plaintiff which reads as follows to wit:

Nathaniel Bruyn to Zachariah Bruyn

Quit Claim

This Indenture made this 26th day of June in the year of our Lord one thousand eight hundred and fifty six Between Nathaniel Bruyn and Cornelia Bruyn his wife of the first part and Zachariah Bruyn of the second part, Witnesseth that the said party of the first part for and in consideration of the sum of Six Hundred and forty dollars lawful money of the United States of America to him in hand paid by the said party of the second part at or before the executing and delivery of these presents the receipt whereof is hereby acknowledged have promised released

29

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Nathaniel Bruyn to Zachariah Bruyn

Quit Claim

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30

sold and forever quit claimed and by these presents do remise release and forever quit claim unto the said party of the second part and to his heirs and assigns forever all that tract or parcel of land known and described as follows to wit: The North West Quarter of Section nine (9) in Township nine (9) North of Range two (2) West of the 4th Principal Meridian in Warren County Illinois, To Have and To Hold the above described premises with all the privileges and appurtenances therunto belonging to him the party of the second part his heirs and assigns forever. In Witnes Whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed Sealed and delivered: Nathaniel Bruyn (LS)
in presence of _____ (LS)

State of Illinois {

County of Warren { S.B. J. A.G. Kirkpatrick a Notary

Public for the City of Monmouth

do certify that on this day personally appeared before me Nathaniel Bruyn and Cornelia his wife whose names appear signed to the foregoing deed of conveyance and who are personally known to me to be the identical persons whose names are subscribed to said deed as having executed the same and acknowledged that they had executed the same as their voluntary act and deed for the uses and purposes therein expressed, And Cornelia

30

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31

Brynn wife of the said Nathaniel Brynn having been by me made acquainted with the contents of said deed and being by me examined separately and apart from her said husband acknowledged that she had executed the same and had relinquished her dower to the premises therein conveyed voluntarily freely and without any compulsion of her said husband and does not wish to retract. Given under my hand and Notarial seal this 26th day of June Eighteen hundred and fifty six.

(Seal)

A. G. Kirkpatrick N.P.

No 17810

State of Illinois {
Warren County {

Recorder's Office

I, William Saffery Clerk of the Circuit Court in and for the County of Warren in the State of Illinois and Ex-officio Recorder of Deeds in said County do hereby certify that the annexed instrument of Writing was filed for Record in my office on the 2^d day of April AD 1857 at 1 O'clock P.M. and has been duly recorded with the accompanying Certificate in Volume 27 of Deeds on Pages 206 & 207. In Witness Whereof I have hereunto set my hand and the seal of said Court at Warren County the day and year above written.

Wm Saffery Clerk and Ex-officio Recorder,
By S. O. Tourtellotte Depty,

which was read to the jury without objection.
The witness Nathaniel Brynn further testified that

31

Brynn wife of the said Nathaniel Brynn having been by me made acquainted with the contents of said deed and being by me examined separately and apart from her said husband acknowledged that she had executed the same and had relinquished her dower to the premises therein conveyed voluntarily freely and without any compulsion of her said husband and does not wish to retract. Given under my hand and Notarial seal this 26th day of June Eighteen hundred and fifty six.

(Seal)

A. G. Kirkpatrick N.P.

N^o 17810State of Illinois {
Warren County {

Recorder's Office

A. William Safety Clerk of the Circuit Court in and for the County of Warren in the State of Illinois and Ex-officio Recorder of Deeds in said County do hereby certify that the annexed instrument of writing was filed for record in my office on the 2^d day of April AD 1857 at 1 O'clock P.M. and has been duly recorded with the accompanying Certificate in Volume 27 of Deeds on Pages 206 & 207. In Witness Whereof I have hereunto set my hand and the seal of said Court at Warren County the day and year above written.

Wm Safety Clerk and Ex-officio Recorder,
By S. O. Tourtellotte Depty,

which was read to the jury without objection.
The witness Nathaniel Brynn further testified that

§ 2.

the next thing done on the land was on Monday the last day of June 1856 when the Plaintiff took five yoke of oxen & a prairie plough from the house of the witness to the land, the witness going with him. They broke furrows around the entire quarter of furrows part way & 3 furrows the balance & also laid 3004 "lands" for breaking. At that time he saw about one acre had been broken on the South side near the center. The witness had no knowledge that any breaking had been done on the land before he got to the land & they were running the furrows around the land. 40 to 60 acres were marked out on that day by the Plaintiff & witness for breaking. The witness then returned home leaving the Plaintiff with his team & plough then at work. On Tuesday near evening the Plaintiff came to the house of witness: The Plaintiff & witness loaded up two loads of lumber & started with it the same evening for the land: they arrived about 11 O'clock at night & left the waggons standing on the land & staid over night with Jones who lived adjoining. The next morning about sunrise the Plaintiff & witness went to building a shanty 16x8 got it partly done - Plaintiff went to building a yard to keep & yoke the oxen in. - When we returned from breakfast the Plaintiff brought his Carpet bag & bed along & put them in the shanty. The shanty & yard were finished by about noon. About 10 or 11 O'clock in the forenoon some 10 or

12 men came on another part of the land with several wagons & teams loaded with logs. The Plaintiff started to them, the witness was not near enough to hear what passed. The men laid up the logs for a stable - put no roof on - Some breaking had been done on the land when we laid out the land from the time the witness left them on Monday until he returned Tuesday night. After the 2^d July & before this suit was commenced Plaintiff broke from 140 to 60 acres all that was laid out & built a dwelling house 16X24 feet framed house, which he commenced to build in fore part of July.

The Plaintiff occupied the shanty until he got the house finished and then moved in the house.

On cross examination the witness testified that it was in September 1855 he hauled the rails on land from home fifteen miles had not had the land run off - laid up one load, rails in bottom & 3 or 4 rails high. Coats was with him: had a load of rails can't tell how many. Did this for the purpose of taking the possession of the land.

The lease was written when second load was drawn on next day - Coats told the witness he would put them up, did not go back till June 1856. Some of the rails were on the land then. Witness staid till middle of afternoon - saw a little patch of breaking on the land. The Plaintiff staid on the land next day came home. The lumber hauled

34 down belonged to the witness, Saw people at work
on same day we commenced to build the shanty before
noon - got shanty done by 11 O'clock - about 10 or 11
O'clock saw the teams come on with logs, The witness
left after dinner

On re-examination the witness testified that the road
ran along south line of the quarter. The pen was
put by witness a few rods from Coats house, When they
rune the furrows around the land it included
the land the pen was built on, Coats owned land
on south side,

The Plaintiff then produced Patrick Clark as a wit-
-ness who was sworn & testified that he knew the land
in controversy and went then with Plaintiff & his
father on the 1st of July 1856 at the time the lumber
was hauled there by Plaintiff, The next morning
went on the land: The witness helped build the sha-
-anty and yard or pen for cattle, The shanty was fin-
-ished about 11 O'clock, About ^{that time} Cincinnati Mansford
a Mr Smith, Richard Ray & Joshua Coats and some
others came on the land with some logs, The Plaintiff
went to them & forbid them from coming on the land,
Mr Coats said "Come boys we are doing this in the
name of Brooks" they then threw the logs off from
the wagons & laid them up in a square pen without
roof, for a stable, Brooks was not with them,

The Plaintiff then produced ⁽²⁰⁾ John S. Chandler as a witness who was sworn & testified that he had known the land since the fall of 1855. In November of that year he moved near the land. He knew the house moved on the quarter in controversy on the 2^d July, 1856 before it was moved. It then stood on the quarter south upon or near the line dividing that quarter in the center. Brooks occupied (but not by residence) one half of that quarter & Coats the other. The house stood near the line between them. Cincinnati Mumford lived in the house before & when it was moved on the land in controversy. The witness had seen the rail fence spoken of by the witness Nathaniel Briggs. It stood on the quarter in controversy about 10 rods from Coats house.

The witness had seen Coats take the rails that made the fence spoken of by Briggs off the land during the winter of 1856 & afterwards hauled them back again & that Coats said he had a lease of the land from the man who owned the tax title & he would take them away. The fence was 8 rails high at that time. This was in December 1856. The witness then said that the above statement of Coats was not made at the time of moving the rails. When the Court on motion of Defendant excluded the evidence of such statement.

On cross examination the witness said the quarter in controversy was open in winter 1855 & 56 on the West North & East and the quarter in controversy was

vacant and unoccupied,

- 36 The Plaintiff then produced George Moose who was sworn & testified that he was a Carpenter & built a dwelling house 16 X 24 containing 3 rooms on the land in controversy for Plaintiff - commenced in August & finished in September 1856, before this suit was commenced & the Plaintiff had moved in it. Before this suit was commenced 50 or 60 acres of Prairie had been broken by Plaintiff, while the witness was building the house & before commencement of this suit & after Plaintiff had done his breaking. The defendant with some hands assisting came on Plaintiff's breaking & sowed wheat. The Plaintiff forbid the Defendant from seeding & told him he was a trespasser. The Defendant disregarded the Plaintiff & continued to sow.

On crop examination the witness stated that Defendant commenced to sow on East side across slough close to the road. The defendant had not sowed more than 8 or 10 rods from the East side when he was forbid sowing. Saw another house on the land about 30 rods from the place. I built the house for Plaintiff. Defendant forbid Plaintiff making any further improvement. Don't think defendant claimed ownership. The witness remained there four days after the conversation in which Plaintiff forbid defendant sowing. Don't know whether he sowed all the land broken by the Plaintiff.

37 The building ran ⁽²²⁾ down to the slough & went half way across the quarter.

The Plaintiff then produced Harrison Jones as a witness who was sworn & testified that he knew the land in controversy. The Plaintiff slept in the shanty on night of 2^d July 1856 & continued to stay there afterwards & board at the house of witness brother until he moved into the house he built on the land.

There was a stone quarry on the land. In the fall of 1855 saw Coats quarrying stone there - the witness worked with him - Coats said to the witness while they were at work there, that he would have to charge people something for stone to get enough to pay for his lease that he had a lease of Nathl Bryer which he had agreed to take of the quarter. The witness had seen men at work quarrying stone there before that time.

The defendant objected at the time to the evidence of the witness as to quarrying stone & the statement of Coats but the Court overruled the objection & allowed the evidence to go to the jury to which decision the defendant then and there excepted.

On cross examination the witness said that he did not pay anything for stone & that he did not know whether others paid or not, and that the land was open and vacant prairie.

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The Plaintiff produced Joel Franklin who was sworn & testified that he knew the stone quarry on the land in controversy, saw Coats & Jones quarrying stone in October 1855. The witness went with Jones they found Coats at the quarry, Coats said he wanted stone to wall a house & Jones wanted stone to wall a well & proposed to Jones to work together. Coats spoke of others getting stone then & said he would have to charge something for stone so as to get enough to pay for his lease, as he had leased the land of Bryan and asked the witness if he had not seen that pen up then - said it was put there by Bryan to hold possession, and that the quarter was vacant and unoccupied.

+ + +

To the evidence of this witness the defendant at the time objected but the Court overruled the objection & permitted it to go to the jury to which the defendant then & then excepted.

The Plaintiff then produced Jackson Smith who was sworn & testified that he knew the land & saw the said pen in fall of 1855 or spring of 1856 when it was seven or eight sails high & looked as if feeding had been done around it. The pen stood 3 or 4 rods from road along which he passed on foot. No land enclosed for 2 or 3 miles east or west of the quarter in controversy. And that this quarter had no improvement that he saw except the pen,

39 The Plaintiff then ⁽²⁴¹⁾ produced William Clayton who was sworn & testified that he ~~was~~ laying out a road on the west line of the quarter in Controvery in May 1856 & that there was a bad place about the middle of the quarter on the west line. The witness ~~asked~~ asked defendant if they might build a bridge East of the line on this quarter & defendant ~~replied~~ replied that he could not give any permission as the West half of the quarter belonged to Joshua Coats. After that & since this suit was commenced the witness had another conversation with defendant when the defendant said that Coats was to have half of the land & either said that he had no title for it or that he had nothing to show for it & further said that if he the defendant lost the land of Course Coats would not get his half.

The defendant objected to the evidence of this witness, but the Court overruled the objection & allowed it to go to the jury to which the defendant then & there excepted.

The Plaintiff then produced Martin Jones who was sworn & testified that he knew the land in Controvery - saw the defendant sow wheat in Sept. 1856 before this suit was commenced on the east part of the breaking done by Plaintiff. The witness saw Plaintiff breaking prairie on the land the afternoon of July 2^d 1856. The yard built by Plaintiff

40 on 2^d July 1856 was used by him to keep & yoke his cattle in,

The Plaintiff then produced Cincinnatus Munford who was sworn & testified that he knew the land in controversy & that he assisted in moving on a house & log stable 2^d July 1856. Saw defendant on 25th June 1856 with Richard Ray break up from one to two acres - he then left the land & went home about a mile off & was not back again & did nothing else on the land until the 2^d July. In the morning of 2^d July Coats came to house of witness & woke him up, said that Plaintiff was on the land in controversy & was building a house & requested the witness to notify some of the neighbors & get them to put a house on the land - the witness did so.

The Plaintiff was building on the land when the witness Coats & the neighbors went then with logs for a stable & he forbid them from going on. The defendant was not there until after the stable was put on - don't know when he was - he came about noon. The house that was moved on was built by Coats & intended to be on his land but by mistake it was put over the line on defendant's land. The witness lived in the house with his family as the tenant of Coats & tilled the land of Coats. When defendant came at noon he told Coats he wanted to buy the house witness lived in - Coats said he could have it - no price agreed. It was put on wheels & moved over on to the land in controversy

(26)
41 The furniture & family of witness remaining in the house while it was moved. The witness supposed he was the tenant of defendant after the house was moved. There was no contract between them nothing said about it in any way & witness never paid any rent to defendant. The witness continued to farm Coats land as he had before the house was moved & did not use the land in any way except to live in the house - defendant came next day and built a yard around the house. At the time defendant ~~broke~~ on 25th June either the rails or pen built by Nathl Bruger were on the land but don't know whether they were laid up or not. The witness knew of the pen & of the lease by Nathl Bruger to Coats. The defendant knew of the lease as early as fall of 1855. have frequently heard him talk about it before the spring of 1856. it was generally known the neighborhood that Coats had such a lease, have heard him & defendant talk about it.

On cross examination the witness said the lease he referred to commenced in fall of 1855 & was for one year - he had seen it in Coats hands.

Now the Counsel for defendant handed the lease previously offered by plaintiff in evidence & extended by the Court to the witness. When the witness stated that such paper was the lease he referred to & then upon the lease was read in evidence to the jury by

(27)

42 the consent of both parties.

The witness then stated that he thought the sails composing the pen built by Nathaniel Briggs were loose on 25th June 1856 - the pen had been 6 or 8 sails high but could not tell whether up or not on 25th June. Coats made the request to go & move the stable from neighbourhood of defendant: Defendant was not along - he came at noon & then bought the house, Coats said they were at work for defendant, Plaintiff was at work building his shanty before the logs were taken by Coats & those assisting.

On the last day of June Plaintiff saw 3 or 4 furr-ows around the quarter - built a shanty & yard on 2^d July.

The witness had known men go on the land & get stone but didn't know whether they had leave or not. There was stone coal on the quarter, bank - of - opened. The witness had got coal then while he was a tenant of Coats, and that the land in dispute was unoccupied except the sails, when defendant made his breaking.

On re-examination the witness testified that no roof was put on the log stable - it was an old stable & was moved from where defendant had laid up. There was no land broken by the defendant during the year 1856 except what he did on 25th June & no other act of improvement except moving the stable & house 2^d July, and building fence,

(28)

Joel S Chandler was recalled by Plaintiff & testified that defendant told him that there was a man breaking up prairie on the quarter in controversy and he did not want it done because he wanted the land for pasture. No fence was built on the land till spring of 1857 except the yards about houses.

The Plaintiff then recalled Nathaniel Brown who further testified that after the lease was signed & delivered by him to Coats on the 24th Sept 1855 it was agreed by Coats & himself that the Plaintiff or the witness should have the privilege of going on the land at any time & make further improvements & Coats was to board the hands while they were at work. There was an agreement made in the year 1854 after the Plaintiff was 21 years old between him & myself by which the witness agreed to let the Plaintiff have a quarter section of land if he would remain with the witness & work until the witness got his farm open & improved, but no particular quarter was at that time mentioned. The Plaintiff agreed to do so & did work for the witness for about two years & until his farm was improved. In the winter or spring of 1856 as early as March the witness agreed to let the Plaintiff have the quarter of land in controversy & he was to go on early in the spring but was prevented for some reason - but no deed was made by the witness to Plaintiff till 26th June 1856 when

44. The deed made in evidence was made in pursu-
=ance of the previous arguments. At the time the
witness put the said pen on the land in 1855
claimed title as owner under a deed from
David Crawford dated June 25th 1852,

The defendant objected to all of the evidence
aforesaid of the last witness, but the Court over-
=ruled the objection & allowed it to go to the jury
to which the defendant then & then excepted.
The Plaintiff then exhibited the deed hereinbefore
set forth from David Crawford to Nathaniel Bru-
=yn to the witness when the witness stated he was
the grantee & that was the deed under which
he claimed and thereupon the Plaintiff offered
to read the deed in evidence, but the defendant
objected & the Court sustained the objection &
excluded the deed to which the Plaintiff then
& then excepted.

The Plaintiff then offered to prove the payment
of all the taxes assessed on the land for the years
1840, 1841, 1842, 1843, 1844, 1845, 1845, 1846, 1847, & 1848
by George M. Berrian & for the year 1849 & 1850 &
1851 by David Crawford & for the years 1852, 1853,
1854 & 1855 by Nathaniel Bruyn to which the
defendant objected because the same was
irrelevant, and the Court sustained the
objection & excluded such evidence to which
the Plaintiff then & then excepted.

(30)

On cross examination the witness Nathaniel Brown stated the first day he hauled sails he built them up in a pen & the second day the papers were made, he wrote one - Coats wrote the other - The witness did not go back again until he went with his son the Plaintiff on the last of June 1856.

The defendant then asked the witness whether Coats paid him a dollar when the lease was executed as recited in the lease to which the Plaintiff objected & the Court sustained the objection & refused to permit the witness to answer & the defendant then & then accepted to such decision. Upon further cross examination the witness said that the Plaintiff came home on Tuesday the 1st July 1856 & told the witness that he had understood that Coats & defendant were about to move a house on the land & he came home to know what it was best to do & the witness told him to get lumber & build a shanty, They did so & went away that night, They had no consultation with counsel.

The defendant admitted that demand had been made for the possession in writing by the Plaintiff of defendant before the suit was commenced and thereupon the Plaintiff rested.

And thereupon the defendant in support of the issue on his part read in evidence a deed from J. H. Baker

46 & others to the defendant as follows to wit:

Gen^d Warranty

J. H. Baker ~~et ux~~ to Thompson Brooks

151 41 This indenture made this twenty fourth day of December
A.D. in the year of our Lord one thousand eight hundred and
fifty five Between J. H. Baker and Isabella Baker, J. L.
Layman & Nancy M. Layman, John M. Westfall and
Selinda Westfall of the first part and Thompson
Brooks of the second part. Witnesseth that the said
party of the first part in consideration of the sum of
Four hundred and fifty Dollars paid by the said
party of the second part the receipt whereof is hereby
acknowledged have granted bargained and sold
and by these presents do grant bargain and sell
convey and confirm unto the said party of the second
part his heirs and assigns forever a certain tract
of land situated in the tract appropriated to Military
Bounties in the State of Illinois known and described
as follows viz: The North West quarter of section nine
in Township nine North in Range two West in the
County of Warren and State of Illinois. To have
and to hold the said premises with all the appur-
tenances thereto belonging or in anywise appertaining
to the only proper use benefit and behoof of the said
party of the second part his heirs and assigns forever.
And the said party of the first part covenant with
the party of the second part his heirs and assigns
that they are lawfully seized in fee of the said premi-
ses and have good right to convey the same that

46 & others to the defendant as follows to wit:

Gen^d Warranty

J. H. Baker ~~et ux~~ to Thompson Brooks

151 41 This indenture made this twenty fourth day of December
A.D. in the year of our Lord one thousand eight hundred and
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Layman & Nancy M. Layman, John M. Westfall and
Selinda Westfall of the first part and Thompson
Brooks of the second part. Witnesseth that the said
party of the first part in consideration of the sum of
Four hundred and fifty Dollars paid by the said
party of the second part the receipt whereof is hereby
acknowledged have granted bargained and sold
and by these presents do grant bargain and sell
convey and confirm unto the said party of the second
part his heirs and assigns forever a certain tract
of land situated in the tract appropriated to Military
Bounties in the State of Illinois known and described
as follows viz: The North West quarter of section nine
in Township nine North in Range two West in the
County of Warren and State of Illinois. To have
and to hold the said premises with all the appur-
tenances thereto belonging or in anywise appertaining
to the only proper use benefit and behoof of the said
party of the second part his heirs and assigns forever.
And the said party of the first part covenant with
the party of the second part his heirs and assigns
that they are lawfully seized in fee of the said premi-
ses and have good right to convey the same that

4)

(82)

They are free from all incumbrance and that for the consideration above named the title thereof to the said party of the second part his heirs and assigns against all lawful claims whatsoever will forever warrant and defend. In Witness Whereof the said grantors have hereunto set their hands and seals the day and year first above written,

signed sealed and delivered } J. H. Baker (seal)
in presence of } 3 Isabella Baker (seal)
Jenson S. Fryman (seal)
Nancy W. Fryman (seal)
J. W. Westfall (seal)
Leilinda Westfall (seal)

State of Illinois }

McDonough County }

ss Be it remembered that
On this 24th day of December
in the year of our Lord One thousand eight
hundred and fifty five before me came person-
ally J. H. Baker & Isabella his wife, Jenson S. Fryman
and Nancy W. his wife, John W. Westfall & Leilinda
his wife personally known to the undersigned a Justice
of the Peace of said County to be the identical person
who executed and whose names are subscribed to
the foregoing deed of conveyance as having executed
the same and acknowledged the same to be their
voluntary act and deed for the purposes therein
expressed, And the said Isabella, Nancy W. & Leilinda
wives aforesaid being by me made acquainted with
the contents of said deed of conveyance and exam-

(33)

248 -ined separate and apart from their said husbands
acknowledged that they executed the same and reli-
quished their dower in the premises therein men-
tioned voluntarily fully and without the compen-
-sation of their said husbands and that they do not
wish to retract the same. In Testimony Whereof
I have hereunto set my hand and affixed my seal
at my office at Macomb the day and year first
above written.

Thompson Chandler J.P. (seal)

State of Illinois }
McDonough County } ss I, Isaac Grantham Clerk of
the County Court within and
for said County do hereby certify that Thompson
Chandler Esq. whose name appears to the foregoing
Certificate of acknowledgment was on the day of the
date thereof and now is an acting Justice of the
Peace in and for said County duly elected com-
-missioned and qualified and that to all his offici-
-al acts as such officer full faith and credit is
and ought to be given In Testimony Whereof I
have hereunto subscribed my name and affixed
the seal of said Court at my office in Macomb
in said County this twenty sixth day of December
A.D. 1855,

(S.S.)

Isaac Grantham Clerk

Recorded January 1st 1856 in Vol 33 Page 690 of
Harrison County Records,

(341)

The defendant then produced Richard Ray who was sworn & testified that he worked for defendant in summer of 1856 at ploughing corn in June, on the 25th of June 1856 the defendant & witness with him with defendant's team & plough broke from one to two acres on this land, the piece was near South side, close to the road, in an oblong shape - 25 or 30 rods long. He did not see any improvements on the land at that time. It was some broken & had a creek & brush on it, but thinks he could have seen any improvement if there was any. The witness did not know what the defendant's object was in breaking except what he told him at the time. The defendant said he wanted to break some so as to put in fall wheat. don't recollect that he said anything more. said he wanted to fence, the witness believed he said he wanted to improve the land but it had been so long before, he had forgotten & could not recollect everything about it. The stable was moved on in the forenoon & the house in the afternoon of 2^d July 1856. They were put on for the defendant, didn't hear him give any directions. The stable came from the defendant's house - defendant was not at home when we got it moved. When the house was moved defendant was there. There was a stone quarry on land but he never saw it.

On cross examination the witness stated that defendant and himself had been ploughing corn on the same

50

day they did the breaking. No breaking had been done by the defendant before that or after it - none other that season. The witness did not look to see whether any improvements were on the land. The defendant said he wanted to do the breaking for the purpose of taking possession of the land & if he could he wanted to fence & sow wheat to take possession. Defendant helped move the house & Coats "helped the job".

The defendant thereupon offered in evidence & read without objection the following deed to wit:

- Yachariah Bruyn to Geo F Harding -
Quit Claim -

19216
Ex

This Indenture made this Eighth day of January in the year of our Lord one thousand eight hundred and fifty eight. Between Yachariah Bruyn of the first part and George F. Harding of the second part Witnesseth that the said party of the first part for and in consideration of the sum of Fifteen Hundred Dollars lawful money of the United States of America to them in hand paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have promised released sold and forever quit claimed and by these presents do promise release sell and forever quit claim unto the said party of the second part and to his heirs and

assigns forever all of the North West Quarter of section
 nine in township nine North of range two (2) West of
 the fourth Principal Meridian in Warren County Illi-
 nois To Have and To Hold the above described premises
 with all the privileges and appurtenances thereto
 belonging to the said party of the second part his
 heirs and assigns forever, In Witness Whereof the said
 party of the first part has hereunto set his hand
 and seal the day and year first above written,
 signed sealed and delivered } Zachariah Amyn (SS)
 in presence of Philo E. Reed }

City of Moundville }
 State of Illinois } ss. J. John T. Morgan a Notary
 Warren County } Public in and for said City & County
 do certify that on this day personally
 appeared before me Zachariah Amyn whose name
 appears subscribed to the foregoing deed of Convey-
 =ance as having executed the same who is personally
 known to me to be the real person who and in whose
 name the acknowledgment is proposed to be made
 and acknowledged the execution thereof as his vol-
 untary act and deed for the uses and purposes
 therein expressed, Given under my hand and seal of
 office at Moundville this 9th day of January
 AD 1858, ~ John T. Morgan
 Notary Public

Recorded January 9th, 1858 in Vol 29 on Page 88
 of Warren County Records.

52. Then the defendant stated,

The Plaintiff then read in evidence the following
And to wit:

Geo. F. Harding to Zachariah Bruyn
Quit Claim

22516 Know all men by these presents that we George F.
Ex Harding & Adelaide W.M. Harding his wife of Cook County
Illinois in consideration of One Dollar paid by them
by Zachariah Bruyn the receipt whereof is hereby
acknowledged have remise released and forever
quit claimed and do for themselves and their heirs by
these presents remise release and forever quit claim
unto the said Zachariah Bruyn his heirs and assigns
the following tract of land situated in Warren County
Illinois and described as follows to wit: The North
West quarter of Section Nine (9) Township Nine (9) North
of Range two (2) West of the 4th. Principal Meridian
To Have and to hold the above mentioned premises
with all the privileges and appurtenances therunto
belonging to him the said Zachariah Bruyn his
heirs and assigns forever. In Witness whereof the said
George F. Harding & Adelaide W.M. Harding have here-
unto set their hands and seals this 27th day of April.
AD 1839.

signed sealed and delivered
in presence of

Geo F Harding (LS)
Adelaide W.M. Harding (LS)

State of Illinois (38)

55

Warren County } J. N. H. Boggess a Justice of the
Peace for said County do certify that
on this day personally appeared before me George H.
Harding & Adelaide W. M. Harding whose names appear sig-
-nied 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 ac-
-knowledgment is proposed to be made and acknowledged
the execution thereof as their voluntary act and deed
for the uses and purposes therein expressed.

And Adelaide W. M. Harding wife of the said George H. Harding
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 her dower to the lands
and tenements therein mentioned acknowledged that
she had done so voluntarily and fully and without
compulsion of her said husband and does not wish
to retract the same. Given under my hand and
seal of Office at Mounds this 30th. day of June
AD 1859.

H. H. Boggess J.P. (Seal)

Recorded October 5th. 1859 in Vol 31 on Page 421
of Warren County Records.

This was all the evidence in the case

524 Thereupon the Plaintiff asked the Court to give the following instructions to the jury to wit:

→ Copy of Instructions →

1. If the jury believe from the evidence that the Plaintiff was in the actual possession of the tract of land described in the Complaint and that afterwards while the Plaintiff was so in the actual possession and before the commencement of this suit the defendant entered upon such possession when no entry was given by law and detained the same from the Plaintiff after demand made in writing before the commencement of this suit by the Plaintiff of Defendant then the jury will find the defendant guilty.

Given
Jury

2. When a person is in the actual use and occupation for any useful purpose of a part of a tract of land claiming the whole, and the residue of the tract is vacant and such person has a deed or other instrument of writing purporting to invest him with a right to the whole tract then the law is that such person is in the actual possession of the whole tract.

Given
Jury

3. A house or enclosure or the breaking of land is not necessary to constitute actual possession, but acts which in their nature in connection with the claim of right indicate an exclusion use and control of the land, such as erecting buildings making fences breaking land or working quarries to the exclusion of others constitutes an actual possession to the extent

Given
Jury

of the instrument under which the right is asserted and so as not to conflict with an adverse prior possession

4. If the jury believe from the evidence that the defendant entered upon the land and broke one or two acres and afterwards put or caused to be put on the land a stable & house for the purpose only of excluding other persons and without the intention of permanently improving or using the same then such acts will not constitute such a prior possession in the defendant as will defeat this action.

5. Unless the jury believe from the evidence that the defendant in good faith broke one or two acres of the land in controversy while the land was vacant with the bona fide intention of reducing the land to some useful purpose, and that the object of defendant was not to obtain possession but to exclude the Plaintiff or other claimants, then such breaking will not constitute a prior possession in the defendant.

6. If the jury believe from the evidence that the defendant entered on the land and broke one or two acres of land before the Plaintiff was in the actual possession, yet if they believe from the evidence that such breaking was done solely for the purpose of excluding others without any intention on the part of defendant of following it up by permanent useful improvements and then

036

left the land, and that the subsequent acts of placing on the stable and house were only done after finding that the Plaintiff was improving the land and for the sole purpose of preventing the Plaintiff from obtaining the use of the land then the breaking of defendant will not constitute such a prior possession in defendant as will defeat this action,

Given

7. Although the jury believe from the evidence that the defendant entered upon the land while vacant and in good faith broke one or two acres intending to follow it up by useful improvements, yet if they further believe that he abandoned such intention before at the time of the entry of the Plaintiff on the 30th of June, then the breaking by defendant will not defeat this action

Given

8. Although the jury believe from the evidence that the defendant was in the actual possession of the land before the Plaintiff yet they further believe from the evidence that such prior possession of defendant will not defeat this action

Given

9. No person can by a trifling improvement appropriate a large body of land to himself, but the improvement must be exclusive and open to the observation of others and made for the bona fide purpose of using the land,

10. If the jury believe from the evidence that the land was leased on the 24th Sept. 1855 by Nathaniel Bruyn to Coats for one year and that before the expiration of the term Coats collusively with the defendant claiming the land by a title adverse to Nathaniel Bruyn & the Plaintiff attempted to put the defendant or himself in possession to hold the land adversely, then the lease terminated when such collusion acts were done.

11. If the jury believe from the evidence that Nathaniel Bruyn leased the land on 24th Sept. 1855 for one year to Coats & after the execution of the lease an agreement was made between the parties to the lease that Nathaniel Bruyn or Plaintiff, could enter upon & take possession of the land before the year expired & that Plaintiff enter under such agreement the Plaintiff had the right so to acquire the possession as against Coats.

12. If the defendant claiming the land adverse to Nathaniel Bruyn & the Plaintiff obtained the possession by collusion with Coats the tenant of Nathaniel Bruyn then the possession so obtained cannot be set up by the defendant as a prior possession to the Plaintiff to defeat this action if they further believe from the evidence that Plaintiff claims under Nathaniel Bruyn.

5-8 13. No one can take advantage of his own wrong and on this principle the act of a tenant & one confederating with him to hold the demised premises adversely to the land Lord will not constitute the commencement of an adverse possession lawful & rightful so as to bar the landlord from peaceably entering on the premises or so as to convert such subsequent peaceable entry whether provided for by agreement subsequent to the lease or not, into a trespass.

14. If the jury believe from the evidence that Coates as tenant of Nathaniel Bryn was in the actual possession of the whole tract & while he was in such possession the defendant not having a paramount title entered on a vacant part of said land & broke one or two acres and afterwards Nathaniel Bryn conveyed the land to Plaintiff in pursuance of an executed Contract made before & Plaintiff then went on said land & broke a part not broken by defendant & performed other acts of ownership & continued in the use thereof & further that defendant before the commencement of the suit entered upon the part broken by Plaintiff & put it in wheat then the defendant would be guilty of an unlawful entry on the possession of Plaintiff.

15. If the jury believe from the evidence that Coates as tenant of Nathaniel Bryn was in the actual possession of the land and that Nathaniel Bryn claimed adverse

59

Given.

to the defendant & that while Coates was in such possession the defendant entered and broke one or two acres having a deed from Baker and others to the whole yet the defendant would not thereby be in possession of the whole tract but only of such part as he obtained & kept the possession, and an entry of the Plaintiff by authority of Nathaniel Bryan under an agreement with the tenant on a part not broken by defendant would not be an intrusion or trespass on defendant,

And the Court ~~gave~~ those marked on the margin given & refused those marked on the margin refused. And the defendant objected to the giving of each of the Plaintiff's instructions as given, but the Court overruled the objections & gave such instructions to which the defendant then & there excepted.

The defendant asked the Court to give the following instructions to the jury to wit:

6016, Although the jury believe from the evidence that the defendant broke an acre or more of prairie on the premises described in the Complaint prior to the entry complained of therein, yet if the jury also believe from the evidence that at the time of said breaking John H. Coats was the tenant of the land under Nathaniel Bryn who had put him in possession & given him charge of said land and that said breaking was done in pursuance of a common design of said defendant and said tenant to hold said land against said Bryn for their common benefit under an adverse title, the jury are instructed that said breaking could not constitute the commencement of a lawful possession of said premises for said defendant adversely to said Bryn and that said Bryn and his grantee the present plaintiff had the right to disregard said act of breaking as if done by a mere trespasser. And the jury are instructed that the plaintiff had the right to take peaceable possession of the land in suit and that if they believe from the evidence that said plaintiff after the said breaking by said defendant did enter and take peaceable possession of said land and that said defendant afterwards as charged in the Complaint forcibly entered on the possession of said plaintiff and detained the same the jury will find the defendant guilty in manner & form as charged therein.

Refused

6/ 17. Any act done by the defendant on the premises while the same was in possession of the tenant of the Plaintiff by collusion with said tenant & in pursuance of a common design to hold the land adversely to said landlord although intended to obtain adverse possession will in law & justice be held to be in subordination to the title of said landlords and will not give said tenant or his confederate any advantage over the said landlord or his grantee, in such case the landlord or his grantee have the right to enter disregarding said act or acts of his tenant confederating with others against him treating their acts as trespasses, and any entry on the peaceable possession of said grantee the present plaintiffs will be held unlawful,

18. The possession of the tenant is the possession of the landlord in fact as well as in law and all the effect of collusion with the tenant to deliver possession to another person or to help him to possession would be in such a case as this a forfeiture of the term of the tenancy. And the landlord may enter peaceably and is not bound to bring forcible detainer, and such landlord can maintain an action of forcible entry & detainer against the party who subsequently enters upon his possession although that party be the

62

said third person who by collusion with said tenant has prior to the entry of said landlord done acts upon said land which would give a stranger adverse possession of said land.

~~holding~~, If Brooks committed a wrongful entry he is guilty.

19. If the jury believe from the evidence that Joshua Carter was the tenant of Nathaniel Bruyn & took & held possession of the land on such as such tenant, that afterwards and before the first entry of defendant the said Nathaniel Bruyn had sold his title to the plaintiff with the agreement that said plaintiff should have the right to enter on & improve said land, that said tenant had prior to said first entry of defendant abandoned the possession of said land and that said entry of said defendant was made by collusion with said tenant in pursuance with a common design to hold the land under a title adversely to said plaintiff, that the plaintiff afterwards entered peaceably upon said premises and said defendant afterwards & while said plaintiff was so in possession entered forcibly thereon & has since declared the same as charged in the complaint, the jury will find the defendant guilty.

Refused

20. If the Jury believe from the evidence that the plaintiff was the real owner of the land, although he had not then received his deed under the title of Nathaniel Bruyn or prior to the 25th day of June 1806 the first entry of defendant, that Coates was the tenant of N. Bruyn under a lease made prior to that date and prior to the sale to said plaintiff & had been put in & taken possession thereunder and that after plaintiff became the real owner & the landlord of said Coates that said Coates abandoned possession of the premises & said defendant then made his first entry therein in pursuance of a common design to hold the land adversely to the plaintiff. The jury are instructed that the said plaintiff has a right to maintain the action of forcible entry & detainer in this case for said entry, provided the jury also believe from the evidence that the defendant has also detained the premises.

21. If the Jury believe from the evidence that Nathaniel Bruyn leased the land to Coates 27th Sept 1805 for one year and that Coates took and held the possession of any part of the land for any useful purpose under the lease, then Coates was in the actual

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possession of the whole tract and if they further believe from the evidence that while Coates was in such possession the defendant without having a paramount title entered upon the land & broke one or two acres then such act of defendant confers no right and will not avail him as a prior possession to defeat this action.

Filed Nov 5, 1859 }
Wm. Lofely Clerk }

and the Court gave those marked on the margin given & refused those marked on the margin refused and the defendant objected to the giving of each of the plaintiff's instructions so given but the Court overruled the objections & gave such instructions to which the defendant then and there excepted.

The defendant asked the Court to give the following instructions to the jury to wit:

(Judge's modifications in brackets)

Zachariah Bruyn }

vs

Thompson Brooks }

Warren C. C. Mar. T. 1858

The defendant asks the Court to instruct the jury as follows:

1st That the act of Nathaniel Bruyn in hauling sails upon the land & making a pen before the entry

Given

666 If the jury believe from the evidence that the land in controversy was leased by Nathaniel Bruger to Coates for one year and that such tenancy had not expired at the commencement of this suit the plaintiff cannot recover and they will find for the defendant (Unless they further believe from the evidence that plff. before the expiration of said lease rightfully entered upon & took possession of the premises and that afterwards the deft wrongfully & forcibly entered upon such possession and detains the same after notice in writing before the commencement of this suit to surrender up such wrongful possession.)

7 Unless Coates was in possession of the land he could not surrender possession to Brooks.

8 If Coates never took possession of the land, and Brooks went on to it on the 25th day of June under a claim of title (while the land was vacant & actually in possession of plff) and broke up one acre or two, with the view of taking possession, and followed up that intention by making other improvements in a reasonable time and these things appear from the evidence the jury will find the defendant not guilty.

67 9 If the land was vacant and unoccupied when Brooks went on to it and commenced breaking, he was justified in so doing if he had claim & color of title

Given

Given

9 1/2 By taking possession of a tract of land under a claim of title by deed, such possession is Co-extensive with the deed.

Given

10 Brooks was at liberty to purchase the land and go on and improve it, if it was vacant when he went on and took possession and Bruyn afterwards came on. Bruyn was himself a trespasser and not Brooks.

Given

11 The Collusion which will end a tenancy must be an agreement or arrangement made by the tenant to surrender the possession to another and in this case if Coates was the tenant of Bruyn his tenancy had not expired at the time of the commencement of this suit unless he expired or colluded with Brooks to surrender the possession of the premises to him, and if he never had any possession he could not surrender it.

68.12

53

Referred

The evidence in this case is totally insufficient to establish any such collusion or agreement between Coates and Brooks as would defeat the tenancy of Coates.

13

Given

If Nathaniel Bryan the father of plaintiff rented the land in controversy to Joshua Coates in September 1855 for one year and defendant Brooks went into possession of the land on the 25th day of June 1856 the plaintiff cannot recover by reason of any forfeiture of his lease (unless such lease was forfeited & pl^{ff} entered & took possession of the premises & after such entry the def^t. forcibly entered & detained the same from pl^{ff}.)

14

Given

If the collusion sought to be proved between Coates & Brooks took place before Nathaniel Bryan conveyed to his son the plaintiff, the plaintiff cannot recover in this case (Unless the pl^{ff}. after the conveyance to him entered upon & took possession of the premises lawfully & after such entry Brooks forcibly entered upon his possession & detained the same.)

15 If there was a forfeiture of the lease from Nathaniel Brugn to Crates before he conveyed to his son the plaintiff cannot maintain this action for any such forfeiture.

16 The plaintiff not having complained in his complaint of any forfeiture of a tenancy cannot recover in this case by reason of any such forfeiture (though they believe from the evidence that the tenancy was forfeited & the plff entered lawfully & took possession of the land under his deed from Nathaniel Brugn and afterwards Brooks forcibly invaded such possession & detained it.)

17 The question of title to the land is not to be decided by the jury in this case. They have nothing to do with the title.

18 The conveyance of the land in dispute by the plaintiff to George H. Harding (if the jury believe from the evidence that such conveyance has been proved) conveyed all his interest in this case and he cannot recover.

70 19

If the jury believe from the evidence that Brooks (the land being vacant & unoccupied) entered on the land in controversy (under his deed in evidence the land being vacant) on the 25th day of June 1856 and broke up one or two acres such entry was *prima facie* an appropriation of the land according to the description in the deed and if he did so *bona fide* for the purpose of using the land by actual occupation in such manner as would be exclusive and open to the observation of others and had not abandoned his possession at the time of the entry by Bruger (such entry by Bruger) was an invasion of the defendants rights and the plaintiff cannot recover.

Given

Refused 20

The payment of taxes by either party has nothing to do with this case & the jury will not take that matter into consideration

21

If Coates agreed to let the plaintiff go on to the land and improve it the plaintiff did not thereby obtain possession until he went on to the land to make such improvements, and if defendant Brooks was in possession when the plaintiff went on to the land to improve it the plaintiff cannot recover for such act.

Given

Filed Nov 5th 1857
W. Lafayette CLK

71 And the Court gave those marked given but the
 the part thereof in the brackets was modifications
 by the Court & those marked refused was refused
 by the Court to which decision of the Court in
 making such modifications & refusing those mar-
 ked refused the defendant then & then excepted.

The jury returned into Court the following verdict
 to wit:

We the jury find the defendant guilty in manner
 and form as charged in the complaint.

Elijah Miller

J. J. Caldwell

Henry Keenan

J. L. Munson

G. Parker

J. A. McCoy

Allen Salisbury

John Carson

Samuel Graham

John M. Morris

J. P. Loperding

Josiah Martin

Filed Nov 5th 1859 }
 Wm. Laferty Clerk }

68.12 The evidence in this case ⁵³ is totally insufficient to establish any such collusion or agreement between Coates and Brooks as would defeat the tenancy of Coates.

13 If Nathaniel Bryan the father of plaintiff rented the land in controversy to Joshua Coates in September 1855 for one year and defendant Brooks went into possession of the land on the 25th day of June 1856 the plaintiff cannot recover by reason of any forfeiture of his lease (unless such lease was forfeited & pl^{ff} entered & took possession of the premises & after such entry the def^t. forcibly entered & detained the same from pl^{ff}.)

14 If the collusion sought to be proved between Coates & Brooks took place before Nathaniel Bryan conveyed to his son the plaintiff, the plaintiff cannot recover in this case (Unless the pl^{ff}. after the conveyance to him entered upon & took possession of the premises lawfully & after such entry Brooks forcibly entered upon his possession & detained the same.)

72 Therefor the defendant moved for a new trial for the following reasons to wit:

Zachariah Bruger
vs
Humphreys Brooks } In the Western Circuit Court
Oct. 7. 1859.

And now comes the said defendant by Cain & Mead his Attornies and moves the Court for a new trial herein for the following reasons:

1st Because the Court gave improper instructions upon the part of the plaintiff.

2^d Because the Court refused proper instructions on the part of the defendant.

3^d Because the Court permitted improper evidence to go to the jury on the part of the plaintiff and rejected proper evidence on the part of the defendant.

4th Because the verdict is contrary to the instructions of the Court.

5th Because the Verdict is contrary to the law and evidence, wherefor he prays for a new trial.

Filed Nov 10/1859
Wm Laferty CLK

By Cain & Mead
his Attornies

But the Court overruled the motion and rendered judgment upon the verdict to which

73 the defendant then & then excepted.

And forasmuch as the foregoing matters do not appear of record it is ordered that this bill of exceptions be signed sealed and made a part of the record which is accordingly done,

Filed December 12th 1860

John S. Thompson (Clerk)

Wm. Lofely clerk

Copy of Appeal Bond

Know all men by these presents that we Thompson Brooks as principal and Garland Ray as held and firmly bound unto Zachariah Bryan in the penal sum of One Thousand Dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this 15th day of November Anno Domini One thousand eight hundred and fifty nine. The condition of the above obligation is such that whereas the said Zachariah Bryan did in the 5th day of November 1859 in the Circuit Court within and for the County of Warren and State of Illinois recover a judgment against the above bounden Thompson Brooks by a verdict of guilty in an action of forcible entry and detainer and costs of suit from which judgment of said

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Circuit Court the said Thompson Brooks has prayed for and obtained an Appeal to the Supreme Court of said State. Now if the said Thompson Brooks shall duly prosecute his said Appeal with effect and shall moreover pay the amount of the Judgment costs interest and damages rendered and to be rendered against him in case the said Judgment shall be affirmed in the said Supreme Court then the above obligation to be null and void otherwise to remain in full force and virtue.

Thompson Brooks (SS)
Garland Ray (SS)

Approved Nov 16, 1859

J. S. Thompson

Filed Nov 16, 1859

Wm. Laferty CLK

State of Illinois

Warrin County

I Wm. Laferty Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true copy of the record & Proceedings in the foregoing case as fully and completely as the same appears from the files & records of my office.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Circuit Court at my office in Mouth this 4th day of April A.D. 1860

Wm. Laferty Clerk

Zachariah Bruyn
VS
Thompson Brooks
" "

State of Illinois - Supreme Court
Third Grand Division - April Term 1860.

Thompson Brooks, Appellant.

vs Appeal from Harrow,

Zachariah Brugn, Appellee.

And now comes the said
Appellant and says: Because in the
verdict and judgement aforesaid, and
in the record and proceedings aforesaid
manifest Error hath intervened, to his in-
jury in this:

1st That the Circuit Court erred in ad-
mitting improper evidence offered by
The Plaintiff.

2nd That the Circuit Court erred in ex-
cluding proper evidence offered by the
Plaintiff Defendant.

3rd That the Circuit Court ~~erred~~ misdirect-
ed the jury by giving improper instructions
on the part of the Plaintiff.

4th That the Circuit Court erred in re-
fusing to instruct the jury, as asked by
The Defendant.

5th That the Circuit Court erred in
over-ruling Defendants motion for a new

Trial, and in rendering judgment for
the Plaintiff

6th That the Circuit Court erred in not
rendering judgment for the Defendant.

7th That the Circuit Court erred in ren-
dering said judgment, because, the same
is against the law and the evidence.

For which, and for other Errors
manifest in the record and proceed-
ings aforesaid, the said Appellant,
prays. That said judgment may be
reversed, annulled, set aside, and for-
naught taken and esteemed.

N. M. & S. Weed

Attorneys for Appellant.

Supreme Court
Thompson Brooks
appellant

207
Zachariah Brown
appellee

and now comes the said
appellee by W C Goudy his
attorney and says that there is
no error either in the record
and proceedings aforesaid
or in the giving of the
judgment aforesaid where
fore he prays that said
judgment may be in all
things affirmed &c

W C Goudy
att'y for Appellee

165
Thompson v. Brooks -
Appellant.
vs Appeal from Kansas

Zachariah Magn. Appelle
165

Record & doct.
of laws

Filed April 16. 1860
L. Leland
clerk

Supreme Court of Missouri
April Term 1860

Thompson Brooks
vs
Jacobus Byrum

Appeal from venue

It is stipulated in this
case that the appellee may
have ~~twenty~~^{ten} days after
the filing of the appellants
argument or points in which
to file her argument &
points - & the appellant
may have like time in
which to reply thereto if
served by him.

Aug 28 1860

Wm. D. Sheard.

Atty for Appellant.

Wm. D. Sheard
for appellee

¹⁶⁵Brooks - 91
2

Briggs

Stipulation

Filed May 29, 1860
L. Leland
Clerk

Thompson Brooks.

vs

Zachariah Mynw

In the Supreme.
Court. In the April
Term A.D. 1860.

Questions by Appellant on motion of
Appellee to strike the Bill of Exceptions from
the record

1st The record shows (page 14) that at
the October Term 1859, of the Warren
Circuit Court; to-wit: on the 14th day
of November A.D. 1859 the said Appellant
by an order of said Court then and
there entered, was allowed Thirty
days in which to prepare and file
his Bill of Exceptions -

2nd That it appears from said record,
(page 73) that the Bill of Exceptions
~~was~~ duly filed in said ^{Circuit} the Clerk's
Office in Warren County of record within
the time allowed by the Court. To-wit:
On the 12th day of December 1859.

He apprehend that it is only ne-
cessary to call the attention of Your
Honors. to these facts to insure the
over-ruling of said motion. The
Affidavits filed in support of
said motion, are clearly inadmissible.

Thompson v. Brooks
in Apr 168

Zachariah Muey

Suggestions by Appellant
on Motion to strike the
Bill of Exceptions from
the files

Filed April 21, 1860
L. Deland
Clerk

State of Illinois 3rd Grand Division
Supreme Court, April Term 1860
Thompson Brooks }
vs } Appeal from Warren
Zachariah Bruyn }

William C. Gandy being duly sworn says that directly after the adjournment of Court at which the judgment below was rendered ~~the~~ Bill of Exceptions prepared by the Attorney for Appellant, was sent to this affiant at Chicago for his examination, that he immediately examined the same and found it grossly incorrect and containing less than half of the evidence, and omitting two or three of the witnesses entirely and in no part of it stating the evidence as given but attempting to give the legal effect of such evidence, that this affiant was unable and unwilling to approve the Bill, but on the contrary made his objections, & for the purpose of having the rights of the appellee protected made out a full

Bill of Exceptions to be presented to the Judge below as expressing the view of the Attorneys for the Appellee as to the facts & a correct Bill, that this affiant proceeded to make such examination, wrote his objections & prepare the other Bill immediately on the receipt of the Appellants Bill & continued to work at the same till completed; and thereupon this affiant took both Bills & the minutes of the evidence in person from Chicago to Peoria where ~~the~~ H. N. Mead, Esq. the attorney of Appellant who had prepared the appellants Bill resided & there he delivered the Bill prepared by him with notes of objection thereto to the said Mead, who immediately in the presence of this affiant enclosed it for mailing to the Judge below who was then holding Court at Ogawatha, Henderson County, and this affiant left the Bill he had prepared in the office of the Geo. H. Harding, Esq. his associate Counsel for examination; and this affiant so delivered the said Bill.

in Peoria a period of time between ten & fifteen days after the rendition of the commencement of the 30 days allowed for filing the same.

And this affiant has been informed & believes that the Bill prepared by the attorneys ~~for~~ of the appellants as well as the Bill prepared by this affiant were received by the Judge below at Oquawka within two days after this affiant left them in Peoria as aforesaid, that the said Judge refused to sign & seal the Appellants Bill because the same was grossly incorrect, and because the same was so incorrect as to in caple of being modified one of the attorneys for Appellants who was present at the time requested leave to prepare & present another Bill, which was never prepared; and after the expiration of the time for filing and after the expiration of sixty days, the said Judge struck out one or two pages & made some other alterations in the Bill prepared by this affiant & signed & sealed

the same so altered and delivered
the same to C. A. Paine Esq one of
the Counsel for appellant, who took
the same to the Clerk of the Circuit
Court of Warren County & such
Clerk then received such Bill for
the first time & marked it filed, Jan
17. 1860.

And this deponent states on
his own knowledge so far as he is
concerned & on information and
belief ~~that~~ as to his associate counsel
that no consent was given by any
of them to the filing of such bill at
the time it was in fact filed, but
the same was done without their knowledge.

W. C. Gandy

Subscribed & sworn to
before me this 20th day of
April 1860.

L. Leland Clerk
by J. B. Pitts Deputy

1859
Brooks
Bryson

Affirmant

Filed April 20, 1860
L. Leland
Clerk

by ~~the~~ ^{the court} for filing the said bill.
That affiant gave said
Bill to Wm. C. Gandy Esq; and
~~never~~ ^{never} again saw the same.
~~within fifteen days after~~
~~Said Court at his office where~~
~~the same he is informed had~~

That he immediately on
the receipt of the bill as drawn
by said Wm. C. Gandy Esq sent
the same with the Minutes
of evidence as taken by the
appellee to the Judge of said
Ancient Circuit Court, &
the same was received by said
Judge as he is informed with
the original bill during the
first week of the Circuit Court
of said Henderson County and
within eighteen days after said
Ancient ^{Circuit} Court on the last day
of which the order allowing
said bill to be filed within thirty
days was made.

That he is informed & believes
that the facts as stated in
said Gandy's affidavit in
relation to said bill are true.

W. J. Gandy

Sworn to & subscribed
before me this 20th
April 1865

L. Leland Clerk of Sup. Court
by J. D. Rice Deputy

185 90
Brook
n
Bryn

Affidavit

Filed April 20, 1860
L. Leland
clerk

Supreme Court of New York
Third Term 1860

Thompson Brooks

vs Appeal from Warren
Zachariah Bryan

George H. Harding being
sworn says

That he has
examined & carefully read
the affidavit of Wm. G. G. &
filed in this case; that he
believes the statements therein
made to be true.

That, of his own knowledge,
affiant states that said
Bill of exceptions in said
case was marked filed
January 17 1860 -
where on the files of
the Court below in March
last; that the Clerk of
said Court acknowledged
to your affiant that
he had changed the filing
of the same in obedience
to & at the request of the

Judge of said Court
your affiant further
states that he ^{not} knows ^{of}
the making of ~~any~~ agree-
ments by the parties or
their attorneys which
justifies this action by
said Clerk, or author-
ized the filing of said
bill of exceptions at said
date.

That the fact is that
said bill of exceptions
was in fact, as your
affiant believes, filed
long after January
17 1860, and the filing
was antedated to come
within the supposed terms
of the order of appeal.

Geo. H. Mundy

Sworn to & subscribed
before me April 18 1860
L. Leland Clerk of Sup. Court
by J. B. Rice Deputy

185⁹⁰
Brooks
n
Pony

Abstract
of
Newspapers

Filed April 18. 1860
L. Leland
Clerk

Thompson Brooks

vs

Zachariah Myn

In the Supreme Court.
Third Grand Division
April Term 1860.

And now comes the said Appellant, and moves the Court to set aside the order made and entered herein at a former day of the present term of this Court and, to strike from the record the Bill of Exceptions - and also asks the Court for a re-hearing of the motion to strike said Bill of Exceptions from the record - reasons and suggestions on file herewith.

H. M. + J. Weed,

Attorneys for the Appellant

Thompson Brooks.

vs 165-90

Zachariah Pruyn.

Motion -

Filed Apr 25: 1860

A. L. Samuel
Clerk

State of Illinois 3rd Grand Division
Supreme Court April Term 1860
Thompson Brooks &
vs } Appeal from Warren
Zachariah Bruyn }

William C. Lundy being duly sworn states that as one of the attorneys for the appellee he examined the files & papers in the Circuit Court of Warren County within the last month for the purpose of ascertaining when the Bill of Exceptions was filed, and that William Lafferty the Clerk of the Circuit Court of Warren County furnished him such papers among which was the Bill of Exceptions now copied in this record, that the said Bill was then marked on the back thereof "Filed January 17. 1860. Wm Lafferty Clerk," which was the only filing thereon, that he called the attention of the Clerk to said filing and enquired of him whether the Bill was actually filed on the 17th January 1860, and the said Clerk replied that he had

received the Bill from the hands of E. A. Paine one of the attorneys for the Appellant during the time or just after the time of a special Term of Court held in January 1860 at Mercer County, and that he either marked it filed on the day he received it, or else marked it filed at an earlier day than the one on which he received it; and this deponent has reason to believe and does believe that after ~~that~~ ~~the~~ time of such conversation with the Clerk, he, the said Clerk altered the date of filing so as to make it appear as filed Dec: 12, 1859.

And this deponent states that he never consented at any time to an extension of the time for the filing of such Bill or to the alteration of the indorsement of the same, and he further states that George H. Harding and this deponent have had the exclusive management of said case since the trial in the Circuit Court & no other person was authorized to act for

the said appellee in regard to said
Bill of Exceptions, and further
this deponent says not.

W. C. Gandy

Subscribed & sworn to,
before me this 18th day
of April 1860
L. Leland Clerk of Sup Court
by J. D. Kim Deputy

185 90
Thompson Brooks
vs
Zachariah Binyu

affidavit of
W. B. Gandy

Filed April 18. 1860
L. Leland
Clerk

The State of Illinois
Warren County

J. Photo E. Reed

being duly sworn upon oath do
say that I am one of the Attorneys
for the plaintiff in said the Cause
of Zachariah Brown vs Thompson
Brooks which was tried at the
October Term A.D. 1839 of the Warren
County Circuit Court of the State
of Illinois. that as such I
never made any agreement with
either of the Attorneys for the defen-
dant or with the defendant that
any further time should be given
to prepare a Bill of Exceptions in
said Cause. or that one might be
prepared signed and filed as within
the time granted by the Court
for filing the same. and that he
frequently examined the said bill
of Exceptions after the same was
filed in the office of the Circuit
Clerk of said Court and that the
same was put every time when
he saw the same marked filed
January 17. 1860 - And that
he had no knowledge of the
filing of the same until he saw
the same on the file of the Court -
Photo E. Reed

Sworn to & subscribed
before me by Photo & Reed
this 21st day of April A.D. 1860
William Safety
Clerk of the Circuit Court
of Warren County Illinois

165-98
Thompson Bros
by
Zachariah Brown
Att. of P. E. Reed

Filed May 8. 1860
L. L. L. L.
Clerk

State of Illinois /
County of Mercer. John S. Thompson being first duly sworn
doth depose & say that he is and has been
for more than five years, Judge of the 10th Judicial Circuit
of said State; that he was the Presiding Judge at the
October Term last past of the Northern County Circuit
Court; that at said Term the Case of ^{Anthony & Wright} ~~Anthony & Wright~~
vs. Thompson & Brooks. Perpetrator & Detainer, was
tried & a verdict found for plff.; That the deft, Brooks,
by his Counsel, according to the recollection of this
affiant, presented to the Court a Bill of Exceptions
in said Case, to be signed by this affiant as Judge
assessing & that during that term of said Court; that the
plff. Counsel objected to the same as not containing
a correct statement of the evidence & the decision
of the Court; that further time was given, what time
this affiant does not now remember, but suppose
the records will show. This affiant further states
that he afterwards & he thinks the day before the
November Term of the Henderson Co. Circuit Court
last past, adjourned, he received by Express from
Geo. H. Henderson Esq or Wm. C. Sandy Esq. Counsel
for plff in said Case, or from both, a package
containing a bill of Exceptions drawn by them or one of them
in said Case and desired this affiant to examine &
sign the same as a true bill of Exceptions in said
Case & that during the month of December or the early
part of January next following the receipt thereof

Peoria Ill
Dec. 13 1835

Hon John S. Thompson
Albion Ill -
Dear Sir:

I
sent you a bill of re-
ceptions & our evidence
for three last terms
by express at Chicago
of 11th. has not reached
you. Will you favor
me with a line - on the
subject - ?

I regret so much my
inability to attend your
meeting here - & commend

the present time, this affiant does not remember
+ as soon as he had time to examine the said
signed said Bill of Exceptions with some
alterations, & handed the same to
Genl. E. A. Prime of Counsel for
said dept. That this affiant
recd a letter from G. F. Harding
dated Dec. 15, 1859 in relation
thereto, but this affiant cannot now
state whether the Bill was signed
before or after the date of said
letter, but he thinks ~~not~~ it was
afterwards — D. John S. Thompson

State of Illinois
Mercer County I personally appeared before the undersigned
Circuit Clerk in & for said County John
S. Thompson Judge of the Peace Judicial Circuit in
said State, who after being duly sworn deposes and says
that the matters and things set out in the above and foregoing
affidavit are true and correct as he verily believes, and
that the letter hereto attached is the same letter referred
to in the foregoing affidavit, being hereto attached by the
direction of the said affiant
In Testimony of which I hereto set my hand
and the seal of our said Circuit Court on this
28th day of April A.D. 1860 W. S. Senter Clerk
By M. P. Brown Deputy

Thompson Brooks

vs

Zachariah Pruyn

Affidavit of John S Thompson

Filed May 8. 1860

L. Selous
clerk

The State of Illinois
Warren County

J. William Laferty

being duly sworn do say that I am
Clerk of the Circuit Court of Warren
County Illinois. That I have now in
my charge & custody as such Clerk
the original Bill of Exceptions in the
case of Zachariah Brown vs
Thompson Brooks. in an action
of forcible Entry & detainer. which
was tried in said Court at the October
Term AD 1859. That said Bill of
Exceptions was first filed in my
said Office on the 27th day of
January AD 1860. That by direction
of the Hon John S. Thompson Judge
of said Court I marked said Bill of
Exceptions filed as of the 12th day
of December AD 1859. That I
cannot tell whether said Authority
from said Judge was in writing
or not - but that he has frequently
given me such Authority in other
cases. That when said Bill of Excep-
tions was first filed in my said Office
I entered on the back of the same
filed January. 17-1860. and that
afterwards I altered the said entry
on the back of said Bill of Exceptions

and made the same to appear that
said Bill of Exceptions was filed Decem-
ber 12, 1859 - I done this so that
said Bill would appear to be filed
at said last mentioned time and
in accordance with the authority of
said Court - And as I understood
by the consent of the Attorneys of
the parties, I am now of the opinion
that Genl. E. A. Parie Atty for the
defendant told me that Judge Thompson
directed that said Bill should be marked
filed as if filed with me within
the thirty days mentioned in the order
granting said appeal - and that the
Attorneys for the plaintiffs had granted
them further time to prepare & file
said Bill of Exceptions

Wm. Laferty

State of Illinois }
Warren County } I Ephraim S. Swinney
Clerk of the County Court of Warren
County Illinois do hereby Certify
that on the 21st day of April A.D. 1860
personally appeared before me William
Laferty and made oath that the
 foregoing Affidavit was true - to the
best of his knowledge & belief

In Testimony whereof I have hereunto
set my hand and affixed the seal, of
the said Court the date herein written
Ephraim S. Swinney

Thompson Brooks
vs
Zachariah Brown
Att of Wm. S. S. S.

Filed May 8. 1860
L. S. S.
Clark

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

THOMPSON BROOKS	}	ERROR TO WARREN.
v.		
ZACHARIAH BRUYN.		

ARGUMENT OF APPELLEE.

The material question presented in this case is, was the defendant in error in the rightful possession on July 2d, 1856? This Bruyn affirms.

There is but the single act of adverse possession by Brooks on June 25th, 1856. Brooks on that day broke about one acre of prairie on the land. This was but an act presumptive of an intention to assert an ownership and possession over the property.

Ellicott v. Pearl, 10 Peters, 412.

Now the court left this point to the jury by instructions numbered 2, 2½, 3—8, 9, and 19, given on the part of Brooks, and instructions 4, 5, and 6, given on the part of Bruyn.

There was evidence to warrant the jury in finding that the intention was only to exclude, and not in good faith to possess, influencing Brooks in breaking the prairie.

First, The act was one of the slightest kind, and therefore the presumption of intention to improve is but slight.

Second, It was done to put in wheat, as stated by Brooks, and was never followed up by any other breaking for a wheat-field — thus rebutting the intention stated.

Third, It was done with the knowledge that Bruyn was going on to improve in a few days, and the jury had the right to infer that it was done to anticipate him and exclude him.

Fourth, It was done under an arrangement with Bruyn's tenant to get his landlord's land, as stated hereafter.

Again,—The character of this act of Brooks in breaking the prairie was not adverse to Bruyn, because it was the joint act of Coates and himself in collusion to get Bruyn's land.

Brooks could not take advantage of his own wrong. Bruyn had the right to treat the act as if done by his tenant, and in subordination to his title, and perhaps as done under it.

Bruyn had three remedies — Ejectment, Forcible Detainer, and Peaceable Entry—after June 25th, 1856, against Brooks or Coates, or both; the usual remedies of landlord against a tenant detaining premises.

Bruyn chose the remedy by peaceable entry on 30th June, continued in the possession quietly and peaceably till July 2d, when Brooks made, under the lead of the tenant Coates, the forcible entry complained of.

This disposes of the adverse act of the plaintiff in error.

The acts of the defendant in error, and his grantee and tenant, showing that they were respectively in possession of the land on and prior to June 25th, 1856, are numerous.

Bruyn's grantee enters on the land on September 26th, 1855, and leaves there a load of rails which he had hauled from his farm fourteen miles distant, and erects them into a rail pen. On the next day he hauls another load of rails on the land for the purpose of finishing the pen. This is done in pursuance of an arrangement with Joshua Coates, who wished to use the land as a feeding-lot, and the pen to feed his hogs on the land. He also leases the land to Coates, whose farm adjoins, and a few rods from whose house the pen is placed, reserving the right to re-enter or improve the land for himself or son.

The rails are afterward laid up in a pen eight or ten rails high, and are seen at that height in February, 1856.

The ground about the pen showed signs of hogs and cattle having been fed therefrom, and the pen thus used during the winter.

Coates quarries stone in a stone-quarry on the land, and states that he has a lease and intends to charge for stone got there. This is in the fall of 1855.

In February, 1856, Coates takes down the pen and hauls the rails off the land—nominally to use on his own farm, really (as the jury had the right to infer in pursuance of an arrangement with Brooks, his brother-in-law, whose farm also adjoins, and who had bought some title in the land in December on joint account) to give Brooks an opportunity to take possession of the premises.

In the spring Coates hauls the rails back and puts them on the land—whether in the shape of a pen or not does not clearly appear.

Afterward, about the time when Bruyn might be expected to come in and follow up his improvements and possession, Brooks breaks a small patch on the land.

Nathaniel Bruyn, in February, sells the land to his son, the defendant in error, though the deed is not made till June 26th, 1856, and the de-

fendant in error goes on to the land, breaks around it, lays out large lands upon it, erects a house, and breaks 50 or 60 acres of the prairie and incloses it, thus showing his good faith in the original improvements.

The jury had the right to find from these acts that Bruyn was in the rightful possession on July 2d, 1856; and four verdicts for the defendant in error attest the righteousness of his case in the opinion of a jury.

Here were five distinct acts of possession prior to June 25th, 1856, but one of which existed among the facts on the former trial of this case. *Brooks v. Bruyn*, 18 Ill. 542. This is, therefore, essentially a different case; that but a naked skeleton.

There was in that case but the naked act of the erection of the rail pen in the fall of 1855. Here we have the lease to the owner and occupant of the adjoining farm; the entry of the tenant, and the assertion of ownership by quarrying stone, by using it as a feeding-lot, by erecting the pen, by removing it, and again putting the rails on the ground, probably as a pen, followed up by the substantial making of a farm, after June 30, 1856.

Again, the right of Zachariah Bruyn to maintain this action is cleared in this case from all doubt.

He was the real owner of the land in February, 1856, under the contract with his father. Coates was then his tenant. Brooks had then done no act on the premises. Bruyn's right was the same with that which his grantor would have had to have disregarded the act of one colluding with his tenant, and peaceably entering. His right, too, would have been the *same, had the contract not existed*, in the present shape of the case.

His father was in possession of the premises, despite the act of Brooks colluding with his tenant, when he conveyed to his son, the plaintiff below. The plaintiff then had the *right* of peaceable possession; and when this was asserted as against his tenant, his right to maintain the action for the entry of July 2d, 1856, on his peaceable possession thus obtained, is unquestionable.

The right of Bruyn to enter was reserved by his lease. The entry of Brooks was on *that actual possession*, and Bruyn was the proper party to complain of this wrong.

And again, Coates' tenancy was forfeited and abandoned by his collusion with Brooks. This gave Bruyn the right of entry which he asserted, and of course the right to defend his possession.

The complaint in this case is for a simple forcible entry and detainer on July 2d; that in *Ballance v. Fortier*, 3 Gil. 391, was for a detainer by a stranger colluding with a tenant and holding possession. Bruyn would have complained as in that case to have obtained possession, had he not chosen his remedy against the act of 25th June, by peaceable entry. He now complains of the subsequent illegal act of Brooks, who cannot shelter himself

under Coates' tenancy, because his trespass was on Bruyn's rights as reserved when lease was made, and because said lease was forfeited, and Coates' right to the premises terminated by his acts of collusion and abandonment.

The defendant in error therefore insists :

1st. That he was in peaceable and rightful possession on July 2d, 1856, and Brooks' entry on that day was wrongful.

2d. That Brooks never in good faith took possession of the land.

3d. That Brooks' act of 25th June, 1856, was the joint act of him and Bruyn's tenant in collusion to defraud Bruyn of his land ; and therefore Bruyn had the right to treat the same as not adverse, but in subordination to his rights and title.

4th. That Bruyn's right to enter was reserved by the lease ; and was doubly assured him on June 30, 1856, by the abandonment of Coates of his tenancy, and his efforts to place an adverse title in possession.

5th. That Bruyn was the owner of the land in February, 1856, and therefore was the party aggrieved, and who had the right to complain of attacks upon the possession subsequent to that date.

6th. That it is enough that the plaintiff became the owner on June 26th for this case, inasmuch as the entry complained of is of July 2d, 1856 ; and if his grantor had the right to disregard the act of Brooks of 25th June, as if the act of his tenant, and therefore not adverse, the right of this plaintiff, his grantee, would be the same, and his assertion of his rights by peaceable entry, on June 30, 1856, continued till July 2d, 1856, gave him the right to complain of the entry of Brooks on that day as a forcible entry.

The abstract erroneously shows that the 19th instruction of plaintiff in error was refused. It was given.

The instructions given are not and can not be complained of by the plaintiff in error. They were all he could ask in his favor.

GEO. F. HARDING,
For Defendant in Error.

165-91

Thompson Brooks

vs

Zachariah Bruyn

Argument of Appellee

13011

Filed June 9th 1860

L. Leland

Clerk

91

State of Illinois 3rd Grand Division
Supreme Court April Term 1884
Thompson Brooks }
vs } Appeal from Warren
Jacobariah Myers }

The said Appellee comes by
his attorneys & moves the Court
to strike the Bill of Exceptions from
the files because the said Bill was
not filed during the Term at
which the judgment was rendered
or during the period ~~when~~
allowed by the Court.

Geo. H. Harding
Att. Geny
attys for Appellee

165

Thompson Brooks
vs
Zachariah Bryan

Mov. to strike Bill
Exceptions from
the record

Filed April 18, 1860
L. Leland
Clerk

13011

Harding & Goudy
Attys for appellee