

No. 13430

# Supreme Court of Illinois

McClintock

---

vs.

Daily

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

No. 277.

---

*McClintock*

*vs*

*Leahy*

*13430*

1861



Supreme Court of the State of Illinois.

HARRISON P. McCLINTOCK,

APPELLANT,

vs.

EDWARD DAILY,

APPELLEE.

*Abstract of Record.*

T. G. FROST,

ATTORNEY FOR APPELLANT.

Pages of Record.

(1)

(2)

(6)

(7)

(8)

This was a proceeding under the Statute of Forcible Entry and Detainer, instituted before Milton L. Knight, a Justice of the Peace, of the City of Galesburg, to recover possession of certain premises situate in said city.

The defendant in the court below, moved to dismiss the proceeding for want of jurisdiction, by reason of the insufficiency of the affidavit upon which the proceedings were founded, and upon the ground that the affidavit did not allege that the plaintiff was in possession of the premises at the time of the alleged dispossession.

2d. The complaint did not allege that defendant came into possession by consent of Wilson, or by collusion with him.

3d. It did not allege that a legal tenancy existed, or that it had expired, or that demand was made in writing after its expiration of the defendant for the possession of the premises.

The motion was overruled, and after trial a verdict was rendered in favor of the plaintiff below. The cause was thereupon removed to the Circuit Court of Knox County by appeal, when the motion for want of jurisdiction, by reason of the insufficiency of the affidavit upon which the proceed-

10  
11  
19

ings were based was renewed on substantially the same grounds as before the justice, and because the affidavit failed to show an illegal entry on plaintiff's possession, or an unlawful detainer, or, holding over after the expiration of the tenancy.

The following is a copy of the affidavit referred to, upon which the suit was instituted.

STATE OF ILLINOIS, }  
KNOX COUNTY, } ss.

(2)

Edward Daily, of said county, after first being duly sworn, gives M. L. Knight, a Justice of the Peace, of said county, to understand and be informed, that this affiant is now justly entitled to the possession of the north-west quarter of lot five (5) in block sixty-four (64) in the southern addition to the town of Galesburg, in said county. That on or about the tenth day of March, A. D. 1859, this affiant made a condition trade of said lot to one George W. Wilson, for certain lands that said Wilson claimed to own in the State of Missouri, but that the condition of said trade was this: that if Wilson failed in a reasonable time to make a satisfactory title to said lands in Missouri, as aforesaid, to this affiant, then the trade was to be null and void, and that this affiant executed a deed to said Wilson for said lot and left the same in the possession of A. C. Wiley, Esq., who was to hold said deed until said Wilson made the title to said land in Missouri satisfactory to said affiant; that affiant delivered the possession of said premises and lot aforesaid to said Wilson, with the express understanding that if the title to said land was not completed, that he, said Wilson, should be the tenant of this affiant and pay rent for said possession from the time of his entry up to the time of his failure to complete the title aforesaid.

3)

Affiant further says that said Wilson wholly failed to complete the title to said land in Missouri as aforesaid and has long since refused to complete the same, claiming now that he had no title to said lands. Affiant says that some time in the month of August or September, 1859, the said Wilson



well knowing that he could not complete the title to said land in Missouri, and without the consent or knowledge of this affiant, did, wrongfully and unlawfully sell, or pretend to sell said lot in question, to Harrison P. McClintock, who knew at the time of said pretended sale, that said Wilson had no title to said lot, and was not entitled to the possession, and while knowing the same, McClintock did take (on or about the time aforesaid) unlawful and forcible possession of said house and lot, and still holds the possession from this affiant unlawfully and forcibly after demand made in writing for the same. Affiant says that he had been in the quiet and peaceable possession of said lot and house previous to said condition trade to said Wilson for the space of two years.

(4)

(4)

All of which acts and doings of said McClintock are contrary to the forms of the Statute, in such cases made and provided. Affiant therefore prays that said Harrison P. McClintock may be summoned to answer this complaint.

E. DAILY.

Subscribed and sworn to before me, this 24th day of July,  
A. D. 1860.

M. L. KNIGHT,

Justice of the Peace.

23

24

The motion was overruled by the Court, to which ruling the counsel for the applicant then and there duly excepted, and afterwards at the February term of said Circuit Court, A. D. 1861, the cause was tried, and upon trial, the following facts were proved. The plaintiff below called as a witness, Aldrich C. Wiley, who testified in substance that Edward Daily and George W. Wilson came in his office on the tenth day of March, A. D. 1859, stating that they had just made a bargain for an exchange of lands. Daily selling certain premises in Galesburg, referred to in the affidavit in question to George W. Wilson, for which Wilson gave a deed in exchange for certain land in Missouri—Wilson agreeing also to clear off some incumbrance in the nature of a tax title on the Missouri property. The deed for

25

the Galesburg property was left with Wiley to take Mrs. Daily's acknowledgment, and was to remain in Wiley's hands until this incumbrance or tax title should be removed. Wilson was to take immediate possession of the Galesburg property, and did so. Wiley was to deliver to him the deed of said property when the tax title incumbrance was removed. Witness could not state any other conditions; witness then stated that about a year after this transaction, he, witness, had another interview with Wilson.

26

The plaintiff's counsel then proposed to prove the declarations made by Wilson to witness a year after the contract was made, which proposed evidence was objected to by defendant's counsel as incompetent to affect the rights of the defendant, McClintock. The objection was overruled by the Court, and the evidence allowed to be given, to which ruling of the court the counsel for the defendant then and there duly excepted.

The witness then stated that about a year after this contract was made, he, at the request of Dailey, had an interview with Wilson, and presented to Wilson an order which he requested him to sign upon Wiley, to deliver back to Dailey the deed of the Galesburg property. Wilson stated, in reply, that he would probably do so before he left town, but that he would not do it that day, and stated also to the witness, that he had agreed to pay rent. This statement was made about a year after the contract was made—Wilson never signed the order. The witness further stated that the defendant below, McClintock, came into his office at one time and wanted to see Daily's deed; that he showed him the deed. McClintock came back again and said he was about to purchase the property; he then asked him if he understood that the title never passed; he replied the he did not care any thing about that; he could get possession of the property with a deed from Wilson, and he thought he could hold it. The witness stated to him the facts and told him the title never had passed to Wilson.



27

On cross examination, the witness further testified that he understood Wilson was to go into immediate possession; that was the agreement, and he did go into immediate possession; he continued in possession a considerable length of time; he did not know when McClintock went into possession; he was there several months or a year. Stewart came in with Wilson and Daily when the deed was left, and stated over the arrangement. The deed to Daily was not left with witness, but he understood at the time that it was delivered. The second conversation, a year after the contract was made, occurred near Smith & Ford's office; may have been at Seiders; Daily asked Wilson if he did not agree to pay rent. Witness said he did not recollect the words used by the parties; Wilson did not say when it was that he agreed to pay rent.

28

29

The witness Robinson, testified that he served on McClintock the written demand of possession, or notice, on the 2d day of June, A. D. 1860; that he read the notice and gave him a copy; the notice so served being a written demand of immediate possession under the Statute, and required by the Statute before the issuing of the summons was read in evidence, which was as follows, viz:

30

To H. P. McCLINTOCK:

Sir:—You are hereby notified to leave the premises now occupied by yourself and owned by me, viz: The north-west quarter of lot No. five (5,) in block No. sixty-four (64,) according to the southern addition of the town of Galesburg, in Knox County, and State of Illinois. I hereby demand possession of said premises, June 2d, 1860.

E. DAILY,

George M. Wilson, a witness, produced and sworn, on behalf of the plaintiff, testified as follows:

31

That he knew the parties and premises in question, that he traded with Dailey by another man's say so; traded a piece of land in Missouri for a house and lot in Galesburg.

There was no other condition, only witness was to pay a tax title on the land, provided there was one. He made out a deed for the lot, and left it with Esq. Wiley. If there was any tax title on the land; witness was to pay it; if not, witness was to have the deed from Daily, of the Galesburg property. The title was not completed by the witness, that he knew of. Witness told Daily sometime after that if the title was not right witness would make it right with him, Witness supposed they were talking about rents. Witness told Dailey if he would give back witness his deed, he, witness, would make it right; that he did not say exactly that he would pay the rent, but would make it right.

Witness then stated further as follows :

This was some time a year ago last October. This title never had been perfected by witness. This occurred, I think, before I left; McClintock got possession when I left; I sent the key at the time; I sent the key up to give to McClintock and the man told me McClintock was in the house; I gave him a quit-claim deed; I did not tell him that this tax title had to be perfected in Missouri before I could get a deed; I told him I would give him a quit-claim deed; I told him the deed was left with Esq. Wiley under the title I got of Daily; I told him I supposed, but did not know, there was a tax title, and if there was I had got to pay it; I told him this in the first place; I did not know anything about it only I heard that another man had possession; I told Daily I would give one hundred dollars upon the tax title after it was investigated; I told McClintock the deed was left there until that was fixed up, to know whether there was or was not a tax title against it, and if there was, I was to settle it. I don't think I told him what would become of that deed in case I did not perfect this title. If the title was not right he was to give me back my deed and I was to give him back his; I can't tell what was said about perfecting that tax title; I think he was to hold the deed until the title was made perfect; I never perfected that title and never deman-



ded this deed of Wiley; I don't think I did; I don't know but I have asked Wiley for the deed, but think not.

33

On cross examination, the witness testified as follows, viz: This trade was consummated near John Riggin's; the papers were drawn in Stewart & Scroggs' office; the deed of the Missouri property was delivered to Daily; that was not left with any one, but delivered over to Daily a warrantee deed. Daily did not deliver his deed to me; I think it was mentioned over in Stewart's; I was to clear off the tax title, if any, and he was then to give up the deed; I did not know at that time whether there was a tax title or not; I had the patent title; I do not know now whether there is any tax title on it or not; the man said he thought there was a tax title; that patent title had possession under him; I did not employ any one to hunt up the tax title; Daily gave me the key, and I was to take possession of it; nothing then said about rent; I occupied about five and a half months; I had the key when McClintock went into possession; I sent it by a man to give to McClintock; I had not fully vacated possession at that time; I had some things there and he said McClintock was there at that time; I had not finished moving my things. This subsequent conversation about making it right was some time after that—a month or two after I traded with defendant, McClintock. That occurred—I don't recollect where, but some place in Galesburg. I told him if things were not all straight I would try and make them right sometime. That was all that was said on that subject; I do not recollect any such conversation as Esq. Wiley speaks of.

34

#### NOTICE OFFERED IN EVIDENCE.

George W. Wilson, recalled, testified: That after this trade was made with Daily, Daily one day came to me and said that Freeman had bought the land of him, and wanted me to give a deed to Freeman to save expense of recording, and I did it. This was sometime after the deed to Daily—

about three months after the trade; this was Daily's son in law; I did make the deed, accordingly, of this Missouri land to Freeman as Daily requested me to do; Daily asked me if I would not take up that deed I gave him, and give Freeman a deed, and I said I would; I rather think this was before I told him I would make it right.

35 John C. Stewart, sworn, says: I am one of the firm of Stewart & Scroggs; I was present and drew the deed between Daily and this Wilson; that occurred in my office, on the tenth day of March, A. D. 1859; the deed of the Missouri property was executed and delivered to Daily in my presence; the deed of the Galesburg property was made out and Daily signed it—went into Wiley's office; the trade was talked over by the parties, Daily and Wilson; Mr. Daily had traded a house and lot in Galesburg; they were exchanging a house and lot for a quarter section of land in Missouri; they asked me to write out two deeds; Wilson spoke first and said he and Daily had made a trade, and wanted I should write a deed to Daily of some land in Missouri; after that deed was written, Daily wanted I should write a deed of this house and lot for Wilson; Wilson's deed was made, acknowledged and delivered to Daily; Wilson, at time deed was being made, stated he understood there was a tax title against the land; Daily then objected to delivering deed until tax title was removed. I said they had better leave it in the hands of another person until that was removed; I suggested it be left with Esq. Wiley; I went into Esq. Wiley's office; Wilson had the possession; Daily had given him possession of the property; said nothing about his being in possession under any other title; there was no evidence of there being a tax title, only Wilson said it was so reported; we went into Wiley's office; the deed was delivered to Wiley, he was to take the acknowledgment and retain the possession of this deed until this incumbrance was removed, if any existed; I do not know whether there was any tax title; I never examined the records, had nothing from the records.

36



On cross-examination, the witness testified, he was to examine and see if there was a tax title. He had the patent and patent title. No specific time mentioned within which this was to be done; but it was to be done within a reasonable time. The testimony here closed, being all the evidence in the case.

The following instructions were given by the Court on the part of the plaintiff below :

1. If the jury believe from the evidence that at the time of the conditional sale from Daily to Wilson of the property in question, said Wilson was, and had been in possession of the same under Daily, as his tenant, and that said sale was conditional, and that the conditions of said sale have never been performed by said Wilson, and that defendant had notice before he purchased of Wilson; that the title had never passed from Daily, and if they further believed from the evidence that said trade, from Daily to Wilson, had never been completed, and that said Wilson was to pay rents to Daily, in case he did not complete the title to the Missouri land, in a reasonable time, and that he failed to complete said title in a reasonable time, then they will find for the plaintiff. If they further believe from the evidence that after said tenancy had expired, and before the commencement of this suit, demand was made in writing upon the defendant for possession.

2. If the jury believe from the evidence that some time after the conditional sale, from Daily to Wilson, said Wilson did admit to Daily, in the presence of A. C. Wiley, that said Daily was to have his deed which was kept with said Wiley, returned to him, and that the said Wilson then and there agreed to sign an order on Wiley for that deed to be so delivered up to said Daily, and that he, said Wilson, further agreed to pay said Daily rents for the property in question, before defendant took possession—admitting Daily to be his landlord—and if they further find that the relation of landlord and tenant did exist between said Daily and

Wilson, and that demand was made in writing upon defendant after the expiration of the tenancy, and before the commencement of this suit, then they will find for the plaintiff.

3d. If the jury find the defendant guilty, the form of the verdict will be, "We, the jury, find the defendant guilty in manner and form as alleged in the complaint," and all the jurors will sign the verdict.

44 5th. If the jury believe from the evidence, that the deed from Daily to Wilson was left with Wiley, to be retained by said Wiley until Wilson should complete the title to the Missouri lands, to the satisfaction of said Daily, then, in law, the title to the lots in controversy, did not pass from Daily to Wilson. So that if the jury believe, further, that Wilson was the tenant of Daily at the time, or before the defendant took possession, then they will find in this action for the plaintiff; If they further believe from the evidence that such tenancy had expired, and a written demand was made for such possession after such expiration of the tenancy and before the commencement of this suit.

The following instructions were given by the Court on the part of the defendant below:

45 1. To enable the plaintiff to recover, in this action, it is necessary to show that the relation of landlord and tenant exists between the parties, or between the plaintiff and the person under whom the defendant claims or desires his right or title, and if there was, in fact, no leasing of the premises, the defendant is entitled to a verdict.

2. To enable the defendant to recover in this action, it is not only necessary for him to prove a leasing of the premises, but also that the term of the lease has expired or been determined.

5. If the jury find, from the evidence in this case, that the relation of landlord and tenant did not exist between the plaintiff and defendant, or between plaintiff and Wilson, and if between plaintiff and Wilson that defendant entered under him and by his consent, or even if this relation of land-



46 lord and tenant did exist, as aforesaid, still if the jury find that the evidence fails to show that the term of the lease expired or had been determined, or if the jury find that the leasing was for an indefinite period, and has not been terminated by a notice to quit, then, in either of the above cases, their verdict must be for the defendant.

6. If the jury find, from the evidence in this case, that possession was taken by Wilson, not under a lease, but under a contract of purchase, and that he occupied said premises under said contract, whether it was fulfilled or unfulfilled, whether a deed was executed and delivered or not, and whether Wilson fulfilled or failed to fulfill the contract or not, they should find a verdict for the defendant.

7. No contract or agreement made between Daily and Wilson, after possession taken under the sale from Wilson to McClintock by McClintock, could affect the rights and interest of McClintock, and if the jury believe from the evidence that the plaintiff has failed to show any contract of leasing, or for payment of rent before the sale by Wilson to McClintock, and possession taken by McClintock, they will find for the defendant.

47 8. If the jury should believe from the evidence that there was a tenancy established by the evidence between Daily and Wilson, before the sale to Wilson and possession by him, or between Wilson and McClintock, they must also find such tenancy was for a specific time and the time had expired, or if it was for an indefinite time, then it must have been terminated by notice prior to the written demand of possession.

The following instructions asked by the defendant below, were refused by the Court, viz:

42 Number 3. To constitute the relation of Landlord and tenant, it is essential that rent should be reserved and if no rent was agreed to be paid then there is no leasing and no right of recovery by the plaintiff.

Number 4. In case the plaintiff shows the relation of

landlord and tenant to exist, if the lease or tenancy was for an indefinite period, the time of its expiration not being fixed by the parties, it is necessary for the plaintiff, in order to recover to prove a termination of such indefinite tenancy or time by service of notice to quit, and this notice must precede and be over and above, and in addition to the written demand required by statute which is not sufficient to terminate such tenancy.

Number 9. The notice if the tenant occupied for a sufficient time to create a tenancy from year to year, must be a six months notice terminating with the year, if sufficient only to create a tenancy from month to month, then a month's notice; and if for any less indefinite period, a reasonable notice before the tenancy can be legally terminated, before this proceeding can be sustained.

To each of which several rulings of the Court in giving the several instructions asked for by the appellee and in refusing the several instructions asked for by the appellant the counsel for the defendant below, then and there duly, severally and separately excepted.

The jury rendered a verdict in favor of the plaintiff below. A motion was made on the part of the appellant for a new trial, upon the ground of the erroneous rulings of the Court aforesaid, and upon the ground that the verdict of the jury was against law and evidence.

The motion was overruled by the Court, the counsel for the appliant then and there duly excepted, and judgement was entered upon the verdict, and appeal taken to this court.

43

48

49

50



277

H. P. McClinton

20

Edward Donly

Abstract

Filed Apr 18. 1861

Adm'd  
Clerk



Transcript of Proceedings  
lately had in the Tenth Judicial Cir-  
cuit in and for the County of Knox,  
and State of Illinois, wherein Edward  
Daily was Plaintiff, and Harrison P.  
McClintock, <sup>was Defendant</sup> as follows. To wit:

Copy of Notice.

To H. P. McClintock.

Sir,

You are hereby notified to leave  
the premises now occupied by yourself and  
owned by me, viz: the north West quarter  
of Lot No. five (5), in Block No. Sixty four  
(64) according to the Southern Addition  
of the Town of Galesburg, in Knox County  
and State of Illinois - I hereby demand  
possession of said premises - June 2, 1860.  
E. Daily"

'Filed May 12, 1860,

J. H. Lewis clk" -

Copy of Complaint before Justice Peace.  
To wit:

"State of Illinois ss  
Knox County ss

Edward Daily



of said County, after being first duly sworn gives M. L. Knight a Justice of the Peace, of said County to understand and be informed that this affiant is now justly entitled to the possession of the North West Quarter of Lot five (5), in Block Sixty four (64) in the Southern addition to the Town of Galesburg in said County. That on or about the 10th day of March AD 1859, this affiant made a condition trade of said Lot to one Geo. W. Wilson, for certain lands, that said Wilson claimed to own in the State of Missouri, but that the condition of said trade was this; that if Wilson, failed in a reasonable time to make a ~~good~~ a satisfactory title to said land in Missouri, as aforesaid, to said affiant, then the trade was to be null and void; and that this affiant executed a Deed to said Wilson for said Lot, and left the same in possession of A. C. Wiley Esq, who was to hold said Deed until said Wilson made the title to said land in Missouri, satisfactory to said affiant; that affiant delivered the possession of said premises and Lot aforesaid to said Wilson, with the express understanding that if the title to said land was not completed that he, said Wilson, should be the



3

Tenant of this affiant, <sup>and pay</sup> rent for said premises  
from the time of his entry, up to ~~this~~ time,  
of his failure to complete the title as aforesaid,

Affiant further Vays that  
said Wilson wholly failed to complete the  
title to said land in Missouri as aforesaid  
and has long since refused to complete the  
same, claiming now, that he had no title  
to said lands: Affiant Vays that some  
time in the month of August or September  
1859 the said Wilson, well knowing that  
he could not complete the title to said land  
in Missouri and without the consent, or  
knowledge of this affiant did, wrongfully  
and unlawfully sell, or pretend to sell, said  
lot in question to Harrison P. McClintock  
who knew at the time of said pretended  
sale, that said Wilson had no title to said  
lot, and was not entitled to the possession  
and while knowing the same, the said Mc-  
Clintock did take, (or or about the time  
aforesaid, unlawful and forcible possession  
of said lot and house, and ~~still holds the~~  
~~possession of said lot & house~~, and still holds  
the possession from this affiant, unlawfully  
and forcibly, after demand made in writing  
for the same - affiant Vays that he had  
been in the quiet & peaceable possession of  
said lot & house prior to said condition trade,



In Said Wilson, for the space of two years,  
all of which actings & doings of  
Said McClintock are contrary to the form  
of the Statute in such case made & provided  
Affiant therefore prays that said  
Harrison P. McClintock may be summoned  
to answer this complaint,

E. Daily,

Subscribed and sworn to before me this  
24th day of July A.D. 1861.

M. L. Knight,

Justice of the Peace

"Filed Sept. 12th 1861.

C. Annis CLK."

Copy of Summons issued by Justice Peace,

State of Illinois  
County of Knox 3d. The People of the  
State of Illinois,

To the Sheriff & Constable of said County  
Greeting -

Whereas complaint has been made  
before M. L. Knight Esq., a Justice of the  
Peace of said County, that Harrison P. Mc-  
Clintock, did wrongfully and <sup>unlawfully</sup> ~~unlawfully~~ enter  
about the month of August or September 1859  
into the lands and possessions of Edward



5

Daily then Situate and known and designated as follows, to wit: The North West Quarter of Lot Five (5) in Block Sixtyfour (64) in the Southern addition to the town of Salsburg in said County, and the said Harrison R. McClintock still does hold and detain the said lands and possessions from the said Edward Daily, unlawfully and without right. The command you to Summon the said Harrison R. McClintock to appear <sup>before</sup> the said Justice at this office in Salsburg in said County on the 31st day of July A.D. 1861, at 10 o'clock, a.m. to answer the said Complaint and have you then and there this precept.

Given under the hand and seal of said Justice the 24th day of July A.D. 1861,

W. L. Knight

Justice of the Peace

"Return upon said Summons, viz: "

"Personally served the within by reading to Harrison R. McClintock this 25th day of July 1861. Geo 50 & -

W. H. Wilsie, Const."

"Filed Sept 12, 1861

C. Adams CLK"



6

Copy of Transcript from Justice of the Peace,

"State of Illinois  
Hunt County 3d SS.

In Justice Court,  
Before M. J. Knight Justice,  
Edward Daily

vs  
Harrison P. McClintock      Forcible Entry and  
Retainer 1861.

Affidavit filed Jan. Edward  
Daily July 24th inst.

Summons issued to Constable  
Wilsie July 24th inst. returnable July 31st,  
A. M. 1861 at 10 o'clock A. M. Subpoena  
issued July 30th for John C. Stewart, re-  
turnable 31st inst. Summons returned  
personally served by reading to the De-  
fendant the 25th inst. signed A. H. Wilsie -

On the 31st inst. on motion of De-  
fendant, and per agreement cause is con-  
tinued until the 6th inst. at 10 o'clock  
A. M.

Venue issued on the 30th  
inst. Subpoena issued on the 30th for A. C.  
Wiley - On August 6th, Trial being called,  
1st. Motion made by Defendants' Counsel, to  
dismiss cause on the ground that the Court  
has no jurisdiction, because of the insuffici-  
ency of the affidavit; also on the ground



7

that your Affiant does not alledge that the Plaintiff was in possession of the Premises at the time of the alleged dispossession.  
2<sup>d</sup> That Complaint, does not alledge that Defendant came into possession by consent of Wilson, or by collusion with him <sup>or that he received the possession from him.</sup>  
3<sup>d</sup> It does not alledge that a legal tenancy existed, or that it had expired or that demand in writing was made after its expiration of the Defendant for the possession of the Premises.

Second venire issued returnable, for the 11<sup>th</sup>. Subpoena issued for George Wilson. Served by Constable Sisson and the following named persons were chosen as Jurors. Thwait, Meyers, Brewer, Flint, L. A. Brown, Lee, Hunt, Goodrich, Fenis, Tompkins. After hearing the testimony, the Jury were put into custody of Constable Sisson, and returned into Court and say they find the Defendant guilty, as charged in the Complaint. It is therefore considered by the Court that the said Defendant is guilty of a forcible entry and detainer, in manner and form as charged in the Complaint, and that Plaintiff recover costs of suit taxed at Ten Dollars and Sixty three cents,  
appeal Bond filed and approved



this 10th day of August A.D. 1861.

State of Illinois

Knox County 3<sup>rd</sup>

Justice of the Peace do hereby certify that the above is substantially a true Copy or transcript of the proceedings, as recorded upon my docket, with the papers in the above entitled cause.

W. L. Knight

Justice of the Peace

"Filed Sept. 12, 1861

C. Annis clk."

Copy of appeal Summons from Circuit Court to wit:

"State of Illinois

Knox County 3<sup>rd</sup>

The People of the State of Illinois  
To the Sheriff of Knox County  
Greeting

We command you to summon Edward Daily if he may be found in your County to be and appear before the Judge of our Circuit Court for the County of Knox on the 4th Monday in the month of



September 1861, To answer to an appeal obtained by Harrison P. McClinton from a Judgment rendered against him, for forcible entry and detainer in favor of said Daily, before M. L. Knight a Justice of the Peace, of said County on the 6th day of August 1861. for the costs of suit; and have you then and there this writ;

Witness Cephas Arms, clerk of our said Court at Knoxville, this 12th day of September A.D. 1861 the Seal of said Court being hereto affixed -

C. Arms.

Clerk "

Seal of  
Cir. Court

Return to writ

Read the within to Edward Daily this 13th day of September A.D. 1861. And, Thomson, Sheriff "

Sheriff's Fees

Service	.50
On Miles Travel	.30
Return	.10
Total	.90

And, Thomson

Sheriff of Knox County "



"Filed this 13th day of Sept. A.D. 1860,  
E. Annis Clerk"

"Knox. Circuit Court. Sept. Term 1860,  
E. Nailly App. vs. H. P. McClintock, Resp.,  
Appeal Quinn's for Pgs"

Copy of Entry of Record September  
28, 1860

318 "Edward Nailly vs. Harrison McClintock Appeal.

"This day came the  
Respondent by his attorneys, and moves the  
Court to dismiss this Suit for want  
of Jurisdiction of the Justice of the Peace  
from whom this Appeal was taken."

Copy of Respondant's Motion, viz:

"Nailly  
vs  
McClintock } Sept 7, A.D. 1860,  
The Respondant, by Smith,  
Mason and Frost, his  
Attorneys, comes & moves the Court to dis-  
miss this cause for want of jurisdiction  
in the Court below, to entertain the  
case, & render judgment therein"



2<sup>d</sup> on the ground that the affidavit  
in the Suit, was insufficient to au-  
thorize the issuing of the Summons  
or enable the Court below to entertain  
jurisdiction of the Case,

Smith Mason & Frost  
Attys for Deft.

"Filed Sept 25<sup>th</sup> 1860

C. Annis, clk"

Copy of Order entered of Record  
October 8<sup>th</sup> A. D. 1860, viz:

318 "Edward Daily vs. Appeal,  
Harison P. McClinton

This cause coming  
on for hearing on Defendants motion to  
dismiss this Suit, for want of Jurisdiction  
of the Justice of the Peace from whom this  
Appeal was taken, and the Court  
being advised in the premises it is  
ordered by the Court, that said motion  
be overruled."

Copy of Order Entered of Record  
October 18<sup>th</sup> A. D. 1860, viz:



918 "Edward <sup>12</sup>Daily vs. Appeal  
Hansen P.M. Clutcock

This day again came  
the parties, and their attorneys, and  
on motion, and by agreement, it is  
ordered by the Court, that this suit  
be continued until the next term of  
this Court."

Copy from Record, of Proceedings  
at the February Term A.D. 1861.

State of Illinois  
Inss County ss. February Term A.D. 1861  
Reas before the Honorable  
Aaron Tyler, Judge of the Tenth Judi-  
cial Circuit, of the State of Illinois  
at a Court begun and held, at the  
Court House, in the City of Knoxville  
in said County, on Monday the eight  
enth day of February, in the Year of  
Our Lord one thousand Eight Hundred  
and Sixty one, being the third Monday  
of said month -

Present  
Honorable Aaron Tyler Judge



H.

James A. Stewart States attorney.  
John H. Lewis Clerk.  
Elijah Abbott Sheriff.

March 11th AD 1861  
Edward Wiley vs appeal  
182 Harmon P. McIntock

This day came  
the parties and their attorneys, and  
issues being joined for trial put them-  
selves upon the country. Thereupon  
came a Jury to wit: C. M. Hall  
A. Browning, A. C. Buzzum, Wm H.  
Higgins, R. W. Robbins, Philip Un-  
-dersen, C. B. Smith, Wm H. Look, M.  
Hansen, J. G. Perdue, J. H. Knapp, and  
James M. Deatherage, who being duly elec-  
-ted, tried and sworn, well and truly  
the issues joined herein, after hearing  
the evidence were permitted to separate  
under instructions from the Court, and  
directed to meet the Court at eight o'clock  
tomorrow morning.

March 12th AD 1861  
Court met pursuant to adjournment  
Present. Same as yesterday



14

(182) Edward Daily  
Hanson P. M. Humber appeal

This day again  
came the parties, and their attorneys,  
and also came the Jury heretofore em-  
panelled herein, and ~~reported~~ after  
after hearing the evidence and arguments  
of Counsel, upon their oaths, do say,  
That the Jury find the Defendant  
Guilty in manner and form as alleged  
in the complaint, (signed by all  
the jurors) Whereupon came the Def-  
endant, by attorney, and moved the Court  
for a new trial "herein".

Copy of Verdict of Jury viz:

"We, the Jury find the Defendant  
Guilty, in manner and form, as  
alleged in the Complaint.

J. H. Knapp, W. N. Look, John I. Perdue,  
Wm. S. Higgins, C. B. Smith, R. M. Robbins,  
O. M. Hall, A. C. Buffum, W. Browning,  
J. M. Ware, J. W. Heathcote, Phillip Anderson "

"Filed March 12th 1861  
J. H. Lewis, Clerk"

Copy of Motion for New Trial.



"Knox Circuit Court,  
 City, Penn. and 1861  
 Edward Daily,  
 vs.  
 Harrison P. McClintock

and now, comes the  
 Defendant by his attorney moves the Court  
 for a new Trial for the following reasons,

- 1<sup>st</sup> The Verdict of the Jury was against Law,
  - 2<sup>d</sup> The Verdict of the Jury was against Evidence,
  - 3<sup>d</sup> The Court erred in excluding the evidence  
 offered by the Defendant -
  5. The Court erred in overruling the motion to  
 dismiss the suit for want of Jurisdiction and  
 insufficiency of the affidavit on which the pro-  
 ceedings are founded -
  6. The evidence was insufficient to justify  
 the Circuit Court in entertaining Jurisdiction  
 of the case -
  - 7 The Court erred in giving the following  
 instructions asked for by the Plaintiff viz:
- |                 |                                  |
|-----------------|----------------------------------|
| 1 <sup>st</sup> | in granting Instruction No. one, |
| 2 <sup>d</sup>  | " " " " No. Two                  |
| 3 <sup>d</sup>  | " " " " No. Five,                |

8th.

The Court erred in refusing the  
 following Instructions, asked for

"3<sup>d</sup> The Court erred in admitting the evidence objected to, the next-



by the Defendant,

1. In refusing Instruction No. three

2. " " " No Four,

3. " " " No nine,

Wesley Smith & Co. Frost  
"Repts attys"

"Filed March 14, 1861

J. H. Lewis clk"

Copy of Judgment viz:

"March 10th A.D. 1861  
Court met pursuant to Adjournment  
Present,

Hon. A. Tyler Judge

J. H. Stewart State atty.

J. H. Lewis clerk

Clifford & Sherris

Edward Dailly

(182)

W. Hamilton P. M. Clintock } Appeal,

This cause coming on for  
hearing on defendants motion for a new  
trial, and in arrest of Judgment, and  
the Court having heard said motion,  
it is ordered that the same be over-  
ruled - Therefore it is ordered by the



5

17

"Court, that the Plaintiff recover of and from the said Defendant, the possession of the premises, by him in his Complaint mentioned and described, and that the same be vested in him, as an indefeasible estate in fee simple.

And it is further considered by the Court, that the Plaintiff recover of the Defendant, his costs by him in this suit expended as well in the Court below, as in this Court, and may have execution therefor.

Whereupon came the Defendant by Attorney, and excepted to the rulings and decisions of the Court and prayed an appeal to the Supreme Court of the State of Illinois - Whereupon it is ordered by the Court that such appeal be allowed, upon Defendant's filing, Bill of Exceptions, and a good and sufficient Appeal Bond, in the sum of Five Hundred Dollars, to be approved by the Clerk, by agreement, within thirty days from the date hereof.

Copy of Bill of Exceptions. viz:

"Circuit Court, Hunt County,  
Edward Bailey

v.  
Harrison P. McIntock



Knox County,  $\frac{2}{3}$  ss.  
 Be it Remembered that in the Sept-  
 -ember Term of said Circuit Court, in the  
 Year of our Lord one Thousand Eight Hundred  
 and Sixty, held at the Court House, at  
 Knoxville in & for said County of Knox, came  
 the said Harrison P. McClintock by Mason  
 Smith & Frost, his attorneys, having per-  
 -fected his appeal in this case & said Cir-  
 -cuit Court, in and for the County of Knox  
 from the Judgment rendered in favor of  
 said Edward Daily, against said Harrison  
 P. McClintock, by Milton S. Knight Esq.,  
 a Justice of the Peace, in & for the City of  
 Galesburg & County of Knox on the Sixth  
 day of August A.D. 1860, in a Proceeding  
 for forcible Entry and Detainer, said  
 Daily having been duly served with a  
 Summons on said Appeal & having ap-  
 -peared thereon by Smith & Frost, his attys.,  
 said McClintock, said Defendant & appell-  
 -ant, moves the Court on behalf of said de-  
 -fendant to dismiss said Suit so pending on  
 appeal, & to quash said Proceedings for for-  
 -cible Entry and Detainer, on the ground, that  
 the Court below, and the said Circuit Court  
 had no Jurisdiction of the subject matter,  
 for the <sup>reason that the</sup> affidavit upon which said Proceed-



ings were founded, was insufficient to give jurisdiction, as follows.

"The Defendant by Smith, Mason, & Post, his attorney, came & moved the Court to dismiss this case for want of jurisdiction in the Court below to entertain the case & render judgment therein -

2<sup>d</sup> On the ground that the affidavit in the suit below was insufficient to authorize the issuing of the Summons, or enable the Court below to entertain jurisdiction of the case. "Filed Sept. 25, 1860, C. Ann. etc." also the further reasons were filed in said cause as follows - "Filed Sept. 28, 1860, C. Ann. etc."

"And now comes the Defendant & moves the Court to dismiss the case for want of jurisdiction in the Justice to entertain the case & render judgment, & on the ground that the affidavit upon which the suit was founded, was insufficient to give jurisdiction to the justice for the reasons stated on the justices transcript on the motion below to dismiss the case before the justice & for the reasons 1<sup>st</sup> Because the plaintiff was not in possession of the premises as appears from the affidavit where the illegal entry & forcible possession was taken by the defendant & therefore the proceeding for illegal & forcible entry will not lie in his name 2<sup>d</sup> Because the affidavit does not show that the defendant was the tenant of the plaintiff or that he entered into possession under the tenant of the plaintiff & therefore the proceeding for detainer will not lie 3<sup>d</sup> The affidavit does not



show the existence<sup>20</sup> of a tenancy

4. the affidavit does not show, that the tenancy had expired, when the demand in writing for the possession was made. 5. The affidavit does not show that there was any sale of the premises by Wilson the purchaser from the plaintiff to the defendant. there is merely an allegation that "he sold" or "pretended to sell" which is insufficient.

6. There is no allegation as to what the character of the defendants possession was, whether it was derived from the plaintiff or from Wilson or under some other & hostile title, to that of the plaintiff.

7. The affidavit shows affirmatively that the deft took <sup>possession</sup> unlawfully & forcibly & therefore did not come in by the consent of the plffs & vendee, Wilson, who was in possession & the case cannot be sustained therefore on the ground of a tenancy & a detainer.

8. The Affidavit is uncertain & indefinite & ambiguous as to what ground the plffs claim is based & whether it is his intention to proceed for an illegal & forcible entry or for a detainer.

"Filed Sept. 28. - 1860  
C. Annis Clk"



Copy of Complaint before Justice of the  
Peace to wit

"State of Illinois }  
Knox County } ss

Edward Daily  
of said County after being first duly sworn  
gives M. L. Knight a Justice of the Peace of  
said County to understand and be informed  
that this affiant is now justly entitled  
to the possession of the North West quarter  
of Lot five (5) in Block Sixty four (64) in the  
Southern addition to the Town of Galesburg  
in said County. that on or about the 10<sup>th</sup>  
day of March A.D. 1859. this affiant made  
a condition trade of said lot to one Geo  
W. Wilson. for certain lands that said  
Wilson claimed to own in the State of  
Missouri, but the condition of said trade  
was this. that if Wilson failed in a  
reasonable time to make a satisfactory  
title to said lands in Missouri, as aforesaid  
to said affiant then the trade was to be  
null and void; And that this affiant  
executed a Deed to said Wilson for said  
Lot and left the same in possession of  
A. C. Wiley Esq. who was to hold said Deed  
until said Wilson made the title to said



land in Missouri satisfactory to said affiant that affiant delivered the possession of said premises and Lot aforesaid to said Wilson with the Express understanding that if the title to said land was not completed that he said Wilson, should be the tenant of this affiant and pay rent for said premises from the time of his entry up to the time of his failure to complete the title as aforesaid.

Affiant further says that said Wilson wholly failed to complete the title to said land in Missouri as aforesaid and has long since refused to complete the same, claiming now that he had no title to said lands: Affiant says that sometime in the month of August or September 1859. the said Wilson well knowing that he could not complete the title to said land in Missouri and without the consent, or knowledge of this affiant did wrongfully and unlawfully sell, or pretend to sell said lot in question to Harrison P. McClinton who knew at the time of <sup>said</sup> ~~the~~ pretended sale, that said Wilson had no title to said Lot and was not entitled to the possession and while knowing the same the said McClinton did take on or



23

about the time aforesaid, unlawfully and  
forcible possession of said Lot and House  
and still holds the possession from  
the Affiant unlawfully and forcibly, after  
demand made in writing for the same  
Affiant says that he had been in the  
quiet and peaceable possession of said  
Lot & House prior to said condition trade  
to said Wilson for the space of two years

All of which actings & doings of  
said M. McIntock are contrary to the  
form of the Statute in such case made &  
provided.

Affiant therefore prays that said  
Harrison P. McIntock may be summoned  
to answer this Complaint

E. Daily

Subscribed and Sworn to before me this  
24<sup>th</sup> day of July A.D. 1860

M. L. Knight

Justice of the Peace

Filed September 12<sup>th</sup> 1860

C. Arms. C.K.

"which motion was overruled by the  
Court, to which Ruling of said Court,  
the Respondant & appellant, then & there  
duly excepted -

and afterwards, to wit  
at the Circuit Court, held in & for said



County of Knox & State of Illinois, at  
the Court House in Knoxville, and at  
the February Term of said Court, in the year  
of our Lord one thousand ~~one~~ thousand eight  
hundred and sixty one, & on the ~~11~~ the day of  
March A. D. 1861. Said Cause came on  
to be tried, between the said parties as  
aforesaid, according to the forms of the  
Statute, in such case made and provided  
before said Court, and a Jury of said County  
for that purpose duly empannelled, good &  
lawful men of said County - at which  
day came then, as well the said Plaintiff as  
the said Defendant, by their respective at-  
torneys aforesaid, and the Jurors afo-  
said, empannelled to try the said issue  
being called, came also, and were then & there  
duly sworn to try said issue, and upon  
the trial of said Cause, the following pro-  
ceedings took place, & evidence was given  
viz: -

The Plaintiff to maintain his case, by his  
attorney & counsel aforesaid, called Aldrich  
C. Wiley who being duly sworn testified  
as follows,

There was a Deed deposited  
with me, - Edward Nailly & Geo. W. Wilson  
& Stewart came into my Office with a deed  
Mr. Nailly had not signed - I think



Stewart handed me the Deed - I was to take the Deed, and take Mrs. Daily's acknowledgment - The Deed was to remain in my hands until Wilson should remove all incumbrance on this land in Missouri, traded for this property in Galesburg, Daily and Wilson having made a bargain, as it appeared, for an exchange of lands, Daily selling certain premises in Galesburg to Wilson, for which Wilson gave a Deed in exchange for certain land in Missouri; Wilson agreeing also to clear off some incumbrances on the Missouri land - The incumbrance I understood to be a Tax Title, and then I was to deliver to him a Deed, - Wilson was to go immediately about it - no time fixed - I was to deliver the Deed to him, when he satisfied Daily it was removed - Wilson was to go immediately into possession - I could state no other conditions - about a year after that I had another interview with Wilson -

The Plaintiff, by his Counsel, then proposed to prove the declarations made by Wilson to witness, about a year after the Contract was made, which proposed evidence was objected to by Defendant's Counsel as incompetent, to affect the rights of the



rights of the Defendant, - The objection was overruled by the Court, and the evidence allowed to be given, to which ruling of the Court, the Counsel for the Defendant then and there duly excepted -

I sought an interview with Wilson to get his consent to deliver Daily back his deed - I wrote out an order to give deed back to Daily - Wilson said, I'll not sign it to day, but will, probably before I leave Town - Wilson said in answer to Daily, he had agreed to pay rent, this was a year after contract was made - He said he had agreed to pay him rent, I never knew whether tax title was removed, or cleared up,

The Defendant, Mr. McIntock, came into my Office and wanted to see Daily's Deed, I showed him the deed, He came back again the next day; said he was about purchasing that property, Mr. McIntock said so - I asked him if he understood the title never passed - He said he did not care <sup>any thing</sup> about that, he could get <sup>possession of the ~~deed~~ property with</sup> a deed from Wilson, and he thought he could hold it - I stated to him the facts & I told him the title had never passed to Wilson -



27

On Cross Examination by Defendants Counsel witness testified as follows viz:

This deed was left two years ago yesterday - I understood Wilson was to go into immediate possession, - that was the agreement - He did go immediately into possession, He continued in possession for a considerable length of time - I don't know when Mr. Clintock went into possession. He was there several months, or a year - This, and the conversation with Wilson was at least a year and may be more after this conversation occurred the time I received from Daily the deed. This deed was delivered in my Office in Gallesburg - Daily, Wilson & Stewart came in, together Daily said they had been making a trade. He went on and stated that Wilson & Daily had made an exchange of property, - that Daily was deeding the House and property in question, for Missouri Land - Mr. Wilson had made a deed to Daily of the Missouri Land - this deed of the land in Gallesburg I was to hold until the incumbrance on the Missouri land was removed - Wilson had delivered his deed of Missouri land, to Daily - the deed to Daily was not left with me - I understood from them it was di-



-libred - It is my impression they said  
 it was a tax title - I understand this  
 incumbrance was a Tax title - That  
 deed was to remain with me, 'till that  
 was removed, I recollect no other con-  
 versation then - I have a lot of deeds in  
 my office possession now. This other con-  
 versation occurred at the Adams Block, at  
 the head of stairs, near Smith & Ford's  
 Office - It may have been Seider's Office,  
 Daily & Wilson were both present, I mean  
 then but a few moments - I did not meet  
 them by appointment - I went over by  
 Daily's request, I went <sup>there</sup> to get Wilson to  
 give up the Deed - I spoke to Wilson about  
 it and he declined to do it, at that time -  
 I showed him an order I had written - say-  
 ing, I will sign it, but not now, for reasons  
 best known to myself - He did not say  
 what the reasons were - Wilson & Daily  
 had considerable talk that I did not  
 pay attention to, I have no recollection  
 of their talking about anything else, I have  
 no recollection of his saying there was no  
 good Tax title - Daily asked if he did  
 not agree to pay rent, I do not recollect  
 the words used by the parties - I don't know  
 what led to that - That was the main



object intended, <sup>29</sup> and to get that Deed, Wilson did not say when it was that we agreed to pay rent - This conversation I cannot tell with Mr. McIntock. I cannot tell anything about the time. He said he was about purchasing - I told him that the deed was deposited with me, and I said, you understand the title has not passed - He said he could hold the land if he could get possession under the Deed from Wilson - He said he knew what he was about. This conversation with McIntock occurred before that with Wilson when I called on him for the Deed, but I cannot tell the exact time it took place,

Wm. Robinson, Secy.

I reside in Salisbury -  
I received notice and a copy which I was requested to serve on McIntock. I served another notice on him - I think I served this notice June 2<sup>nd</sup> 1861 - this was before the commencement of this suit. McIntock was then in possession of the premises. I read the notice to McIntock and gave him a copy besides -

Copy of Notice, to wit,



To H. P. McClellan

Sir, You are hereby notified to leave the premises now occupied by yourself & owned by me, viz: the north west quarter of Lot No. five (5) in Block No. Sixty four (64) according to the Southern Addition of the Town of Galesburg, in Knox County & State of Illinois - I hereby demand possession of said premises -

June 27 1860 - E. Wiley.  
Filed Mar 12, 1861  
J. H. Lewis CLK

The written notice so served being a written demand of immediate possession, under the Statute, required by Statute, upon the issuing of summons was then read in Evidence, as above set out -

George W. Wilson, being sworn on behalf of the Plaintiff, testified as follows.

I know the parties, and their premises & know the premises - I heard the Evidence of Wiley - I traded with Wiley by another man's say so - I traded him a piece of land in Missouri, for a house & lot



in Galesburg - <sup>31</sup> There was no other con-  
dition only I was to pay a Tax title on the  
land, provided there was one - He made  
out a Deed for the lot and left it with  
Esg. Wiley - If there was any Tax title  
against the land, I was to pay it, if  
not I was to have the Deed from Wiley  
to the Galesburg property, the title was  
not completed by me that I know of, I  
told him some time after that, if the title  
was not right, I would make it right  
with him - I suppose we were talking about  
Rent. I told him if he would give me back  
my Deed, I would make it right with him,  
I did not say exactly I would pay the  
rent, but would make it right, this was  
sometime a year ago last October, this  
title never had been perfected by me, this  
occurred I think before I left McClintock -  
got possession before I left, I had the key  
at the time - I sent the key up to give to  
McClintock & the man told me McClintock  
was in the House - I gave him a quit  
claim Deed, I did not tell him the title  
had to be perfected in Missouri, before I  
could get a deed - I told him I would  
give him a quit claim deed - I told  
him the Deed was left with Esg. Wiley  
under the title I gave of Wiley - I told



him. I supposed, but did not know there was a tax title, & if there was one, I had got to pay it. - I told him this in the first place. - I did not know anything about it, only I heard that another man had a possession - I told Wiley I would give One Hundred Dollars, or pay the tax title after it was investigated. - I told Nic Clintock the deed was left there until that was fixed up, to know whether there was or was not a tax title, against it, & if there was I was to settle it. I don't think I told him what would become of that deed, in case I did not perfect this title. If the title was not right he was to give back my deed, and I was to give him back his. I can't tell what was said about perfecting that tax title - I think he was to hold the deed until the title was made perfect. I never suspected that title, nor demanded this deed of Wiley - I don't think I did - I don't know but I have asked Wiley for the deed, but think not -

Cross Examination,

On cross examination the witness testified as follows viz:

This trade was consummated near John Rogers'. The papers were drawn up in



9

33

Stewart & Scroggs Office. The Deed of the Missouri Property was delivered to Daily - that was not left with anybody, but delivered over to Daily - a Warranted Deed, Daily did not deliver his Deed true. - I think it was mentioned in Stewart's ~~and~~ ~~Scroggs~~ office. I was to clear ~~the~~ off the tax title, if there was one, and he was then to give up the deed - I did not know at that time, that there was a Tax title or not - I had the perfect title. I do not know now whether there is any Tax title on it or not - The man said he thought there was a Tax title on it, he thought - that Patent title had possession under him - I did not employ any one to hunt up the tax title - Daily gave me the key, and I was to take possession of it - Nothing then said about Rent, I occupied about five and a half months - I had the key, when McClintock went into possession I sent <sup>it</sup> ~~key~~ by a man to give it to Mc., Clintock - I had not fully vacated possession at that time - I had some things there and he, said McClintock was then at that time - I had not finished moving my things - This subsequent conversation about making it right, was sometime after that, a month or two after I traded



with Agent Mr. Clintoek, where that occurred, I do not recollect, but some place in Galzburg - I told him that if things were not all straight, I would try and make them right sometime - <sup>That was all that was said on the subject -</sup> I do not recollect any such conversation as Esq. Wiley speaks of -

Notice offered in Evidence

Plg. nests

George W. Wilson, Recalled testified, that after this trade was made with Daily, Daily one day came to me, and said that Freeman had bought the land of him, and he wanted me to give Freeman a deed, to save expense of recording, & I did it - This was some time after the deed to Daily, about three months after the trade - This was Daily's Son in law - I did make the deed accordingly of this Missouri land to Freeman, as Daily requested me to do -

Daily asked me, if I would not take up that deed & give him, & give Freeman a deed, and I said I would - I rather think this was before I told him I would make it right -

John C. Stewart, Sworn, Says I am one of the firm of the Firm of Stewart &



35

Scroggs, - I was present and drew the deed between Daily and this Wilson, that occurred in my Office on the tenth day of March A.D. 1859. The deed of the Missouri property was executed <sup>delivered to Daily</sup> in my presence - The deed of the Galesburg property was written out - and Daily signed it, and went into Wiley's Office. The trade was talked over by the parties, Daily & Wilson - Mr. Daily had traded a House & Lot, they were exchanging a House & Lot, for a Quarter Section of land in Missouri.

They asked me to write the Deeds; Wilson spoke first and said he and Daily had made a trade, and wanted I should write them a Deed to Daily of some land in Missouri - after that Deed was written, Daily wanted I should write a Deed of this House & Lot for Wilson - Wilson's Deed was made, acknowledged and delivered to Daily - Wilson at the time deed was being made stated he understood there was a Tax title against the land - Daily then objected to delivering Deed until Tax title to the was removed - I said they had better leave it in the hands of another person until that was removed - I suggested it be left with Esq. Wiley - I went



into Esq. Wiley's Office; Wilson had then possession - Daily had given him possession of the property - Said nothing about his being in possession under any other title - There was no evidence of there being a Tax title, only Wilson said it was so reported - We went into Wiley's Office; the deed was delivered to Wiley; he was to take the acknowledgment, and to return possession of this deed, until this incumbrance was removed, if any existed, I do not know whether there was a Tax title - I never examined the Records; had nothing from the Records.

On Cross Examination the Witness testified  
He was to examine and see if there was a Tax title - He had the Patent title; no specific time mentioned within which this was to be done - It was to be done in a reasonable time -

The Testimony here closed,

The foregoing, is all the ~~Testimony~~ Evidence and Proceedings in the trial of said Cause, with the exception of the following instructions and rulings of the Court thereon.



The following Instructions were asked by the Counsel for the Plaintiff, and each severally and respectively objected to, by the Counsel for the Defendant and Appellant, and was given by the Court. Each of which several Rulings of the Court, in giving each separate instruction aforesaid the Counsel for the Defendant then and there duly and severally and Separately excepted —



Copy of Instructions "given" on the part  
of the Plaintiff

- 1 If the Jury believe from the evidence that at the time of the conditional sale from Dailey to Wilson of the property in question said Wilson was and had been in possession of the same under Dailey as his tenant and that said sale was conditional and that the conditions of said sale have never been performed by said Wilson and that Defnt. had notice before he purchased of Wilson that the title had never passed from Dailey of his tenancy, and if they further believe from the evidence that said trade from Dailey to Wilson never had been completed and that said Wilson was to pay rents to Dailey in case he did not complete the title to the Missouri lands in a reasonable time & that he ~~failed to complete said title in a reasonable time~~ ~~will find for Plff.~~ failed to complete said title in a reasonable time then they will find for Plff. if they further believe from the evidence that after said tenancy had expired & before the commencement of this suit demand was made in writing upon defendant for possession

"Given"



2

If the Jury believe from the evidence that sometime after the conditional sale from Dailly to Wilson said Wilson did admit to Dailly in the presence of A C Wiley that said Dailly was to have his deed which had been left with said Wiley returned to him and that he said Wilson then & there agreed to sign an order on Wiley for that deed to be so delivered up to said Dailly and that he said Wilson further agreed to pay said Dailly rents for the property in question before Deft took possession admitting Dailly to be his land lord and if they further find that relation of landlord & tenant did exist between said Dailly & Wilson and that demand was made in writing upon the Deft. after the expiration of the tenancy and before the commencing of this suit then they will find for Plaintiff

3 If the Jury find the defendant guilty the form of their verdict will be

"We the Jury find the defendant guilty in manner and form as alleged in the complaint" And all the Jurors will sign the verdict



5

If the Jury believe from the evidence that the deed from Dailey to Wilson was left with Wiley to be retained by said Wiley until Wilson should complete the title to the Missouri lands to the satisfaction of said Dailey, then in law the title to the lots in controversy did not pass from Dailey to Wilson - so that if the Jury believe further that Wilson was the tenant of Dailey at the time or before Deft took possession, then they will find in this action for the Plaintiff if they further believe from the evidence that such tenancy had expired and a written demand was made for such possession on deft after such expiration of the tenancy & before the commencement of this suit.

"Given"

Upon the back of which instructions was the following filing

Filed Mar. 12/61.  
J H Lewis CLK



Copy of Plaintiffs instruction which was refused

Refused

6" The Jury are instructed that when a tenant sells or attempts to sell, ~~to sell~~ the property of the landlord no time is required as to the demand and this rule applies to those holding under or through the tenant as well as to the tenant himself

Filed Mar. 12/61.

J. B. Lewis, Clerk

The following Instructions were asked on the part of the Defendant, and were "Refused" by the Court, each of which Rulings of the Court, in refusing to give, each several Instructions so asked on the part of the Defendant said Defendant by his Counsel then and there duly severally and Separately excepted -  
wyz



42

Copy of Defendants Instructions Refused

"Refused"

3<sup>rd</sup> constitute the relation of Landlord & Tenant it is essential that rent should be reserved & if no rent was agreed to be paid there is then no leasing & no right of recovery by the plaintiff

"Refused"

4 In case the plaintiff shows the relation of land lord & tenant to exist if the lease or tenancy are for an indefinite period, the term of its expiration not being fixed by the parties it is necessary for the plaintiff in order to recover, to prove a termination of such indefinite tenancy or term by service of notice to quit & this notice must precede & be over & upon & in addition to the written demand required by statute which is not sufficient to terminate such tenancy

"Refused"

9 The Notice if the tenant has occupied for a sufficient time to create a tenancy from year to year must be a six months notice terminating with the year. If sufficient only to create a tenancy from month to month then a months notice & if for any less indefinite period a reasonable notice, before the tenancy



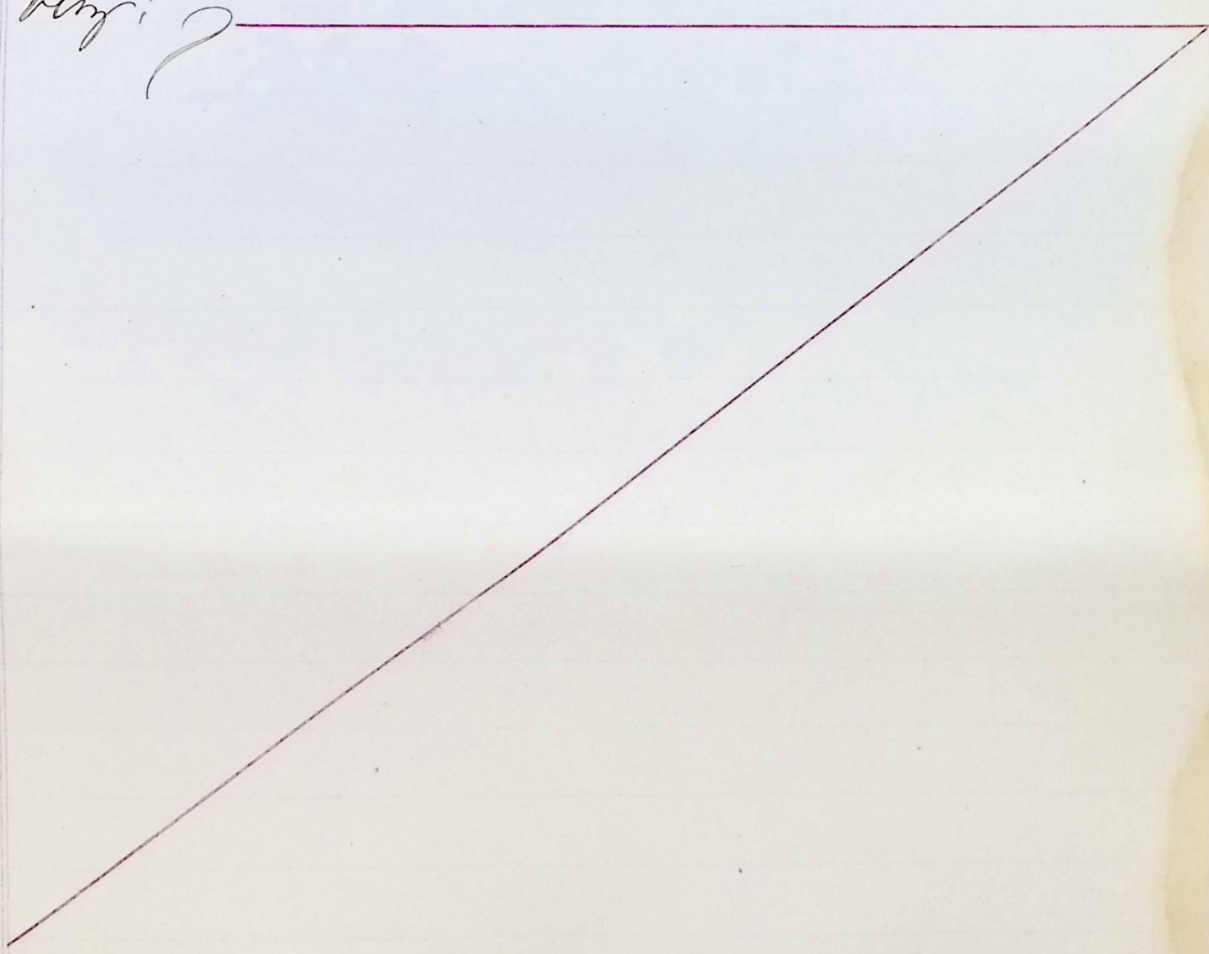
can be legally terminated. before this  
proceeding can be sustained"

Upon the back of which instructions  
were the following filing

"Filed Mar 12/61  
J H Lewis clk"



The following modifications of the Respondant's Instructions were made by the Court, to which Ruling of the Court, in making such modifications, the Counsel for the Respondant, as to each of said modifications, duly, severally and separately, objected and excepted to.





Copy of Instructions "given" on the part  
of the Defendant

1. To enable the plaintiff to recover in this action, it is necessary to show, that the relation of Landlord & Tenant, existed between the parties, or between the plaintiff & the person under whom the defendant claims or derives his right or title & if there was in fact no leasing of the premises then the defendant is entitled to a verdict

2<sup>d</sup> To enable the plaintiff to recover in this action it is not only necessary for him to prove a leasing of the premises, but also that the term of the lease has expired or been determined

5- If the Jury find from the evidence in this case that relation of Landlord & Tenant did not exist between the plaintiff & defendant or between plaintiff & Wilson & if between the plaintiff & Wilson, that defendant entered under him & by his consent - or even if the relation of Landlord & Tenant did exist as aforesaid, Still if the Jury find that the evidence fails to show that the term of the lease has expired



or been determined, or if the Jury find that the leasing was for an indefinite period & has not been determined by a notice to quit then in either of the above cases, their verdict must be for the defendant

6 If the Jury find from the evidence in this case that possession was taken by Wilson not under a lease, but under a contract of purchase & that occupied said premises under said Contract whether it was verbal or written, whether a deed was executed & delivered or not & whether Wilson forfeited or failed to fulfill the contract or not they should find a verdict for the Defendant

7 No Contract or agreement made between Daily & Wilson after possession taken under the sale from Wilson to M. Clintock by M. Clintock, could affect the rights & interest of M. Clintock & if the Jury believe from the evidence that the plaintiff has failed to show any contract of leasing or for payment of rent before the sale by Wilson to M. Clintock & possession taken by M. Clintock they will find for the defendant



8 <sup>47</sup> If the jury should believe from the evidence that there was a tenancy established by the evidence, Between Daily & Wilson, before the sale to Wilson or permission by him or between Daily & M. Clintock, they must also find such tenancy was for a specified time and the term had expired or if it was for an indefinite time then it must have been terminated by notice prior to the written demand of possession

Upon the back of which instructions were the following filing

Filed Mar 12/61.

J H Lewis Clerk

The Jury under the instructions of the Court found a Verdict in favor of the Plaintiff and against the Defendant, and therefore the said the said Defendant by his attorneys and counsel appeared and moved the Court for a new Trial for the following reasons to wit;



48  
Knox Circuit Court February Term A.D. 1861.  
Edward Daily (vs) Harrison P. M. McIntock

And now comes the defendant by his Attys &  
moves the Court for a new trial for the following reasons

1<sup>st</sup> The verdict of the jury was against law

2<sup>d</sup> The verdict of the jury was against Evidence

3 The Court erred in admitting the evidence objected to by (the depts)

4 The Court erred in excluding the evidence offered

by the defendant

5. The Court erred in overruling the motion to dismiss

the suit for want of jurisdiction & insufficiency of the

affidavit on which the proceedings are founded

6. The evidence was insufficient to justify the Circuit

Court in entertaining jurisdiction of the case

7. The Court erred in giving the following in-

structions asked for by the plaintiff viz

1<sup>st</sup> in granting instruction No one

2<sup>d</sup> ~~Instruction~~ Do No Two

3<sup>d</sup> Do No Five

8. The Court erred in refusing the following

instructions asked for by the defendant

1<sup>st</sup> in refusing Instruction No Three

2<sup>d</sup> Do Do Instruction No Four

3 Do Do Instruction No Five Nine

Mason Smith & Frost

Depts Attys

Filed Mar 14/61 J. H. Lewis Clk



which motion<sup>49</sup> was overruled by the Court to which Ruling of the Court the Counsel for the Defendant, then and there duly objected and excepted, the foregoing contains all the evidence and proceedings on said trial, and inasmuch as the said several matters so produced and given in evidence, and said proceedings on said trial do not appear by the Record of the Verdict aforesaid, the said Counsel for the said Defendant, did then and there prepare the aforesaid Exceptions, and requested the said Honorable Aaron Tyler, Circuit Judge, to put his Seal to this Bill of Exceptions, containing the said several matters, evidence rulings and proceedings, aforesaid, according to the form of the Statute in such case made and provided, and thereupon said Circuit Judge, at the request of said Counsel for said Defendant, did put his Seal to this Bill of Exceptions. Pursuant to said Statute in said cases made and provided on the Sixth Day of April A.D. 1861

A. Tyler *Just*  
 \* Said Bill of Exceptions, filed as follows:  
 "Filed April 8th 1861  
 J. H. Lewis Clk"

\* We have examined the above Bill of Exceptions and think it correct. Smith & Ford, for U.A. Smith.



Copy of appeal Bond

Know all men by these presents that we Harrison P. McClintock of Moline State of Illinois and Charles A. Hinkley of the County of Knox and State of Illinois are held and firmly Bound unto Edward Dailey in the penal sum of Two Hundred Dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents Witness our hands and seals this 5<sup>th</sup> day of April in the year of our Lord One thousand eight hundred and Sixty one

The Condition of the above obligation is such that whereas the said Edward Dailey did on the 16<sup>th</sup> day of March A.D. 1861 at the February Term of the Circuit Court holden in and for the County of Knox recover a judgment in said Court upon an appeal taken from the Judgment of Milton S. Knight Justice of the Peace of the City of Galisburg and County of Knox on a proceeding for forcible entry and detainer against said Harrison P. McClintock awarding to him possession of certain premises in the City of Galisburg and



for costs from which Judgment the said  
 Harrison P. M. McIntock has taken an ap-  
 peal to the Supreme Court of the State of  
 Illinois Now Therefore if the said Harrison  
 P. M. McIntock shall duly prosecute said  
 Appeal and shall pay the Judgment  
 damages and costs and interest in case  
 the Judgment aforesaid, <sup>shall be affirmed</sup> including the  
 Judgment of the Supreme Court in case  
 of affirmance then the above obligation  
 to be void, otherwise to remain in full  
 force and effect

Harrison P. M. McIntock Esq.  
 C. A. Hinckley Esq.

We hereby authorize J. G. Frost to fill the  
 blanks in and correct the foregoing bond  
 and perfect the same for the purpose of perfect-  
 ing the appeal to the Circuit Court  
 Witness our hands and seals

Harrison P. M. McIntock Esq.  
 C. A. Hinckley Esq.

I approve the foregoing bond & security thereto  
 April 11, 1861

"Filed April 11/61 J. H. Lewis. CK."  
 J. H. Lewis CK."



State of Illinois  
Knox County 3<sup>rd</sup> J.

I, John A. Lewis, clerk  
of the Circuit Court, in and for  
said Knox County, do hereby cer-  
tify that the foregoing is a true  
and complete copy of the Record  
and Proceedings, had in the foregoing  
case of Edward Daily, against  
Harrison P. McClinton, as the same  
appears from the Files and Records  
of my Office.

In Testimony whereof  
I have hereunto set my hand  
and affixed the Seal of said  
Court, at my Office in the City  
of Knoxville this 13th day of  
April A. D. 1861.

John A. Lewis, Clerk  
 By J. Wilson, Dep. Clerk.





Supreme Court

Harrison P McClinton

Appellant April Term 1869

Edward Daily

Appellee

Afterwards to wit on the 16<sup>th</sup> day of April in this same Term before the Justices aforesaid at Ottawa comes the said Harrison P McClinton by Thomas G Frost his Attorney, and says that in the record and proceedings aforesaid and also in giving the Judgment aforesaid, there is manifest error in this to wit.

1<sup>st</sup> That ~~the~~ Court below erred in overruling the motion to dismiss the writ and quash the proceeding for the insufficiency of the affidavit on which the same were founded.

2<sup>d</sup> The Court below erred in admitting in evidence the declaration of <sup>George W</sup> Nelson testified to by Aldrich C Miles made after Nelson had sold his interest to McClinton and McClinton had taken possession of the premises

3<sup>d</sup> The verdict of the jury was against law.

4<sup>th</sup> The verdict of the jury was against evidence.



5<sup>th</sup>; The Court erred in giving the following instructions asked for by the plaintiff below, viz.

1<sup>st</sup> In granting instruction No One

2<sup>d</sup> In granting instruction No Two

3<sup>d</sup> In granting instruction No Five.

6<sup>th</sup>. The Court erred in refusing the following instruction asked for by the defendant below viz

1<sup>st</sup> In refusing instruction No Three

2<sup>d</sup>. In refusing instruction No Four

3<sup>d</sup>. In refusing instruction No nine.

7. The Court erred in overruling the motion for a new trial made on behalf of the defendant below for the reasons then assigned.

Wherefore in that there is manifest error and this the said appellant is ready to verify —  
Wherefore he prays that the Judgment aforesaid, for the errors aforesaid may be set aside annulled and altogether held for nothing and that he may be restored to all things which he hath lost by reason of the Judgment aforesaid &c.

Thomas G Fox  
Attorney for Appellant



277

Supreme Court

Harrison P. McClintock

vs

vs

Edward Daily  
appellant

— " —

Record & Assignment of Error

Filed April 18, 1861  
L. Veland  
Clerk.

Hayward atty.  
\$5.00.