

No. 12049

Supreme Court of Illinois

Wilcox~~x~~on

vs.

McGhee

71641  7

State of Illinois }
Sixth Judicial Circuit }
Stephenson County }
}

Pleas in the Circuit Court in and
for said County of Stephenson begun and held at Deepport,
in said County on the first Monday - which was the second
day of April A.D. 1849, before the Honorable Benjamin
R. Sheldon Judge of the Sixth Judicial Circuit in said
State and presiding in said County of Stephenson -
Frederick A. Stroock, Sheriff and John A. Clark
Clerk -

Thomas M. Shee } Plaintiff
vs }
Rezin Wilcoxson } Defendants

Be it remembered that heretofore to wit:
on the 23 day of October A.D. 1848 the plaintiff in said
cause by his attorney filed in the Clerk's Office of
said Court his prayer in the words following to wit:

"Stephenson County Circuit Court of the April
Term -
Term A.D. 1849
Thomas M. Shee }
vs }
Rezin Wilcoxson }
} cause

The clerk will order the Sheriff to summon
Rezin Wilcoxson to appear before the Court
of Stephenson County at its next term to answer
Thomas M. Shee of a plea of case - damages \$2000.00
Deepport Oct. 17. 1848

J. J. J. J.

Attorneys for Plaintiff

which is endorsed Filed Oct. 23. 1848. John A. Clark ckb.

And afterwards to wit: on the said 28th day of October 1848 there issued out of the Clerk's office of said County a summons in said cause in accordance with said precept in words & figures following to wit:

summons

State of Illinois, } The People of the State of Illinois
Stephenson County, } ss. To the Sheriff of said County, Greeting:

We command you that you summon Rezin Wilcox if he shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court house in the town of Freeport in the said County, on the first Monday in April next, to answer unto Thomas M. Shee in a plea of case to the damage of the said plaintiff as he says in the sum of two thousand dollars —

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same

Seal

Witness John A. Clark Clerk of our said Court, and the seal thereof, at Freeport in said County, this 28th day of October A.D. 1848

John A. Clark Clerk

which summons has the following endorsement to wit:

Executed the within by reading the same to the within named Rezin Wilcox on Nov. 10. 1848

Ref return

See Invoice 50 - 5 miles, travel 6 1/4 - 31 1/4 Return 12. = \$.93 3/4

J. A. Thrift, Sheriff

And afterwards to wit: on the said 28th day of October 1848 the said plaintiff by his attorney filed in the said Court his declaration in the said cause which declaration is in the words & figures following to wit:

Stephenson County Circuit Court of the
April Term AD 1849 —

Declaration

Stephenson County (to wit:) Rezin Wilcoxson was summoned to answer Thomas M. Ghee of a plea of
surplus on the case, and thereupon the said Thomas
M. Ghee by Turner & Turner his attorneys complains,
for that whereas the said plaintiff on the first day
of October in the year of our Lord one thousand
eight hundred and forty six and long before, and
ever since was and is seized of his demesne as of fee
and possessed of a certain tract or parcel of land
containing by estimation eighty acres with the appurte-
nances situate in the County of Stephenson and State
of Illinois and known and described as the East
half of the North East quarter of Section number
ten (10) in Township number twenty seven (27), North
of Range number seven (7), East of the fourth (4),
principal meridian and lying on both sides of a
stream or brook commonly called Richland Creek;
and whereas the water from the said stream or brook
from the time whereof the memory of man runneth
not to the contrary, in its natural channel was wont
to run through said land, yet the said Rezin Wilcoxson
not ignorant of the premises but maliciously intending
to deprive the plaintiff of the use and profit of his said
land hath ever since the first day of October AD 1846
maintained and kept up and continued a
mill dam in the County of Stephenson aforesaid
across the stream or brook commonly called Rich-
land Creek aforesaid; and by means thereof
caused the water of the stream or brook aforesaid
to overflow and drown the plaintiff land afore-
said whereby the plaintiff's trees and grass standing

and growing upon his land aforesaid within the time aforesaid and of the value of one thousand dollars has been made worse and damaged and destroyed and his land aforesaid is become spongy, rotten and impassible and the plaintiff has also during the time aforesaid thereby been prevented clearing his said land cutting his said timber wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of two thousand dollars and therefore he brings his suit &c

2^d Count. And whereas also the said plaintiff before and at the time of the committing of the grievances hereinafter next mentioned, was, and from thenceforth hitherto hath been and still is, the lawful owner and possessor of a certain other tract of land situate in the County of Stephenson aforesaid, yet the said defendant well knowing the premises but contriving and intending to injure, prejudice and agrieve the said plaintiff and to incommode and annoy him by means of a mill dam on his the said defendants own land and across Richland Creek in Stephenson County aforesaid and by him ever since the first day of October AD 1847 continued there across Richland Creek aforesaid hath obstructed and stopped the natural course of Richland Creek and thereby caused it to overflow and drown the plaintiff land aforesaid and thereby to kill damage and destroy the trees saplings and underwood of the said plaintiff to wit: one thousand walnut trees, of the value of one thousand dollars, one thousand Oak trees of the value of one thousand dollars

one thousand elm trees of the value of one thousand dollars, one thousand Maple trees of the value of one thousand dollars, one thousand basswood or linn trees of the value of one thousand dollars, fifty thousand saplings of the value of one thousand dollars, and a large quantity of underwood of the value one thousand dollars all of which, said trees, saplings and underwood were on the day and year aforesaid at Stephenson County aforesaid, on the plaintiffs land last aforesaid then and there standing and growing wherefore the said plaintiff suith he is injured and hath sustained damage to the amount of two thousand dollars and therefore he brings his suit &

3^d Count— And whereas also the said plaintiff on the first day of October in the year of our Lord one thousand eight hundred and forty six at Stephenson County aforesaid was and ever since hath been seized in fee of eighty acres of land situate in the County of Stephenson and State of Illinois lying on each side of Richland Creek and being the East half of the North East quarter of section number ten (10), in Township number twenty seven (27), North of Range number seven (7), East of the fourth principal Meridian in the Dixon Illinois land district and the said Defendant by means of a mill dam by him erected on his own land and across said Richland Creek on the first day of October A.D. 1846 in Stephenson County aforesaid and by him ever since the said first day of October A.D. 1846 continued there across Richland Creek aforesaid, hath obstructed

and stopped the natural course of the water
of Richland creek aforesaid and thereby caused
it to overflow and drown the plaintiff's land
aforesaid ever since the said first day of October
A.D. 1846 whereby the plaintiff's trees saplings and
grass growing on the said eighty acres of land
at that time of the value of two thousand
dollars have been greatly diminished, killed
and injured and his said land made spongy,
rotten and good for nothing and that by means
of said drowning and overflowing the said plaintiff
is unable to go on said land and is wholly
prevented from cutting his said timber, trees,
saplings and grass, and clearing and cultiva-
ting said land — Whereupon the said plaintiff
saith that he is injured, and hath sustained
damage to the amount of two thousand
dollars and therefore he brings his suit as
herein shown

Attorneys for Plaintiff

where said declaration is endorsed

"Filed Oct. 23^d 1848 John A. Clark cler."

And afterwards to wit: at the April term of said
court A.D. 1849 — on the 3^d day of April, there appears
upon the records of said court of that day the
following entry in said cause to wit:

Thomas M. Shee

"

Rezin Wilcoxson

}
} Cause

Rule to plead

On motion of the plaintiff by his attorney
it is ordered by the court that the defendant

plead tomorrow morning at the opening of the
Court

And afterwards to wit: on the 4th day of April A.D. 1849
as yet of the said April term of said Court there appears
upon the records of said Court the following entry to wit:
Thomas M. Chee

"

} care

Rezin Wilcoxson

Extension of Rule

By agreement of parties, It is ordered
by the Court that the defendant have until tomorrow
morning to file his plea

And afterwards to wit: on the 6th day of April A.D. 1849
of the April term of said Court there appears upon the records
of said Court the following entry to wit:
Thomas M. Chee

"

} care

Rezin Wilcoxson

def. of plea

Now at this time comes the defendant by
his attorney and files his plea to plaintiff's declaration

Which plea of the said defendant filed as aforesaid
on the sixth day of April A.D. 1849 in the said cause
is in the words of figures following to wit:

Rezin Wilcoxson

ad

Thomas M. Chee

} In pursuance of the

} In the Circuit Court of Stephenson
County of the April term A.D. 1849

Plea

And the said defendant by Smith & Bradley
his attorney comes and defends the wrong and
injury wherein and says that he is not guilty
of the said supposed grievances above laid to him

change or any or either of them or any part
thereof in manner and form as the said
plaintiff hath above thereof complained a-
gainst him and of this the said defendant
puts him on upon the country &

Similiter

And the plaintiff doth the like

Verba & Formula for Poff

2^d

And for a further plea in this behalf the said de-
fendant by leave of the Court here for this purpose
first had and obtained according to the form of
the Statute in such case made and provided
with actio non because he says that before
the commencement of this suit, to wit: on the tenth
day of July in the year of our Lord one thousand
eight hundred and forty four he, said defendant
purchased of the United States of America a
certain tract or parcel of land containing by
estimation eighty acres with all the rights, privileges
immunities and appurtenances thereto belonging
situate in the County of Stephenson and State
of Illinois and known and described as the
West half of the North West quarter of Section eleven
in Township Twenty seven of Range seven East
of the fourth principal Meridian and lying on
both sides of a stream or brook commonly
called Richland Creek, across which said
stream there had already, before said purchase
by said defendant of the United States of America
been erected and raised a mill dam on said
land aforesaid in the County of Stephenson

aforesaid which said mill dam aforesaid caused the water of the said stream or brook aforesaid to overflow the banks of the said stream or brook and flow back upon the lands lying adjacent to said stream or brook and above said mill dam across said stream or brook and that subsequent to the purchase aforesaid of the land aforesaid by the said defendant of the United States of America as aforesaid the said plaintiff purchased the said tract or parcel of land in the declaration mentioned lying on both sides of the said stream or brook and above said mill dam then already made and raised across said stream or brook which said mill dam at the time of the said purchase of the said land in the declaration mentioned, by the plaintiff and long before had caused the waters of said stream or brook to overflow its banks and flow back upon the lands so purchased of the said plaintiff which the said plaintiff well knew at the time he made said purchase and this the said defendant is ready to verify wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thing against him in

J. M. & B. Brawley
attys for defendant

which said plea is endorsed "Filed April 6. 1849
John A. Clark clerk"

And afterwards to wit: on the 7th day of April 1849 there appears upon the record of said court as yet of the said April term of said court the following entry to wit:

Thomas M. Elfre }
as } care
Rezin Wilson }
}

Now at this time comes the said defendant by his attorney and files additional pleas in this cause

which said additional pleas of the said defendant filed as aforesaid in the said cause on the 7th day of April AD 1847 are in the words and figures following to wit:

additional pleas

" and for a further plea in this behalf the said defendant by leave of the Court here for the purpose first had & obtained says atis non, because he says that on & for a long time previous to the tenth day of July in the year AD 1844 there was & had been erected & standing upon the West half of the North West quarter of Section eleven in Township N. truly seven in Range seven East a certain mill dam upon & across a certain brook or stream called Richland creek, then & there running through said tract of land by means whereof the water of said creek was raised into a pond above said dam & did then & there, thereby overflow the banks of said stream within & on the said tract or parcel of land in the said plaintiffs declaration mentioned where said dam had been so erected & was then & there standing for the purpose of creating a water power to carry & supply with water a certain saw mill then & ~~there~~ for a long time previous to the said 10th day of July 1844 standing & being upon the said

first above described parcel of land, which said several
tracts or parcels of land, with the said saw mill
& dam so standing & being thereon as aforesaid had
for a long time & until the said 10th day of July 1844
belonged to & were then owned solely by the Government
of the United States together with the appurtenances
thereunto belonging; and the said defendant avers
that on the said 10th day of July A.D. 1844 he purchased
of & from the said United States of America the said
first above described tract or parcel of land & received
from the said United States of America a deed or
patent of the same, conveying to the said defendant
the said tract or parcel of with all the right, privileges
immunities and appurtenances whatsoever thereunto
belonging. Said saw mill & dam then & there standing
& being thereon as aforesaid & the water of said brook
being so raised in the said pond & overflowing the bank
of said stream as aforesaid; and the said defendant
further avers that from & after the said 10th day
of July 1844 for a long time he continued to use and
occupy said saw mill & carried & supplied by
water taken from the pond raised & created by
said dam in manner as aforesaid the title
to the said tract or parcel of land in said plaintiff's
declaration mentioned still remaining & being
in the said United States of America & that when
the said plaintiff thereafter purchased of and
from the United States of America, the said
tract or parcel of land in his said declaration
mentioned the said saw mill & dam were
still standing & being on the said premises & the
water in the pond raised by said dam was not
higher and did not otherwise overflow the Banks

of said stream than on the said 10th day of July
A.D. 1844 of which the said plaintiff had notice
and the said defendant avers that the obstructing
of said stream & causing the same to overflow
the banks thereof by means of the erection & con-
tinuance of said dam in manner aforesaid
is the same obstructing & overflowing complained
of in the said plaintiff declaration mentioned
& not other or different - and this the said defen-
dant is ready to verify, wherefore he prays judgment.

And afterwards to wit: at the August term of said
Circuit Court on the 13th day of said month of August
there appears upon the records of said Court for said
term the following entry to wit:

Thomas M^o Shee }
vs } case
Rezin Wilcox }

Leave to file add^l pleas

Now at this time comes the defendant
by his Attorney and asks leave of the Court - and leave
is given, To file additional pleas in the said cause

And afterwards to wit: on the 15th day of August A.D.
1849 as yet of the said August term of said Court there
appears upon the records of said Court the following entry
to wit:

Thomas M^o Shee }
vs } case
Rezin Wilcox }

Rule for Repleviation

On motion of the defendant by his
attorney It is ordered by the Court that the plaintiff
file his repleviation to defendant's pleas by two o'clock
this day.

And afterwards to wit: on the said fifteenth day of August AD 1849 at y^t of the said August term of said Circuit Court the said plaintiff files his Demurrer to defendants pleas and exceptions to notice - which demurrer & exception are in the words & figures following to wit:

Demurrer
notice

Thomas M. Ghee } Of the April term of the Stephenson
" } County Circuit Court
Rezin Wilcoxson }

And the said plaintiff by Turner & Barnell his attorneys comes and says that as to the first plea of the said defendant by him above pleaded which of the said defendant hath put himself upon the country, the said plaintiff saith he doth the like -
Turner & Barnell
plff attys.

And as to the second and third pleas by the said defendant above pleaded the plaintiff by his attorneys aforesaid says precludi non, because he says that the matters and things set forth in said pleas, in manner & form as the same is pleaded and set forth thereby are insufficient in law to preclude the said plaintiff from having and maintaining his aforesaid action against the said defendant, which he is ready to verify - wherefore he prays judgment -
Turner & Barnell

Attys for Plff
And the said plaintiff by Turner & Barnell his atty comes & moves the Court to strike from the files the said defendants notice of special matter to be given in evidence by him filed in said cause, for the reason that said

notice is insufficient to entitle the said
defendant to the benefit sought to be obtained
by said notice and for the reason that the
said defendant hath not the right to plead
specially any give notice in manner & form
aforesaid in the same cause where each goes
to the the same cause of defence

Turner & Samuels

Plff. atty. —

which demurrer is endorsed "Filed August 15th 1869
John A. Clark clk

And afterwards to wit: on the 17th day of August 1869
as yet of the said August term of the said Circuit
Court there appears upon the records of said Court
the following entry to wit:

Thomas M. Chee

"

Rezin Wilcoxson

} case

withdraw notice

Now at this time appears the defendant
by his attorney and withdraws his notice of special
matter to be given in evidence in this cause

And afterwards to wit: on the 18th day of August A.D.
1869 as yet of the said August term of said Court.
there appears upon the records of said Court the
following entry to wit:

Thomas M. Chee

"

Rezin Wilcoxson

} case

Now at this time comes the defendant by his
attorney and moves the Court for leave to file additional
pleas herein —

and afterwards to wit: on the same day to wit: on the said
18th day of August A.D. 1849 at yet of the said August
Term of said Court there appears upon the records
of said Court the following entry to wit:

Thomas M. Ghee }
vs } case
Rezin Wilcoxson }

Now at this day came on to be heard the
demurrer heretofore filed in this cause by the defen-
dant to plaintiff's declaration which after arguments
of counsel the Court takes time -

and afterwards to wit: on the 23^d day of October A.D.
1849 at the October Special Term of said Circuit Court
on the records of said Court for said Term there appears
the following entry to wit:

Thomas M. Ghee }
vs } case
Rezin Wilcoxson }

Now at this time the Court being fully
advised and having fully considered the demurrers
to the second & third pleas herein orders that the
same be sustained and thereupon the said
defendant by his attorney asks leave of the Court
to file additional pleas and leave is given to
file the same tomorrow morning at the opening
of Court -

and afterwards to wit: on the 25th day of October
1849 the said defendant by his attorney filed in
the said Court his amended & also additional
pleas in the said cause - which additional
pleas are in the records & figures following

Hearing of Dem.

Order Sust. Dem.

to wit:

4 And for a further plea in this behalf, the said defendant by leave of the Court here for this purpose first had & obtained satisfaction now because he says that on & for a long time previous to the tenth day of July in the year eighteen hundred & forty four, the United States of America were & had been the sole & exclusive owner of the West half of the North West quarter of Section Eleven & the East half of the North East quarter of Section ten in Township twenty eleven in Range seven East of the fourth principal meridian, together with all the rights, privileges, immunities & appurtenances of whatsoever nature thereunto belonging & the said United States so being the owner thereof there had been previous to the said tenth day of July ¹⁸⁴⁴ rightfully erected within the boundaries of said first above mentioned tract or parcel of land upon & across a certain stream or brook running through said above mentioned tract or parcel of land known as & called Richland Creek a certain dam for the purpose of a mill dam by means whereof the water of said stream or creek was raised & was caused to flow back from & above said dam & to overflow the bank of said stream or creek within the boundaries of said above mentioned tract or parcel of land & thereby formed a large mill pond for the purpose of conveying carrying & supplying with water a certain saw mill which had been a long time previous to the said tenth day of July A.D. 1844 rightfully & lawfully erected & was then standing & remaining upon the said first above mentioned tract of or parcel of land & used & occupied for the

person of a saw mill — And the said defendant avers that the said United States of America so being the owner of the said above mentioned tract or parcel of land & of the said saw mill & dam together with the said stream or creek so formed into a mill pond as aforesaid did on the said tenth day of July eighteen hundred & forty four for a good & valuable consideration sell & convey to the said defendant all the first above mentioned tract or parcel of land with the said saw mill & dam & erector & being thereon as aforesaid together with all the rights, privileges, immunities & appurtenances of whatsoever nature thereto belonging whereby the said defendant then & there became seized in fee & the absolute owner of the said first above described tract or parcel of land, with the said saw mill dam & mill pond then & there standing & being thereon as aforesaid — And the said defendant avers that a long time previous to the said tenth day of July A.D. 1844 the said United States of America had caused the said above mentioned tract or parcel of land together with a large number of other tracts or parcels of land adjacent thereto to be surveyed & subdivided and platted; and that at the time the said defendant so purchased the said first above mentioned tract of land of the said United States of America as aforesaid there was on file in the Land Office of the Land District wherein said land is situated to wit: at Dixon a plat or survey of said above mentioned sections ten, on which said plat or survey the said stream or creek is represented, platted or surveyed as being a mill pond where the same passed through the said last mentioned & described

tract of land. and the said defendant further avers that the said mill pond so represented, designated & described by the said United States of America on said plat or survey was formed by the water of said stream or creek being raised by said dam & that said saw mill was used & occupied for the purpose of a saw mill & was carried & supplied by means of water taken from said mill pond & not otherwise, at the time the said defendant purchased the same of & from the said United States of America as aforesaid - and the said defendant further avers that the said mill pond has not at any time since the said 10th day of July A.D. 1844 been raised higher by reason of said dam than the same then was & that said mill pond then was & always has since been necessary to enable the said defendant to use & enjoy the said saw mill: all of which the said plaintiff had notice and the said defendant further avers that the said plaintiff purchased of & from the said United States of America the said last above described tract or parcel of land a long time after the said tenth day of July A.D. 1844. the said saw mill & dam still standing & remaining upon the said tract or parcel of land so purchased by the said defendant of & from the said United States of America as aforesaid & said tract or parcel of land so purchased by the said plaintiff of & from said United States of America being then & there overflowed by the said mill pond in the same manner as the same was overflowed on the said tenth day of July & not otherwise - and the said defendant avers that the obstructing of said stream & causing the water thereof to be raised so as to form said mill pond

& to overflow the banks thereof in manner aforesaid is the same obstructing & overflowing in the said plaintiff's declaration complained of & not other or different — And this he is ready to verify whereupon he prays judgment &c

Printed & Printed for Sept.
which said additional plea is endorsed "Filed
Oct. 25. 1849 — John A. Clark clk."

and on the same day to wit: on the said twenty fifth day of October A.D. 1849. the said plaintiff by his attorney filed his demurrer to defendant's fourth plea which demurrer is in the words & figures following to wit:

Thomas M. Shee } In the Stephenie County her Court
" } of the October Special Term 1849.
Regin Wilcox }

And the said plaintiff as to the plea of the said defendant by him forthwith above pleaded saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against the said defendant and that the said plaintiff is not bound to answer the same and that he is ready to verify whereupon he prays judgment &c

James & James & Farnell

And for special cause of dem. the piff. shews that the fourth plea aforesaid is double and otherwise informal uncertain and insufficient
James & Farnell

which said demurrer is endorsed

"Filed Oct. 25. 1849, John A. Clark clk."

And on the same day to wit: on the said 25th day of October 1849 at the October Special Term of said Court there appears upon the record of said Court the following entry to wit:

"Thomas M^cShee }
" " " } care
Rezin Wilson }"

Now at this day came on to be heard the demurrer heretofore filed by the Plaintiff by his attorney to Defendants fourth plea, which after argument of counsel is sustained by the Court — and the defendant by his attorney stands by his plea —

and also the following order to wit:

"Thomas M^cShee }
" " " } care
Rezin Wilson }"

Now at this day came the parties and their attorneys and upon issue joined thereupon came a jury of twelve good and lawful men to wit: Est. Hanchett, Alben Hall, M. Carnifax Lewis, Ovan-maire, J. Armstrong, Luther St John, Solomon Rima, A. Cadwell, W. Patterson, W. French, G. Bancroft and A. Brace who were severally duly sworn and sworn — and after hearing the evidence and arguments of counsel retired to consider of their verdict

By agreement of parties it is ordered by the Court that the jury when they have agreed upon their

verdict may seal the same and hand it to the clerk

And afterwards to wit: on the 26th day of October AD 1849
at the said October term of said Court there appears upon
the records of said Court the following entry to wit:

Thomas McThee }
vs } leave
Rezin Wilcoxson }

Now at this day came again the parties and
their attorneys and the jury yesterday empanelled
to try this cause and the jury returned the following
sealed verdict to wit: We find the defendant guilty
and assess the plaintiff damages at the sum of
twelve dollars and fifty cents — It is thereupon
considered and ordered by the Court that the
said plaintiff have and recover of the said defen-
dant the said sum of twelve dollars and fifty
cents his damages so as aforesaid assessed together
with his costs by him about his suit in this behalf
expended and that he have execution therefor —

And afterwards to wit: on the 27th day of October AD
1849 at yet of the said October term of said Court
there appears upon the records of said Court the following
entry to wit:

Thomas McThee }
vs } leave
Rezin Wilcoxson }

On motion of the defendant by his attorney
It is ordered by the Court that the judgment heretofore
entered in this cause be set aside and vacated

And also the following entry to wit:

Thomas McThee } leave
vs }
Rezin Wilcoxson }

And now the defendant by

from the ruling of this Court

And afterwards to wit: at the said ^{October} Special term of said Court - on the 10th day of November 1849 the said defendant filed his bill of exceptions in the said cause duly signed and sealed which is in the words and figures following to wit:

Bill of Exceptions
" Stephen County, } Of the Special term of October in the
Circuit Court. } year eighteen hundred and forty nine
Thomas M^cShree }

Rezin Wilcox } Be it remembered that at the Special
term of this Court to wit: on the 22nd day of October in the
year eighteen hundred and forty nine the Court
having considered the demurrer heretofore filed by
the plaintiff in this cause to the said defendant,
second & third pleas, sustained said demurrer,
to which decision of the said Court sustaining
said demurrer the said defendant by his counsel
then & there excepted

And afterwards to wit: in this same term came
on to be heard the demurrer filed by said plaintiff
to the said defendant's fourth plea, & the said Court
having heard the arguments of counsel upon
said demurrer sustained the same, to which
decision of the Court sustaining said demurrer
the said defendant by his counsel excepted

And afterwards to wit: in this same term
on the trial of said cause upon the issue of the
said defendant's first plea, the said plaintiff
to sustain the issue on his part, offered in evidence
a patent from the United States to Adamson
Bentley & Thomas M^cShree (the Plaintiff) of the
East half of the North East quarter of Section
ten in Township twenty seven Range seven

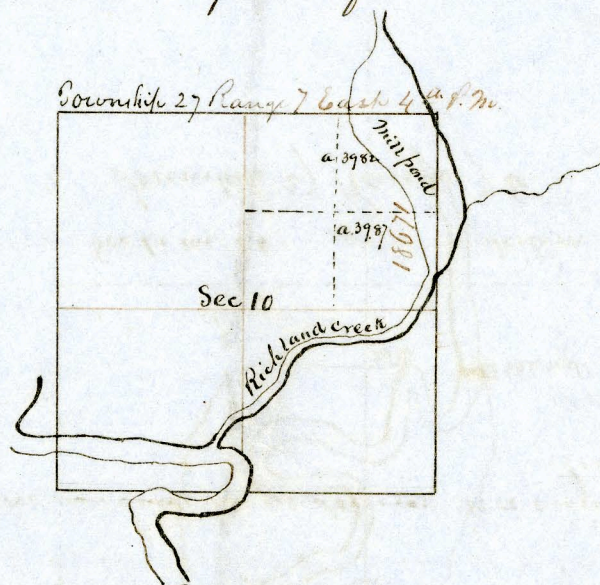
dated January 24. 1845 - a deed of the Undivided half of the same from said Bentley to the plaintiff dated Aug. 4. 1846. also a patent from the United States to James D Turner of the South East quarter of the South East quarter of section three Township twenty seven Range seven dated May 4. 1847, & a deed from said Turner to the plaintiff dated June 18. 1847, to the introduction of all which patents & deeds, the execution of same having been first proved, the defendant by his counsel objected - The court overruled the objection, to which decision of the court allowing said patents & deeds to be received in evidence the defendant by his counsel excepted - The said patents and deeds were then read to the jury.

The Plaintiff then proved by Aaron Chamberlain & Wm Roby that since 1846 the defendant has kept up, on his own land a dam across Richland Creek (which runs through the above described premises, which has raised the water so as to cause it to form a pond which overflows about 50 acres of the land mentioned in said deeds & patents - On cross examination it was proved that in the year 1837 said defendant erected a saw mill on the said land said dam was built on and below the dam, which has ever since been supplied by water from said pond & has been in the possession of the defendant & that the defendant had ever since kept up said dam & pond - that at the time said dam & mill were built Sections 10 & 11 on which said dam & mill were Government land & were not surveyed & brought into market until the year 1842. That the plaintiff land which was overflowed by the pond formed by the dam had some timber on it on the first day of October 1846 but it was mostly dead & not of much value.

that the water in the pond was lower on the 1st October 1846 than it was on the 10th day of July 1844 & has ever since remained lower; that the land overflowed was of very little value for any purpose & that the damage to the plaintiff in consequence of its being overflowed since October 1st 1846 could not be estimated at any particular amount. Some further evidence proving damage was introduced.

The Plaintiff has cited his case

The defendant to maintain the issue on his part offered to read to the jury two patents from the United States to himself, one dated July 10th 1844 of the West half of the North West quarter of Section eleven in Township twenty seven in Range seven. the other dated July 1st 1845 of the South West quarter of Section eleven in Township twenty seven in Range seven also a certificate of Silas Noble Register of the Land Office in Dixon as follows

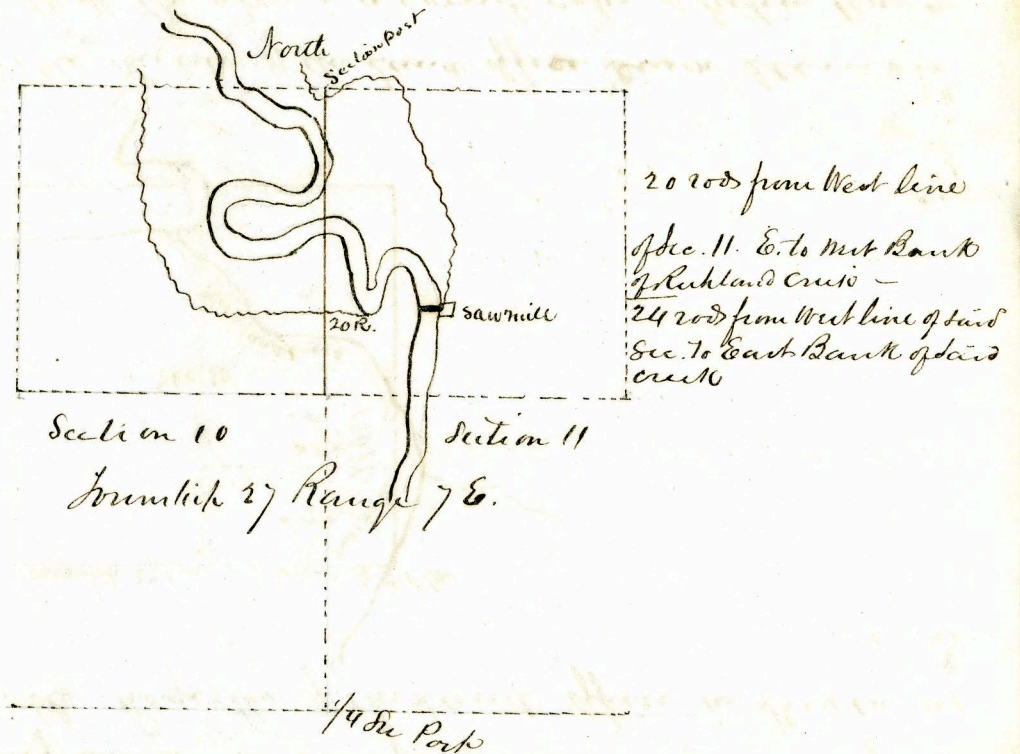


I Silas Noble Register of the Land Office Dixon Illinois do certify that the above is a correct copy of Section ten in Township twenty seven Range seven East of the fourth principal meridian, as appears from the plat on file in this office.
Dixon August 6th 1849

Silas Noble
Register

Defendant also introduced Marcus Montelius as a

Witnup & offers to prove by him that he was the County Surveyor of Stephenson County & had made a survey of the premises described in the deed & patents given in evidence by the plaintiff & in the patents offered in evidence by the defendant, according to a plat thereof as follows.



that the dam and saw mill built & occupied by the defendant are upon the land described in said patent dated July 10. 1844, that the pond formed by the water of said Richland creek being raised by the said dam of the defendant is the same pond described on the plat in the said certificate of the Register offered by the defendant & that the plat of the premises produced by the witnup is a correct description of the same - All of which evidence being objected to by the plaintiff was rejected and excluded from the jury by the Court, to which decision of the Court excluding the evidence offered by the defendant, the defendant by his counsel excepted. This being all the evidence given or offered by the parties, the cause was submitted to the jury, who found a verdict for the plaintiff for twelve dollars.

4 fifty cents

And afterwards to wit: on the same day the said defendant moved for a new trial & for arrest of judgment in this cause, which motion afterwards to wit: at this same term the Court denies & renders judgment on the verdict of the jury against said defendant, to which decision the defendant by his counsel excepted -

Whereupon the defendant prayed that this his bill of exception may be allowed & sealed by the Court & made part of the record of this cause & it is done accordingly -

Benf. R. Sheldon Clerk

which Bill of exception is endorsed "filed Nov. 10. 1849, John A. Clark, Clerk"
And afterwards to wit: on the 3^d day of December 1849 the defendant filed his appeal Bond in the office of the clerk of the said Court - which bond is in the words & figures following to wit:

"Know all men by these presents that we Rezin Wilcox and Thompson Wilcox of the County of Stephenson and State of Illinois are held and firmly bound unto Thomas M. Chee of the said County of Stephenson and State of Illinois in the penal sum of two hundred dollars for the payment of which well and truly to be made we and each of us bind ourselves, our heirs executors and administrators jointly and severally and firmly by these presents, sealed with our seals and dated at Freeport this third day of December Anno Domini, one thousand eight hundred and forty nine

The condition of the above obligation is such that whereas the said Thomas M. Chee died on the sixth day of November A.D. 1849 in the Circuit Court within and for the County of Stephenson

and State of Illinois, obtain a judgment against
the above bounden Rezin Wilcox for the sum of
twelve dollars and fifty cents and costs of suit
from which judgment the said Rezin Wilcox
has prayed for and obtained an appeal to the
Supreme Court of said State

Now if the said Rezin Wilcox shall duly pros-
ecute said appeal, and shall moreover pay
the amount of the judgment, costs, interest, and
damages rendered and to be rendered against
him the said Rezin Wilcox 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

Witness }
Chas. Betts }

Rezin Wilcox }
Thompson Wilcox }

which said Bond is endorsed

"Filed December 3rd 1849 John A. Clark Clerk

700750
State of Illinois
Stephenson County, Bp. of John A. Clark Clerk of the Circuit
Court within and for the said County do hereby
certify that the foregoing is a true and complete
Record of the proceedings of the case wherein Thomas
McGhee is plaintiff and Rezin Wilcox defendant
taken from the books and files in my office, where the
same remain

In witness whereof I have hereunto
set my hand and the Seal of said Court
at Keokuk this 5th June 1850
Attest John A. Clark Clerk

Thomas M. Ghee } October Quinal Term Cer. Court. Ad 1849
 as } Pp's cert in or^d of dep't.
 Rezin Wilson } Pp's cert — Clerk's fee
 July. fm. th. Dock but 3 hrs. 37^c hrs. 50 July. 17 papers 1.06 \$ 2.00
 Issuing 6 subp's 3.00 Aug. hit to 6 aff 75 Euly mo. for plea 25 4.00
 Euly or for plea 25 Euly appt. to 4 tend rule 25 50
 Euly or for hury dem. 25 Euly appt. 15^c atty 15^c 50
 Cally. & Aug. Aug 18^c Aug. 15 hours V. D. 93^c Aug. 3 mt. 18^c 1.31
 Euly appt. for Aug to heat bid out 25 Recg. Euly mid out 12^c 37^c
 Euly hit 25 Dock 25 Euly hit 25 Making total Rec cost 37^c 1.12^c
 9.81'
 Shuff for J. A. Attocky for 45. out 2 subp's 1.81'
 " do do summons 93^c
 " do sum. & cally Aug. 62^c
 " J. Baker dep. for 45. out 2 subp's 2.00
 " M. Leate do do 1 do 1.93^c
 " J. McNamee do do 1 do 75^c 8.06'
 County for Docket fee 1.25
 do Jury fee 3.00 4.25
 Nitrap for James W. Mordaugh 5 days. 2.50
 do Aaron Chamberlin 10 — 5.00
 do W. W. Roby 14 — 7.00 14.50
 \$36.62^c

State of Illinois }
 Stephenson County }
 3/1

I hereby certify that the foregoing Bill
 of costs is a true copy from the fee Book in my Office
 of the costs taxed against the Plaintiff in the above entitled
 cause

Witness my hand & the seal of the said
 County Court this 20th Nov. 1849

John A. Clark clk

Thomas M. ~~Har~~

vs

Q

Rigm Wilson

Plff costs

Thomas M. Shee	} Oct. Minute from Sec. Court. 1879	
"		
Rezin Wilcox	} Pp. cost mov. of Sept?	
	Sept 29 cost - clerk's fee -	
Enty app 15 th atty 15 th July 30 paper 187 th		2.15 th
Issuing 9 subpo. 4.50 16 off of wit. 2.00		6.50
Enty plea 25 Enty ad. plea 25 Enty mo. for leave to file add. plea 25		75
Enty mo. for rule for dep. 25 Enty order for Dr. 25		50
Enty withdrawl of notice 25 Enty mo. for leave to file add. plea 25		50
Enty hear. of dem. 25 Enty order for leave to file add. plea 25		50
Ing. 9 wit. 56 th Enty mo. in award of hosp. 25		81 th
Enty mo. for new trial 25 Enty order orally. Mo. in award 25		50
Enty except. 25 Enty order orally. Mo. for new trial 25		50
Enty prayer for appeal 25 Enty adn granty. Dr. 25		50
Makg. senty Bill cost 37 th copy 25 Enty time 50		1.12 th
		<u>\$14.31th</u>
Shuffler J. Attorney App for exp. only 4 subpo.		5.81 th
" J. B. Barr dep. - Dr 3 Dr.		2.31 th
" J. Buchhol Dr Dr 1 Dr.		44 th
" L. Butler Dr Dr 1 Dr.		<u>1.25th</u>
		9.81 th
Transcript of Record		7.25
Cent. & Seal		<u>25</u>
		7.50
		<u>\$31.62th</u>

State of Union,
Washington County, 3^d.

I hereby certify that the within
is a true copy from my fee Book of the costs taxed
against the defendant in the within entitled cause
as the same appears of Record in my office.

Witness my hand & the seal of said
Court at Trenton this 20th Nov. 1849
John A. Clark Clerk

916

Thomas M. Clark

Prize Nixon

Depts costs

52
Thomas M. Ghee

27
Rezin Wilcox

Complete Record

Filed June 11. 1850.
L. Leland Clk.

\$5. pd. Clk. on this -

Regin Wilcoxson }
vs } In the Supreme Court, third grand
Thomas Mc Lhee } division, June term A.D. 1856

And the said appellant by Sweet his attorney comes and says that in the record and proceedings and in the rendition of the judgment aforesaid there is manifest error to the prejudice of him the said Appellant in this to wit

- 1 That the said Circuit Court erred in sustaining the demurrer of the appellee to the second, third, and fourth pleas of the appellant
- 2 That the said Circuit Court erred in rejecting from the jury the evidence offered by the appellant
- 3 The Circuit Court erred in overruling the motion of the appellant for a new trial and in arrest of judgment
- 4 The said Circuit Court erred in rendering judgment for the appellee against the appellant

Wherefore for the errors aforesaid and others appearing in the record and proceedings aforesaid the said appellant prays that the judgment aforesaid be reversed

M. P. Sweet
for Appellant

Thomas M^r M^rs.
adls
Rejoice M^r M^rson

} And the said appellant by Thomas
O Lunn his attorney says there
is not such manifest error as the said
appellant has charged to be in said record
and proceeds on any error he therefore
says that the judgment of the said Court
can't be affirmed

Thos O Lunn
for Appellant

Regin Wilson
vs
Thomas C. C. C.

12049

1850

Deceased