

No. 13361

# Supreme Court of Illinois

Ballance

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vs.

carroll

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 172.

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Ballance  
vs  
Darnell

1881

13361

(Faint handwritten notes)



SUPREME COURT OF ILLINOIS.

Third Grand Division.—April Term, 1861.

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CHARLES BALLANCE, *Appellee*,  
                  *ads.*                                 } Ejectment.  
CHARLES R. CARROLL *Appellant*. }

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APPEAL FROM PEORIA COUNTY.

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This whole case resolves itself into this one question, "Can a mortgagee maintain ejectment, in this State, against the mortgagor, after condition broken, without having given a notice to quit." The proof would probably justify me in saying *after notice*, but as there might be some doubts as to the sufficiency of the verbal notice proved by Mr. Webb, and as the law is clear, as the proposition is above made, I prefer putting the case on that ground.

The evidence excluded amounts to nothing, because if William Kellogg, did buying out Gregg's lease, which he held under Thompson and Cole, he in the first place had no right to buy it without my consent; and secondly, when he bought the ground from me, and accepted a deed, the lease immediately merged in the deed, and became extinct.

All that is said about a failure of title to the land, which is contained in the deed, but which is not sued for, were it true, is foreign to the issue, and was rightly excluded. The title to no part of the land has failed; both this court, in the case of Williams vs. Ballance, decided a year ago, and the Supreme Court of the United States, in the cases of Mehan vs. Forsyth, and Gregg vs. Forsyth at the late term, have settled the question, that mine is the paramount title.

The facts are briefly these: Cole, Thompson and Gregg were alternately my tenants, William Kellogg, deceased, it is said, bought the lease from Gregg, and then bought the fee from me, and executed to me ten promissory notes of equal amount; payable one every year, for ten years, amounting altogether to nearly \$40,000. After William's death his brothers, Henry and Uriel, became his administrators, and took possession of the premises, and for sometime, occupied it themselves, and then leased them to Carroll for \$1200 per year. They refused to pay a cent of the principal, interest, rents, or taxes, or give



up the property, and when urged to do one or the other, no pretense was made that there had been a failure of title by way of avoiding the payment.

I hold that at common law, the legal title was deemed to be in the mortgagee, and that he had a right, at any time to bring ejectment, without waiting for a breach of any of its conditions ; and hence all English mortgages contain a clause providing that the mortgagor shall remain in possession until condition broken.

In 4 Kent 155, I find it written " Technically speaking, the mortgagor has, at law, only a mere tenancy, and that subject to the right of the mortgagee to enter immediately, and at his pleasure, if there be no agreement to the contrary. He may at any time when he pleases, and before default, put the mortgagor out of possession, by ejectment, or other proper suit. This is the English doctrine, and I presume it prevails very extensively in the United States, and to sustain this position he cites *Birch vs. Wright*, 1 Tenn. Rep., 378—*Rockwell vs. Bradley*, 2 Conn. Rep. 1—*Blaney vs. Bearce*, 2 Greenleaf, 132—*Erskine vs. Townsend* 2 Mass. Rep 493—*Newell vs. Wright*, 3 Mass. 138—*Coleman vs. Parkard* 16 Mass. 39—*Simpson vs. Ammons*, 1 Binney, 176—*McCall vs. Lenox* 9 Sey. and Rawle, 302. But whatever the court may think as to the right of the mortgagee to sue before condition broken, I hold it to be clear, at this day, that he may sue after condition broken without any notice to quit. In this suit the mortgage and *all* the notes were given in evidence.

The great leading case on this subject is *Keech vs. Hall*, Douglas 21. See also 2 *Espinassi Nisi Prius* 10—13 *Vermont* 653—*Fuller vs. Wadsworth*, 2 *Iredell* 263—*Williams vs. Bennett*, 4 *Iredell* 122—*Lyman vs. Mower* 6 *Vermont*, 345—*Doe on dem. Fisher vs. Giles*, 5 *Bingham*. 421—*S. C.* 2 *M. & P.* 749—*Ely's lessee vs. McGuire*, decided in 1826 in *Ohio*, 16 *Ohio*, 485. The case of *Prentice vs. Wilson*, 14 *Ill.* 93, was different from this, in its facts ; yet the reason of that case sustains my position.

The only authorities I have been able to find any where that seems to militate against my position, are two or three of those quoted from New York by plaintiff's attorney.

The first is that of *Benton vs. Laughhead*, 2 *John* 75. A short examination of that case will show that it is of no authority here : 1st. That opinion, such as it is, was made without argument. 2ndly. It was made by a divided court. 3dly. Judge Thompson's dissentant opinion shows more reason than that of the majority. 4thly. It is not pretended that that opinion is in accordance with the common law, but the pretence is that whether a notice to quit shall be given is a mere matter of practice, which the court has the power to alter. But I submit that the common law, having been adopted here, by the



constitution, the court is bound to regard it, until by the legislature it is changed. Surely, until by a statute or rule of court it is changed, the courts must enforce it. 5thly. The reason the court gave in that case does not apply in this case. They say, where notice to quit given. "The mortgagor may not only surrender the possession of the land, but may protect himself against an action, by the payment of the money due." The testimony of Mr. Webb shows he had ample opportunity to save himself the expense of a suit, by doing either. In the case of Carr vs. Green, 4 John, 186, no argument is made by the court, nor authorities cited, but the above case of Benton vs. Laughhead is simply acquiesced in.

The case of Bennet vs. Lamson, 17 John 300, was the case of a mortgage with power to sell. No notice to quit had been given, but the property had been advertised and sold pursuant to the power. The court say "We are of opinion that the notice of sale of the premises, under the power contained in the mortgage, was equivalent to six months notice to quit. It fully apprised the mortgagor that if he suffered the premises to be sold, that the implicit tenancy, under the mortgage, would be at an end." In one of these New York cases the court say they have carried the doctrine of notice to quit, far enough. From this case it would seem that they think they have carried it too far, and are trying to get back to the good old common law rule that required no notice. If to advertise the property for sale, is to be construed into a notice to the tenant that you meant to bring the tenancy to a close, surely a notice served on him *personally*, that you intended on a certain day to file a declaration in ejectment against him, and if he should fail within twenty days thereafter, to plead or demur a judgment would be entered against him, by defendant, and he turned out, would be a decided notice that you meant to bring the tenancy to a close.

In the case of Barclay et. al. vs. Hopkins 18 John, 87, the court simply follow the case of Benton vs. Laughhead, but they say, "There must undoubtedly be a privity of contract or estate between the lessor of the plaintiff and the tenant to require notice to quit, and here such privity existed." But even in New York although they held contrary to all other courts, that notice to quit must be given by the mortgagee to the mortgagor, should he still be in possession, that no privity existed between the mortgagee and the tenant or vendee of the mortgagor, and consequently no notice was necessary.

The case of Wredenburgh vs. Marsh, 5 Wen. only establishes the doctrine that "A tenant is at liberty to show that his landlord's title is at an end."—Here no such question arises. There the title to the whole of the property failed. Here none of it. It is not pretended here that the title to any of the property sued for has failed, but other property not sued for, but which was included in the mortgage. In the case of Jackson vs. Colden, the Supreme Court of New York show a disposition to get around the case of Benson vs. Laughhead



as well as they can and say, "The mortgagor in possession, has never, I believe, been held to be entitled to notice to quit, from the purchaser, under the foreclosure of the mortgage, but if he was, the case of Jackson on dem. Bennett, vs. Louisen 17 John 300, has settled it, that the notice of sale under the power, is equivalent to six month's notice to quit.

The court will perceive that the reference to sec. 23, page 646, Purple's statutes has nothing to do with any question involved in this case. It only provides a new mode of foreclosing mortgages, in certain cases. It neither repeals nor alters any law that was then in force.

The deed to W. Kellogg and mortgage from him, and described in the mortgage bearing the same date, are prima facie one transaction.

C. BALLANCE.



172-57

Balance

at

Barroll

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Appelles argt

Filed May 6. 1881

L. Leland  
Clerk



IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

Of the Ottawa April Term, 1861.

CHARLES BALLANCE, APPELLEE, }  
vs. } EJECTMENT.  
CHARLES R. CARROLL, APPELLANT. }

**Appeal by Defendant from Peoria.**

This was an action of ejectment, brought by Ballance against Carroll, in the Circuit Court of Peoria County, to recover the following described real estate: "All of lot three, in block forty-seven of Ballance's Addition to Peoria, together with certain adjoining ground, enclosed and occupied therewith, described and bounded as follows, to-wit: Beginning at a point in the south-west line of said  
p. 2 lot, 127 feet south-east of the lower line of Water street; thence to a point in Ballance's Avenue, as the same is represented on the recorded plat of said addition, 150 feet below Water street; thence along down said Avenue to the Illinois River; thence up said river to the line between lots three and four of said addition; thence along up said line to the place of beginning: excepting so much of said above described real estate as is included in French Claims *No. Twenty-nine* and *Thirty-three*, as the same were surveyed and platted by Joseph C. Brown, United States Deputy Surveyor."

p. 13 The particular location of the land sued for, and of the French Claims excepted in the description, is fully shown by the plat on page 13 of the Record.

The defendant pleaded the general issue, and the cause was tried by jury.

p. 5-7 The jury found the defendant guilty, and judgment was entered on the verdict.

On the trial the plaintiff offered in evidence a mortgage executed by William Kellogg, which is as follows:

p. 7-9 "This deed, made this fifth day of November, 1855, between William Kellogg of the first part, and Charles Ballance of the second part, (both of Peoria,) witnesseth, that the said party of the first part, for, and in consideration of, one dollar in hand paid, and the further consideration hereinafter contained, has bargained, sold and conveyed, and by these presents do bargain, sell and convey,



unto the said party of the second part, the following described piece of land to-wit:” (Here follows a description of all the lands embraced in the declaration; and said description includes also the two French Claims, excepted from the description in the declaration.) “Together with all the appurtenances thereto belonging, or in any wise appertaining; to have and to hold the said tract of land and appurtenances to the said Ballance, his heirs and assigns, for his and their own proper use and behoof forever. Provided, however, and upon this express condition, that whereas the said Ballance has on this day sold to said Kellogg the above described premises for the sum of forty thousand, three hundred and twenty dollars. Three thousand of which has been paid in hand, and ten promissory notes have been executed by said Kellogg to said Ballance for the residue, of three thousand seven hundred and thirty-two dollars each, all bearing even date herewith, and the first payable on the first day of April, 1857, and each of the others payable one year later. Now, therefore, if the said Kellogg shall well and truly pay said several promissory notes, according to the tenor and effect thereof, then the above conveyance to be null, &c.”

The plaintiff then offered in evidence the ten promissory notes mentioned in the mortgage. The defendant objected and excepted to the admission of the mortgage and notes in evidence.

p. 10 The plaintiff called Henry M. Kellogg, who testified that William Kellogg died November 15th, 1858; that he was in possession of the premises described in the mortgage at the time of his death; that Carroll and he claimed the possession of the premises under the right of William Kellogg; that after Kellogg's death witness and his brother, Uriel, took possession of premises as administrators of William Kellogg; remained in possession about one year; that they afterwards leased to defendant, Carroll, that portion of said premises that they retained possession of, having been turned out of the possession of one and part of another French Claim lot previous to their leasing to the said defendant; that Carroll had been in possession under the lease from them since November, A. D. 1859; that the lots of which they were dispossessed constituted a portion of the land embraced in the description in the plaintiff's mortgage offered in evidence, but was excepted in the declaration.

p. 11 RICHARD GREGG, called by plaintiff, identified the land, and stated that the land claimed was included in the mortgage; but that the declaration did not include the French Claims.

p. 11 L. R. WEBB, called by plaintiff, stated that in January or February, 1860, Ballance told Henry M. Kellogg that he wanted payment of the notes or possession of the property; and thought it unjust that Kellogg would not give him possession without a law suit. Kellogg said he was waiting for his brother to come on from New York, and when he arrived something should be done; that defendant Carroll was in possession of the land at the time; heard nothing said at the time



about French Claim suits ; I knew from Mr. Ballance that there had been suits pending about the land. Last winter I spoke to Carroll, the defendant, about the land. I went to him, I think, at the request of plaintiff to ascertain how he held it, and to try and get possession without a law suit. I made no formal demand  
 p. 12 of possession, but told defendant plaintiff would like to get possession without trouble. I had a general power of attorney from plaintiff to transact all this kind of business for him. Witness served the declaration and notice on the defendant as stated in return of service.

The plat on page 13 of record was given in evidence without objection, as shewing  
 p. 13 the land described in the mortgage, declaration and French claims.

(Here the plaintiff rested.)

The defendant then offered in evidence a lease from Charles Ballance to A. S.  
 p. 15-17 Cole, dated 22nd January, 1844, which lease covers a portion of the land described in the mortgage and declaration, and includes all the land covered by the French claims aforesaid. The lease was for a term of ten years, reserving a yearly rent of fifty dollars, payable the 18th of July in each year, with a right on the part of the lessor to re-enter in case of failure to pay the rent ; the lessee to have the privilege of renewal of the lease every five years after its expiration, at a price to be agreed upon, or determined by arbitrators, also of removing buildings and improvements put on by him.

On the seventh of December, A. D. 1846, Cole assigned this lease to *Sylvanus*  
 p. 18 *Thompson*.

On the 21st of January, 1854, the lease was renewed to Richard Gregg & Co.  
 p. 17

On the 25th of September, 1854, Sylvanus Thompson having died, his executors—Harriet J. Thompson and Richard Gregg—assigned said lease to William Kellogg.  
 p. 18

The execution of the lease, assignments, extension, &c., and the death of Thompson previous to September 25th, 1854, and the appointment of Thompson and Gregg as his executors were admitted by the plaintiff.  
 p. 19

The plaintiff in connexion with this evidence offered to prove that William Kellogg entered into the possession of the premises described in the lease under the lease and assignment ; that he paid Thompson's executors fifteen thousand dollars for improvements made by them and Thompson on the land ; that Carroll, the defendant, entered said premises after the date of the plaintiff's mortgage, under the administrators of William Kellogg, and as their tenant, and that Kellogg and his administrators and the defendant have been in possession ever since the assignment of the lease to William Kellogg under said lease, and claiming to hold possession under the same.  
 p. 19



The court excluded all this evidence.

p. 20—21 The defendant then offered in evidence a deed from Charles Ballance to William Kellogg, dated November 5th, 1855.

This deed describes the same land embraced and described in the plaintiff's mortgage, and includes the French claims before mentioned.

p. 23 The defendant next offered in evidence a record of the Circuit Court of the United States for the Northern District of Illinois in Ejectment: *William P. Bryant*, Plaintiff, and *Richard Gregg*, Defendant. For French Claim No. (29) as represented in the plat aforesaid.

p. 25 The record shews that suit was commenced on the 12th of January, 1854.

p. 28—29 That a verdict and judgment was rendered in favor of the plaintiff on the 10th of October, 1857, Charles Ballance, the plaintiff in this suit, approving and acting  
p. 26 as attorney for the defendant.

p. 30—31 On the 3rd day of May, A. D. 1859, a writ of possession was issued upon this judgment, and on the 5th day of May, A. D. 1859, this writ was executed by de-  
p. 32 livering possession of said premises to the plaintiff.

p. 33—34 The defendant then offered in evidence the record of a judgment and proceedings in the Circuit Court of the United States for the Northern District of Illinois in Ejectment: *Edward P. Tesson*, Plaintiff, and *Richard Gregg*, defendant. For the undivided half French Claim No. (33) as represented on the plat aforesaid.

p. 35 The suit was commenced and the declaration served April 7th, 1854.

p. 36 Charles Ballance, the plaintiff in this suit, appeared, pleaded, and tried the cause for the defendant.

p. 36—37 On the 21st of July, 1856, there was a verdict and judgment rendered in said cause in favor of the plaintiff.

p. 39, 40, 41 On the 3rd day of May, A. D. 1859, a writ of possession was issued upon this judgment, and on the 5th day of May, A. D. 1859, this writ was executed by delivering possession of said premises to the plaintiff.

p. 41—45 Defendant then offered in evidence a lease of the undivided half of Claim (33) from Edward P. Tesson, and a lease of Claim (29) from William P. Bryant to William S. Moss, A. C. Harding, James Knox, Uriel H. Kellogg, Henry M. Kellogg, each bearing date May 6th, 1859.



Defendants then offered to prove that Kelloggs and defendant Carroll, since the execution of said leases, had occupied the premises described in the leases under said leases, and that the French claims (33) and (29) recovered in the ejectment suits aforesaid, and from which the defendant in said suits and those claiming under him had been ousted by and under the writs of possession given in evidence by defendant, constitute a large majority in value of the land described in the plaintiffs deed to William Kellogg, and in the mortgage offered in evidence by the plaintiffs, and that they are worth the sum of \$20,000; that Richard Gregg, against whom the recovery was had in said suits, was the plaintiffs tenant at the time said suits were instituted, and that he claimed title, and was defended under the same title that the plaintiffs had and claimed, when he sold and conveyed to said William Kellogg by his deed of November 5th, 1855.

The defendant then admitted that the land recovered in the suits of Bryant vs. Gregg, and Tesson vs. Gregg, though embraced in and constituting a portion of the land described in plaintiffs mortgage given in evidence, and in plaintiffs deed to William Kellogg, constituted no portion of the land claimed or described in the plaintiffs amended declaration.

The court on motion of the plaintiff excluded all the defendants evidence offered in the suit, and withdrew the same from the consideration of the jury.

To all of which the defendant excepted.

This was all the evidence offered in the case.

The court at the plaintiffs request instructed the jury as follows:

If the jury believe from the evidence that the lands described in the plaintiffs declaration were, and are included in, and constitute a portion of the land described in the mortgage of William Kellogg offered in evidence; that William Kellogg was at the execution of said mortgage in possession of the premises described in the declaration, and continued in such possession until the time of his death; that immediately after Henry M. Kellogg and Urial Kellogg, as administrators of said William Kellogg, entered into the possession of said premises described in said declaration, claiming them only under the right, title and interest of said William Kellogg; that afterwards the said Henry M. Kellogg and Urial Kellogg leased said premises described in the declaration to the defendant; and that said defendant was in possession of said premises described in the declaration at the time of the commencement of this suit, and that before the commencement of this suit the said William Kellogg and his legal representatives had made default in the payment of two or more installments of the money secured to be paid by the said mortgage, then the jury must find the defendant guilty of unlawfully withholding the possession of the premises claimed in the declaration from the plaintiff.



p. 47—48 If the jury believe from the evidence that the only title which the plaintiff in this cause has established to the premises in controversy is by virtue of the mortgage offered in evidence, and a default on the part of the mortgagor and his legal representatives in the payment of a part of the money, secured to be paid by said mortgage, then, if the jury find for the plaintiff upon the other facts sought to be proved in this cause under the foregoing instructions, they will find that the title, which the plaintiff in this cause has established, is an estate in fee, subject to be defeated, by the performance of the condition of the mortgage offered in evidence.

To which the defendant excepted.

Defendant asked the following instructions, which the court denied:

3.—That no action of ejectment can be maintained upon the mortgage given in evidence until the whole of the mortgage money has become due and remains unpaid.

p. 48 4th.—That the plaintiff cannot maintain this action on this mortgage unless upon a failure by the mortgagor to pay some installment, and the plaintiff has given notice of a forfeiture for such failure.

5th.—That no action of ejectment can be maintained on this mortgage until the conditions of the mortgage have been broken by the mortgagor, and six months notice has been given him to quit the possession of the premises.

p. 49 7th.—That no such action can be maintained until the conditions of the mortgage have been broken, and reasonable notice to quit has been given by the mortgagee to the mortgagor or those claiming under him.

8th.—That if the jury believe from the evidence that the defendant at the date of the service of the declaration in this cause was in possession of the premises under the lease to Cole, and the assignments of the same, claiming as a tenant and occupying under said lease and assignments, the plaintiff cannot recover in this action unless he has proved that the defendant had reasonable notice to quit the possession prior to the commencement of this suit.

9th.—That if the jury believe from the evidence that the defendant or those under whom he claims have been evicted from the most valuable portion of the premises described in the mortgage, the plaintiff cannot maintain ejectment upon the mortgage for the residue or any portion of the residue of the land described in said mortgage.

10th.—That if the jury believe from the evidence that the defendant was in possession of the premises at the time of the service of the declaration, as a tenant



from year to year under the plaintiff, or under those having or claiming possession under him, the plaintiff cannot recover, unless the plaintiff gave him reasonable notice to quit prior to the commencement of this suit, and that six months is such reasonable notice.

11th.—That if the defendant at the time of the service of the declaration in this case was in possession of the premises as a tenant of William Kellogg's executors *p. 50* from year to year, with the plaintiff's knowledge, he was entitled to six months notice to quit before this action could be maintained against him; and, unless this notice has been given, the plaintiff cannot recover.

The defendant excepted to the ruling of the court, denying said instructions.

After the verdict, the defendant moved for a new trial, because :

1st.—The verdict was against law and evidence.

*p. 50—51* 2nd.—Because the court excluded the evidence offered by the defendant.

3rd.—Because the court permitted the plaintiff to give improper evidence.

4th.—Because the court gave the instructions asked by plaintiff, and refused those asked by defendant.

Which motion was overruled, and defendant excepted.

#### ERRORS ASSIGNED :

- 1.—Excluding defendant's evidence.
- 2.—Admitting plaintiff's evidence.
- 3.—Giving the plaintiff's and refusing the defendant's instructions.
- 4.—Overruling the defendant's motion for a new trial.

#### POINTS AND AUTHORITIES :

1st.—No action of ejectment can be maintained upon a mortgage against the mortgagor until after the condition is broken and a forfeiture has been declared by the mortgagee.

Adams on Ejectment, p. 108. Partridge vs. Ball, 5, B. & A. 604.



2nd.—The condition of a mortgage is not broken in contemplation of law, and especially under our statute until the last payment upon the mortgage has become due and is unpaid.

Purple's Stat. Sec. 23, p. 616.

3rd.—A mortgagor in possession by the consent of a mortgagee is a tenant from year to year, and is entitled to six months notice to quit.

|                   |                      |              |      |
|-------------------|----------------------|--------------|------|
| Jackson ex. dem., | Benton v. Loughhead, | 2 John. Rep. | 75.  |
| " " "             | Carr v. Green        | 4 " "        | 186. |
| " " "             | Bennett v. Lampson   | 17 " "       | 300. |
| " " "             | Barklay v. Hopkins   | 18 " "       | 487. |
| " " "             | Bedford v. Thomas    | 6 B. Monroe  | 322. |

4th.—The defendant in this case was a tenant from year to year under the lease offered in evidence by him, and was entitled to six months notice to quit.

5th.—The defendant's lessor having been evicted from the principal and most valuable portion of the land, had not violated his contract, nor was the condition of the mortgage broken by his refusal to pay the purchase money under such circumstances; he had a right to retain possession of the land and his improvements until the plaintiff established his title, or paid for his improvements and refunded the purchase money paid.

Jackson v. Marsh, 5 Wend. 44.

*Steinman v. Whitman 18 B. 447.*  
*Carter v. Monroe M. Co 1 Green's chy Rep 467.*

6th.—The plaintiff violated his contract and broke his covenants by permitting the lessee of the mortgagor to be evicted from the premises: after this it was no breach of the condition of the mortgage to refuse to pay the purchase money. The plaintiff should <sup>first</sup> offer to refund the purchase money, and pay for the improvements, or file his bill in chancery offering to do so, and asking for a rescission of the contract.

7th.—Defendant having offered to prove that he was tenant from year to year under the lease and assignments—the fact is to be taken as proved, and such being the case he is clearly entitled to six months notice to quit.

8th.—In this case the deed to Kellogg and mortgage to Ballance bear the same date. There is no presumption that the mortgage was delivered after the deed: it rests with the plaintiff to show which was delivered first, or the presumption will be that the legal title is still in Kellogg's representatives.

N. H. PURPLE, *Attorney for Appellant.*



Charles Bullard appellee  
(172) vs  
Charles R. Carroll appellant  
Bullard  
Abstract Points &c

Brief  
and  
Argument of  
A. M. Purple  
for appellant.

Filed Apr. 30 - 1861

L. Ireland  
clerk



Charles R Conoll }  
" } In Supreme Court.  
Charles Bullance }

Suggestions of Mr. Peple for Appellate

1st. It is a question whether the Condition of a Mortgage is broken until the last payment has become due, and a forfeiture has been declared. By Statute the Mortgage cannot be foreclosed until that time.

2nd. The Mortgagor in possession by Consent of the Mortgagee is a tenant from year to year and entitled to six months notice to quit. It might perhaps be considered to hold a position to assume, that it is now the law of this State that Ejectment can not be maintained upon a Mortgage merely, which is taken only as security for money; while the fee simple title is in the Mortgagor.

Yet such is the true spirit of all those decisions which hold & which have settled and established the doctrine, that a mortgage is but security for money.

It is true, and consistency requires



That these decisions should have their full  
weight. That it should be settled that a mortgage  
shall not for one purpose pass the legal title  
while for all others it is only security for a  
debt. That this Rule should be establish-  
ed both at law and in Equity.

It is against all my notions of  
Consistency—and of the obligation of the  
instrument—That if I give a Mortgage  
on property worth \$5000.00 for \$50.00  
that as between me and the Mortgagee  
the title is in him: While as to all the  
Rest of the world I am the owner  
in fee of the Mortgaged property.

There is an absurdity in the doctrine  
itself, which is irreconcilable with all our  
Ideas of Right Reason or propriety.

The Mortgagee may sue me—and I  
may sue every body Else in Equity.

There is no sound Sense in the  
doctrine, all the Courts have lately leaned  
strongly against it, and this Court,  
(I hope) will overrule it altogether.

It is against the common understand-  
ing that all parties take, save of such a



Contract— It is never supposed by any one that if he gives a small mortgage on valuable property, that he can be turned out of possession of his house because he has passed the legal title to the mortgagee.

It is never looked upon as any thing else than mere security for a debt.

3<sup>rd</sup> The Defendant and his Issues were in under a lease as well as under the purchase by Kellogg. This was fully proved and instructions asked upon the point. The instructions were refused, and the evidence excluded. Clearly he was entitled to six months notice to quit.

4<sup>th</sup> The Plaintiff below had violated his Contract & Broken his Covenants. Therefore defendant was not bound to perform his by paying any more money. Kellogg had already paid \$3000 of the purchase money \$15,000 for improvements by former tenants and had lost, and been dispossessed by Ejectments of \$20,000, worth of the land.



And because he Refuses to pay more, it is  
Said he is to be turned out of the posses-  
sion of the land which is left - And must  
Resort to a Court of Equity to get back his  
purchase money & for his Damages on  
his Warranty from Rollence

Is this Just fair or honest?

Let him who is first in fault, who first  
Violates his Contract, be Compelled to Resort  
to Equity, and Offer to do Equity before he  
insists upon a forfeiture.

It will not I think be contended  
that this Suit can be maintained  
until there has been a forfeiture of the  
Contract by Condition broken by Mortgagee

If this Contract is not fully per-  
formed by Kellogg, whose fault is it?  
Who is to blame; who has committed  
the first breach? The Plaintiff.

Let him then go into Equity, and let us  
defend. And that too with such possession  
and such weapons as we rightfully have

As the points are fully made and  
set forth in the Brief Abstract



I Consider it unnecessary to Enlarge further upon the same - and only ask to Refer the Court to the Abstract Brief Points and Authorities, and to crave for them a fair and careful consideration

J. M. Chapple

Atty for Appellants.



Charles Ballance } In the Supreme  
                <sup>vs</sup> } Court  
Charles R. Conoll } Ottawa Feb Term  
                               } 1861.

And Now Comes the Said Appellant  
Charles R. Conoll and says that in the  
Records and Proceedings and in the  
Rendition of the Judgment aforesaid there  
is manifest Error in this to wit.

1st The Circuit Court Erred in Excluding  
the Evidence offered by the Defendant  
in that Court.

2nd Said Court Erred in admitting the evi-  
dence offered by the Plaintiff below

But said Court Erred in giving the  
Plaintiffs & Refusing the Defendants  
instructions as asked

If the Said Court End in Overruling  
the Defendants Motion for a new trial  
and giving Judgment for the Plaintiff  
upon the Verdict

For these and other  
manifest errors in said Records the



Proceedings at a term of the Circuit Court begun and held at the Court House in the City and County of Peoria, State of Illinois, on the nineteenth day of November in the year of our Lord one thousand eight hundred and sixty, it being the third Monday of said month. Present the Honorable Elihu W. Powell Judge of the 16<sup>th</sup> Judicial Circuit, in said State, John Wyner Sheriff and Enoch P. Sloan, Clerk, to wit:

Wednesday November 28<sup>th</sup> A.D., 1860  
Charles Ballance

vs Ejectment.  
Charles R. Carroll

By Agreement plaintiff withdraws his declaration and files an amended declaration herein.

And on the same day, to wit: on the twenty eighth day of November in the year of our Lord one thousand eight hundred and sixty there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois an Amended Declaration of the plaintiff in said Cause, in the words and figures following, to wit:

|                          |                                   |
|--------------------------|-----------------------------------|
| United States of America | In the Circuit Court              |
| State of Illinois        | 3 <sup>d</sup> of Peoria County   |
| Peoria County            | 3 <sup>d</sup> of March term 1860 |



2  
Charles Ballance }  
vs }  
Charles R. Carroll }

Ejectment

Charles Ballance the plaintiff  
in this suit complains of Charles R. Carroll the  
defendant in this suit of a plea wherefore he the  
said defendant with force and arms &c, entered  
into the following described premises

For that heretofore to wit on the first day of  
January in the Year of our Lord one thousand eight  
hundred and Sixty the said plaintiff was possessed  
of certain premises situated in the County of Peoria  
in the State of Illinois and described as follows  
to wit: All Lot three in Block Forty Seven of  
Ballance's Addition to Peoria, together with cer-  
tain adjoining ground enclosed and occupied  
therein described and bounded as follows  
to wit beginning at a point in the South West  
line of said lot, 127 feet South East of the corner  
line of Water Street; thence to a point in Bal-  
lance's Avenue as the same is represented on the  
Recorded plat of said Addition 150 feet below  
Water Street thence along down said Avenue  
to the Illinois river thence up said river to the  
line between lots three and four of said addition  
thence along up said line to the place of begin-  
ning excepting so much of said above described  
real estate as is included French claims No twenty  
nine and thirty three as the same were <sup>Surveyed</sup> ~~conveyed~~  
and platted by Joseph C. Brown United States deputy  
Surveyor and being so possessed thereof the said  
defendant afterwards to wit, on the second day of



3

January in the year of our Lord one thousand eight hundred and Sixty entered into such premises, and that he unlawfully withholds from the said plaintiff the possession thereof and the said plaintiff avers that he claims title to said premises in fee.

Wherefore said plaintiff says that he is injured and has sustained damages to a large amount, to wit one thousand dollars and therefore he sues &c. C. Ballance  
Att. for plaintiff."

Plaintiff proposes to Amend the declaration in this Cause by introducing the above in place of the said first Count and striking out the said Second Count C. Ballance."

On the eighth day of March in the year of our Lord one thousand eight hundred and Sixty there was filed in the office of the Clerk of said Court in said Cause a Plea of the defendant to wit:

" Charles Ballance } In the Circuit Court  
Charles A. Carroll } of Peoria County,  
March 8, 1860  
Ejectment

And now Comes the defendant & says that he is not guilty in manner and form as stated in the plaintiff's declaration and of this he puts himself upon the Country &c.  
O. H. Purple  
Def's Atty."



4  
Proceedings at a Special term of the Circuit Court  
began and held at the Court house in and for  
the County of Peoria and State of Illinois,  
on the third Monday in the month of August in  
the Year of our Lord one thousand eight  
hundred and Sixty, it being the twentieth  
day of said Month, in pursuance of an  
order of said Court made and entered of  
Record at the last May term thereof, which  
said order is in words following, to wit:

"Ordered by the Court that a Special term  
of the Circuit Court of Peoria County State of  
Illinois, for the trial of civil Cases, be held  
at the Court house, in the City and County of  
Peoria, on the third Monday in August next"  
Present the Honorable Elisha N. Powell Judge of  
the 16<sup>th</sup> Judicial Circuit in said State, John  
Byrnes Sheriff, and Crook P. Hoorn Clerk,  
to wit:

Monday September 3<sup>rd</sup> A.D. 1860  
Charles Ballance,

vs. <sup>vs</sup> Ejectment  
Charles R. Carroll.

This day Came N. H. Purple  
and Moved the Court to Substitute other  
and additional Defendants to this Suit.

Proceedings at a term of the Circuit Court  
began and held at the Court house in the City  
and County of Peoria, State of Illinois, on  
the nineteenth day of November in the year of our  
Lord one thousand eight hundred and Sixty,



5

it being the third Monday of said month.  
Present the Honorable <sup>Edw</sup> C. Powell Judge  
of the 16<sup>th</sup> Judicial Circuit in said State, John  
Byrner, Sheriff and Enock P. Sloan, clerk,  
to wit:

Friday November 30<sup>th</sup> A. D. 1860

Charles Ballance

vs

Ejectment

Charles R. Carroll

This day Come plaintiff in  
person assisted by Grove and Manning  
and the defendant by Purpl, and it is  
ordered that a jury be empannelled to try  
the issues in this Cause, whereupon Come a  
jury of twelve good and lawful men to wit  
Wm H. Miller, Hugh Sears, James Bryden, Matthew  
Jaggart, J. W. Frank, Danl R. Buck,  
Edw McCurry, Joseph Stillman, Jacob Dawson,  
J. H. Wells, Austin Gordon and A. J. White,  
who were duly chosen, tried and sworn to well  
and truly try the issues joined in this Cause  
and a true verdict give according to the  
evidence, The Jury (not having) heard all  
the evidence in the Case were adjourned to  
meet the Court to-morrow morning.

Saturday December 1<sup>st</sup> A. D. 1860

Charles Ballance,

vs

Ejectment.

Charles R. Carroll

This day Come the parties to  
this suit and also Come the jury (sworn on yesterday



6  
to try this Cause, And the said jury upon their oaths afore-  
said do say, we the jury find the issues for the  
Plaintiff and find the defendant guilty and that the  
Plaintiff has title in fee simple to the land as by  
him alleged in his declaration filed herein, and do  
assess the plaintiffs damages by reason of the promises,  
at the sum of one cent. Therefore it is considered  
that the said Charles Ballance have and recover of  
the said Charles R. Carroll the said sum of one  
cent his damages aforesaid and also his costs  
and charges by him about his suit in this behalf  
expended and that he have execution therefor. And  
it is further considered that the said Charles Bal-  
lance have and recover of the said Charles R.  
Carroll the possession of the following described prop-  
erty to wit: - All lot three in Block forty seven  
of Ballance's addition to Peoria, together with certain  
adjoining ground enclosed and occupied therewith  
described and bounded as follows to wit: - begin-  
ning at a point in the South West line of said lot,  
127 feet South East of the lower line of Water Street,  
thence to a point in Ballance's Avenue as the same  
is represented on the recorded plat of said addition 150  
feet below Water Street, thence along down said  
Avenue to the Illinois River, thence up said river  
to the line between lots three and four of said ad-  
dition, thence along up said line to the place of  
beginning excepting so much of said above des-  
cribed real estate as is included in French  
Claims No Twenty Nine and Thirty three as the  
same were surveyed and plotted by Joseph C. Brown United States  
Deputy Surveyor, and that a writ of possession issue therefor.



7. Tuesday December 4<sup>th</sup> A.D. 1860  
Charles Ballance

vs Ejectment  
Charles R. Carroll

This day Came defendant by Purples  
his attorney and prayed an appeal to the Supreme  
Court of this State, which is allowed, on his giving  
bond in the sum of five hundred dollars payable  
to said plaintiff Conditioned as the law directs, with  
Edward F. Nowland as Security, and filed with  
the clerk of this Court in thirty days.

And afterwards, to wit: on the twenty fourth  
day of December in the Year of our Lord one thousand  
and eight hundred and Sixty there was filed  
in the office of the Clerk of the Circuit Court in and  
for the County of Peoria and State of Illinois in  
said Cause the Defendants Bill of Exceptions  
in the words and figures following, to wit:

"Charles Ballance

vs

Charles R. Carroll

In the Circuit Court  
of Peoria County  
Ejectment

Be it remembered that the plaintiff in this suit  
in order to maintain the issue on his part offered  
in evidence a Mortgage executed by William  
Kellogg to the plaintiff dated November 5<sup>th</sup> 1855  
which said Mortgage is as follows

"This Deed made this 5<sup>th</sup> day of November 1855  
between William Kellogg of the first part and Charles  
Ballance of the Second part (both of Peoria) witnesses,



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that said party of first part for and in Consideration of one dollar in hand paid and the further Considerations hereinafter Contained, Has bargained, sold and conveyed and by these presents do bargain, sell and convey, unto the said party of the Second part, the following described piece of land to wit: Commencing at a point in the Corner edge of Water Street in the City of Peoria at the most Northerly Corner of a large Warehouse, of brick, lately erected by said Kellogg, thence running along up the lower edge of Water Street five hundred and Seventy Six feet to a stake forty five feet from the intersection of Water Street and Chestnut Street, thence along down the line of a lot lately sold by said Ballance to one Robert Forsyth, to the Illinois River, thence along down the Meanders of said river to a point which a line run from the place of beginning, at right angles with Water Street, would strike, thence along said line to the place of beginning. Together with all the appurtenances thereto belonging or in any wise appertaining. To have and to hold the said tract of land and appurtenances to the said Ballance his heirs and assigns, for his and their own proper use and behoof forever. Provided however and upon this express Condition, that whereas the said Ballance has on this day sold to said Kellogg the above described premises for the sum of forty thousand and three hundred and twenty dollars, three thousand and of which has been paid in hand and ten several promissory notes have been executed by said said Kellogg to said Ballance for the residue of three thousand



Jas. B. Smith & Co.  
No. 27 S. Seventh Street,  
Philadelphia.

9 Seven Hundred and Sixty two dollars each, all bearing even date herewith, and the first payable on the first of April 1857, and each of the others being payable one year later. Now therefore if the said Kellogg shall well and truly pay said several promissory notes according to the tenor and effect thereof, then the above conveyance to be null and void, but otherwise to remain in full force and virtue. Witness my hand and Seal the date above written.

Wm Kellogg (Seal)

State of Illinois,  
County of Peoria, ss. I John A. McCoy, a Justice of the Peace of said County do certify, that on this day William Kellogg who is personally known to me to be the identical person whose Name is signed to the foregoing deed of Mortgage as having executed the same and acknowledged the execution thereof to be his act and deed for the uses and purposes therein expressed. Given under my hand and Seal this 16th day of November A.D. 1855

J. A. McCoy J.P. & C.

to the introduction of which the defendant objected; the Court overruled said objection and then defendant then and there excepted to the opinion of the Court.

The Plaintiff then offered in evidence ten promissory notes of \$3732. each being the same notes described in and bearing the same date as the Mortgage aforesaid, to the introduction of which the said defendant then and



there objected the Court overruled the objection and admitted the evidence and defendant then and there again excepted to the decision of the Court in admitting said notes in evidence

<sup>ing</sup>  
The plaintiff then called Henry M. Kellogg as a witness; who testified that William Kellogg died November 15<sup>th</sup> 1858, that he was in possession of the premises described in the mortgage at the time of his death, that there was a portion of the premises which were unoccupied at the time of the date of the mortgage that Carroll and himself never pretended to claim the premises except under the right of William Kellogg and that they leased the same to the defendant Carroll, that after his death, the witness and his brother Uriah H. Kellogg, as administrators of said William Kellogg, and not as heirs took possession of the mortgaged property & remained in possession of the same, or part thereof for about one year. That they afterwards leased to the defendant Carroll that portion of the mortgaged premises which they retained possession of — Having been turned out of the possession of one and part of another French claim lots previous to their leasing to the said defendant; That the defendant Carroll had remained in possession under said lease from them since November A.D. 1859. The lots which they were dispossessed of constituted a portion of the land embraced in the description in the plaintiff's mortgage offered in evidence but was not part of the premises



embraced in the declaration. That the following named persons are the heirs of the said William Kellogg deceased, Mary C. Kellogg, Mother, John G. Kellogg, Richard G. Kellogg, Unalut, Kellogg, & Henry M. Kellogg Brothers, Mary C. Parker wife of Timothy Parker sister and Carrie Kellogg daughter of Frederick Kellogg deceased who was a Brother of said William Kellogg deceased.

Richard Gregg - Called by plaintiff.  
Identified the land in controversy and showed by the accompanying plat that the land claimed in the declaration was included in said Mortgage but said declaration did not include said French claims.

J. R. Webb Called by plaintiff testified that about one year ago he heard the plaintiff demand possession of the property in controversy of Henry M. Kellogg. This was at Bullance's house in January or February 1860 - He Bullance said he wanted payment of the notes or possession of the property, and thought it very unjust that Kellogg would not give him possession without a law suit. Said Kellogg said he was waiting for his brother to come on from New York and when he arrived something should be done. That defendant Carver was in possession of the land at the time. Heard nothing said at the



time about French claim suits, I knew from Mr Ballance that there had been suits ~~pending~~ pending about the land. Last winter I spoke to Carroll the defendant about the land, I went to him I think at the request of plaintiff to ascertain how he held it, and to try and get possession without a law suit. I made no formal demand of possession but told defendant plaintiff would like to get possession without trouble. I had a general power of attorney from plaintiff to transact all this kind of business for him, said witness also stated that he served the declaration and notice on the defendant as stated in his affidavit on the declaration.

The following Plat showing the location of the land described in the mortgage was given in evidence without objection; said Plat also shows the location of French Claims (27) & (33) and of the land described in plaintiffs declaration.

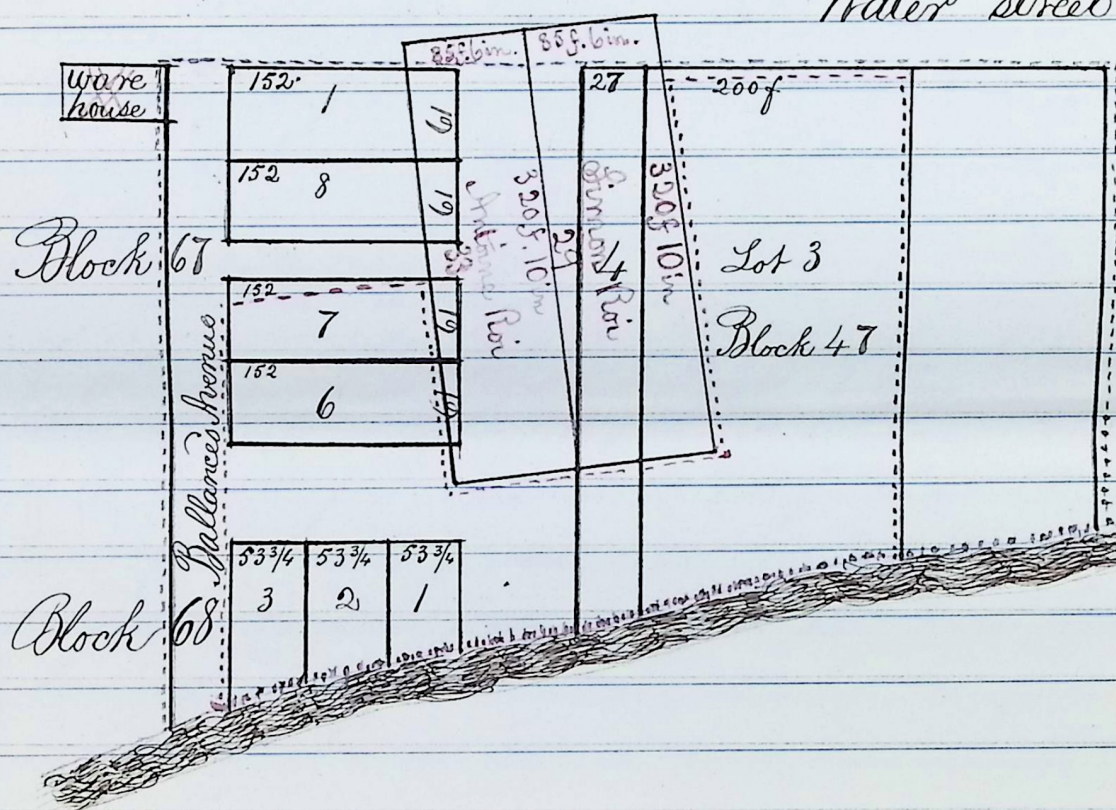


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Plat of Ballance's Addition to Peoria Laid off  
on the S. W. Quarter Sec. 9, S. R. 8. E. Peoria Co.

Oak street

Water street



Land embraced in the description is  
Kellogg's Mortgage to Ballance & Ballance's  
debt to Kellogg.

Lines of French claims 29 & 33

Land embraced in description in amended  
declaration

Brick ware house

Lines of lots in Ballance's addition.

Here the plaintiff rested.



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The defendant then offered in evidence a lease from Charles Ballance to H. S. Cole dated 2nd January 1844

And an assignment of the same by said Cole to Sylvanus Thompson dated Dec. 7, 1846

And an extension of the same to Richard Gregg & Co. dated January 21, 1854

And an assignment of the same from Harriet S. Thompson & Richard Gregg dated the 25 September A.D. 1854; which said lease, extension and assignment are as follows

Lease

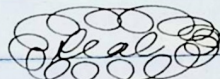
"This Indenture Made this twenty Second day of January eighteen Hundred and forty four between Charles Ballance of the first part and Harriet S. Cole of the Second part - witnesses that for and in Consideration of the rents profits and covenants hereinafter expressed the said party of the first part hath leased, demised granted and let, and by these presents doth lease, demise and let unto the said party of the Second part, his executors, administrators and assigns, all that lot of ground or tract of land bound as follows to wit; beginning at the (most westerly) Corner of a lot by said Ballance heretofore conveyed to Jacob Lorenz, on the South West quarter of Section Nine Township Eight North Range Eight East and on which said Lorenz now lives thence running down the Course of the rail road two Hundred feet thence at right angles with the said rail road to the Illinois river thence up and along the bank of said river two Hundred feet to the lower line of said Lorenz's lot, thence along said line to the place of

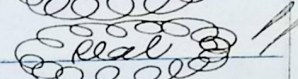


16  
beginning together with all the appurtenances thereto  
belonging or in any wise appertaining. To have and to hold  
the said lot of ground and appurtenances to the party  
of the second part his executors, administrators and  
assigns from the date hereof for and during, and  
to the full end and term of ten years, paying therefor  
yearly during said term unto the said Ballance  
the sum of fifty dollars on the eighteenth day of July  
in every year, provided nevertheless that if said  
Cole his executors, & administrators and assigns  
shall at any time within three months after either  
of said payments shall fall due, refuse, neglect or  
fail to pay the same that then said Ballance his  
heirs and assigns shall have the right to re-enter  
and take possession of said premises. Provided  
further that said Cole shall keep a good fence  
on the lower line of said lot adjoining said Bal-  
lance and said Ballance shall have the right  
to join it. And the said Cole for and in con-  
sideration of the premises promises to pay to said  
Ballance the sum of fifty dollars aforesaid,  
and also that he the said Cole will not occupy  
said premises for slaughtering. It is further agreed  
that after this lease shall expire said Cole his heirs  
and assigns shall have a right to a renewal of the  
same for every five years by paying in the manner  
above what the ground rent shall at the time be worth  
(exclusive of the improvement) which shall in case of  
disagreement be determined by two persons one of  
which shall be selected by each party and if said  
two persons cannot agree they the said two persons  
shall select a third person whose decision shall be final.



It is also further agreed that said Cole his heirs and assigns shall at any time have the privilege of removing from said premises any building or other improvements that said Cole may have placed or erected on said premises. Lastly the said Ballance agrees to warrant and defend the said lot of ground to said Cole during said period against the lawful claim or claims of all persons whatever. Witness our hands and seals the day and year above written.

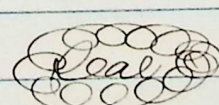
C. Ballance 

A. J. Cole 

It is this day agreed by and between Charles Ballance & Richard Gregg & Co. that the above foregoing and within lease is hereby renewed and extended for the term of five years from and after the twenty second day of January A.D. 1854 said Richard Gregg & Co. to pay rent at the rate of two hundred dollars per annum, and said Richard Gregg & Co. are to pay the taxes assessed upon the improvements made on the within described land and said Ballance agrees to pay all the taxes assessed upon the land within described.

The rent to be paid to said Charles Ballance at the times mentioned in the within lease.

Done January 21<sup>st</sup> 1854

C. Ballance   
Richard Gregg & Co.

Renewal  
of lease.



assignment  
of lease.

For value received I Almurin S Cole do hereby  
assign transfer and set over to Sylvanus Thompson  
his heirs and assigns the foregoing lease from  
Charles Ballance to me the said Cole dated the  
22<sup>d</sup> day of January A. D. 1844, together with  
the rights and privileges in said lease granted  
and contained Witness my hand and seal this  
seventh day of December in the year of our Lord  
one thousand eight hundred and forty six.  
And the said Cole is to pay the rent ~~due~~  
and taxes on said leased property up to  
this date and said Thompson to keep the  
covenants of said Cole in said lease  
December 7 1846

A. S. Cole (Seal)

"The amount due on this lease is adjusted up to this 22<sup>nd</sup> January 1847 to Ballance."

assignment  
of lease.

For value received we the undersigned Executor &  
Executrix of Sylvanus Thompson deceased do transfer  
and assign all our right, title and interest in and  
to the within lease to William Kellogg. To have and  
to hold the same to him his heirs and assigns  
forever. Witness our hands and seals at Peoria  
this 25<sup>th</sup> day of September A. D. 1854

Signed Read and delivered Harriet S. Thompson (Seal)  
before B. L. T. Dowland. Richard Gregg (Seal)

The name Edward F. Nowland erased and  
the name of William Kellogg introduced in above  
assignment before the same was signed.

Witness

B. L. T. Dowland.



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The execution of the lease, assignments, extensions &c were admitted by the plaintiff.

It was also admitted that Sylvanus Thompson died previous to 25 Sept. 1854 and that Harriet S. Thompson & Richard Gregg were his executors.

The defendant in connexion with the evidence offered as above, further offered to prove that William Kellogg entered into the premises described in the lease under the lease and assignments at the date of the assignment to him, that he paid Thompsons Executors fifteen thousand dollars for improvements made by them & paid Thompson on the land.

That Carroll the defendant entered said premises after the date of plaintiffs Mortgage, under the administration of said William Kellogg and as their tenant - and that Kellogg and his administrators and the defendant have been in possession ever since the assignment of said lease to said William Kellogg under said lease and claiming to hold possession under the same.

All which evidence so offered was objected to by the plaintiff and excluded by the Court, and the Counsel for the defendant then and there excepted to the opinion of the Court in excluding said lease, (renewal assignments & other evidence) aforesaid.

Defendant next offered in evidence a deed from Charles Ballance and wife to William Kellogg, dated Nov. 5. 1855, which deed is as follows,



"This Indenture Made this fifth day of November in the year of our Lord one thousand eight hundred and fifty five witnesseth, that Charles Ballance and Julia Ballance his wife of the County of Peoria and State of Illinois Parties of the first part in consideration of the sum of forty thousand three hundred and twenty dollars in hand paid by William Kellogg of the County of Peoria and State of Illinois Party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm, unto the said party of the second part, his heirs and assigns forever, a certain tract of land, known and described as follows, to wit, beginning at a point on the lower edge of Water Street in the City of Peoria at the most Northerly Corner of of a large brick ware house lately built by said Kellogg, thence along said lower edge of Water Street in a North Easterly direction five hundred and twenty six feet to a point forty five feet from the intersection of Water and ~~Ches~~ Chestnut Street Thence along down the line of a lot heretofore sold to Robert Toneyth to the Illinois river Thence along down the line of a lot meanders of said river to a point which a line from the place of beginning run at right angles from Water Street would strike thence along said line to the place of beginning

Also so much of the South East quarter of Section nine in township Eight North of range Eight East as lies below Chestnut street Together



Jas. B. Smith & Co.  
No. 27 S. Seventh Street,  
Philadelphia.

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with all the appurtenances thereunto belonging or in any  
wise appertaining. To have and to hold the said premises,  
with all the appurtenances thereunto belonging, or in any  
wise appertaining, to the only proper use and behoof of the  
said party of the second part, his heirs and assigns  
forever. And the said parties of the first part, for them-  
selves and their heirs, executors and administrators, the  
aforesaid lot of ground, with all the rights, privileges  
and appurtenances thereunto belonging, against the claim  
of every person, and of all persons, to the said party of  
the second part, his heirs and assigns, do and will  
warrant and forever defend. In witness whereof,  
the said grantors have hereunto set their hands and  
Seals, the day and year first above written.

Signed, Sealed and delivered } C Ballance Seal  
and in presence of } Julia Ballance Seal

State of Illinois,  
Cook County,

Be it remembered, that on this  
Nineteenth day of November in the year of our Lord  
one thousand eight hundred and fifty five Charles  
Ballance & Julia Ballance personally known to the  
undersigned Justice of the Peace of said county, to be  
the identical persons who executed, and whose names  
are subscribed to the foregoing deed of conveyance, as  
having executed the same, came before me and acknowl-  
edged the same to be their voluntary act and deed  
for the purposes therein expressed. And the said Julia  
Ballance having been by me made acquainted with the  
contents of said deed of conveyance, and examined sepa-  
rate and apart from her said husband, acknowledged  
that she executed the same, and relinquished her dower  
in the premises therein mentioned, voluntarily, freely and



without Compulsion on the part of her said Husband,  
and that She does not wish to retract the same.  
In testimony whereof, I have hereunto set my Hand, and  
affixed - at my office at Peoria, the day and year first  
above written.

J. A. M. Coy. Esq. & Co. Attys.

The Defendant next offered in evidence the  
Record Proceedings Judgment Unit of possession  
and return thereon of a Suit in the Circuit Court  
of the United States for the Northern District  
of Illinois wherein William P. Bryant was plain-  
tiff & Richard Gregg defendant

Also the Record proceedings Judgment  
Unit of possession and return thereon of a  
Certain other suit in the Same Court wherein  
Edward P. Jesson was plaintiff and said Richard  
Gregg was defendant,

Which said Records, writs and returns  
are as follows

|                   |   |                                        |
|-------------------|---|----------------------------------------|
| "                 | { | <del>Circuit Court</del> United States |
|                   | { | Northern District of Illinois          |
| William P. Bryant |   |                                        |
| "                 |   | Ejectment                              |
| Richard Gregg     |   |                                        |

The following are copies  
from the original papers filed in the above  
entitled Case, together with the final verdict  
and Judgment in the same.



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Declaration.

In the Circuit Court of the United  
States for the District of Illinois  
April Term 1854. At Chicago.

William P. Bryant

vs

Ejectment.

Richard Gregg

William P. Bryant who is  
a citizen of the State of Indiana plaintiff in  
this suit Complainant of Richard Gregg who is a  
Citizen of the State of Illinois defendant in this  
suit for that whereas on the 10<sup>th</sup> day of January  
A.D. 1854 at the State & District aforesaid,  
he said Plaintiff was possessed of the following  
described real estate, to wit: - the lot containing  
twenty seven thousand four hundred and  
forty nine square feet and seven hundredths  
of a square foot Surveyed and designated  
as covered by claim number twenty nine,  
in the South West fractional quarter of fractional  
Section nine in township eight north of range  
eight East of the fourth principal meridian  
Illinois according to the Survey approved 1<sup>st</sup>  
September 1840 by the Surveyor of the Public  
lands in the States of Illinois and Missouri  
as by reference to said Survey and the  
plat thereof will fully appear  
And for that whereas also on the 10<sup>th</sup> day of  
January A.D. 1854 at the State and District  
aforesaid, he the said Plaintiff was possessed  
of the following described real estate to wit: - the

1<sup>st</sup> count



2nd Count,

Equal undivided one fourth part of the lot containing twenty seven thousand four hundred and forty nine square feet and seven hundredths of a square foot, surveyed and designated as covered by claim number twenty nine in the South West fractional quarter of fractional Section nine in township Eight North of Range Eight East of the fourth principal meridian Illinois, according to the survey approved 1<sup>st</sup> September 1840 by the Surveyor of the Public lands in the State of Illinois and Missouri, as by reference to said survey and the plat thereof will fully appear.

The title to which he claims in fee; and the said Plaintiff being so possessed thereof, the said defendant on the 11th day of January A.D. 1854 entered into said premises and unlawfully withholds from the plaintiff the possession thereof, to the damage of the said plaintiff one hundred dollars and therefore he brings suit &c. and the said plaintiff avers that he is a citizen of the State of Indiana, and that said defendant is a citizen of the State of Illinois and that the value of the land in controversy in this suit exclusive of costs exceeds the sum of five hundred dollars.

N. H. Purple Esq. Atty.  
Mr. Richard Gregg

You are notified that on the first day of the next term of the United States Circuit Court to be holden in & for the State & District of Illinois at Chicago or as soon thereafter as Counsel can be heard the foregoing declaration in ejectment will be filed, and thereupon a rule will be entered requiring you



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to appear and plead thereto within twenty days after the entry of such rule; and that if you neglect to appear and plead, judgment by default will be entered against you, and the Plaintiff will recover possession of the premises described in said declaration

N. H. Purple

January 12<sup>th</sup> 1854.

Plff's atty.

State of Illinois

Peoria County

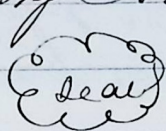
Mark H. Aiken being

duly sworn, Says that he served the foregoing declaration and notice on the defendant within named by giving Richard Gregg a true copy of the same this 12<sup>th</sup> day of January A.D. 1854.

Mark H. Aiken

Subscribed and sworn to before me this 12<sup>th</sup> day of January A.D. 1854

(Endorsed)



N. H. Purple

Notary Public, Peoria City, Mo.

Filed Apr 18, 1854

Wm Pope Clk.

Plca.

United States of America

State and District of Illinois

In the Circuit Court

Of the Oct. Term 1854

William P. Bryant

vs

Richard Gregg

In Ejectment.

Said defendant Comes and



defends the force and injury when &c, and says  
he is not guilty of the trespass and ejectment  
in said Declaration alleged, in manner and  
form as the same is therein set forth and  
charged against him and of this he puts  
himself upon the Country &c.

C. Ballance  
for defendant.

(Endorsed)

Filed Oct. 11. 1854

Jm Pope Clerk.

The following are all the proceedings  
had and entered of record upon the final  
trial of said Cause in said Court, at  
the October Term A. D., 1857

Tuesday October 6<sup>th</sup> 1857

Present the Hon Thomas Drummond Judge

William P. Bryant

Ejectment.

Richard Gregg

Now at this day

Come the parties by their attorneys, and upon  
issue joined thereupon Come a Jury of good  
and lawful men, to wit: William S. Hughes,  
V. G. Harbaugh, John L. Smith, John Thomas,  
William Nixon, William H. Whitton, J. R. Web-  
ster, Ezekiel S. Harding, John Robb, James  
Clark, George W. Norton & Geo. W. Washburn who  
were duly elected tried and sworn and after pre-  
senting the cause to the Jury the hour of adjournment



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Having arrived, the trial of the Cause is postponed until tomorrow morning.

Wednesday October 7<sup>th</sup> 1857

William P. Bryant

vs  
Richard Gregg

Ejectment

Now Come again the parties by their attorneys and now Come also the Jury heretofore empannelled in this Cause and after proceeding in the trial until the hour of adjournment without concluding the same the further trial of the Cause is postponed until tomorrow morning.

Thursday October 8<sup>th</sup> 1857

William P. Bryant

vs  
Richard Gregg

Ejectment

Now Come again the parties by their attorneys and now Come also the Jury heretofore empannelled in this Cause and after concluding the testimony, the hour of adjournment having arrived, the arguments of Counsel are postponed until tomorrow morning.

Friday October 9<sup>th</sup> 1857

William P. Bryant

vs  
Richard Gregg

Ejectment

Now Come again the



parties by their attorneys, and now Come also the Jury heretofore empannelled in this cause, and after proceeding with the arguments of Counsel until the hour of adjournment without concluding the same, the concluding arguments of Counsel are postponed until to-morrow morning.

Saturday October 10<sup>th</sup> 1857

William P. Bryant

Richard Gregg

Excerptment

Now Come again the parties by their attorneys, and now Come also the jury heretofore empannelled in this cause and after hearing the concluding arguments of Counsel and receiving instructions from the Court the jury retired to consider of their verdict, and after a short absence returned into Court with the following verdict, to wit:

That the Jury find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiffs declaration to wit: The lot containing twenty seven thousand four hundred and forty nine square feet and seven hundredths of a square foot, surveyed and designated as covered by claim number twenty nine, in the South West fractional quarter of fractional Section nine in Township Eight North of Range Eight East of the fourth principal meridian, Illinois, according to the survey approved



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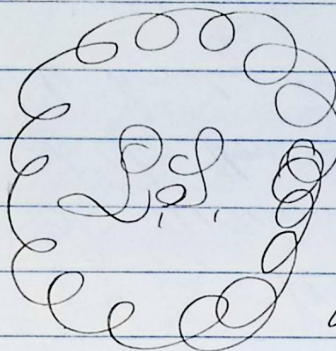
1<sup>st</sup> September 1840, by the Surveyor of the Public lands in the State of Illinois, and Missouri as by reference to said Survey and that plat thereof will fully appear. We also find the estate established in plaintiff upon the trial to be an estate in fee simple and assess his damages at the sum of one cent. And the defendant by his attorney moves the Court for a new trial, which motion is overruled.

It is thereupon considered and adjudged by the Court that the plaintiff have and recover of the defendant possession of the said described real estate and premises according to the force and effect of his said recovery and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent his damages so as aforesaid assessed, together with his costs by him about his suit in this behalf expended amounting to the sum of Seventy two dollars and forty cents and that he have execution therefor.

Northern District of Illinois, S.  
J. William H. Bradley Clerk of the Circuit Court  
of the United States for the Northern District of Illinois,  
do hereby certify the foregoing to be a true and  
correct copy from the original files, of  
the declaration and plea, filed in a certain cause  
then pending in said Court wherein William P. Bryant  
was plaintiff and Richard Gregg was defendant  
and also of the record entries and judgment



entered upon the final and last trial of said Cause in said Court as the same remain of record in my office. In Testimony whereof, I have hereunto set my hand and



affixed the Seal of said Court at my office in Chicago in said District this thirty first day of August in the Year of our Lord one thousand eight hundred and sixty and of our Independence the 85th Year

Wm H. Bradley, Clerk.

United States of America }  
Northern District of Illinois. }

The United States of America  
To the Marshall of the Northern District  
of Illinois Greeting;

Whereas William P. Bryant plaintiff has lately in our Circuit Court of the United States for the Northern District of Illinois, by the judgment of said Court recovered against Richard Gregg defendant the following described real estate and promises described in the plaintiffs declaration, to wit, the lot containing twenty seven thousand four hundred and forty nine square feet and seven hundredths of a square foot surveyed and designated as Covered by Claim number twenty nine in the South West fractional Quarter of fractional Section nine in township Eight North of Range Eight East of the fourth principal meridian Illinois according to the Survey approved 1<sup>st</sup> September 1840 by the Surveyor of the public lands in the States of Illinois and Missouri

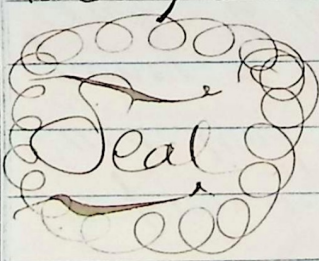


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as by reference to said survey and that plat thereof will fully appear, which said premises have been and still are unjustly withheld from the said William P. Bryant by the said Richard Gregg whereof he is convicted as appears to us of record, and forasmuch as it is adjudged in the said Court, that the said plaintiff have execution upon his said judgment against the said defendant according to the force, form and effect of his said recovery.

Therefore, we Command you, that, without delay, you deliver to the said William P. Bryant possession of the premises ~~so recovered~~ recovered with the appurtenances; and that you certify hereon to our said Court, in ninety days from the date hereof, in what manner you shall have executed this writ.

And we further Command you, that of the goods and chattels, lands and tenements of ~~this~~ the said Richard Gregg you cause to be made the sum of seventy four dollars and thirty five cents, which the said plaintiff also recovered against said defendant for his costs and charges in that behalf expended, whereof the said defendant is convicted as appears to us of record, and have you that money ready in ninety days, to render to the said plaintiff for his costs and charges aforesaid.



Witness the Hon. Roger T. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid this third day of May in the Year of our Lord one thousand eight hundred and fifty nine and of our Independence the eighty third year  
William H. Bradley, Clerk.



I have executed this writ by entering upon the premises within described and by reading said writ to the persons in possession and occupancy of the said premises, and by reading the same to the said defendant and by delivering the possession of the same premises to Norman H. Purple Agent and attorney of the said plaintiff as within I am commanded.

mil 9.00

for. 2.00

11.00 paid.

C. C. Pine U.S.M.

By J. C. Bullock

Dept.

I also made a demand of Richard Gregg for money or property with which to satisfy this execution and was informed by him that he had neither money or property to turn out and having searched I have been unable to find any thing belonging to him upon which to levy, therefore this execution is returned wholly unsatisfied.

May 5<sup>th</sup> 1859.

C. C. Pine U.S.M.

By J. C. Bullock Dept.

Northern District of Illinois, Sd.

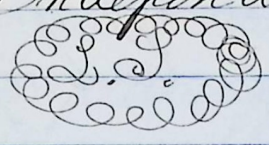
I hereby certify this to be a correct Copy of the original writ issued in a certain Cause wherein William P. Bryant was plaintiff and Richard Gregg was defendant together with the return of the Marshall thereon, as the same remains on file in my office. In testimony witness my hand and Seal of said Court at my office this thirty first



Jas. B. Smith & Co.  
No. 27 S. Seventh Street,  
Philadelphia.

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day of August A. D. 1860 and of our  
Independence the 85<sup>th</sup> Year



Wm H. Bradley, Clerk.

Jesson  
vs  
Gregg.

" Copy  
" Circuit Court United States  
Northern District of Illinois

Edward P. Jesson

vs  
Richard Gregg

Ejectment

The following are copies  
from the original papers filed in the above  
entitled Case, together with the final verdict  
and Judgment in the same.

### Declaration

In the Circuit Court of the  
United States for the District of  
Illinois -

April Term 1854. ~~A. Chicago~~

Edward P. Jesson

vs  
Richard Gregg

Ejectment.

Edward P. Jesson

who is a citizen of the State of Missouri  
Plaintiff in this Suit complains of Richard Gregg  
who is a citizen of the State of Illinois defendant  
in this Suit for that whereas on the 1<sup>st</sup> day of  
April A. D. 1854 at the County aforesaid, the  
said plaintiff has possessed of the following  
described real estate, the equal undivided half  
part of a certain lot containing twenty seven thousand



Four Hundred and forty (nine) Square feet and Seven Hundreths of a Square foot, Surveyed and Designated as covered by Claim number ~~three~~ thirty three (33) in the South West fractional quarter of fractional Section nine, in township eight North of Range Eight East of the fourth principal Meridian Illinois, according to the Survey approved 1st September 1840 by the Surveyor of the public lands in the States of Illinois and Missouri.

The title to which he claims in fee, and the said plaintiff being so possessed thereof, the said defendant on the 2nd day of April A. D. 1834 entered into said premises and unlawfully withheld from the plaintiff the possession thereof, to the damage of the said Plaintiff one Hundred dollars and therefore he brings Suit &c, and the said plaintiff avers that the real estate above described and the matters in controversy in this suit exceed in value the sum of five hundred dollars

Carpenter & Sanger  
Plffs Attys

Mr Richard Gregg

You are notified that on the first day of the next term of the Circuit Court of the United States to be holden in and for the District of Illinois at Chicago or as soon thereafter as counsel can be heard, the foregoing declaration in ejectment will be filed, and thereupon a rule will be entered requiring you to appear and plead thereto within twenty days after the entry of such rule; and that if you



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Neglect to appear and plead, judgment by  
default will be entered against you, and  
the plaintiff will recover possession of the  
premises described in said declaration

Purple & Langer

Plffs Attys.

State of Illinois, 3<sup>rd</sup> Lt.

Peoria County. 3

Leonard J. Cornwell  
being duly sworn, says that he served  
the foregoing declaration and notice on the  
defendant within named by giving to him  
a true copy of the same this seventh day  
of April A. D. 1854.

Leonard J. Cornwell

Sheriff P. E. Jees

Subscribed and sworn to before me the Clerk  
of Circuit of said Peoria County this eleventh  
day of April A. D. 1854

Witness my hand and the Seal of the  
Circuit Court of Peoria County aforesaid this  
April 7<sup>th</sup> 1854. Jacob Gale, clk.

(Endorsed) Filed April 18, 1854

Wm Pope, clerk.

Plea.

United States of America 3

State & District of Illinois 3

In the Circuit Court

of the October Term

A. D. 1854.



Edward P. Tesson  
 vs  
 Richard Gregg In Ejectment

Said defendant comes and  
 defends the force & injury when he and says  
 he is not guilty of the trespass and ejectment in  
 said declaration alleged in manner and form  
 as the same ~~was~~ <sup>is</sup> therein charged and set forth  
 and this he ~~prays~~ prays may be inquired of by  
 the Country. E. Pallance  
 for defendant

(Endorsed)

Filed Oct. 11. 1854

Wm. Pope, Clerk.

The following verdict was rendered and judgment  
 entered thereon in said entitled Cause on the twenty  
 first day of July A.D. 1856, of the July term  
 A.D. 1856 of said Court.

Monday July 21<sup>st</sup> 1856  
 Present the Honorable Thomas Hammond Judge.

Edward P. Tesson

Ejectment.

Richard Gregg

The defendant by his  
 attorney moves the Court on affidavit filed,  
 for a continuance of this Cause to the next term  
 which motion is overruled by the Court, and now  
 come the parties by their attorneys and upon issue  
 joined thereupon come a jury of good and lawful  
 men to wit: Thomas Barnett, William Heering,



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Wm Rogers, Peter Stout, John Brown, Rufus Ordway, Daniel P. Holt, William McFee, William H. Brandall, M. Jagart, Elisha Putnam & D. Johnson who were duly elected, tried and sworn ~~at~~ and after hearing the evidence and receiving instructions from the Court, the Jury returned into Court the following verdict, to wit: — We the Jury find the defendant guilty of unlawfully withholding from the possession of the plaintiff the land and premises described in the plaintiffs declaration, to wit: the equal undivided half part of a certain lot containing twenty seven thousand four hundred and forty nine square feet and seven hundredths of a square foot surveyed and designated as covered by claim number thirty three (33) in the South West fractional quarter of fractional Section Nine (9) in Township Eight North of Range Eight East of the fourth principal Meridian in the County of Peoria and State of Illinois according to the Survey approved 1<sup>st</sup> of September 1840 by the Surveyor of the Public Lands in the States of Illinois and Missouri, We also find the estate established in the plaintiff on the trial, to be an estate in fee simple And assess his damages at the sum of one cent.

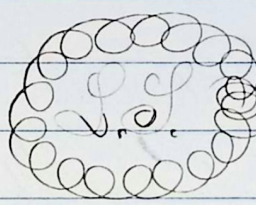
It is thereupon Considered and adjudged by the Court that the plaintiff have and recover of and from the defendant possession of the land and premises so recovered as aforesaid, according to the force, form and effect of his said recovery and that he have a writ of possession



therefor, and that he also have and recover of  
and from the said defendant the said sum of  
one cent his damages as aforesaid assessed, to-  
gether with his costs by him about his suit  
in this behalf expended amounting to the sum  
of = dollars and = cents and that he have  
execution therefor

Northern District of Illinois ss.

I William H Bradley, Clerk of the Circuit  
Court of the United States for the Northern Dis-  
trict of Illinois, do hereby certify the foregoing to  
be true and correct copies from the original  
of the declaration and plea, filed in the said  
Cause wherein Edward P. Tesson was plaintiff  
and Richard Gregory was defendant, and also of  
the judgment entered therein on the final trial of  
said Cause in said Court, as the same remain  
of record in my office. In testimony whereof,  
I have hereunto set my hand and af-  
fixed the Seal of said Court at my office  
in Chicago in said Northern District  
this thirty first day of August in the  
year of our Lord one thousand eight  
hundred and Sixty and of our  
Independence the 85<sup>th</sup> year



Wm H Bradley Clerk.

Copy

United States of America } ss.  
Northern District of Illinois }  
The United States of America



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To the Marshall of the Northern District  
of Illinois, Greeting:

Whereas Edward P. Tesson plaintiff, has lately,  
in our Circuit Court of the United States, for the  
Northern District of Illinois, by the judgment of the  
said Court, recovered against Richard Gregg  
defendant the following described real estate  
and premises, described in the plaintiffs  
declaration, to wit: the equal undivided half  
part of a certain lot containing twenty seven  
thousand four hundred and forty nine square  
feet and seven hundredths of a square foot,  
surveyed and designated as covered by claim  
number thirty three (33) in the South West frac-  
tional quarter of fractional Section Nine (9) in  
township Eight North of Range Eight East of the  
fourth principal meridian in the County of Peoria  
and State of Illinois according to the Survey  
approved Feb<sup>y</sup> of September 1840 by the Surveyor  
of the public lands in the States of Illinois and  
Missouri which said premises have been and  
still are unjustly withheld from the said  
Edward P. Tesson by the said Richard Gregg  
whereof he is convicted as appears to us of record,  
and forasmuch as it is adjudged in the said  
Court that the said plaintiff have execution  
upon his said judgment against the said de-  
fendant according to the force, form and effect of  
his said recovery. Therefore, we command you, that,  
without delay, you deliver to the said Edward P.  
Tesson possession of the premises so recovered with the  
appurtenances; and that you certify hereon to our said



Court, in ninety days from the date hereof, in what manner you shall execute this writ. And we further Command you, that of the goods and Chattels, lands and tenements of the said Richard Gregg you cause to be made the sum of thirty eight dollars, and forty five cents, which the said plaintiff also recovered against said defendant for his costs and charges in that behalf expended, whereof the said defendant is convicted as appears to us of record, and have you that money ready in ninety days, to render to the said plaintiff for his costs and charges aforesaid.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid this third day of May, in the year of our Lord one thousand eight hundred and fifty nine and of our Independence the eighty third year. William H. Bradley, Clerk.

Real

Came to hand May 3<sup>rd</sup> 1859 at 7 o'clock.

I have executed this writ by entering upon the premises within described and by reading said writ to the persons in possession and occupancy of the said premises, and by reading the same to the said defendants and by delivering the possession of the same premises to Norman H. Purple agent and attorney of the said plaintiff as within I am commanded.

mil 9.60

by J. C. Bullock Deft.

Per. 2.00  
11.60 Paid.



Jas. B. Smith & Co.  
No. 27 S. Seventh Street,  
Philadelphia.

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I also made a demand of the within named Richard Gregg for money or property with which to satisfy this execution and was informed by him that he had neither <sup>money</sup> or property to turn out and having searched I have been unable to find any thing belonging to him upon which to levy wherefore this execution is returned wholly unsatisfied

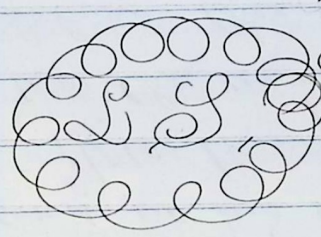
May 5th 1859,

C. W. Pine U. S. Marshall  
By J. C. Bullock Dep't,

Northern District of Illinois, S.

I hereby certify this to be a correct copy of the original writ issued in a certain Cause wherein Edward P. Tesson was Plaintiff and Richard Gregg was defendant together with the return of the Marshall thereon, as the same remains on file in my office.

In testimony witness my hand and



Seal of said Court, this thirty first day of August A.D. 1860 and of our Independence the 85<sup>th</sup> year.

Wm H. Bradley, Clerk.

Also two certain leases one from Edward P. Tesson to Urial & Henry W. Kellogg & others and the other from Wm P. Bryant to the same parties both dated May 6<sup>th</sup> 1859, and which said leases are as follows

"Whereas by virtue of a writ of possession issued from the Circuit Court of the United States for the Northern District of Illinois in favor of Edward P. Tesson vs Richard Gregg,



and bearing date the 4th day of May A.D. 1859 the possession of the undivided one half part of French claim number thirty three (33) in the village of Peoria has been delivered to Norman H. Purple agent and attorney of the said Edward P. Tesson, We the undersigned having been removed and turned out from the possession and occupancy of the same, and whereas the said Norman H. Purple has consented that we may as tenants at will re-enter and take possession of said premises under him and as his tenants at will <sup>as</sup> ~~at~~ aforesaid -

Now therefore in consideration of the premises we the undersigned do hereby acknowledge ourselves the tenants at will of said premises of the said Norman H. Purple agent and attorney as aforesaid and agree and bind ourselves to pay to him a reasonable rent for the use and occupation of the same and that we will not underlet the same nor any part thereof to any other person or persons without his written consent and that we will upon reasonable demand made by him in writing at any and all times we may occupy the same whether for one or more years surrender to him the possession of said premises and that ten days shall be considered reasonable notice. We agree further to pay such reasonable rent at the end of each and every month from the date hereof and that - shall determine and decide what the rent of said premises is reasonably worth and his decision and determination shall be final and



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Conclusive upon all parties.

Witness our hands & Seals this 6th  
day of May A. D. 1859.

Wm. S. Moss by his Seal  
att'y in fact Tobias J. Bradley Seal  
J. C. Harding Seal  
James Knox Seal  
Uriel H. Kellogg Seal  
Henry M. Kellogg Seal  
Edward P. Talbot Seal  
by N. H. Purple Seal  
his att'y Seal

The undersigned having been called upon  
to determine what may be considered  
a fair and reasonable rent for the above  
described premises am of opinion that  
fifteen dollars per month or one hundred  
and eighty dollars per annum will be a  
fair rent for the same to be paid monthly  
Perona May 26, 1859. In Hamlin "

"Whereas by virtue of a writ of possession  
issued from the Circuit Court of the United  
States for the Northern district of Illinois in  
favor of William P. Bryant vs Richard Gregg  
and bearing date the 4<sup>th</sup> day of May A. D. 1859  
The possession of french claim number twenty nine  
(29) in the "Village of Perona" has been delivered  
to Norman H. Purple agent and attorney of the  
said William P. Bryant; the undersigned  
having been removed and turned out from the  
possession and occupancy of the same, and



whereas the said Norman H. Purple has consented that we may as tenants at will re-enter and take possession of said premises under him and as his tenants at will <sup>as</sup> ~~at~~ aforesaid - Now therefore in consideration of the premises, we the undersigned do hereby acknowledge ourselves, the tenants at will of said premises of the said Norman H. Purple agent and attorney as aforesaid, and agree & bind ourselves to pay to him a reasonable rent for the use and occupation of the same - and that we will not underlet the same nor any part thereof to any other person or persons without his written consent & that we will upon reasonable demand made by him in writing, at any and all times we may occupy the same whether for one, or more years surrender to him the possession of said premises - and that ten days shall be considered reasonable notice.

We agree further to pay such reasonable rent at the end of each and every month from the date hereof and that John Harlin shall determine and decide what the rent of said premises is reasonably worth and his decision and determination shall be final and conclusive upon



Jas. B. Smith & Co.  
No. 27 S. Seventh Street,  
Philadelphia.

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all parties, Witness our hands & Seals  
this 6th day of May A.D. 1859.

Wm. St. Moys by his  
Atty in fact Ibraham Bradley  
A. C. Harding  
James Knox  
Uriel H. Kellogg  
Henry M. Kellogg  
Wm. P. Bryant  
by N. H. Purple  
his atty

The undersigned having been called upon  
to determine what may be considered a fair  
and reasonable rent for the above described  
premises Am of opinion that thirty dollars  
per month or three hundred and sixty  
dollars per annum will be a fair rent  
for the same to be paid monthly  
May 26 1859. Jno Hamlin //

And also offered to prove that (viz) the  
execution of the said leases the said Kellogg  
and the defendant Carroll had occupied the  
premises described in the leases under ~~under~~  
said leases; and that the French claims 33  
& 29 recovered in the ejectment suits, and  
from which the defendant in said suits  
and those claiming under him had been ousted  
by and under the writs of possession given  
in evidence by defendant as above, constitute  
a large majority in value of the land described



in the plaintiffs deed to William Kellogg and in the mortgage offered in evidence by the plaintiff, and that they are worth the sum of \$20,000

That Richard Gregg against whom the recovery was had in said suits was the plaintiffs tenant at the time said suits were instituted, and that he claimed title and was ~~defendant~~ defended under the same title, that the plaintiff had & claimed when he sold and conveyed to said William Kellogg by his deed of November 5<sup>th</sup> 1855

The defendant then admitted that the land recovered in the suits of Bryant vs Gregg & Tesson vs Gregg, though embraced in and constituting a portion of the land described in plaintiffs mortgage given in evidence and in plaintiffs deed to William Kellogg — constituted no portion of the land claimed or described in the plaintiffs amended declaration — The court on motion of the plaintiff excluded all the defendants evidence offered in this suit and withdrew the same from the consideration of the jury.

To which ruling and decision of the Court the defendants Counsel then and there excepted.

This was all the evidence given in the case. The Court at the request of the plaintiff instructed the Jury as follows

"If the Jury believe from the evidence that the lands described in the plaintiffs declaration were and are included in and constitute a portion of the lands described in the mortgage of William Kellogg offered in evidence; that the said William



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Given.

Kellogg was at the execution of said Mortgage in possession of the premises described in the declaration and continued in such possession until the time of his death, that immediately after Henry M. Kellogg and Uriel Kellogg as the Administrators of said William Kellogg entered into the possession of said premises described in said declaration, claiming them only under the right title and interest of said William Kellogg, that afterwards the said Henry M. Kellogg and Uriel Kellogg leased said premises described in the declaration to the defendant, and that the said defendant was in possession of said premises described in the declaration at the time of the commencement of this suit, and that before the commencement of this suit the said William Kellogg and his legal representatives had made default in the payment of two or more instalments of the money secured to be paid by the said Mortgage then the Jury must find the defendant guilty of unlawfully withholding the possession of the premises claimed in the declaration from the plaintiff.

If the Jury believe from the evidence that the only title which the plaintiff in this cause has established to the premises in controversy is by virtue of the Mortgage offered in evidence and a default on the part of the Mortgagor and his legal representatives in the payment of a part of the money secured to be paid by said

Given.



Mortgage, then if the jury find for the plaintiff upon the other facts brought to be proved in this cause, under the foregoing instruction, they will find that the title which the plaintiff in this case has established is an estate in fee subject to be defeated by the performance of the condition of the mortgage offered in evidence.

To which ruling of the Court the said defendant then and there excepted.

The defendant's Counsel requested the Court to instruct the Jury as follows

" Charles Ballance

"

Charles R. Carroll

Left instructions

3<sup>rd</sup> That no action of ejectment can be maintained on the mortgage given in evidence until the whole of the mortgage money has become due and remains unpaid

4<sup>th</sup> That the Plaintiff can not maintain this action on this mortgage unless upon a failure by the mortgagor to pay some instalment & the plaintiff has given notice of a forfeiture for such failure

5<sup>th</sup> That no action of ejectment can be maintained on this mortgage - until the conditions of the mortgage have been broken by the mortgagor and six months notice has been given him to quit the possession of the premises.

Refused

Refused

Refused



49

Refused.

7. That no such action can be maintained until the conditions of the mortgage have been broken and reasonable notice to quit has been given by the mortgagee to the mortgagor or those claiming under him

8<sup>th</sup> That if the Jury believe from the evidence, that the defendant at the date of the service of the declaration in this cause was in possession of the premises under the lease to Cole & the assignments of the same, claiming as a tenant occupying under said lease and assignments, the plaintiff cannot recover in this action unless he has proved that the defendant had reasonable notice to quit the possession prior to the commencement of this suit.

9 That if the Jury believe from the evidence, that the defendant or those ~~claiming~~ under whom he claims have been evicted from the most valuable portion of the premises described in the mortgage — the plaintiff cannot maintain ejectment upon the mortgage for the residue or any portion of the residue of the land described in said mortgage.

10 That if the Jury believe from the evidence that the defendant was in possession of the premises at the time of the service of the declaration as a tenant from year to year, under the plaintiff or under those having or claiming possession under him, the plaintiff cannot

Refused

Refused.



Recover unless the plaintiff gave him reasonable notice to quit prior to the commencement of this suit, and that six months is such reasonable notice.

11<sup>th</sup> That if the defendant - at the time of the Service of the declaration in this case was in possession of the premises as a tenant of Wm Kellogg's Executors from year to year with the plaintiff's knowledge he was entitled to six months notice to quit, before this action could be maintained against him, and unless this notice has been given the Plaintiff can not recover. //

(which the Court refused to give and the defendant's Counsel then and there excepted to the opinion of the Court in refusing said instructions so asked by the said defendant.

The Jury found a verdict for the plaintiff and the defendant entered a Motion for a new trial for the reasons

1<sup>st</sup> That the verdict was against law & evidence.

2 Because the Court excluded the evidence offered by defendant from the Jury

3 Because the Court permitted the plaintiff to give improper evidence.

Refused.



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4. Because the Court gave the instructions asked by plaintiff and refused those asked by defendant.

Which motion was overruled by the Court & defendant's Counsel then and there again excepted to the opinion of the Court in overruling said motion.

The Court gave judgment on the verdict and the defendant then and there excepted to the same and requested the Court to sign and seal this bill of exceptions which is done.  
E. N. Powell Esq.

On the fifth day of December in the year of our Lord one thousand eight hundred and fifty there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois and in said Cause an appeal bond in the words and figures following, to wit:

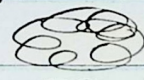
"Know all Men by these presents, that we Charles A. Carroll and Edward S. Howland are held and bound to Charles Ballance in the sum of five hundred dollars lawful money of the United States, to which payment well and truly to be made and done we do bind ourselves, our heirs, executors, and administrators to the said Charles Ballance his heirs, executors and administrators, and

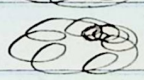


assigns, jointly and severally by these presents;  
 Witness our hands and seals this 4<sup>th</sup> day of  
 December A.D. 1860.

The Condition of this obligation is this  
 Whereas on the 4<sup>th</sup> day of December A.D. 1860  
 Charles Ballance above named recovered judg-  
 ment in ejectment against the above bounden  
 Charles R. Carroll, in a certain suit pending  
 in the Circuit Court of Peoria County in which  
 said Ballance was plaintiff and said Carroll  
 defendant, together with his damages & costs,  
 as by the record and proceedings in said cause  
 will appear; from which judgment the said  
 Charles R. Carroll has prayed an appeal to the  
 Supreme Court of the State of Illinois which  
 has been allowed.

Now if the said  
 Charles R. Carroll shall duly prosecute his  
 said appeal, and shall pay and satisfy  
 the judgment aforesaid and all damages,  
 interest and costs in said suit in case the  
 judgment of the Circuit Court shall be affirmed  
 in said Supreme Court, then this bond  
 shall be void, otherwise in force.

Chas R Carroll 

C. J. Nowland 



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State of Illinois  
County of Peoria  
I, Enoch P. Sloan clerk  
of the Circuit Court and ex-officio Recorder of  
the County of Peoria and State of Illinois do  
hereby certify that the foregoing copy of an  
Amended Declaration, Plea, Bill of Exceptions  
and Appeal bond are fully and truly copied  
from the files of my office in a certain cause  
wherein Charles Ballance is Plaintiff and Charles R.  
Carroll is defendant and I do also certify that  
the foregoing proceedings had in said Circuit Court are  
fully and truly copied from the Records of said  
Court in said cause and I do further certify that  
the foregoing copies, viz: a mortgage from William  
Kellogg to Charles Ballance and a deed from Charles  
Ballance to William Kellogg and Transcripts from  
the United States Court for the Northern District of  
Illinois in two certain causes are fully and truly  
copied and also certify that the foregoing copies of  
leases and assignment & renewal are true and  
correct.

In witness whereof I have hereunto  
set my hand and affixed the seal  
of said Court at office this 9th  
day of March A.D. 1861.  
Enoch P. Sloan, Clerk



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Charles Carrall  
172 v 57 ~~42~~

Charles Ballance

Record & asy. of  
Inns.

Filed April 8, 1861  
L. Leland  
clerk