

No. 12229

Supreme Court of Illinois

Goff

vs.

Connor

Michael O. Conner

Pattee D.H. Giff.

Changs of Venue from S. D. Kendall Esq

1853 Oct 12th Summons Subpoena
out for Changs of venue + Certificate of S. D.
Kendall recd. Suit called Parties appear
Plaintiff by E. Gifford declares in Trover for taking
and converting to his own use by the defendant
a wooden building of the Plaintiff in Dundee
formerly owned + occupied by John Moore
of the value of \$75. Deft in person pleads. Not
Guilty. No property in the Plff found in Sale
by Moore to Plff - Deft moves to dismiss this
suit for want of jurisdiction. which motion is
overruled - Deft. moves for a continuance +
on each of the deft. this suit is continued to the
15th day of October inst at 1. O Clock P.M.
1 subp issued for Plff + 1 for deft. cl. in last find
claims fees. Plff subp ret seized. Minutale
fees. 43^c Writs fees. 52^c October 15. 1853. Suit
called. Parties present. John Moore. J. M. Sadelford
+ Levi Clemens sworn for Plff + claims fees.
Jas H. Thompson E. M. Vining D Smith. H. J
Hoolover H. E. Hunt A. S. Hollister J. C
Bosworth. J. S. Simpson + A. C. Kirby shingles
for deft - claims fees. After hearing the evidence
it is considered that the Plaintiff have judgment
against the Defendant for the sum of fifty

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Pattee D.H. Giff.

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against the Defendants for the sum of fifty

Dollars Damages this onto herein Affs. Cuts
\$6.05 Paul R. Wright, Justice of the Peace

Nov. 3rd 1853 appeal taken
appeal bond with H. Bowser the Security
approved

State of Illinois
Hane County I Paul R. Wright
a Justice of the Peace
of said county do certify
that the foregoing is a true & correct copy from
my docket of the proceedings in the above
entitled case and that the papers herewith
enclosed are all the papers in the case
given under my hand and seal
this 11th day of Nov 1853.

Paul R. Wright - Secd
Justice of the Peace

And thereupon on the day last
aforesaid a summons issued out of said
Clerks Office which is in the under signed
following tenor

State of Illinois
Hane County vs The People of the State
of Illinois to the Sheriff
of said county Greeting
We Command you to summon
Michael C. Conner if to be found in your

County personally to be and appear before
the Circuit Court of said County on the first
day of the next term thereof to be holden at
the Court house in Geneva on the second
Monday of February next to abide by and perform
the judgment of said court on a certain appeal
at the suit of him v. latter D^H Goff. and
make due return of this writ.

Seal

Witness Luther Dearborn clerk of our said
Court and the seal thereof at Geneva
in said County this 11th day of January
AD 1853. Luther Dearborn clerk

And upon the back of the same
was the endorsement of the Sheriff which is in
the words of yours following to wit

Personally served this
11th day of February 1854. by reading this writ
to Michael Coleman

A. B. Spalding Sheriff
of Hamilton

And whereas afterwards to wit
13th day of February AD 1854, the same
being one of the days of said court at the
February term thereof AD 1854, the follow-
ing among other proceedings were had and
entered of record to wit

Michael O. Conner
vs
Potter D & Goff } Appeal

This day comes the defendant
by Eastman his attorney and moves to dismiss this
suit for want of Jurisdiction in the Justice of
the peace. The Court being fully advised overrules
the Motion

And afterwards to wit on the
17. day of May A D 1854. the same being one
of the days of said Court at the May Term thereof
the following among other proceedings were
had and entered of Record to wit

Michael O. Conner
vs
Potter D & Goff } Appeal
Continued by Agreement

And afterwards to wit on
the 8th day of November A D 1854. the same
being one of the days of said Court at the Novem-
ber Term of said Court the following among
other proceedings were had and entered of Record to wit

Michael O. Conner
vs
Potter D & Goff } Appeal

This day comes the Plaintiff

by Gifford his attorney and the defendant being
three times solemnly called comes not nor does
any one for him but wholly makes default herein
which is ordered by the court to be entered of record
and that the appeal ^{be} dismissed and that a
proviso issue to the court below and that the
plaintiff have and recover from the defendant
his costs in and about this appeal expended
and have execution thereon

And afterwards to wit on the
9th day of said November the same being one
of the days of the last aforesaid Term of court
the following among other proceeding were had and
entered of Record to wit

Michael Bloomer
v
Patter D. H. Goff } Appeal

This day comes the
defendant by Eastman his attorney and moves
the court to set aside default heretofore made
herein. And thereupon comes the plaintiff by
Gifford his attorney and by agreement of parties
the default heretofore made is set aside and
this cause is continued at plaintiff's next
of term. It is therefore considered by the
court that the defendant have and recover

of and from the said Plaintiff his costs in this behalf expended and that he have Execution therefor

And afterwards doint on the 28
Day of January AD 1855 the same being one
of the days of said Court of the January Special
Term of said Court AD 1855

Michael C. Conner (
Platter D. S. Goff) Appeal

This day comes the
Plaintiff by Herington and Gifford his attorney
and the Defendant by Eastman & Plater also come
and on motion of Plaintiff it is ordered by the
Court that a Jury come whereupon come a
Jury of good and Lawful men to wit
Elias Leray Rufus Gray Emory Norton E. C.
Barney Ekron Hatchkiss Daniel Hull
Amasa White Esquires John H. Andrews
John D. Hygiant William R. Powers and Edward
C. Coolidge who being severally Electet tried and
sworn also come and after hearing the evidence
produced argument of Counsel and Instruction
of the Court retire under charge of a sworn officer
of this Court to consider of their verdict
Subsequently return into Court and for a verdict
upon their oaths say that the jury find the issues

joined in favor of the plaintiff and assessed
his Damages at the sum of Fifty Dollars
Whereupon comes the Defendant
by his Attorney and enters his Motion for a
New trial herein

And afterwards to wit
on the on the 2nd Day of February 1855 the
same being one of the days of the said January
Special Term of said Court the following
among other proceedings were had entered of
Record to wit—

Michael Bloomer
v
Foster D & Goff } Appeal

This day comes on to
to hear the defendants Motion heretofore entered
herein for a new trial. After argument of
counsel the court being fully advised overrules said
Motion. It is therefore considered by the Court
that the said Plaintiff have and recover from
the said Defendant the sum of Fifty Dollars
in manner and form aforesaid assessed
together with his costs in this behalf Expended
and have Execution therefor

And thereupon the
said Defendant by his said Attorney
enters his Motion for an appeal herein

which is allowed by the court on condition
that the said defendant enter into bond
in the penal sum of Ten Hundred dollars
considered according to Law with security
to be approved by the clerk of this court. Time
for making the bill of Exceptions extended
until the first day of the next term of this court.

And afterwards Doit on the
3^d day of March A.D. 1855 the same
being one of the days of said court the following
among other proceedings were had and entered of record
to wit

Michael Bloomer
v
Patter D H Goff } Appeal

This day comes the
defendant by Eastman his attorney And
on his motion the record of the last term of
this court is amended so as to ~~read~~ make
the motion for an appeal & the allowance
thereof & have been made on the third day
of February instead of the "Second"

Copy of Bill of Exceptions
State of Illinois
Kane County vs Kane County Circuit

Court January Special Term AD 1855

Michael O'Connor

vs
Potter D H Goff

} appeal from P H Wright Esq
Grover

And now comes on the above entitled cause at the January Special term of the said Kane County Circuit Court for trial and after empanneling a jury under the direction of the Court the Plaintiff introduced the following witnesses. Drist E. H. Wining who after being duly sworn testified as follows

I know the parties to this suit. have lived in Dundee since the fall of 1837. was present at a time when a division took place between the Defendant and one John Moore of the house and land in question by an agreement arrangement between Goff & Moore Goff was to have the land and Moore was to have the House Moore lived in the house at the time the arrangement was made. It was two years ago. Was last of January or first of February thereafter. The land was lot No ten in Block No five in the town of Dundee and is a part of the South East fractional quarter of Section twenty two in Township No Forty two. North Range No Eight East of the — principal Meridian. The House

in question was originally built on said Lot No Ten in the fall of 1839 or 1840 and not positive which by the school district in Dundee for a school house, it was built on a very flat and level piece of prairie. The foundation was three sills running East & West and two sills running North and South, halved together all lying flat on the ground. I cannot say whether they were sunk into the ground or not. The building stood upon this lot until the commencement of this suit it was built for a school house. The Division spoken of was about two years ago, was the last of January. The paper of which the following is a copy was here shown, the witness, who stated that the signature to the same was that of John Moore. had seen him write. The paper was then offered as evidence, objected to by Defendants counsel which objection was overruled by the court and Defendants counsel then & there excepted to the ruling of the court. Here follows a true copy of the paper shown the witness

" Dundee March 27. 1853. for value recd I hereby sell my house known as the old school house to W. Clemoner which I now live in for the sum of fifty dollars: thirty seven dollars paid down and thirteen dollars to be paid when session is over John Moore
peaceable possession to be given in

Twenty days from date

On the back are the following
words and figures " Rec'd on the within Three Dollars
Apr 12 1853 John Moore

"Rec'd on the within three Dollars Apr
23 1853 John Moore

The paper of which the above is
a true copy was here read to the jury: Witness also
stated that at the time of the Division between
Goff Moore, Moore executed a deed to Goff
conveying the land to him. They were both in my
office at the time. Don't know whether there
was any reservation of the house in the deed or not
Did not say that the house was built for a perma-
nent building: saying it was built on those false sills

Witness then stated that the house was
not to remain on the lot after the first of April.
Moore was to have until that time to take it away
The house had been banded up around it so the
sills were nearly covered up the foundation sills
I should think from the make of the ground the
dirt or soil on the back side must have been
moved so that the building back it had been moved
back about 6 or 8 feet by Moore, the ground
was higher back a little. The house was built
for a permanent building.

The Plaintiff next called Anne
Simpson who after being duly sworn testified

as follows

I know the building in question
I knew it ^{at} the time Moore occupied it. It was
moved about two years ago by Moore. It was moved
back about 8 or 10 feet. I think it was raised
up a little in order to move it back; was something
put under to keep it up don't know what; did not
take particular notice. I went away and most of the
men there went along with me at sometime whom
were helping. Moore was there two or three months
he moved along in the spring. I moved him from
there. Cleoener exercised ownership afterwards
as I supposed. He had some windows. Two
men had some windows two or three sets. think they
were the same windows. It was after Moore moved
away. Cannot say a day or a week afterwards
soon afterwards after I moved Moore away
the men had the windows I spoke of at Cleoener
House some 80 rods from the house in question
they were common windows nothing peculiar about
them; like many other windows don't know when
they got the windows - never saw Cleoener at the
house never saw Cleoener exercise any other
acts of ownership except he had the windows
as I supposed. Windows were out of the house
I think. I don't know whether it was in the fall
or spring. when I went to help Moore move the
building back. the under sills were in sight

It was moved ^{back} I should think 8 or 10 feet. I was not on the back side. I don't know the ground had to be moved or not to get it back there was rollers put under the sills. I think they were one inch and one half to 3 inch thick. front post rested on the foundation sill. they had pretty much sunk into the earth. top of them were in sight. I did ^{not} go back further than the side of the building could not see whether soil was removed or not to let the building back. men had nearly all left when I came away all the moving was done.
(Hafford's Statement) not on file

The Plaintiff then called Levi Clemens who being duly sworn testified as follows: I have seen the building in question I went in there to buy it of Cleonmer in April or May Mr Goff was there, was not much said about my buying it. Goff spoke to Cleonmer and decided him to take away the building because he wanted to make a garden. Cleonmer took off some of the window sashes at the time and carried them away. Goff was present and made no objections, then Goff spoke to Cleonmer about moving it away. Cleonmer took off a cleat of the window had it in his hand

Goff was present. Windows were out I think
was two years ago, this in April or May. Was
early enough to make garden, before I made mine
at any rate. I examined the House It was moved
back about 8 feet, this a Stone I think under
the North East corner. Don't know what was
under the others. Might be scow blocks. Can't
tell what it was underpinned with. Was a Stone under
the corner

The Plaintiff called John H Thompson
who after being duly sworn testified as follows

I know the house in question
Sticks of timber as testified by Mrs Irving were
assumed originally placed under or down for
false sills on the ground. The House was built
upon those sills. The ground was frozen at the time
the house was built and they blocked up the false
sills. It was originally built by the School District
in Dundee on Sat ten and Black fir for a school
house. The Land was deeded by Enclosure to Bowmont
from Government who agreed to let the District have
it. The District afterwards contracted with John
Moore to build a new school house for them and
Moore was to receive the old School House
and Sat ten in part pay for building the new one
Goff was not a party to this contract. but he
appeared to be interested ^{in the contract} with Moore. He had
something to say about building the new house

but he was not a party known in the Contract.
The Old School house was originally built by the
District until they wanted to take it away or it
should rot down as I suppose. It was built
on a very level piece of prairie. Sills were laid
flat on the ground. I think it was in the fall
ground was frozen. If there was any need of
leveling up it was done by small score chips. Don't
think there was much leveling necessary as the ground
was very flat. The building has been there from the
time it was built to the present time except as
it was partly moved back. The false sills
are partly pretty much embedded in the earth or
gone to decay.

Plaintiff next called John M.
Padelford who was duly sworn and testified as
follows. I know the building. Was there once at
the request of Alconner. I don't know whether
it stood on a lot or in Block, to fire or
not. Don't know the number of the lot there.
It is on a street running with right angles with
Main Street in same inclosure where Goff
resides from 4 to 10 rods south. are false sills
for a foundation they then projected from
6 to 10 feet in front, the building having been
moved back. I went there to move the building
Goff came out and drove me off. Alconner wanted
the building. He was in the building at the time

Goff told him he could ^{not} have it & put him
out forcibly. I told Goff I would go out without
force and picket up my tools & went out. It
was worth from \$60 to \$80 Dollars! It was a
year ago last summer in July or August might be
as late as first of September; am not positive as
to the time. Goff said to Connor that he had
no objection at a previous time to his having the
building; but he had objection to his having it there.
Something was said by Goff about a certificate of
sale or claim under a judgment or execution against
the House or something of the kind. Cannot state
just what he ~~was~~ said. But that was the reason why
he did not wish or was not willing he then should take
the house away. Plaintiff here rested.

Defendant by his counsel first
offered in evidence a Patent from the United
States to Increase C. Bosworth the following
of which is a true copy

The United States of America
Do all to whom these presents may come
Greeting Whereas Increase C. Bosworth of
Kane County Illinois has deposited in the General
Land Office of the United States a certificate of
the Register of the Land Office at Chicago whereby
it appears that full payment has been made

Certified to
Ch 7275

by the said Incense & Bosworth according to the
provision of the act of Congress of the 24th of
April 1820 entitled an act making further
provision for the sale of public Lands for the
North West fractional quarter and the South East
fractional quarter of Section twenty two in town-
ship forty two North of range Eight East in the
District of Land subject to sale at Chicago Illinois
containing two Hundred and Eighty six Acres and
twenty five hundredth of an acre according to
the Official plat of the survey of the said Lands
returned to the general Land Office by the Surveyor
General which said tract has been purchased
by the said Incense & Bosworth — Now know
ye that the United States of America in consideration
of the premises and in conformity with the several
acts of Congress in such case made and provided
have given and granted and by these presents do
give and grant unto the said Incense & Bosworth
and to his heirs the said tract above described
to have and to hold the same together with
all the rights privileges immunities and appurtenances
of whatsoever nature thereunto belonging unto the
said Incense & Bosworth and to his heirs and
assigns forever. In Testimony whereof I John
Tyler President of the United States of America
have caused these letters to be made patent and
the seal of the general Land Office to be hereunto

affixed. Given under my hand and the city
of Washington the tenth day of March in the year
of our Lord One Thousand Eight hundred and forty
three and of the Independence of the United
States the Sixty-Seventh

By the President John Tyler

By B. Tyler Secy

S. Williams

Recorder of the General Land Office

Recorded vol 15. page 122

On the back of which patent are the
words & figures following: 3585

United States to Increase C. Borwirth
State of Illinois
Kane County

Recorded May 11th 1854

at 6 o'clock A.M. in Book 33 page

347

L. Dearborn Recorder

After the above was read to
the jury Defendant next offered in evidence
a deed from Increase C. Borwirth wife to one
John Moore of which the following is a true copy

This Indenture made the twenty seventh
day of October in the year of our Lord one thousand
eight hundred and fifty one: Between Increase C.
Borwirth and Mary Ann his wife of the town of
Dundee county of Kane State of Illinois of

the first part. and John Moore 2 of the town
County and State aforesaid of the second part
Witnesseth that the said Party of the first part
for and in consideration of the sum of One hundred
and fifty dollars to them in hand paid by the said
party of the second part the receipt whereof is hereby
confessed and acknowledged have granted barg-
ained sold remise released aliened and confirmed
and by these presents do grant bargain sell
remise release alien and confirm unto the said
party of the second part and to his heirs assigns forever
all the following described piece or parcel of land
viz^t Lot 11 ten in Block first in the village
of Dundee as will more fully appear by reference
to the plat of said village as recorded in the records
office in the County of Kane and State of Illinois
together with all and singular the hereditaments
and appurtenances thereto belonging or in any
wise appertaining And the reversion and reversion
remainder and remainders unto issue and profits
thereof and all the estate right title interest
claim or demand whatsoever of the said party
of the ~~second~~^{first} part either in Law or Equity of
in and to the above bargained premises with
the said hereditaments and appurtenances To
have and to hold the said premises as above
described with the appurtenances unto the said
party of the second part and to his heirs and

aspirins forever! And the said parties of the first
part for their heirs Executors and administrators do
covenant bargain and agree to and with the said
party of the second part his heirs and assigns that
at the time of- executing and delivering of these
present they were well seized of the premises above
conveyed as of a good sure perfect absolute and
indefeasible estate of inheritance in Law in fee
simple and that the said Lands and premises are
free from all incumbrances whatsoever and that
the above bargained premises in the quiet and
peaceable possession of the said party of the second
part his heirs and assigns against all and every
person or persons lawfully claiming or to claim
the whole or any part thereof will forever warrant
and defend" In Witness Whereof the parties of the
first part have hereunto set their hands and seals
the day and year first above written

Signed sealed and delivered
in presence of E W Vining

In witness to Forworth Esq
Mary A Forworth Esq

State of Illinois
Kane County

On the twenty eighth day of October
in the year of our Lord one thousand Eight-
hundred and fifty one before me E W Vining a Justice
of the peace in and for said County personally came
the above named Encour le Bosworth Mary A
Bosworth known to me to be the persons who executed

the within instrument and acknowledged to the
same to be their free act and deed and the said
Mary A. Brewster having been by me examined
separately and out of the hearing of her said husband
and the contents and meaning of the said deed having
been by me made known and fully explained to her she
acknowledged that she had freely and voluntarily executed
the same and relinquished her dower to the lands and
tenements therein mentioned without compulsion of
her said husband and that she did not wish to
retract the same

Given under my hand and seal this 28th
day of October A.D. 1851

E. H. Vining Esq
Justice of the Peace

And on the back are the words & figures
"Filed and recorded June 15 1852 at 5 1/2 PM
in Book 26. fol. 161 Chas B. Wells

Recorder

And the same was read to the
jury "The Defendant next offered in evidence the
records of said Kansas Circuit Court so far as
pertains to a judgment rendered in favor of one
William S. Pinckles and against said John Moore
which record was produced by J. Dearborn clerk of
this Court and of such part thereof as was offered
in evidence the following is a true copy

Friday May 21st 1852
William S. Knowles

John Moon } as plaintiff

This day the plaintiff by Wright his attorney and files his Declaration against the Defendant thereupon comes A. D. Day a licensed attorney of this court and presents to the court a power of attorney from the defendant the Execution of which is duly proven to by which it appears the defendant owes service of process and confesses that he promises and undertakes in manner and form as said Plaintiff hath thereof complained against him and hath sustained Damages by reason of the non performance of said promise and undertakings to the amount of Sixty three $72\frac{1}{100}$ Dollars. It is therefore considered by the court that the Plaintiff have and recover from the Defendant the sum of Sixty three $72\frac{1}{100}$ Dollars and his costs in this suit expended and have Execution

The said record was read to the jury and the Defendant next offered ~~to the jury~~ a certificate of sale in evidence made by Luther Dearborn as Sheriff of Kane County to one Paul. R. Wright and by said Wright assigned to defendant in this cause A. D. Hoff of which the following is a true copy
State of Illinois
Kane County
Sheriff Office
Geneva
8th December A.D. 1852

This may certify that by virtue of an
Execution and fee bill to me directed from the Clerk
Office of Kane County Circuit Court in favor of
Wm. Knowles and against the goods and Chattels
Sands and Tenements of John Moore & Co on the
23rd day of August AD 1852 lay on the following
described property to wit Lot 10 Block 5. in the
village of Dundee Kane County Illinois as will more
fully appear by reference to the Plat of said village
as recorded in the Records Office of said County
Kane County which property I advertised according
to Law and on the 8th day of December AD 1852
I offered the said property for sale at public
auction vendue between the hours of 10 o'clock in
the forenoon and 3 o'clock in the afternoon of the
same day at the Door of the Court House in the
village of Geneseo which property was sold to J
R Wright (he being the highest and best bidder therefor)
for the sum of Seventy three Dollars and ninety
four cents and the said J R Wright or his assigns
will be entitled to a deed for said property in
fifteen months from this date unless redeemed
according to Law

Guthrie Deaton

Sheriff of Kane Co

On the back of which are the following
words of figures & c

For a valuable consideration

I hereby assign the within certificate to R D H
Goff of Dundee Kane Co Ill and authorize
the Sheriff to execute a deed of the within des-
-cribed premises to him unless redeemed accor-
-ding to Law Dundee Sept 3rd 1853.
Paul R Knight

State of Illinois
Kane County J. Luther Dearborn Clerk
of the Kane County Circuit Court
do hereby certify that the within is a correct copy
of the original certificate of sale on file in
my Office " Witness Luther Dearborn Clerk
of said Court and the Seal of said Court
this 1st October A D 1853.
Luther Dearborn Clerk

The above was read to the jury and the
Defendants next introduced a deed from said Sheriff
to R D H Goff of the same premises as evidence "
A true copy of which reads as follows

To all to whom these presents
shall come Whereas William S. Knowles did at
the May Term of the Kane County Circuit Court
for the County of Kane in the State of Illinois in
the year of our Lord one thousand Eight Hundred
and fifty Two recover a judgment Against John
Morris for the sum of Sixty three ⁷²/₁₀₀ Dollars

and costs of suit upon which judgment an Execution
was issued dated on the twenty sixth day of June
in the year of our Lord One Thousand Eight Hundred
and fifty two directed to the Sheriff of said Kane
county to Execute And by virtue of said Execution
Luther Dearborn then Sheriff of said Kane county
on the ^{twenty} third day of August in the year of our Lord
One Thousand Eight Hundred and fifty two levied
upon the Lands hereinafter described and the same
were struck off and sold to said A. Wright on
the eighth day of December in the year of our
Lord one thousand Eight Hundred and fifty two
for the sum of seventy three Dollars and ninety
four cents he being the highest and best bidder there-
for And the time and place of the sale thereof having
been duly advertised according to Law And the said
A. Wright having duly assigned his certificate of pur-
chase to one P. D. Goff Now Therefore
know all men by these Deeds that I Luther Dear-
born Ex Sheriff of the County of Kane in the State
of Illinois as aforesaid in consideration of the
premises have granted bargained and sold and
do by these presents hereby convey to the said P. D.
Goff heirs and assigns the following described
tract piece or parcel of Land situate lying and
being in the county of Kane and State of Illinois
to wit "Lot Sen 12 in Block five 5 in the village
of Dundee Kane County Illinois acutt more

fully appear by reference to the Plat of said village
as record in the Recorder Office of said Kane County
I have and hold the said described premises with all
the appurtenances thereunto belonging to the said Edw
Loff his heirs and assigns forever Witness my hand and
seal this fourteenth day of February in the year of our
Lord one thousand eight hundred and fifty four

Signed Sealed and delivered
in the presence of

Luther Dearborn ^{Seal}
Ex Sheriff of the County of Kane in
the State of Illinois

State of Illinois
Kane County ss

I James Herington clerk of the
County Court in and for the said County
in the State aforesaid do hereby certify that Luther
Dearborn Ex Sheriff of the County of Kane who is per-
sonally known to me to be the real person whose name
is subscribed to the annexed deed appeared before me
this day person and acknowledged that he Executed and
delivered said deed as such Sheriff of said County
freely and voluntarily for the purposes and uses therein
set forth Given under my hand and the seal of
said Court at my Office in Seneca in said County
this 14th day of February in the year of our Lord
one thousand eight hundred and fifty four

Edw

James Herington clerk

On the back are the words

State of Illinois
Kane County } Filed Feb'y 14 1854 at 3 1/2 PM
Recorded in Book 32. Page 464.

L. Dearborn
Recording

The Defendant has rested.

The above is all the evidence given in the case.

The Plaintiff then asked the following instructions which the Court gave to the jury of which the following is a true copy.

The Court will ^{please} instruct the Jury.

Given "First" That nothing personally in ~~chief~~ itself will pass as a fixture or as a part of the freehold unless it be in some way habitually and permanently fixed to the soil.

Given "Second" That unless the jury find the evidence that the building in question was habitually and permanently fixed to the freehold at the time C. Comer purchased it of Moore they must find for the plaintiff as to that question.

Given "Third" Unless the jury believe from the evidence that the building in question at the time of the sale under the Execution in favor of Knowles was permanently fixed to the freehold the sale under the Execution did not pass the building and therefore could give no title to Goff the Defendant to it.

The Defendants asked the following instructions to the jury and the Court gave those.

marked "Given" on the margin, refused those marked "Refused" on the margin of all of which the following is a copy. Except the words in Parentheses which were added by the court. The Defendant asked the following instruction

"Given"

1st That if you believe from the evidence that the building in question was permanently or substantially affixed to the freehold on soil (So as to constitute a part thereof) at the time the Defendant notified the plaintiff not to remove the same from the lot spoken of by the Statutes the Law is for the Defendant

Given

2nd That if the jury believe from the evidence that the building in question was situated on lot 10 in Block 5 of the Village of Dorndee named in the Certificate of Sale from Sheriff Dearborn to A. Wright and habitually or permanently annexed to the said soil at the date of the rendition of the judgment in favor of said Knowles mentioned in said Certificate and that said lot was sold "(permanently to Law)" on said judgment to said Wright without mentioning in so many words "together with the building thereon" such sale will pass title to Wright (as vendee) not only to the said lot but also also to all buildings permanently or substantially annexed

given

^{of said}
to the said, Lot ("or to all buildings or fixtures
adopted to the enjoyment of said Lot & more
or less annexed thereto")

Refused

3^d That if they believe the building
in question was permanently placed upon said Lot
by its builder and it so remained though but
slightly attached to it to the time the defendant
notified the Plaintiff not to remove the same the
Law is for the defendant

Refused

4th That if the building in question
was located on Lot No 10 & Block No 5 in
Quincy that the fee in the soil of said Lot passed
from Rosworth & Wife to Morris and by the Sale
on the Knowles Execution brought and from
Morris to the Defendants, that *prima facie* the
building will pass with the soil and the law
presumes the said building if erected on said
Lot to be a part of the realty

In the 2^d instructions above
copied the words "servant to Law" — "as 'render'
"or to all building or fixtures adopted to the enjoy-
ment of said Lot & more or less annexed thereto"
were erased by the court

To the giving of the plaintiffs.

instructions and the empanes and the refusal of
the court to give instructions above refused to
and refused to be given by the court the defendant
by his counsel then and there Excepted to

The Law as above having been
given to the jury by the court. They retired to con-
sider ^{at} their verdict & afterwards returned into court
and presented ^{their} verdict to the court which was read
by the clerk and placed on ~~the~~ file in this cause
a copy of which is hereto set out to wit

Albion

vs
D. H. Goff

} Kane Circuit Court
The jury in the
above entitled cause find the Defendant
guilty and assess the Damages at fifty Dollars
Law Hall form

Whereupon the Defendant
entered his motion for a new trial in said
cause for the following reasons to wit

1st The verdict of the jury is against
the Law and evidence as given in the case

2nd The court erred in allowing the
instructions of the plaintiff to be read to the

= jury " They are not the Law

3rd The court erred in Erasing and altering the instructions asked for by the Defendants

4th The court Erred in refusing instructions asked for by the Defendants

5th The verdict is against the evidence

Whereupon after argument of counsel the court overruled Defendants motion for a new trial and Defendant thereupon prayed his appeal in this case which was allowed by the Court on Condition the Defendant perfect his appeal by giving his bond in the sum of \$200, with security to be approved by the clerk within 30 days

Isaac G. Wilson Judge

Know all men by these presents that Mr. Walter D. H. Goff as principal and Noah B. Spalding as security are held and firmly of the County of Kane and State of Illinois are held and firmly bound unto Michael Cleomey in the sum of Two Hundred Dollars lawful money of the United States which sum well and truly to be paid to the said Michael Cleomey

his heirs and legal representatives. We Bind
Ourselves our heirs administrators and Executors and
Each of them jointly by these presents. Witness
Our hands and seals this 5th day of March AD
1855

The condition of this obligation
is such that whereas the said Michael Bloomer
did recover a Judgment in the Kane County
Circuit Court in the State of Illinois against
said Patter D & Goff on the 23 day of January
AD 1855 for the sum of Fifty Dollars Damages
and costs of suit and whereas the said
Patter D & Goff had duly prayed his appeal
to the Supreme Court from said Judgment
now if the said P & D & Goff shall duly
prosecute said appeal ~~not~~ effect and
in case Judgment shall be affirmed by the
Supreme Court shall pay the said Judgment
appealed from and all costs and interest and
damages which shall accrue by reason of
said appeal then this bond shall be void
otherwise to be and remain in full force
and effect.

Assured March 3 1855
S. Dearborn
ex

P & D & Goff Gats
N B Shaldray Seal

State of Illinois }
Kane County } J. Luther Seaborn
Clerk of the Kane County
Circuit Court in the State of Illinois do hereby
Certify that the above and foregoing is a full
perfect and complete copy of the Transcript
from the Justice of the Peace, "Summers" and
Bill of Exceptions Bond, and of the Record
of said Court as far as appertains to said
cause of Michael Bloomer & Dittsaff
as appears from the records & files of said
County

J. Luther Seaborn Clerk
of said Court and the Seal thereof at
Geneva in said County this 24th Day of April
A.D. 1855

J. Seaborn

Clerk.

State of Illinois } Supreme Court of said State
June Term at Ottawa A.D. 1855

And now comes the said Peter D. & Co. the appellants
in this case and by Edgel and his attorney says that
in the record & proceedings there is manifest error in
this

1st The evidence in the case was not such as to

authorize the rendition of the fragments according to law

2^d The Court below erred in giving each of the instructions given to the jury at the request of the plaintiffs below

3^d The Court also erred in refusing to give each of the instructions asked for by the defendant below which were refused

4th The Court below erred in qualifying & altering the instructions & each of them asked for by the defendants below which were qualified & altered as stated in the record.

5th The Court below erred by entering of record a different verdict from that rendered by the jury

June 19th 1835
E. H. and Atty for
Appellants

Suprem⁵⁶ Court

Michael C. Conner
ats

Patte L. H. Goff

Draught-Kane Co

Filed May 29th 1855.
L. Deland Ch.
By F. H. Deland
Sdy.

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P. D. H. Goff

as
Ch. O'Connor

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1855