

No. 14675

Supreme Court of Illinois

Johnson

vs.

Adleman.

71641  7

14675

STATE OF ILLINOIS,
April 1866
SUPREME COURT,
THIRD GRAND DIVISION.

Priggen
No. 246

J. W. Middleton & Co., Stationers, 190 Lake St.

Johnson
vs

Adlerman

1864

Ready

SUPREME COURT.---STATE OF ILLINOIS.

THIRD GRAND DIVISION.

pellant,

Appellee.

} Appeal from Will Circuit Court.

Record

ABSTRACT OF CASE.—EJECTMENT.

Page 1

Caption of Record.

2-4 Declaration—notice and affidavit of service for S. E. qr. L. 3
B. 71 in town of Lockport. Plff. claims fee simple title.

5-6 Deft. pleas—1st. General issue 2d. Homestead. 1st trial of
6-8 case, at Dec. Term 1862—Verdict and judgt. for plff.

8 Motion by Deft. for new trial entered.

8-9 Order for new trial.

9-12 2d trial Dec. Term 1863—January 12-13 1864.

12 Verdict for Plff. Fee simple title found in plff.

10 After jury sworn plff. moves to strike Deft's. 2d plea from
the nies. Overruled. Exception by Deft to the Court's enter-
taining said motion.

10 Plff. thereupon enters his motion for leave to file replication
to 2d plea. Leave granted.

11 Deft. excepts to the granting of said leave.

11 Plff. renews motion to strike 2d plea from files

11 Plff. on leave of Court files general Demurrer to Deft's. 2d
plea. Deft. excepts.

11 Plffs. Demurrer to 2d plea sustained and trial proceeds.

13 Defts. motion for new trial argued—overruled and exception
by Deft.

14 Judgment entered on verdict.

14-15 Deft. excepts and prays appeal to Sup. Court. Appeal al-
lowed on deft. filing bond in 30 days in penalty of \$500—securities
named—and leave to file Bill of Exceptions in 30 days.

15 Appeal Bond filed with securities named within the 30 days.

15-16 Appeal Bond.

17-37 Bill of Exceptions showing that after the jury was sworn the
17 Plff. entered his motion to strike from the files Defts. 2d plea—on
the ground that the Statute furnishes form of pleading in Eject-
ments and that it amounts to general issue.

17 Deft. objects, under the following rule of court contained in
the bill of exceptions, at page 17.

“ Monday, May 18th, 1863.

“ In the matter of motions—order.

18

Court overruled Dft's objection and considered the motion.—
Def't excepted. Court overruled Plff's motion.

Plff. entered motion for leave to file Demurrer to Defts. 2d.
plea. Def't. objected under rule aforesaid. Court overruled Defts.
objection and allowed Demurrer to be filed. Def't. excepted.

Plff. filed demurrer and under objection of def't. the Court
heard the arguments on said demurrer and sustained said demurrer
and defendant stood by his said plea.

19 Plff. offered to read in evidence to the jury the following from
the record of a suit in Will Co. Circuit Court to-wit:

Def't. objected to reading the same.—Court overuled the ob-
jection and defendant excepted.

The Plff. then called George H. Ward as a witness, who being
sworn testified that he was Deputy Clerk of Will County Circuit

Court, "and the mortgage shown me is one of the original papers
"on the files of said Court in the suit of

"Jacob Helbig for the use of
"Albert Rendi, assignee
vs.
"Andrew Johnson."

20 "This ^{mortgage} ~~motion~~ is copied in the bill of exceptions. It bears
date Dec. 7th, 1858. Is executed by Andrew Johnson to Jacob
21 Helbig, to secure the payment of \$600,00, covers the s. e. qr. of ~~8~~
22-23 3 in B. 71 in town of Lockport duly acknowledged and recorded.

23 Plff. then read as evidence to the jury the following record in
said suit of Jacob Helbig for the use of
Albert Rendi, assignee
2284 vs.
Andrew Johnson.

"Friday, June 8th, 1860.

24 "Jacob Helbig for the use of
"Albert Rendi, assignee.
"2284— vs.
"Andrew Johnson. } Sci. fa. to foreclose mortgage.

Record shows that Deft. called and default entered for want
25 of plea and judgment against Deft. for *damages* and reference to the
Clerk to assess.

Clerk assesses damages at \$654,00 and same approved by the
Court and judgment entered for that amount and an order for sale
of the property, (describing it.)

26 Said witness George H. Ward, then testified on the part of
plff. as follows :

"The execution shown me is the execution which was is-
sued for the collection of the judgment rendered in the suit of

"Jacob Helbig for the use of
 "Albert Readie, assignee
 vs.
 "Andrew Johnson."

}
 }
 }

"And the said execution and the sheriff returned thereon, are
 "a part of the files in said suit."

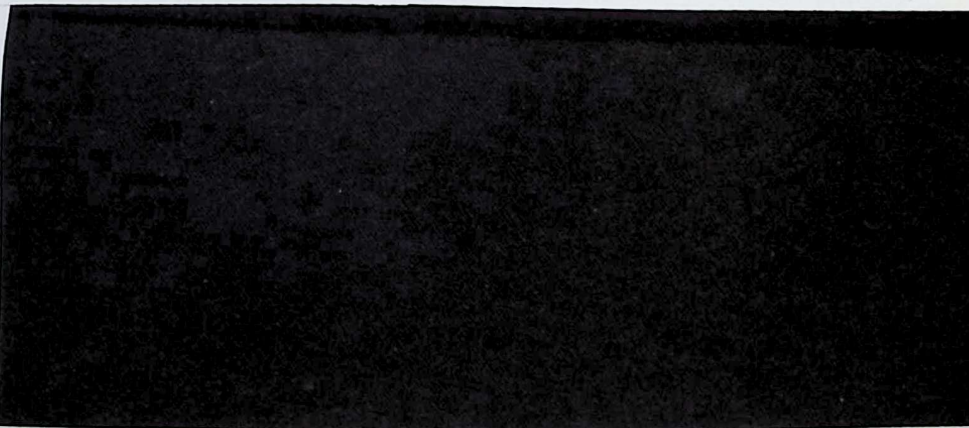
Plff. then read to the jury the said execution and the Sheriff's
 return thereon.

26-27 Execution in regular form against the following described lands
 and tenements of Andrew Johnson to-wit. S E qr. of L. 3 B. 71
 in town of Lockport, Will County, State of Illinois, in favor of Ja-
 27 cob Helbig for the use of Albert Readie, on above judgment for
 damages and costs.

Date of Execution, June 20, 1860.

SHERIFF'S RETURN ON EXECUTION.

28



29 The Plff. then offered to read as evidence to the jury the fol-
 lowing Sheriff's deed, to-wit:

This deed describes a judgment in favor of *John Helbig* for
 the use of Albert Readie entered at the May Term 1860, of the
 Will County Circuit Court, against Andrew Johnson for \$654.00

and costs of suit. That execution issued June 20, 1860, to Sheriff of Will County—and by virtue of said execution Alonzo Leach then Sheriff lived upon the lands hereinafter described, and that the same were struck off and sold to *Christopher Adleman*.

29 The deed describes the property as the S. E. $\frac{1}{4}$ of L. 3. B. 71 in the Town of Lockport, Co. of Will and State of Illinois—and conveys the same to said *Christopher Adleman*.

30 The deed bears date Oct. 18, 1861, and is executed by W. W. Bartlett Sheriff of Will County—and is duly acknowledged and recorded.

31 To the reading of which said deed to the jury the Def't. then and there objected, on the ground that said deed described a different judgment and executed from those introduced in evidence by Plff. and being otherwise objectionable.

The Court overruled the Def'ts. objections and allowed the deed to be read in evidence to the jury—and the Def't. then and there excepted.

The foregoing is all the evidence in the case.

The Plff. asked the Court to give the jury the following instruction, which the Court gave viz:

"Given."

To the giving of which the Def't. excepted.

The Def't. then asked the Court to give the following instructions—which the Court gave excepting to the last or 6th, instruction which was refused—with the qualifications to 1st, and 2d, instructions as asked by the Plff.—viz:—

32

"Given."

35

"Given."

32

"Given."

35

"Given."

32

"Refused."

33 "Given."

33 "Given."

"Given."

35 The Def't excepted to the giving the qualifications of Plff. to said Def'ts. instructions 1 and 2.

36 Verdict of the jury for Plff.

Motion by Def't. for new trial and reason as follows :

1st.—The Court on the trial of said suit allowed improper evidence to be given to the jury.

2d.—The Court gave to the jury improper instructions on the part of Plff.

3d.—The Court improperly refused to give to the jury a proper instruction of Def't. marked "6."

4th.—The Court improperly stated in the presence of the jury after the arguments of counsel had been concluded and before said
37 jury retired to consider of their verdict, that the mortgage in the case of Jacob Helbig for the use of Albert Readie assignee vs. Andrew Johnson, was evidence to the jury in the case.

5th.—The virdict of the jury is contrary to law and the evidence and the instructions of the Court.

37 The Court overrules Def'ts. motion for new trial and Def't. excepts—and bill of exceptions signed.

38 Clerks certificate to record.

1st.—The Court below improperly allowed and entertained a motion by Plff. after the jury had been empanelled and sworn, to strike from the files the Def'ts 2d plea, and improperly allowed to be filed, and heard a demurrer to said 2d plea after the jury had been empanelled and sworn.

2.—The Court in which said suit was tried allowed improper and illegal evidence to be given to the jury on the part of the Plff. therein, on the trial.

3d.—The Court gave to the jury on the trial of said suit improper and illegal instructions for the Plff. therein and also gave improper qualifications for said Plff. therein to Def'ts 1st and 2d instructions.

4th.—The Court in which said suit was tried improperly and illegally refused to give to the jury for the Def't. in said suit instruction no. 6.

5th.—The Court in which said suit was tried improperly and illegally stated to the jury after the arguments of Counsel had been closed to the jury, what was evidence in the case.

6th.—The Verdict of the jury was and is contrary to law and the evidence and the instructions of the Court wherein said suit was tried.

7th.—The Court below improperly refused to grant a new trial.

AUTHORITIES CITED BY APPELLANT.

As to motion to strike plea from files, and to file Demurrer. &c,
22 Ill., 161, Owens vs. Ranstead.

As to admission of improper evidence.

- 1 Scam. 502-505, Williams vs. Claytor et.al.
- 2 Gil. 151-163, Bybee vs. Ashby.
- 11 Ill. 327-329, Davis vs. McVicker.
- 15 " 283, Pickett vs. Hartsock.
- 20 " 266-280, Dickerman et. al. vs. Burgess, et. al.
- 24 " 307-309, Loomis vs. Riley.
- 2 conn. Rep. 462, Palmer vs. Palmer.
- 6 " " 6-9, Cutler vs. Wadsworth.

As to improper instructions—refusal of Def'ts 6th instructions.
The verdict being contrary to law and the evidence and the instructions of the Court. Same authorities above and

- 28 Ill. 264, Durham et. al. vs. Heaton.
- 21 " 85-86, Spangler vs. Pugh.
- 8 Iredell, 221-223, Callais vs, McLeod.
- 3 " 105-107, Blanchard vs. Blanchard.

As to the Court stating to the jury what was evidence &c.

URI OSGOOD,
Att'y for Appellant.

Fees paid by Appellant's Attorney.

246 .83

Emp. Court

Andrew Johnson
vs,

Christopher Sullivan

Verdict

Filed May 19, 1864

S. S. S. M.

1st Page

The People of the State of Illinois by the
Grace of God free and Independent!

To all
to whom these presents shall come Greeting!

Know Ye that we having caused to
be inspected the Records and proceedings now
remaining in the office of our Clerk of our
Circuit Court in and for our County of
Will in the State of Illinois do there find —
certain Records and proceedings in the words and
figures following to Wit

United States of America }
State of Illinois } ss.
County of Will }

Plas before the Honorable
Sidney W Harris Judge of the Eleventh Judicial Circuit
of the State of Illinois and sole Presiding Judge of
of the Will County Circuit Court at a term thereof
began and held at the Court House in the City of
Joliet in said County and State on the First Monday
(the same being the second day) of December in the
the Year of Our Lord One Thousand Eight Hundred
and Sixty One "11 of the Independence of the United
States the Eighty Sixth

Present Honorable Sidney W Harris Judge as aforesaid
County of Will State Attorney

William W. Bartlett Sheriff of Will County
Attest Benjamin T. Russell Clerk

And afterwards to Wit on
the third day of December in the year of
our Lord One Thousand Eight hundred and
Sixty one the same day being one of the
regular days of the said December Term
of said Court for the said year AD 1861
It came into open Court Christopher Adlemann
by G. D. A. Parks his Attorney and filed in
said Court his certain Declaration of a
plea in Ejectment with copy of notice
thereof which said plea Declaration and
Notice are in the words and figures
following to Wit

State of Illinois ss. Will Circuit Court
County of Will ss. Of December Term AD 1861
Christopher Adlemann by G. D. A.
Parks his Attorney, complains of Andrew Johnson
in a plea of trespass and Ejectment;

For that Whereas, heretofore to Wit, on the
Nineteenth day of October in the year Eighteen
hundred and Sixty one (AD 1861) at and within
the County of Will and said State of Illinois,
the said Plaintiff was possessed as of his own

3d.

demeuse, in fee simple, of a certain tract or parcel of land, with the appurtenances, situate in the County of Will in the said State of Illinois and described as follows, to wit:—

The South East quarter of Lot Number Three (3) in blocks number Seventy one (71) in the Town of Lockport and which the said Plaintiff claims in fee simple

And the said Plaintiff being so possessed thereof, the said Defendant afterwards, to wit; on the same day and year last aforesaid entered into the said premises and ejected the said Plaintiff therefrom and from the time last aforesaid has unlawfully withheld and does now unlawfully withhold from the said Plaintiff the possession thereof, to the damage of the said Plaintiff of the sum of Five Hundred Dollars, and therefore he brings Suit & etc.

G. D. A. Parks atty for Plaintiff

(Notice)

To Andrew Johnson

the above named Defendant;

You are hereby notified that the Declaration, with a copy of which you are now hereby herewith served, and to which this notice is attached will be filed in the Circuit Court of Will County on the first day of the December term thereof A.D. 1861.

11th

and that upon filing the same a rule will be entered requiring you to appear and plead to the said Declaration within twenty days after the entry of said Rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the Plaintiff will recover possession of the premises specified in said Declaration.

Dated this 4th day of November A.D. 1861

G. D. Parks Atty for Plaintiff

And on the back of the foregoing recited declaration and notice appears the affidavit of J. K. Wilson in the words and figures following to wit:

State of Illinois }

County of Will }

ss J. K. Wilson being duly sworn on oath says that on the 4th day of November A.D. 1861, he personally served on Andrew Johnson the within named defendant a copy of the within declaration by delivering the same to him, and that at the time of such service, he said Johnson was in actual possession of the premises described in said declaration. Subscribed & sworn before me this 4th day of November A.D. 1861

Geo. F. Green J. P. C. D.

5th

And afterwards to Wit; on the fourteenth day of January in the year A D 1862 there was filed in said Court in said cause a certain plea which is in the words and figures following to Wit;

Will County Circuit Court

Andrew Johnson }
vs }
Christopher Adlemann }

And the said Andrew Johnson by Osgood & House his Attorneys comes & defends the force & injury when &c & says that he is not guilty of the said supposed trespass & Ejectment above laid to his charge or any part thereof in manner & form as the said Christopher Adlemann hath above thereof complained against him &c & that he puts himself upon the Country &c

and the said Plff doth the
like G. I. A Parks

Osgood & House
Atty for Deft

Atty for Plff

And for a further plea in this behalf the said defendant says that the said Plaintiff doth so, because he says that the said lot & premises are and for a long space of time to wit for five years last past have been and are his homestead; that he is a married man & the head of a family & resides on & for the space of five years last past has resided on the said Lot

8th

premises as his said homestead - and
this he is ready to verify - Wherefore he
prays judgment &c

Osgood & House
Attys for Deft

And afterwards to Wit: on the Eighteenth day of
December in the year of Our Lord One thousand
Eight hundred and Sixty two the same day being
one of the regular days of the December Term of
said Court for the said year AD 1862 and the
said Court being then duly organized and sitting
in open Court for the transaction of business
the following proceedings were had and entered
of Record by said Court in the words and figures
following to wit

Christopher Adleman
(vs)
Andrew Johnson } Ejectment

2879

And now on this day comes
the said plaintiff by G. D. A. Parks his Attorney and
the said defendant also comes by Osgood and
House his Attorneys and this cause having now
been reached for trial by jury on the regular
call of the docket by the Court it is on motion
of said Plaintiff ordered that this cause be now
taken up for hearing and that the trial thereof

7th

do now proceed. Whereupon come the jurors
of a jury of good and lawful men to wit:
Caleb Chapman King & Hummel Michael Adler
Morris Weis Alanson Williams Robert S. Sen and
Isaac B. Schermerhorn Abraham G. Stael Alanson W. Wilcox
Amos J. Patrick Nichols Hull & Washington Carpenter
who were duly empaneled and sworn to well and
truly try the issues herein joined between the
said parties and a true verdict render according
to the evidence. Whereupon the said jurors put together
and heard the evidence adduced by the parties and the
arguments of counsel and after receiving the inst-
ructions of the court said jurors retire in
charge of an officer of the court to consider of their
verdict; and afterwards said jurors return
into open court and for verdict say,

We of the jury find the said defendant
guilty as the said Plaintiff hath alleged
against him in his declaration of unlawfully
withholding the possession of the premises men-
tioned in the plaintiffs declaration in this cause
from the said plaintiff. And we further find
that the said Plaintiff is entitled to the possession
of the said premises. And we also further find
that the said Plaintiff has an estate in fee simple
in said premises as described in his said declaration.

Whereupon the said plaintiff ought now to
have judgment upon the verdict of the jury as

8th.

aforesaid against the said defendant herein

Therefore it is considered by the Court that the said plaintiff do have and recover of the said defendant the possession of the premises described in his declaration as follows to wit:—

The South East quarter of Lot number three (3) in Block number Seventy one (71) in the Town of Lockport To have and to hold the premises aforesaid as the owner thereof and of an Estate in fee simple therein.

And it is further considered that the said plaintiff do have and recover of the said Defendant his costs and charges in this behalf expended and have execution thereof

And therefore the said defendant enters his Motion for a new trial herein

And afterwards to wit: on the fifth day of January in the year of Our Lord One thousand Eight hundred and Sixty Three the same day being one of the regular days of the said December Term of said Court for the year A.D. 1862 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit:—

9th
2879

Christopher Adleman }
 (20) } Ejectment
Andrew Johnson }

And now on this day comes the said plaintiff by G.D. Parks his Attorney and the said Defendant also comes by Osgood and Nourse his Attorneys and upon Motion of said Defendants attorneys and the Court being now fully advised in the premises it is ordered by the Court that a new trial under the Statute in such case made and provided be and the same hereby is granted in this cause to the said defendant upon the payment of the costs of this suit by said defendant by the first Monday of April next

And afterwards to wit: on the twelfth day of January in the year of our Lord one thousand eight hundred and sixty four the same day being one of the regular days of the December Term of said Court for the year AD 1863 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit:

10th
2879

Christopher Hellman }
vs } Ejectment
Andrew Johnson }

And now comes the said Plaintiff by G.D. Parks his Attorney and the said defendant also comes by Osgood El House his Attorneys and on Motion it is ordered by the Court that this cause be now taken up for final hearing and that a jury do now come herein to try the issues between the parties

Whereupon come the jurors of a jury of good and lawful men to wit:

Henry J. Hammond Harlow W. Spear John W. Warranough
Augustus Knox Michael Learney Henry Gates James
Ryan Conrad Wasmannacher Warren Nichols
Morgan Ashley Samuel D. Foot El Phillip Sulzbach
who were duly empanelled and sworn to well and truly try the issues herein joined between the parties and a true verdict render according to the evidence

Thereupon the said Plaintiff enters his Motion to strike the special plea of said Defendant from the files and upon the hearing of said Motion and the Court being fully advised thereof the same is overruled to which ruling of the Court the said Plaintiff by his said Attorney then and there excepts Thereupon the said Plaintiff enters his Motion for leave to file his Replection which leave is granted

11th.

and to the granting of which leave by the Court the said defendant by his said Attorneys then and there excepted and prays that his exceptions aforesaid be entered of Record Thereupon the said Plaintiff by his said Attorney renews his motion to strike the said special plea from the files in this cause and also by leave of the Court files his demurrer to the 2nd plea of defendant herein to which leave and ruling of the Court the said Defendant by his said Attorneys also then and there excepted and prays that his exceptions be entered of Record Thereupon is heard by the Court the arguments of Counsel on the Demurrer of said Plaintiff aforesaid, and the Court being now fully advised in the premises it is ordered that said demurrer be and the same hereby is sustained Thereupon the said parties proceed to the trial of the issues formed between the parties and is heard by the jurors aforesaid a part of the evidence when by the agreement of the parties and under the instructions of the Court the said jurors are allowed to separate for the night

And afterwards to Wit on the thirteenth day of January A.D. 1864 the same day being one of the regular days of the December Term of said Court for the said year A.D. 1863 and the said Court being then duly organized and sitting in open

12th.

2879

And now again comes the
sail plaintiff by G. A. Parks his Attorney and the
sail defendant also comes by Asgood & Keouse his
Attorneys and the jurors aforesaid ~~also come~~ empan-
eled and sworn herein also come Thereupon
it is ordered that the trial of this cause be now
resumed Thereupon the said jurors sat togeth-
er and heard the remainder of the testimony
adduced by the parties and the arguments
of Counsel and after receiving the instructions
of the Court the said jurors retire in charge of an
officer of the Court to consider of their verdict

And afterwards the said jurors return into open court and for verdict say "We the jury find defendant guilty of withholding the premises described in the declaration and find the fee simple in the Plaintiff. Thereupon the said Defendant by his said Attorney enters his motion for a new trial

And afterwards to wit on the twelfth day

13th

of February in the year of our Lord One thousand
eight hundred and sixty four the same day
being one of the regular days of the said December
Term of said Court for the year AD 1863 and
the said Court being then duly organized and
sitting in open Court for the transaction of
business the following proceedings were had
and entered of Record by said Court in the
words and figures following to wit

2879

Christopher Adleman
@.
Andrew Johnson } Ejectment

And now on this day
comes the said Defendant by Osgood & Horner his
attorneys and the said Plaintiff also comes by G.D.H.
Perks his Attorney and now is ordered to be heard
the motion for a new trial entered herein
And the Court having heard the arguments of
Counsel and being now fully advised in
the premises finds the reasons of said Defen-
dant in support of his said Motion for a
new trial not sufficient in the law to
support the same and therefore it is ordered
by the Court that his said Motion be and the same
thereby is overruled Thereupon the said Defen-
dant by his said Attorneys then and there
enters his exceptions to the ruling of the Court

14th.

in overruling his said motion for a new trial

Whereupon the said Plaintiff ought now to have judgment entered herein upon the verdict of Guilty of the jurors afore said in this cause entered, and for possession of the premises described in his declaration aforesaid

Therefore it is considered by the Court that the said Plaintiff do have and recover of and from the said defendant the possession of the premises described in his declaration as follows to wit: The South East quarter of Lot number three (3) in Block number Seventy one (71) in the Town of Lockport in the County of Will and in the State of Illinois To have and to hold the same as the owner thereof in fee simple, and it is Ordered by the Court that the said Plaintiff do have a Writ of Possession therefor

And it is further considered by the Court that the said Plaintiff do have and recover of the said defendant his costs and charges by him about his suit in this behalf expended and that he have execution therefor

And thereupon the said Defendant

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having entered his exceptions prays an appeal herein to the Supreme Court of this State from the ruling and judgment of this Court which is allowed to him upon filing his bond in due form of law in the sum of Five Hundred dollars with Charles E. Boyer and Joseph Widenkeller as sureties therein and also his bill of Exceptions herein both to be filed in Thirty days from and after this date

And afterwards to wit on the twelfth day of March in the year A.D. 1864 the bond of the said defendant with sureties as aforesaid was filed in said cause in said Court which said bond is in the words and figures following to wit:—

Know all men by these presents that we Andrew Johnson as principal, Charles E. Boyer & Jacob Widenkeller as sureties, of the County of Will & State of Illinois are held & firmly bound unto Christopher Adleman of the same County & State, in the penal sum of Five Hundred dollars lawful money of the United States, for the payment of which well and truly to be made we do hereby bind ourselves our heirs executors & administrators jointly severally & firmly by these presents— Witness our hands & seals the Ninth day of March A.D. 1864—

1672

The condition of the above obligation is such, that whereas the said Christopher Adleman did on the 12th day of February A.D. 1864 in the Circuit Court in & for the County of Will & State of Illinois it being in the December Term A.D. 1863 of said Court receive a judgment against the above bounden Andrew Johnson for the costs of suit in a suit of Ejectment for the South East quarter of Lot number three (3) in Block number Seventy One (71) in the Town of Lockport in said Will County & State of Illinois, of the Value of three hundred dollars upwards, & for possession of said premises, from which said judgment of the said Circuit Court the said Andrew Johnson has prayed for & obtained an appeal to the Supreme Court of said State.

Now if the said Andrew Johnson shall prosecute his said appeal with effect & shall moreover pay the amount of the said judgment, costs interest & damages rendered & to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue

Taken & filed in my office this
12th day of March A.D. 1864
B. F. Russell Clerk

Andrew Johnson
J. E. Boyer
Joseph Witten Keller

184 " Except motions for continuance be made in
" writing and filed in said Causes at least
" one day before they shall be heard and
" that said motions shall contain the points
" upon which the party relies in support of
" his motion so filed "

The Court overruled
said objection of the Defendant & considered
said objection motion, to which ruling &
decision of the Court the Defendant then
and there excepted. The Court then overruled
said Plaintiff's motion - The said Plaintiff
then entered his motion for leave to file a
demur to said defendant's second plea, to the
granting of which leave & the filing of such
demurrer by said plaintiff, the said Defendant
then and there objected under the rule aforesaid
which said objection the Court then and
there overruled & decided to allow said
Plaintiff to file a demurrer to said second plea,
to which ruling & decision the said defendant
then and there excepted - The Plaintiff then filed
his demurrer to said second plea, & the Court
then and there under objection from said defendant
heard the arguments on said demurrer &
sustained the said demurrer to said second
plea & defendant stood by his said plea -
The Plaintiff then to sustain the issue on his

1914

part offered to read in evidence to the jury
the following portion of the Record of a suit
tried in said Will County Circuit Court entitled

Friday

Monday March 12 A.D. 1860

Jacob Welbig for the use
of Albert Readi assignee

2284

@

Andrew Johnson

Sci to foreclose Mortgage

And now at this day
comes said Defendant by G.H. Tucker his
Attorney on whose Motion it is ordered by
the Court that the Rule to plead heretofore
entered herein be and is extended until
next Wednesday morning

To the introducing and reading of which
the said Defendant then and there excepted
objected, and the Court overruled said
objection & allowed said Record to be read
as evidence to the jury to which ruling
and the reading of said Record the said
Defendant then and there excepted

The said Plaintiff then called George H.
Chard who being sworn as a witness testified
as follows "I am deputy clerk of the Circuit
Court of Will County & the Mortgage shown
me is one of the original papers on the
files of said Court in the suit of

2074

Jacob Welby for the use
of Albert Reali Assignee

vs

Andrew Johnson

Which mortgage aforesaid is in the words and
figures following to wit:

This Indenture,
Made this Seventh day of December in the
year of our Lord One Thousand Eight hundred
and Fifty Eight Between Andrew Johnson
of the Town of Lockport in the County of Will
& State of Illinois party of the first part, and
Jacob Welby of the County & State aforesaid
party of the second part;

Whereas, the said party of the first part, is justly
indebted to the said Party of the second part,
in the sum of Six hundred Dollars (\$600.00)
secured to be paid by one certain promissory
note bearing even date herewith given for the
sum of Six hundred Dollars value received -
payable at the Banking & Exchange Office of J. B.
McDonald Lockport Ill without interest if paid
when due

Now therefore, This Indenture Witnesseth,
That the said Party of the first part, for the better
securing the payment of the money aforesaid,
with interest thereon, according to the tenor and
effect of the said promissory note above mentioned

And also in consideration of the further sum of One Dollar to him in hand paid by the said party of the Second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents, do grant, bargain, sell and convey unto the said party of the Second part his heirs and assigns forever, all of the following described lot, piece, or parcel of land, situate, lying, and being in Lockport in Will County, and State of Illinois to Wit:

The South East quarter of Lot number Three (3) in Block number Seventy One in said Town of Lockport

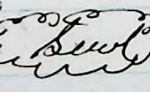
To have and to hold the same Together, with all and singular the Tenements Hereditaments, Privileges, and appurtenances - thereto belonging, or in anywise appertaining And also all estate interest and claim - whatsoever, in Law as well as in Equity, which the Party of the First part, has in and to the premises hereby conveyed unto the said party of the Second part, his heirs and assigns, and to their only proper use, benefit and behoof.

Provided always and these presents are upon this Express condition, that if the said party of the First part, his heirs executors and administrators shall well and truly pay or cause

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to be paid to the said party of the second part
his heirs and assigns executors, administrators
or assigns the aforesaid sum of money with
such interest thereon at the time and in the
manner specified in the above mentioned prom-
issory note according to the true intent and
meaning thereof, that then and in that case
these presents, and everything herein, expressed
shall be absolutely null and void

In Witness Whereof The said party of the
first part hereunto set his hand and seal
the day and year first above written

Andrew Johnson 

Sealed and delivered in
presence of
G A Tucker }

State of Illinois }

Will County }

I George A Tucker a Notary
Public residing in Lockport in
said County in the State aforesaid do hereby certify
that Andrew Johnson who is personally known
to me as the real person whose name is subscribed
to the above Mortgage Appeared before me this
day in person, and acknowledged that he executed
and delivered the said Mortgage as his free and
voluntary act, for the uses and purposes therein
set forth Given under my hand and Notarial

221.

Seal, this Eighteenth day of December in the
year of our Lord one thousand
Eight Hundred and fifty eight
George A. Tucker
Notary Public

Which said Deed of Mortgage above recited was
duly Recorded in said County of Will as appears
by the Certificate of the Recorder of said County
thereon in the words and figures as follows to wit

State of Illinois County of Will

I certify that this Instrument was
filed for Record the Twentieth day of December
A.D. 1858 at the hour of one o'clock P.M. and
duly recorded in Book 58 Page 2

A. McIntosh Recorder

The Plaintiff then produced & read as
evidence to the Jury the following record
in said suit of Jacob Welby for the use
of

Albert Reuter assignee

No 2284

as
Andrew Johnson

24th

part, offered to read in evidence to the jury
the following portion of the Record of a suit
tried in said Mill County Circuit Court entitled

Friday June 8th 1861.

"Jacob Welby for trustee of
"Albert Readi assignee

"2284

"@ Andrew Johnson

"Sci fa to foreclose Mortgage

"And now at this day comes
"said Plaintiff by Parks & Elwood his Attorneys on
"whose motion it is ordered by the Court that the
"said Defendant be now called Whereupon said
"Defendant was three times solemnly called but
"comes not himself or any person for him nor has
"he filed his plea herein to said Plaintiffs declaration
"in this cause in obedience to said Rule of Court
"heretofore entered herein requiring him so to do
"but of this fail and make default which by order
"of Court is entered of Record

"And the Court being fully advised in the
"premises it is ordered that said Plaintiff do
"have judgment against the said defendant
"for his damages in his declaration mentioned
"but because said damages are uncertain and
"unknown to the Court and being founded on
"an instrument in writing for the payment of
"money only it is ordered that the Clerk of this Court

do assess and report the amount of said
25th "Plaintiffs damages And the said Clerk having
"assessed said damages reports the same to the
"sum of six hundred and fifty four dollars
"Whereupon it is ordered by the Court that said
"Report be and is approved to the sum aforesaid

"It is thereupon considered by the Court
"that said Plaintiff do recover of said Defendant
"his Damages aforesaid assessed to the sum
"of six hundred and fifty four dollars together
"with his costs and charges by him about his
"suit in this behalf expended and that he do
"have a Special Execution against "The South
"East Quarter of Lot number Three (3) in Block
"number Seventy one (71) in the Town of Lockport
"in Will County and State of Illinois"

~~To the introduction & reading of which the
said Defendant then and there objected, and the
Court overruled said objection & allowed said
record to be read as evidence to the jury to which
ruling & the reading of said Record the said
Defendant then and there excepted,~~

~~The said Plaintiff then called George
H. Ward, who being sworn as a Witness,
testified as follows, "I am Deputy Clerk of the
Circuit Court of Will County, & the Mortgage
shown me, is one of the original papers in
one the files of said Court in the suit of~~

26th

Said Witness George W. Ward then testified on the part of Plaintiff as follows "The Execution shown me is the Execution which was issued for the collection of the judgment rendered in the suit of Jacob Welby for the use of Albert Reade Assignee

vs

"Andrew Johnson

"And the said Execution and the Sheriffs return thereon are a part of the files in said suit"

The said Plaintiff then read to the jury the said Execution & the Sheriffs return thereon which are as follows

State of Illinois }
Will County } ss.

The People of the State of Illinois, to the Sheriff of said Will County Greeting!

We Command You that of the following described Lands and Tenements of Andrew Johnson to wit: The South East quarter of Lot number Three (3) in Block number Seventy one (71) in the Town of Lockport County of Will and State of Illinois in your County you cause to be made the sum of Six Hundred and Fifty four Dollars which Jacob Welby for the use of Albert Reade Plaintiff lately in the Circuit Court of said

27A

Will County, at a Term thereof begun and held at Joliet, in said Will County, on the third Monday of May A.D. 1860 recovered against the said Defendant and which by the said Court was adjudged to the said Plaintiff for his damages And also the further sum of Ten Dollars and sixty five cents, which were adjudged to the said Plaintiff for costs and charges in that behalf expended, whereof the said defendant does stand convicted, as appears to me of Record; And have you these moneys ready to render to the said Plaintiff for his damages and costs afore said and make return of this Writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Alexander McIntosh, Clerk of said Court and the Seal thereof, at Joliet, in said County, this 20th day of June A.D. 1860

(A McIntosh Clerk

(Sheriff's Return)

I Return this Ex. Satisfied in full by sale of the Property within described to Eff recpt herewith attach^d

Debt lost upon back of Ex \$667.65-

28th

Inst

3.67

671.27

Printers fees

3.50

Shiffs fees & Clerks fees Recording Sale 13.77

\$688.54

fees Paid by John Adleman

A Leach Shiff

The Plaintiff then offered to read as evidence to the jury the following Sheriffs deed to wit:

Whereas John Keeling for the use of Albert Reedi did at the May Term AD Eighteen hundred and Sixty of the Circuit Court in and for the County of Will in the State of Illinois, recover a judgment against Andrew Johnson for the sum of six hundred and fifty four dollars 654⁰⁰ and costs of suit upon which judgment an execution was issued dated the twentieth day of June A.D. Eighteen hundred and Sixty directed to the Sheriff of Will County to execute, and by virtue of said Execution Alonzo Leach then Sheriff of said County, levied upon the lands hereinafter described and the same were struck off and sold to Christopher Adlemann, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly

297A

advertised according to law

Now therefore, know all by this deed that I William W Bartlett Sheriff of said County of Will (and successor of the said Henry Leuch late Sheriff as aforesaid) in consideration of the premises, have granted bargained and sold, and do hereby convey to the said Christopher Allemann his heirs and assigns the following described tract of land to wit:-

The South East quarter of Lot number three (3) in Block Number Seventy one (71) in the Town of Lockport County of Will and State of Illinois

To have and to hold, the said described premises with all the appurtenances thereto belonging, to the said Christopher Allemann heirs and assigns forever

Witness my hand and seal, this 18th day of October in the year of Our Lord One Thousand Eight Hundred and Sixty One

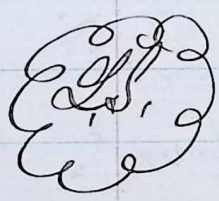
W W Bartlett
Sheriff of Will County

State of Illinois
County of Will } ss

I Benjamin F. Russell
Official Recorder & Clerk of the Circuit Court

30th -

of Will County, do certify that W. M. Bartlett
Sheriff of Will County, personally known to
me to be the real person whose name is
subscribed to the above deed, this day ack-
nowledged before me, that he executed the
said Deed as such Sheriff voluntarily
and freely for the uses and purpose therein
set forth.

 Given under my hand and the seal
of said Court this Eighteenth day
of October eighteen hundred and
sixty one

B. F. Russell ex officio
Recorder & Clerk of the Circuit Court

Upon the back of which said deed above
recited appears the Certificate of Record
by said Recorder in the words and figures
following to wit: -

No 40,834
State of Illinois County of Will ss
This Deed was filed for Record
the 18th day of October 1861 and duly -
recorded in Book 3 Page 540

B. F. Russell Recorder
per Fred Schreyer dp

To the receding of which said deed to the

31st.

jury the said defendant then & there objected upon the ground that said deed described a different judgment & Execution from those introduced in evidence by Plaintiff & being otherwise objected objectionable which said objection the Court then & there overruled & allowed the said deed to be read in evidence to the jury, to which said ruling of the Court & the reading of said deed in evidence to the jury the defendant then and there excepted.

The foregoing is all the evidence given on the trial in said suit. The Plaintiff then asked the Court to give to the jury the following instructions to wit:

"Given" In order to sustain this action, it is not necessary for the plaintiff to prove a demand for possession prior to the bringing of this suit

To the giving of which instructions the said defendant then & there objected, and the Court overruled said objection & gave said instructions to the jury & marked the same "Given" To which said ruling of the Court & giving of said instructions the defendant then and there excepted -

The defendant then asked the Court to give the jury on his part the following instructions

32d. to wit:

1 The Plaintiff if he recover at all in this case must ~~at~~ recover upon his own title, and that title must be shown by the evidence in the case to be a fee simple title in the said plaintiff as set out and claimed in his declaration, and unless the jury believe from the evidence that the plaintiff has proven by the evidence in the case that he has such fee simple title in the premises described in his declaration, the law is for the Defendant, & the Plaintiff is not entitled to recover

2 The Sheriff's deed mentioned & introduced in evidence by the Plaintiff in this suit is an important & necessary maintenance of title in said Plaintiff to the premises in question, and unless the jury believe from the evidence that the Plaintiff has shown the existence of such a judgment, execution, levy & sale as that described in said deed, the law is for the Defendant, & the Plaintiff is not entitled to recover

3 The Sheriff's deed introduced in evidence by the Plaintiff in this suit, is of itself evidence that the judgment & execution in said deed described was the judgment & execution under & by virtue of which the sale in said deed set forth & described,

"Given"

was made, and such plaintiff is bound by such evidence so introduced by him, and the jury are to be governed by such evidence so introduced to them in forming and making up their verdict, and unless the jury believe from the evidence, that the plaintiff has shown & proven such judgment & execution so described in said deed to have been in existence & that a levy & sale was made under & in pursuance thereof, the law is for the Defendant & the Plaintiff is not entitled to recover

4

Given

Unless the jury believe from the evidence that the Plaintiff has shown a fee simple title to the land in question in himself & that the defendant withheld from said Plaintiff the possession thereof at the time of the commencement of this suit, the law is for the defendant & the Plaintiff is not entitled to recover

5

A Sheriff's deed in order to be allowed as evidence that the provisions of the law in relation to sales of lands upon executions were complied with must contain a statement of the judgment upon which the lands therein was sold, and if the jury believe from the evidence that the

34th.

"Given" judgment recited in the Sheriffs deed here introduced is a different judgment from that recited in the execution and upon which the said land was sold then the law is for the defendant and the Plaintiff - cannot found title upon the Sheriffs deed

"Refused" The name of the parties in the judgment recited in the Sheriffs deed is ~~exclusive~~ - evidence of the judgment upon which the land was sold and if the jury believe from the evidence that the judgment recited in the Sheriffs deed differs from the judgment set forth in the execution upon which the land was sold in this, that it set forth a judgment of different parties either Plaintiff or defendant then the law is for the defendant and the Plaintiff cannot recover - upon that deed

The Court gave those instructions marked "Given" & refused to give those marked "Refused" - to the refusal of the Court to give the said instructions marked by the Court "Refused" & numbered 6 the said defendant then and there excepted

And the Plaintiff then & there asked the Court to give to the jury the

following as qualifications to the 1st & 2nd Instructions of the defendant

"Given"

But if from the evidence the jury believe that the Plaintiff's title is derived from an original mortgage from Andrew Johnson to Jacob Welby in which the said defendant conveyed the premises to the mortgagee as his said Johnson's property, then the defendant is estopped from denying the legal force and effect of that mortgage, and the nature and character of the title thereby conveyed

"Given"

But the plaintiff is not bound by the recital in the deed, and if, notwithstanding a discrepancy in one or more particulars of the description of the judgment contained in the deed upon the whole evidence the jury believe the judgment to be the same the law on that point is for the plaintiff

To the giving of which the defendant then & there objected & the court overruled said objection & gave to the jury the said qualifications to which the defendant then & there excepted

304

The jury then retired under the order of the Court to consider of their verdict, & afterwards, came into Court & rendered their the following verdict

Christopher Adleman
(D)
Andrew Johnson

Who the jury find —
defendant Guilty of withholding the premises
described in the Declaration & find the Fee
simple in the Plaintiff

W. F. Hammond
Foreman

Whereupon the Defendant entered his
motion for a new trial & filed his reasons
for such new trial, which are as follows

1st The Court on the trial of said suit allowed improper evidence to be given to the jury

2^d ~~1st~~ The Court gave to the jury improper instructions on the part of Plaintiff

3^d ~~2^d~~ The Court improperly refused to give to the jury a proper instruction of the defendant marked "C"

4th The Court improperly stated in the presence of the jury after the arguments of counsel had been concluded & before said jury retired

37th

to consider of their verdict; that the Mortgage in the case of Jacob Velby for the use of Albert Readie assigned as Andrew Johnson, was evidence to the jury in the case

5th The verdict of the jury is contrary to law & the evidence and the instructions of the Court

which said motion for a new trial the Court overruled & refusal to grant a new trial, to which said ruling & refusal of the Court to grant a new trial the said defendant then & there excepted, & prayed that this his ^{said} bill of Exceptions be signed, sealed & made a part of the record herein, which is accordingly done.

S. W. Morris Esq.
Judge of the Eleventh Judicial
Circuit of the State of Illinois

State of Illinois }
County of Will }

I Benjamin F. Russell Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify that ~~and~~ the above and foregoing is a true copy of the Declaration and Petition and of the Affidavit thereunto and the pleas and of the Record of the first Jury trial and the Record of the order of the Court granting a new trial and of the final trial and all the proceedings of said Court since the final trial and of the Appeal Bond to the Supreme Court and the defendants Bill of Exceptions in the cause in said Court therein entitled wherein Christopher Adelman is Plaintiff and Andrew Johnson is defendant as the same appears from the files and the Records of the said Court now remaining in my said office

Witness my hand and the Seal of said Court hereunto attached this 19th day of April
AD 1864



B. F. Russell (Clerk)

Clerks fees on Transcript \$10.00 Bail by Appellant

B. F. Russell Clerk

34th

State of Illinois Supreme Court - 3d Division

Andrew Johnson Appellant

vs.

Appellant from Will Circuit Court

Christopher Adkins Appellee

And now comes the said Andrew Johnson Appellant & says that in the record & proceedings aforesaid & also in the rendition of the judgment aforesaid there is manifest error in this to wit -

* 1st. The Court in which said suit was tried, allowed improper evidence to be given & illegal evidence to be given to the jury, on the part of the Plaintiff therein on the trial

2d. The Court gave to the jury on the trial of said suit improper & illegal instructions for the Plaintiff therein and also gave improper qualifications for said Plaintiff therein to defendants 1st & 2d instructions

3d. The Court in which said suit was tried improperly & illegally refused to give to the jury for the defendant in said suit instruction no. 6 -

4th. The Court in which said suit was tried improperly & illegally stated to the jury after the arguments of counsel had been closed to the jury, what was evidence in the case

5th. The verdict of the jury was & is contrary to law

1st. The Court below improperly allowed to be introduced & introduced a motion by Plaintiff after the jury had been empanelled & sworn, to strike from the file the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 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853rd, 854th, 855th, 856th, 857th, 858th, 859th, 860th, 861st, 862nd, 863rd, 864th, 865th, 866th, 867th, 868th, 869th, 870th, 871st, 872nd, 873rd, 874th, 875th, 876th, 877th, 878th, 879th, 880th, 881st, 882nd, 883rd, 884th, 885th, 886th, 887th, 888th, 889th, 890th, 891st, 892nd, 893rd, 894th, 895th, 896th, 897th, 898th, 899th, 900th, 901st, 902nd, 903rd, 904th, 905th, 906th, 907th, 908th, 909th, 910th, 911th, 912th, 913th, 914th, 915th, 916th, 917th, 918th, 919th, 920th, 921st, 922nd, 923rd, 924th, 925th, 926th, 927th, 928th, 929th, 930th, 931st, 932nd, 933rd, 934th, 935th, 936th, 937th, 938th, 939th, 940th, 941st, 942nd, 943rd, 944th, 945th, 946th, 947th, 948th, 949th, 950th, 951st, 952nd, 953rd, 954th, 955th, 956th, 957th, 958th, 959th, 960th, 961st, 962nd, 963rd, 964th, 965th, 966th, 967th, 968th, 969th, 970th, 971st, 972nd, 973rd, 974th, 975th, 976th, 977th, 978th, 979th, 980th, 981st, 982nd, 983rd, 984th, 985th, 986th, 987th, 988th, 989th, 990th, 991st, 992nd, 993rd, 994th, 995th, 996th, 997th, 998th, 999th, 1000th

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the evidence & the instructions of the Court wherein
said suit was tried

It - The Court below improperly refused to grant
a new trial

and the said Andrew Johnson
prays that the judgment aforesaid for the errors
aforesaid & for other errors apparent in the record & pro-
ceedings aforesaid, may be reversed, annulled, & alto-
gether held for nothing, & that he may be restored to all
things which he hath lost by occasion of the said
judgment, &c.

(Mr Osgood Attorney
for appellant)

Supreme Court of the State of Illinois
Third Grand Division

Christopher Adleman

Appellee

vs

Andrew Johnson

Appellant.

And the said Christopher Adleman appellee in the above entitled cause, by G. D. A. Parks his attorney, comes and says that there is no error in the record and proceedings aforesaid nor in giving the judgment aforesaid, and he prays that said ~~judgment may be~~ Supreme Court may proceed to examine the record and proceedings aforesaid and the matters aforesaid above assigned for error and that the judgment aforesaid may be in all things affirmed.

G. D. A. Parks
Attorney for
appellee.

Sep. 6th. 3rd Div

Christopher Adlumam
appellee

vs
Andrew Johnson
appellant

Order in Error.

Filed Apr. 25. 1864.

L. Selance
Clerk.

G. & A. Parker

246 83

Andrew Johnson
Appellant,

Christopher Attemun
Appellee

Record

Filed April 21, 1864

L. L. Mumck

Fee for Record \$10.00

Pld. by appellants atty
Wm. O'Connell