

14651

No. _____

Supreme Court of Illinois

Richard

vs.

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Loy~~x~~es

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 20

J. W. Middleton & Co., Stationers, 196 Lake St.

Richard

Leaves

1864

1864

1
Pleas before the Circuit Court within and for the
County of Peoria in the State of Illinois, on the
nineteenth day of March in the year of our Lord One
thousand Eight hundred and sixty one.

Be it remembered, that heretofore, to wit: on the eighth
day of December in the year of Our Lord One thousand
eight hundred and sixty, there was filed in the office
of the Clerk of the Circuit ^{Court} of Peoria County, Illinois, a
transcript from the Circuit Court of Fulton County,
Illinois, together with a Petition, Summons, Injunction
Writs and Bonds, Demurrer, Answer, Replication,
Petition for Change of Venue, & Order for Change of Venue,
which are in words and figures, as follows, to wit:

transcript Pleas at the Court House in Lewistown before the Hon.
John S. Bailey Judge of the Fifth Judicial Circuit of
the State of Illinois.

At a Circuit Court begun and held at the
Court House in Lewistown County of Fulton and
State of Illinois on Monday the 8th day of November
A.D. 1868.

Present the Hon. John S. Bailey Judge

The following proceedings were had on the 20th day of
November aforesaid the same being the twelfth day of
said term of the Court.

Ordered by the Court that all causes, motions &c to
the present term of this Court, not otherwise disposed of

he continued till the next term of this court.

And afterwards, to wit: at a Circuit Court begun and held at the Court House in Lewistown within and for the County of Fulton and State of Illinois on Monday the 6th day of June A D 1859.

Present the Hon. John L. Bailey Judge

The following Proceedings was had on the 8th day of June aforesaid the same being the third day of said term of the Court

Edward Sayre	}	Bill for Specific Performance
vs.		
Nathaniel Heckard		

This day came the defendant herein by his solicitors and moved the Court to dissolve the injunction herein,

And afterwards, to wit: on the 25th day of June in the year aforesaid the same being the Eighteenth day of said term of the Court the following appears of Record to wit.

Ordered by the Court that all causes motions, and all other matters to the present term of this Court not otherwise disposed of be continued till the next term of this Court.

And afterwards, to wit: at a Circuit Court begun and held at the Court House in Lewistown within and for the County of Fulton and State of Illinois on Monday

3 The 26th day of September A.D. 1859.

Present Hon. John S. Bailey Judge

The following proceeding was had on the 27th day of September aforesaid, the same being the second day of said term of the court.

Edward Sayre }
vs. } Bill for Specific Performance
Nathaniel Heckard }

This day came the defendant by his Attorney and moved the Court to dissolve the injunction herein,

And afterwards, to wit on the 10th day of October in the year aforesaid the same being the thirteenth day of said term of the court the following proceeding was had to wit.

Edward Sayre }
vs. } Bill for Specific Performance
Nathaniel Heckard }

This day this cause coming on for a hearing upon the defendants motion to dissolve the injunction herein, it is considered by the Court that said motion be sustained. Then came the Complainant by his solicitors and asked leave to mend his bill of Complaint herein which was granted by the Court, and the said Complainant by his solicitors entered his motion for an injunction herein

And afterwards, to wit: on the 11th day of October in the year aforesaid the same fourteenth day of said term of the Court, the following proceeding was had, to wit:

Edward Sayre }
 vs } Bill for Specific Performance
 Nathaniel Heckard }

This day this cause coming on for a hearing on the Complainant's motion for an injunction herein, It is considered by the Court that said motion be sustained, and it is ordered by the Court that a writ of Injunction issue herein upon the said complainant entering into bond with John H. Pursol as security in the sum of Three Hundred dollars.

And afterwards, to wit: At a Special Term of the Circuit Court of the County of Fulton for Chancery business held pursuant to an order of his Honor the Judge of the Fifth Judicial Circuit of the State of Illinois on Monday the 20th day of February A. D. 1860
 Present Hon John S. Bailey Judge

The following proceeding was had on the first day of said special term, to wit:

Edward Sayre }
 vs } Bill for Specific Performance
 Nathaniel Heckard }

This day came the Complainant herein by his solicitors and upon his motion the

5 defendant herein was ruled to answer by to morrow morning, and it is ordered by the Court that this Cause be continued till the next term of this Court.

And afterwards, to wit: At a Circuit Court begun and held at the Court House in Lewistown in the County of Fulton and State of Illinois on Monday the 27th day of February A.D. 1860.

Present Hon John S. Bailey Judge

The following proceeding was had on the 13th day of March in the year aforesaid the same being the fourteenth day of said term of the Court.

Edward Sayre
vs.
Nathaniel Heckard

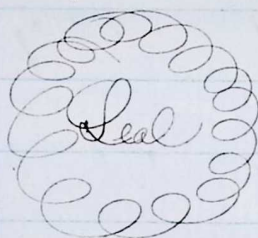
Bill for Specific Performance

This day came the defendant by his attorney and moved the Court for a change of venue herein which motion is sustained by the Court and it is ordered by the Court that the venue of this Cause be changed to the County of Peoria, and it is further ordered by the Court that the clerk of this Court make and certify the record herein and transmit the same together with the papers to the clerk of the Circuit Court of Peoria in the State of Illinois

State of Illinois
Fulton County

Edward Sayre Clerk of the Circuit

Court within and for the County aforesaid do hereby certify that the foregoing is a true and complete copy of the Record of the proceedings of Court in the case therein named as the same appears and remains of Record in my office and that the papers transmitted herewith and numbered A. B. C. D. E. F. G. H. I. J. K. L. M. are all the original papers filed herein during the progress of said case.



In Testimony whereof I have hereunto subscribed my name and affixed my seal of Office at Lewistown this 17th day of August A. D. 1860.

Edw Sayre Ck

State of Illinois County of Fulton J.

Edward Sayre
vs.

Nathaniel Heckard

Circuit Court November Term

A. D. 1858. In Chancery

Bill for Specific Performance

To the Hon John I Bailey Judge of the fifth judicial Circuit of the State of Illinois, in Chancery sitting. in and for the County of Fulton.

Your Orator

Edward Sayre of the County of Fulton and State of Illinois. Vnt your Honor humbly complaining respectfully represents that ^{on the} eighteenth day of September in the year of our Lord Eighteen hundred and fifty seven, your orator did agree to purchase of the said Nathaniel

Filed October 13th 1858

Edw Sayre ckr.

Heckard, the defendant, and the said Nathaniel Heckard did then and there agree to sell unto your Orator the following described lot or parcel of Land situate lying and being in the County of Fulton and State of Illinois and known and described as follows to wit: Fifty acres - the North End of the East half of the South West quarter of Section twenty six, in Township Five (5) North of the base line of Range Three (3), East of the fourth principal meridian - for the sum of nine hundred dollars and your Orator made payment of the sum of One hundred and five dollars and eighty nine cents down at the time of the making of the said agreement, and gave his two notes for the residue - the first for the sum of Four hundred and ninety four dollars, and eleven cents payable on or before the 23rd day of October next thereafter and the second of said notes for the sum of Three hundred dollars, payable on or before the first day of September next thereafter, which said notes were then and there executed and delivered by your Orator to the said defendant.

And your Orator further shows, that the said Nathaniel Heckard did thereupon on the said 18th day of September A.D. 1857, make execute and deliver his Contract in writing for a deed, which said Contract in writing is in the words and figures following, to wit,

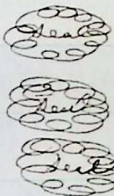
"Know all men by these presents that I Nathaniel Heckard of the County of Fulton and State of Illinois am held and firmly bound unto Edward Sayre of the County and State aforesaid in the penal sum of fifteen hundred dollars lawful money of the United States for the payment of which well and truly to be made I bind myself myself my heirs

" Executors, administrators and assigns firmly by these presents
 " signed with my hand and sealed with my seal and
 " dated this 18th day of September A D eighteen hundred and
 " fifty seven, Now the condition of the above obligation is
 " such that whereas the said Edward Sayre has purchased from
 " said Nathaniel Heckard Fifty acres, the north end of
 " the east half of the South west quarter of section twenty six
 " in Township Five North of the base line of Range Three
 " East of the fourth principal meridian - for the sum of Nine
 " Hundred dollars and made payment of One hundred and
 " five dollars and eighty nine cents of the purchase money,
 " and given his two notes for the residue, The first for the sum
 " of four hundred and ninety four dollars and Eleven cents,
 " payable on or before the 25th day of October next, and the
 " second the sum of Three hundred dollars, on or before the
 " first day of September next - Now provided said Edward
 " Sayre shall well and truly pay or cause to be paid and
 " satisfied said notes as soon as they shall respectively
 " become due and payable and shall also pay all taxes
 " assessed on the said land since the 18th day of September
 " A. D. 1857. then shall the said Nathaniel Heckard or his
 " legal representatives make and execute a Quit Claim
 " deed of conveyance for said land unto the said Edward
 " Sayre or his assigns provided said notes shall not be
 " paid as soon as they shall respectively become due, or said
 " taxes as above mentioned shall not be paid, then this
 " obligation to be forever void in law and equity;
 " otherwise to remain in full force and effect, And provi-
 " ded also, that the time herein stipulated for the payment
 " of said notes and each of them, shall be regarded as

of the essence of the contract; and that non payment of either
 of said notes, when due, shall be considered as an avoidance
 of this bond, and an absolute forfeiture of the payments,
 that may have previously been made.

Signed in presence of
 S. C. Judd

Not for record. By Doct.



State of Illinois

Fulton County } Records Office Leavittown September 23. 1857



Whereby certify that the annexed instrument
 was this day duly recorded on the land records
 of said County in Vol 42, P. 291.

Edw Sayre

No 20,159

Clerk Circuit Court

and Recorder Fulton County,

and your Orator further shows unto your honor, that in compli-
 ance with the condition of the said contract to be by your
 orator on his part performed, your orator paid the first of
 said promissory notes and the amount due thereon in full,
 when the same became due, and payable in full compliance
 with the tenor and effect of the said contract, And
 your orator further shows unto your honor that in ^{further} compliance
 with the condition of the said contract to be by your orator
 on his part performed, your orator did on the seventh
 day of September A.D. 1858. tender in lawful money, of
 the United States unto the said defendant, the sum of
 Three Hundred Dollars and fifty cents - the same being the
 amount in full due payable upon the second of the
 said promissory notes - which the defendant refused to
 accept, and which said sum of Three Hundred Dollars

and fifty cents, your orator now brings into court here, to keep his tender good and holds the same subject to the order of this court. And your orator further represents, that at the time the said tender was made, a deed was demanded, as agreed to make and executed by the said defendant, in the above contract in writing - which the defendant then and there refused to execute and deliver. and your orator further represents that the said defendant has never heretofore at any time, tendered to your orator a Quit claim deed for the premises agreed to be conveyed in the above mentioned contract in writing - And your orator further shows that he has never received a deed from the said Nathaniel Heekard or from any other person for him in compliance with the said contract, which was according to said contract to be executed to your orator, upon your orators complying with the condition thereof, as he has done, as before stated,

And your Orator further represents that under and by virtue of the said contract your orator did on or about the 1st day of April A.D. 1858. take and enter into possession of the said premises, by his tenant Jacob Meeker, to whom your orator leased said premises, from the said 1st day of April A.D. 1858, until the first day of September of the same year - and your orator shows that during said term the said Jacob Meeker was using and in possession of said premises as the tenant of your orator, that he treated with and acknowledged your orator as his landlord, during the whole of said term - And your orator further represents that on or about the first day of September A.D. 1858, the said Nathaniel Heekard

did as your orator believes by an arrangement with Jacob Meeker the tenant of your orator re-enter and take possession of the said premises, and that the said Nathaniel Heckard from that time hitherto has held and possessed, and used and still holds the possession of the said premises, and refuses since the 7th day of Sept 1858. to deliver possession of the same to your orator.

Wherefore, and inasmuch as your orator is remediless by the strict rules of the common law, and can only have full and adequate relief in a court of Chancery, where matters of this kind are properly cognizable and relievable, your orator prays that a summons issue out of this court against the said Nathaniel Heckard, returnable to the next term thereof according to law - that the said defendant be required to make full true and perfect answer to all and singular the statements and charges in this Bill of Complaint, contained as fully and completely as if the same are here again repeated and he particularly interrogated thereto (but not under oath, that being hereby waived - That upon the hearing of this cause the said Nathaniel Heckard may be decreed and ordered by this court, to make, execute and deliver to your orator a good and sufficient deed of and for the aforesaid Real Estate, in accordance with the aforesaid contract - and that he the said Nathaniel Heckard be required ordered and decreed to deliver to your orator immediate possession of the said Real Estate - And that the said Nathaniel Heckard may be restrained by an injunction issuing out of this court from cultivating or using in any way whatever, the said Real Estate, and from cutting using and hauling away the growing timber upon said Real Estate, and from cutting or using the

fallen timber upon said Real Estate - And that the said Nathaniel Heckard may be restrained by an injunction issuing out of this Court from cultivating & using the said Real Estate or the timber thereon both growing and fallen, in any way or manner whatsoever - and that your orator may have such other and further order and relief as to your Honor may seem meet and equitable in the premises, and your orator as in duty bound will ever pray &c.

Edward Sayre
By Goudy Judd & Boyd
his Solicitors

For copy of bond or contract sued on, defendant is referred to the body of the foregoing bill of complaint

Goudy Judd & Boyd
Compls Solrs

State of Illinois }
County of Fulton }.

Edward Sayre personally appeared before me, and being duly sworn, on his oath says, that the matters and things alleged and set forth in the foregoing bill of complaint are true in substance and fact, as therein stated

Edw Sayre

Subscribed & sworn to before me }
this 15th day of October 1858 }
H. L. Bryant }
Master in Chancery }

Whereas the Judge of the Circuit Court of Fulton County, Illinois, is now absent, from said county you are hereby

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directed, by virtue of the authority in me vested in the absence of the said Judge, to issue a writ of injunction according to the prayer of the within bill of Complaint, upon the Complainant giving bond in the sum of Three hundred dollars with David J. Waggoner as security.

To Clerk of Circuit Court
of Fulton County

W. L. Bryant
Master in Chancery

October 15th 1858.

State of Illinois County of Fulton

Edward Sayre

vs.

Nathaniel Heckard

Circuit Court September Term
A.D. 1859.

Amended Bill of Complaint by Edward Sayre against Nathaniel Heckard to the original Bill filed October 15th 1858.

To the Honorable John S. Bailey Judge of the Fifth Judicial Circuit in & for the state of Illinois.

Your orator Edward Sayre Complainant unto your Honor further Complaining sheweth by the way of amendment to his original Bill of Complaint heretofore filed herein that the said Nathaniel Heckard has never either before or since the 1st day of September A.D. 1858. nor on that day made, executed or tendered to your orator a deed in form or according to the purport of said Contract set out in the Original Bill or any deed whatever conveying the premises described in said contract or any part thereof, but on the contrary the said Nathaniel Heckard has at all times and still doth

Filed October 10
1859. Edw Sayre
Clerk

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hold & retain the legal title to said premises in himself and has not at any time offered to perform his part of the said contract by executing and delivering any deed of conveyance to your orator or any person for him, and has refused on the tender of the last payment and interest as in the original Bill alleged to execute & deliver a quit claim deed or any other to your Orator. And your orator further sheweth that before & at the time of the filing of the original Bill the said Nathaniel Heckard was about to proceed to plough up a part of said premises and also to cut down valuable timber and sell the same from said premises thereby committing waste thereon.

And your orator further sheweth that the said Nathaniel Heckard is insolvent and that any damages that might accrue to your orator for the use of said premises or for waste committed thereon cannot be collected by any process at common law. And your Orator further sheweth after the 1st day of September A.D. 1838, to wit: on the 3^d day thereof, the said Nathaniel Heckard agreed with one Jacob Meeker who was then & there occupying the said premises as the tenant of your Orator to purchase the crop then upon said premises and to pay unto your orator one third of said crop as rent to your orator due from the said Meeker. & by virtue of said agreement entered into the possession of said premises

as the tenant of your orator as he is informed and believes and your orator charges that thereby the said Heckard recognized the said contract set out in the original Bill

as a valid & subsisting contract after the 1st day of September A. D. 1858, of which facts your orator was informed immediately after such arrangement was made and that Lewis W. Ross Esq one of the Respondents solicitors had been retained & consulted by said Nathaniel Heckard on the 2^d day of September 1858. & the said Ross informed your orator that the said Heckard only wanted the money due & he supposed would accept it and the said Heckard on the first day of September stated to your orator that if the money was paid by the 1st day of October 1858 it would be sufficient & your orator agreed to pay him by that time whereby your orator had the right to & did rely upon said Contract as subsisting and that the failure of your orator to pay on the first day of September would not be taken advantage of in any way, and your orator acted in good faith when making the tender of payment believing that the same would be accepted for the reasons aforesaid wherefore your orator prays as in & by his original Bill of complaint he has prayed & waiving the oath of defendant

Goudy Judd & Boyd
Counsel for Sol^r

State of Illinois
County of Fulton J. on this 10th day of October A. D. 1859 before the undersigned came Edward Sayre who being sworn states that the facts set forth in the original Bill and the foregoing amended Bill as the same are now therein stated are true in substance & in fact.

Sworn to and subscribed before Edw Sayre
me this 10th day of Oct. 1859. J. S. Bailey

State of Illinois County of Fulton J.
 Edward Sayre
 vs
 Nathaniel Heckard } Circuit Court September Term
 A.D. 1859.

Amended Bill of complaint of Edward Sayre
 against Nathaniel Heckard. to the original Bill
 filed October 15th 1858.

To the Hon John S. Bailey Judge of the
 Fifth Judicial Circuit in and for the State of Illinois

Your orator Edward Sayre complainant
 unto your Honor further complaining sheweth by
 way of amendment to his original Bill of complaint
 heretofore filed herein. That the said Nathaniel
 Heckard has never either before or since the 1st
 day of September A.D. 1858, nor on that day made
 executed or tendered to your orator a deed in form
 or according to the purport of the said contract set
 out in the original Bill, or any deed whatever con-
 veying the premises described in said contract or
 any part thereof, but on the contrary the said Nathaniel
 Heckard has at all times and still doth hold and
 retain the legal title to said premises in himself, and
 has not at any time offered to perform his part of said
 contract by executing and delivering any deed of Con-
 veyance to your orator or any person for him, but
 has refused on the tender of the last payment and interest
 as in the original bill alleged to execute and deliver
 a quit claim deed or any other to your orator.

Filed Oct. 11. 1859

Edw^d Sayre
 Clerk

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And your orator further sheweth that before and at the time of the filing of the original Bill the said Nathaniel Heckard was about to proceed to plough up a part of said premises, and also to cut down valuable timber and sell the same from said premises thereby committing waste thereon.

And your Orator further sheweth that the said Nathaniel Heckard is insolvent and that any damages that might accrue to your orator for the use of said premises or for waste committed thereon cannot be collected by any process at common law. And your Orator further sheweth that he is now and has been clerk of the Circuit Court of Fulton County aforesaid for several years last past and that he has been accustomed to and has performed all the duties of said office in person during the sitting of said Court, and that on or about the sixth day of July A.D. 1858, he received notice from his Honor the Judge of the Fifth Judicial Circuit of the State of Illinois a Special term of said Court would be convened on the third Monday of August then ensuing which said Court was held and continued in session requiring the personal services of your Orator from the said 6th day of July day and night until the evening of the first day of September A.D. 1858. the day on which the last payment specified in said contract became due, And that your Orator in good faith expected to receive a sufficient sum of money in the ordinary course of collecting the costs and fees due him as such Clerk during said term to pay the money to the said Heckard,

but that he was disappointed and in fact received but a very small sum not exceeding that your orator did not have the means on the first day of September 1858 to pay the sum due, and owing to the extreme money pressure then existing and the performance of his duties in said Court. which he could not delegate to any one else without seriously embarrassing the progress of business. Your orator could not before the second day of September take any steps to obtain said money but that your orator as soon as he could after the adjournment of said Court obtained and tendered the money as stated in the original Bill of Complaint. And your orator further sheweth after the first day of September A.D. 1858. to wit: on the 3rd day thereof the said Nathaniel Heckard agreed with one Jacob Meeker who was then and then occupying the said premises as the tenant of your orator to purchase the crop then upon said premises, and to pay unto your orator one third of said crop, as rent to your orator due from the said Meeker, and by virtue of said agreement entered into the possession of said premises. as the tenant of your orator as he is informed and verily believes, and your orator charges that thereby the said Heckard recognized the said contract set out in the original Bill as a valid and subsisting contract after the first day of September A.D. 1858. of which facts your orator was informed immediately after such arrangement was made, and that Lewis M. Ross Esq. one of the

Respondents solicitors had been retained and consulted by the said Nathaniel Heckard on the 2nd day of Sept A.D. 1858, & the said Ross informed your orator that the said Heckard only wanted the money due and he supposed would accept it, and the said Heckard on the 1st day of September stated to your orator that if the money was paid by the first day of October A.D. 1858, it would be sufficient and your orator agreed to pay him by that time, whereby your orator had the right to and did rely upon said contract as subsisting and the failure of your orator to pay on the 1st day of September would not be taken advantage of in any way, and your orator acted in good faith when making the tender of payment, believing that the same would be acceptable for the reasons aforesaid.

Wherefore your Orator prays as in and by his original Bill of complaint he has prayed and waiving the oath of the defendant. Goudy Judd & Boyd
Complts Solicitors

State of Illinois
County of Fulton. On this 11th day of October A.D. 1859, before the undersigned came Edward Sayre who being sworn states that the facts set forth in the original Bill and in the foregoing amended Bill as the same are now therein stated are true in substance and fact.

Edw. Sayre
Sworn to and subscribed before me
this 11 day of Oct. A.D. 1859.

J. S. Bailey

State of Illinois }
Hulton County }

The People of the State of Illinois
To the Sheriff of said county Greeting:

We command you to summon Nathaniel Heckard if found in your county, personally to be and appear before the Circuit Court, in and for the said County of Hulton on the first day of the next term thereof, to be held at the Court house in Lewistown, on the second Monday in the month November next to answer a certain Bill of complaint filed in our said Circuit Court, on the Chancery side thereof against him by Edward Sayre and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness Edward Sayre Clerk of our said Circuit Court at Lewistown this 15th day of October A. D. 1858.

Edward Sayre Clerk

Endorsed

State of Illinois }
Hulton County } Ss.

I do hereby certify that I have served by reading and delivering a true copy of the within summons to Nathaniel Heckard this 16th day of October 1858.

Wm. M. Standard Sheriff.

Bonds

Know all men by these presents that we Edward Sayre and David J. Waggoner of the County of Hulton and State of Illinois are held and firmly bound unto Nathaniel Heckard of the County and State aforesaid in the penal sum of Three Hundred Dollars for the payment of which they hereby bind themselves their executors and administrators firmly by these presents

Filed October

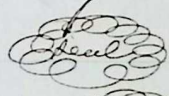
15th 1858

Edward Sayre
Clerk

sealed with their seals and dated this 15th day of October
A. D. 1858.

The condition of the above obligation is
such that if the said Edward Sayre shall well
and truly pay or cause to be paid to the said
Nathaniel Heckard such damages and costs as
shall be awarded by the court against the said
Edward Sayre on the dissolving of an injunction this
day granted by the Master in Chancery of said Fulton
County on the complaint of the said Edward Sayre
against the said Nathaniel Heckard, then the
above obligation to be void otherwise to be and
remain in full force and effect.

Witness our hands and seals the day and year
above written

Edw Sayre 
David J. Waggoner 

Approved by me at my
office this 15th day of October
A. D. 1858.

H. L. Bryant
Master in Chancery

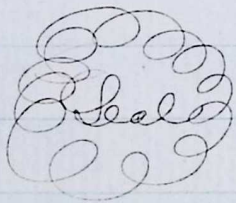
Injunction Will

State of Illinois
Fulton County ss.

The People of the State of Illinois
To Nathaniel Heckard, his agents, servants,
workmen and all persons doing business for him - Greeting:

Whereas on the 15th day of October A. D. 1858, it was
alleged to us in our Circuit Court for the County of Fulton
before Henry L. Bryant Master in Chancery for said
County, the presiding Judge of said Court being absent
from the County, in a certain case therein depending

wherein Edward Sayre is complainant and you the said Nathaniel Heckard defendant, that you the said Nathaniel Heckard are trespassing by cultivating and using the following tract of land, to wit, Fifty acres the North End of the East half of the South West Quarter of Section twenty six in Township Five North of the Base line of Range Three East of the Fourth Principal Meridian. We therefore having regard to the matters and things aforesaid do strictly Command and enjoin you the said Nathaniel Heckard, your agents, servants workmen, and all persons doing business for you that you and each of you do from henceforth absolutely desist from cultivating the said land or in any manner using the same, and from cutting using and hauling away the growing timber upon the said land, or from cutting or using the fallen and down timber upon the said land, under the penalty penalty of the law, thence ensuing until our said Court shall further order to the contrary.



Witness Edward Sayre Clerk of our said Circuit Court and the seal thereof at Leicestown this 15th day of October A.D. 1858.

Edw Sayre CLK

State of Illinois

Hulter County. I do hereby certify that I have served by reading and delivering a true copy of the within writ of Injunction to Nathaniel Heckard this 16th day of October 1858.

Wm M. Standard Sheriff

Denuer

State of Illinois County of Tullton Is.

Edward Sayre

vs.

Nathaniel Heckard

}

}

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Circuit Court Nov. Term

A. D. 1858. In Chancery

Bill for Specific Perform

Filed November
10. 1858Edw Sayre
clerk

And the said Nathaniel Heckard by Ross & Stevenson
his solicitor comes and demurs to the said Bill of com-
plaint of the said Edward Sayre, and for cause
of demur shows, that the said Edward Sayre, by his
said Bill, has not made and set forth such a case
as entitles him in a Court of Equity to any discovery
from this defendant, or relief against him; Wherefore
and for other good causes, the said Nathaniel Heckard
demurs to the said Bill, and prays the judgment of
this Court, whether he shall be compelled to make
any further or other answer thereto, and that he may
be dismissed with his costs.

By Ross & Stevenson his
Solicitor.

Bond

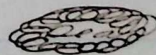
Filed October 14, 1859

Edw Gay re, clk

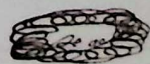
Know all men by these presents that we Edward Gayre and John N. Peirsol of the county of Fulton and State of Illinois are held and firmly bound unto Nathaniel Heekard of the county and state aforesaid in the penal sum of three hundred dollars for the payment of which they hereby bind themselves their executors and administrators firmly with these presents sealed with their seals and dated this 14th day of October AD 1859.

The condition of the above obligation is such that if the said Edward Gayre shall well and truly pay or cause to be paid to the said Nathaniel Heekard such damages and costs as shall be awarded by the court against the said Edward Gayre on the dissolving of an injunction this day granted by the Honorable the judge of the fifth judicial Circuit of the state of Illinois on the complaint of the said Edward Gayre against the said Nathaniel Heekard then the above obligation to be void otherwise to be and remain in full force and effect. Witness our hands and seals the day and Year above written

Edw Gayre



John N. Peirsol

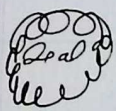


Approved Oct 14, 1859
J. J. Bailey

28
Writ of
Injunction

State of Illinois The People of the state of Illinois
Fulton County To Nathaniel Hookard his agents, ser-
vants, workmen and all persons doing busi-
ness for him - Greeting:-

Whereas on the 14th day of October AD 1859 it was al-
leged to us in our Circuit Court for the County of Fulton having
Chancery Jurisdiction before the Hon John T Bailey, judge of the fifth ju-
dicial circuit of the state of Illinois, in a certain cause therein de-
pending whose in Edward Sayre is complainant and you the said Nathaniel Hookard
are defendant, that you the said Nathaniel Hookard are trespassing, by cul-
tivating and using the following tract of land to wit: Fifty acres the north
end of the east half of the south west quarter of Section twenty-six in
Township five north of the base line of range three east of the
fourth principal meridian. We therefore having regard to the
matters aforesaid do strictly command and enjoin you the said
Nathaniel Hookard, your agents, servants, workmen and all persons
doing business for you, that you and each of you, do from hence-
forth absolutely desist from cultivating the said land or in any
manner using the same, and from cutting using and hauling away
the growing timber upon the said land, or from cutting and using
the fallen and down timber upon the said land, under the penalty
of the law thence ensuing until our said Court shall further order to the
contrary. Witness Edward Sayre, clerk of our said Circuit



Court and the seal thereof at Lewistown this
14th day of October AD 1859 Edw. Sayre, clk

Served by reading and delivering a true copy of
the within writ to the within named Nathaniel Hookard
this 14th day of October AD 1859

D. J. Waggoner,

Sheriff

Return

Answer

Filed Feby 22, 1860

Edw. Sayre, clk

State of Illinois, County of Fulton, ss.

Circuit Court Feby Term A.D. 1860

Edward Sayre

vs

Nathaniel Heckard

In Chancery - Bill for Specific Performance

The answer of Nathaniel Heckard the dependant to the bill of complaint of Edwin Sayre complainant.

This dependant now and at all times hereafter reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies, in the complainant's said bill of complaint contained, for answer thereto, or unto so much thereof or such parts thereof as he is advised is material for him to make answer unto, says, That he admits that he did on or about the 18th day of September A.D. 1857, agree to sell to the said Edward Sayre, and the said Edward Sayre did then agree to purchase of him, the said Nathaniel Heckard, the said parcel of land in the complainant's said bill of complaint described for the sum specified in said bill of complaint, to wit, the sum of nine hundred dollars, that the said Edward Sayre then made payment of the sum of one hundred & five dollars & eighty-nine cents, at the time of making said agreement, and gave his two notes for the residue, for the amounts respectively and payable at the times respectively, stated in said bill of complaint, and

that said notes were then & there executed & delivered to the said Nathaniel Hecker and by the said Edward Payne as stated in said bill of complaint.

That he further admits that he, the said Nathaniel Hecker did thereupon, on the said 18th day of September A.D. 1857, make, execute and deliver his contract in writing for a deed, which contract of writing was & is as set forth in said bill of complaint - and further admits that the said Edward Payne did pay said first mentioned promissory note and the amount due thereon in full, when the same became due & payable, as stated in said bill of complaint.

But the said dependant further answering says, that the complainant, Edward Payne, did not on the first day of September A.D. 1858, when said second promissory note became due and payable, nor on the 7th day of September A.D. 1858, nor at any time before or since said second promissory note became due & payable, pay the same or any part thereof to the said dependant, or tender to the said dependant the sum of three hundred dollars and fifty cents, or the full amount due on said second promissory note. And the said dependant denies that at the time said pretended tender was made or at any other time before or since or on the first day of September A.D. 1858, a deed was demanded of the said dependant by the said complainant.

or by any one for him for said premises; and affirms that he was ready and willing on the said first day of September AD 1858, when said last or second note became due, & on full payment on said first day of September AD 1858, of the amount due thereon to execute and deliver to the said complainant or his assigns a quit claim deed of conveyance for said land as stipulated in said contract of writing, and did on said first day of September AD 1858, demand of the said complainant the amount due on said second note, and then proposed & offered to execute & deliver a sufficient quit claim deed of conveyance for said lands to the said complainant, on payment of the amount due on said note and did then & there tender such quit claim deed to the complainant, but the said complainant refused & neglected to receive & accept the same and to pay the amount due on said last named note on said first day of September AD 1858; and by reason of such failure to make said payment on said day, according to the terms of said contract in writing all right of the said complainant to have or demand such deed of conveyance for said premises, or to demand or recover back the payments previously made on said premises, or to have or enforce any other right or benefit or advantage under or by virtue of said contract in writing became and was on said first day

of September AD 1858 absolutely forfeited & void, and the said defendant then declared, and has ever since held, the same to be so forfeited and at an end, and the defendant was not bound after such failure, to tender or deliver such deed; and he admits that he did not at any time since said first day of September AD 1858, tender or deliver such deed of conveyance to the said complainant, but utterly denies that he did on or at any time since said 1st day of September AD 1858 by himself or the said Ross as his attorney, or otherwise agree to accept said last sum of money as alleged in complainants amended bill by the said 1st day of October AD 1858 or at any other date after said 1st day of September 1858.

And the said defendant further answering denies that the said complainant did, on or about the 1st of April AD 1858, or at any other time, take or enter into possession of said premises under or by virtue of said contract in writing, or by any other lawful licence or authority, either by the said Jacob Meeker as his tenant or otherwise; but the said defendant says that the said Jacob Meeker did, about the time enter into possession of the same as the tenant of this defendant & from said first day of April AD 1858, until the first of September of that year, continued to use & cultivate the same as his said tenant, and that he the said Meeker, during all the time aforesaid,

treated with and acknowledged the said defendant as his said landlord; and the said defendant says that he has no knowledge of said pretended lease from the said complainant to the said Jacob Meeker or of the said Meeker's treating with or acknowledging the said complainant as his landlord during said term. And the said defendant admits that he did, on or about the first of September A.D. 1858, on the expiration of the term of lease by him to said Jacob Meeker enter into possession of said premises, and that he has ever since continued, and is now in rightful possession of the same, and has the legal title thereto, but he denies that he did then, or at any other time, agree with the said Meeker, or the complainant or with "one Jacob Heckard" to purchase the crop on said premises, and to pay the said complainant one third part of said crop as rent due from the said Meeker, or entered into possession of said premises by virtue of such supposed agreement, or otherwise recognized said supposed contract alleged in the original bill in that behalf, and he denies all and every manner of collusion with the said Jacob Meeker, as the tenant of the said complainant, or otherwise, in re-entering and taking possession of said premises.

And the said defendant further answering admits that the said complainant is and was clerk of the said circuit court for and

31 during the time alleged in his amended bill; and that said special term of said court was commenced and held at the date, and continued for the period, as set forth in said complaint, and that complainant received notice of the said special term at the date and as alleged in said bill, and that the said complainant "has been accustomed to, and has performed all the duties of said office in person during the sitting of said court," but denies that said special term required "the personal services of the said complainant from said 6th day of July (A.D. 1858) day and night till the evening of the first day of September A.D. 1858 as alleged, and denies that the said complainant owing to his said engagements as said clerk, and the extreme money pressure could not before said second day of September (1858) take any steps to obtain said money, as alleged in his said amended complaint, and affirm that the said complainant had, or could have had, said money on said first day of September, A.D. 1858, if he had desired so to do.

And the said respondent further answering denies that at or before the filing of the said original bill the said defendant was about to proceed to plough up a part of said premises, or to cut down or sell from said premises any valuable tim-

ber as averned in said amended bill, or that he was otherwise about to commit waste thereon; And also denies that he the said defendant is or was at the time said original bill was filed insolvent; and asserts that "any damages" that might accrue or might have accrued, to the said complainant from waste on said premises, could be and could then have been collected off from this respondent by ordinary process at common law.

All which matters and things the defendant is ready to aver, maintain and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most unjustly sustained.

Nathaniel Heckard.

Replication State of Illinois, County of Fulton, ss.
 Filed, Feb. 23rd 1860 Edward Sayre Circuit Court, February
 Edw. Sayre, clk W Spl Term AD 1860.
 Nathaniel Heckard On Chancery

The replication of Edward Sayre, complainant to the answer of Nathaniel Heckard defendant in this cause. This replant having and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereto says

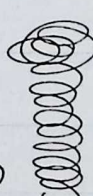
that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said dependant is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed and avoided, traversed or denied as true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this Honorable court shall direct and humbly pray as in and by his said bill he has already prayed.

Goudy & Gidd,

Campa. Salis.

Pet. for change of
Venue
Filed March 13, 1860.
Edw. Sayre, ch.

State of Illinois, County of Fulton, St.
Edward Sayre
Nathaniel Heckard



Circuit Court, February Term
AD 1860
In Chancery

To the Honorable John S. Bailey,
Judge of the fifth Judicial District, as chan-
cellor sitting,

Your Petitioner Nathaniel Heckard would respectfully represent unto your honor that he is the dependant in the above en-
titled cause, that he fears that he will not receive a fair trial of said cause in

said circuit court of Fulton county, where the same is now depending, on account that the judge of said court is prejudiced against your petitioner and in favor of the said Sayre, the plaintiff in said cause, so that your petitioner cannot effect a fair trial of the same in said court; and that the facts above stated have come to the knowledge of your petitioner within the last eight days. Wherefore your petitioner prays that your Honor ~~shall~~^{would} award a change of venue in the above entitled suit to some county where the causes above complained of do not exist.

Nathaniel Heckard

State of Illinois, County of Fulton, H.

I, Nathaniel Heckard, defendant in the above mentioned action, being duly sworn depose and say that all the several matters and things above stated and set forth are true in substance and in fact.

Nathaniel Heckard

Sworn to & subscribed before me this 13th day of March A.D. 1860.

John^H Peissol, Clerk

Order for change of Venue	State of Illinois, County of Fulton, H.	
	Edward Sayre	3 Circuit Court, February
Filed March 13, 1860		— Venue A.D. 1860
Edw. Sayre, att	Nathaniel Heckard	3 Bill for conveyance

And now this cause coming on to be heard upon the petition of the defendant under oath, for a change of venue in this cause, on motion to the court by Ross & Stevenson, solicitors for defendant and upon reading & considering said petition and affidavit, It is ordered and adjudged that a change of venue be granted in said cause to the circuit court within and for the county of Peoria & State of Illinois, J. L. Bailey

Proceedings in
Peoria
Circuit Court

Proceedings in Chancery before the circuit court began and held at the court house in the city and county of Peoria, Illinois, on the first Monday of March, in the year of our Lord one thousand eight hundred and sixty-one, it being the fourth day of said month. Present, the Honorable Elisha N. Powell, Judge of the 16th judicial circuit in the state of Illinois, James Stewart, Sheriff, and Enoch Hoar, Clerk, to-wit:-
Tuesday, March 19th A.D. 1861.

Edward Layne

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Specific Performance

Nathaniel Hebard

And now again this cause having come on for a hearing upon the bill answer replication and proofs, and the court having heard the same and the arguments of counsel upon the side of both complainant and defendant, and being now fully advis-

ed in the premises doth order, adjudge and decree that the said complainant deposit with the clerk of this court within thirty days from the date hereof the sum of three hundred dollars and fifty for the use and benefit of the said defendant - which deposit is to be made in specie - that upon such deposit being made within the time specified the said defendant shall deliver over to the complainant, the note described in the complainant's bill for three hundred dollars, dated September 18, 1857, payable by said complainant to said respondent or order, on or before the first day of September (then) next, to be cancelled and the same is hereby declared & ordered to be cancelled, and that the said respondent Nathaniel Heckard make, execute and deliver to the said complainant a good and sufficient Quit claim deed, conveying to said complainant the premises described in his bill filed in this case, viz: Fifty acres, the north end of the east half of the south west quarter of Section twenty six, in township five north of the base line of range three east of the fourth principal meridian situated in the county of Fulton in the state of Illinois.

It is also further ordered, adjudged and decreed that if the said Nathaniel Heckard shall fail or neglect for the space of thirty days after the deposit of the sum of three

hundred dollars and fifty cents shall have been made by the complainant with the clerk of this court as in above provided in this decree to make, execute and deliver to the complainant a quit claim deed, that the Master in Chancery of this court be and hereby is authorized and empowered to make, execute & deliver a good & sufficient Quit claim deed of the premises aforesaid, which said deed shall vest in the complainant as good an estate and title as if the said respondent had made executed and delivered said deed in his own proper person.

And it further ordered, adjudged and decreed that the said Master in Chancery shall report his proceedings in the premises to the next or some future term of this court.

It is further ordered, adjudged and decreed that said complainant have and recover of the said defendant his costs in this behalf expended, and that execution be issued therefor, And that this cause be continued until the next term of this court.

On the 30th day of August A.D. 1860 there was opened and filed in the office of the Clerk of the Circuit Court of Peria County under a general order of Court a Deposition in words and figures as follows - to wit; -

Edward Sayre	~~~~~	State of Illinois County of Peria S.S.
vs.		Circuit Court
Nathaniel Heckard		Forcible Detainer. - Appeal.
		Change Venue from Fulton

Same	~~~~~	Same venue and Court
vs.		In Chancery
Same		Bill for Specific Performance Chg. of Venue from Fulton

It is hereby agreed and stipulated by and between the parties to the above entitled suits that without previous notice and without affidavit in the Common Law Case as to the residence out of Peria County and in Fulton County of the following named persons the Depositions of the following named gentlemen may be taken on the part of the Plaintiff Sayre before Isaiah B. Morley, Notary Public for Lewistown, Fulton County, Illinois, commencing this 15th day of August A.D. 1860 between the hours of 10 O'Clock A.M. and 3 O'Clock P.M. and continuing and adjourning from day if necessary - the same to be taken by and before said Notary Public at the Office of the Clerk of the Circuit Court in Lewistown Fulton County, Illinois, viz - De Witt C. Bryant, Leonard F. Ross, Allen Mc Gehee, Peter Crook Jacob Dewey and Milton Cain. And it is further agreed that the Defendant, Heckard, on his part may under this Agreement, and before the same officer, and after the taking of said depositions on behalf of said Plff. Sayre may take the Depositions of John Hearn, John Deems, Moses Boardner, Jonathan Boardner, and Peter Boardner, also without affidavit or notice. All of said Depositions may be read in

Evidence in said Causes. No rights are waived however of objection to the same for irrelevancy or incompetency dated August 15. 1860.

Youdy, Judd & Boyd

Solrs. & Attys. for plff. Sayre

Ross & Stephenson of

Solrs & Attys for Defendants

State of Illinois, County of Peoria s.s.

Edward Sayre

vs.

Nathaniel Heckard

Circuit Court

Forcible Detainer - Appeal

Change of venue from Fulton

Same

vs.

Same

Same Venue & Court. In Chancery

Bill for specific Performance

Change of venue from Fulton

State of Illinois

County of Fulton

s.s.

Be it remembered that on this fifteenth day of August A.D. 1860 personally appeared before me Isaiah C. Worley an acting Notary Public for the Town of Lewistown in said County of Fulton and State of Illinois, at the office of the Clerk of the Circuit Court for said County, in said Town, Dewitt C. Bryant, Peter Crook, Leonard F. Ross, Allen S. McGehee, Jacob Deary, and Milton Cain, Witnesses on part of the Complainant in the above entitled causes in the Peoria County Circuit Court in the State of Illinois. Wherein Edward Sayre is Complainant and Nathaniel Heckard is Defendant, between the hours of ten O'clock A.M. and three O'clock P.M. of said day, and after being duly sworn according to law did make answer to the interrogatories propounded to them as follows, to wit:

Deposition of Dewitt C. Bryant who being first duly sworn testifies as follows in answer to the following interrogatories - to wit; -

Question 1st What is your name, age and place of residence?

Ans. - My name is Dewitt C. Bryant, my age is 36 years place of residence, Lewistown, Fulton County Illinois

Question 2nd Are you acquainted with the parties to these suits and if yea, how long have you known them?

Ans. I am acquainted with them, I have known Sayre five or six years and Heckard two or three years or perhaps more

Question 3rd Did you or not, at any time, serve upon the Defendant Heckard any Notice or Notices in writing for or on behalf of the Plaintiff, and if yea, when, where, on what authority, what notice or notices giving a copy of the same, if you can, how or in what manner did you serve it or them, and what and what was said between yourself and the said Defendant if anything at the said time or times?

Ans. I served two notices upon Mr. Heckard defendant at the instance of Mr. Sayre Plaintiff, the first was served on the 18th day of September A.D. 1858 at the Store of John Millburns or the Store of Gustine & Hair in Lewistown, Illinois, I served said notice by delivering a copy and reading it to the said Defendant. I have not got the original notice, I think I gave it to the Plaintiff, Sayre, since which time I have not seen it, I have made diligent search for it, and cannot find it. I served the second notice upon the Defendant Mr. Heckard on the 18th day of May A.D. 1859 (which said second notice is hereto attached marked exhibit (A) by delivering a copy and reading the said notice at the time I served it I was on horseback and met Mr. Heckard the defendant near the land specified in said notice. where the said Defendant was flooring corn; the conversation at the time between the said Heckard & myself was as follows. I said to the Defendant "This is the same description of land and like the notice I served on you the 18th of September last" Heckard answered "Is the same land and think

the notice like the other" I then said "The same land you live on referred to in both notices" Heckard answered "yes" I said to him then "The other notice I served was dated 18th of September last. Heckard answered "It has a date & I believe it is 18th of September last" When I served the notice on the 18th of September A.D. 1858 after reading the notice which demanded possession of fifty acres off of the North end of the East half of the South West quarter of section Twenty six in Township five north of Range Three East of the fourth principal Meridian, which you unlawfully withhold from me, and signed Edward Sayre, and which notice according to my recollection is the same as the one served by me on the 18th of May, A.D. 1859, and hereto annexed marked exhibit "A" after reading the notice on the said 18th of September A.D. 1858 to the said Heckard I asked the Defendant Heckard if he would give up the possession immediately. Heckard said "no" I will do nothing about it until I consult with my lawyers" I met him again the same day and asked him on the Court House steps in Lewistown if he had concluded to give up possession or decided the matter yet, he said "he had concluded not to give up possession" I was authorized by Mr. Sayre the Plaintiff to act as his agent and receive possession of the premises described in said notice, Heckard refused to deliver up the possession of the said premises and did not do it at either time of serving the notice When I served the second notice aforesaid he the said Heckard said he would not give up possession

D. W. C. Bryant

Deposition of Peter Crook who being first duly sworn testifies as follows in answer to the following interrogatories

Question 1st What is your name, age and place of residence?

Ans. My name is Peter Crook my age 53 years, occupation a farmer

Question 2nd Are you acquainted with the parties, Plaintiff

and defendant in this suit & if so how long have you known them?

Ans. I am acquainted with both the parties. I have known Sayre the Plaintiff about three years, I have known the Defendant about three years also

Question 3rd Are you acquainted with the 50 acres off of the North end of the East Half of the South West quarter of section Twenty Six in Township five North of Range Three East of the fourth Principal Meridian and if yes, how long have you known it?

Ans. I am acquainted with that tract of land. I have known it about three years, three years this last spring.

Question 4th Do you know anything of the said premises being occupied by one Jacob Meeker, and if so, when were they so occupied by him, and state further if you know whether he occupied the same as owner or tenant, and if as tenant, state all you know as to who he occupied the same under, when he took possession of the same, and how long he continued in such possession and state also how you know these things

Ans. I do know that he, Jacob Meeker did occupy the place he commenced or raised the first crop on the said premises two years ago this last Spring, and left in the fall of that year I think in September or October, it was before corn was ripe, he occupied the said premises as tenant. He, Meeker, told me he occupied the place as tenant under Mr. Sayre, he told me this while he was living on the place, it was at the house, he told me, which is on the place adjoining the said premises where Caleb Meeker lived I think it was along in the summer or fall that he told me. I came here to Beavertown with him to bring some wheat directly after harvest after he had thrashed out his wheat crop of that year, at that time a fuss had been raised between him Jacob Meeker and the Defendant Heckard about the place, he Jacob Meeker told Heckard that he was going to deliver up the possession of the premises to Mr. Sayre, that he had rented of Mr. Sayre and he would deliver up possession to him and that if he (Heckard) did not go

away he would put a ball through him, we came on up to town with the wheat, when we got here he Jacob Meeker told Mr Sayre the Defendant that he had rented the said premises of him and would deliver up possession of the same to him that was going to do it, - These conversations were all in my presence, and while he was yet living, on the premises described herein

Question 5th Will you state whether or not Jacob Meeker about the 1st of September 1858 and while said Meeker was yet living on the premises above described, and at or near said premises or on the road between the same and Lewistown Fulton County Illinois or in said Town, that he, said Jacob Meeker, was the tenant of Edward Sayre, and would not deliver up the possession of the said premises to any other person.

Ans. - He did say so on the road between the said premises and Lewistown aforesaid, at the time when we started to come with the wheat and while said Jacob Meeker was still living on the said premises

Question 6th Will you state how far the said premises are situated from the said Town of Lewistown

Ans. - It is a little over one mile

Question 7th Did you at any time have any conversation with the Defendant Heckard in respect to his being a renter of the said premises above described, and if yes, when & where was such conversation, and state the same as nearly and as fully as you can recollect

Ans. I did have such a conversation, it was where I lived on a place adjoining the premises aforesaid, at the time Mr. Heckard the Defendant sold out to the Plaintiff Sayre, and before I had left the place adjoining said premises, it was in the Spring that I had such conversation, I can not fix the date, but it was the day that he (Heckard) sold out to Sayre. I know it was that day because he (Heckard) told

me had sold out to Mr Sayre that day. It was within the time that I lived there but I do not recollect positively whether it was in the spring or fall he (Heckard) said at this time he had sold out to Mr. Sayre, and had become a renter as well as I (witness)

Question 8th Was the defendant Heckard at that time living on the said premises, and how long was this conversation before Jacob Mucker went into possession of the said premises, if it was before?

Ans. Yes the Defendant Heckard was at that time living on said premises. It was before Jacob Mucker went into possession of said premises. It might have been a month or two more, or not quite so long, I have not got a good memory as to dates

Cross Examination by Defendant

Question 1st How did Jacob Mucker come to tell Sayre that he had rented of him and would deliver up the possession of the said premises to him? and no person else?

Ans. I suppose he was a little spunked and that it was his idea to tell him he said it was, Heckard had been talking to him (Mucker) and he was spunked, he came to see Sayre intentionally to tell him

Question 2nd Where was it between the premises and Lewistown Hamilton County Illinois that Jacob Mucker told you that he was tenant of Sayres

Ans. It was as we started from the house on the premises to come to town to see Sayre

Deposition of Allen Mc. Gehee ^{Peter ^{his} Crook} ^{mark} who being first duly sworn testifies as follows in answer to the ^{following} ~~foregoing~~ interrogations

Question 1st What is your name, age, and place of residence

Ans. My name is Allen Mc. Gehee, my age is 50 years

and place of residence Lewistown Fulton County Illinois

Question 2nd Are you acquainted with the parties, Plaintiff and Defendant in this suit, and if so how long have you known them.

Ans. I know them both, I think I have known them both eight or nine years

Question 3rd Do you know fifty acres off of the North end of the East Half of the South West quarter of section Twenty Six in Township five north of Range three East of the fourth principal Meridian?

Ans. I have known said land for the last thirty years

Question 4th Have you any knowledge of one Jacob Meeker going into the possession of the said land within the last three years, and if yes, state if you know when and in what capacity he so went into the possession of the same, whether as owner or tenant, and if you say as tenant, please to state as whose tenant, how long he continued to occupy the said premises as such tenant and all about how you know the facts concerning which you testify?

Ans. Yes I have, he went into possession of said premises as a renter in the Spring of 1858, he went into possession of said premises as a tenant of Mr. Sayre the Plaintiff, he occupied said premises as such tenant, I think, about five or six months, I cannot state the exact time. In the first place I had been trying to rent the said premises myself of Mr. Sayre and afterwards came down to Mr. Sayre's office in Lewistown in the Spring of 1858. I spoke to Mr. Sayre in regard to renting the place, Jacob Meeker was in the office of Mr. Sayre when I came in, he (Meeker) said "you are a little too late, for I have just rented the place" Mr. Sayre the Plaintiff spoke at the same time and said "I have just rented it to Mr. Meeker". Afterwards, and while Meeker was living on the premises, I think, in the month of August or September of the year 1858 I was at the old man Meeker's and saw said Jacob Meeker and told him I wanted to buy his share of the crop on Mr. Sayre's premises the 50 acres above described, he

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(Jacob Meeker) said that one third of it was going to Mr. Sayre for rent, and that he wanted fifty dollars for his share this was before the crops were matured, and I declined to give that price

Question 5th In that conversation with the said Jacob Meeker and at the same time and place will you state whether he the said Meeker mentioned how the Plaintiff Sayres Portion of the crops was to be delivered? and if yes, what did he say about it

Ans. He did, he said Sayres portion of the corn and other crops was to be delivered to him Sayre in Leavittown, the Corn to be delivered in the crib, in the ear,

Allen S. ^{his} X Mc. Gehee
mark

Deposition of Milton Cain, who being duly sworn testifies as follows in answer to the following interrogations, to wit; -

Question 1st — What is your name age and place of residence?

Ans. My name is Milton Cain, my age is twenty six years my residence is in Leavittown, Fulton County, Illinois

Question 2nd Are you acquainted with the parties Plaintiff and Defendant in this suit, and if so how long have you known them?

Ans. I am, I have known the Plaintiff, Mr. Sayre, four years, and have known the Defendant Heekard, about three years.

Question 3rd Are you acquainted with the fifty acres of the north end of the south west quarter of section twenty six, in Township five north of the base line of Range three east of the fourth principal meridian if so how long have you known the same?

Ans. I am, I have known it about three years

Question 4th Did you at any time or times during the year 1857 or the fore part of the year 1858 hear any conversation or conversations, between the Plaintiff and Defendant in regard to the said premises, or in respect to either of them renting the same of the other, if yes, state when and where such conversation or conversations took place, and

relate the same as fully and particularly as your recollection will permit

Ans. I did. Mr. Heckard the Defendant came into the Plaintiff's office in Lewistown Fulton County Illinois, in August or September of the year 1857 and wanted to sell the said premises to Mr. Sayre the Plaintiff, he gave Mr. Sayre his terms, and was to come back again some time after to see if Mr. Sayre would accept of his proposition. In about two weeks he came in again to see Mr. Sayre. I do not remember exactly what was said but Mr. Sayre accepted his proposition and I think the writings were drawn at that time. Mr. Heckard in his first conversation said he wanted to go to Texas that fall, and would give up possession to Mr. Sayre as soon as he could get off, in course of a few weeks, at the time the writings were drawn, he (Heckard) had concluded not to go to Texas, and wanted to stay on the place until the next spring, on account that his crop and stock was all on the place, after the writings were drawn Mr. Sayre & Mr. Heckard got to talking about the interest on the three hundred dollar note. Mr. Sayre, Plaintiff, said to Heckard, Defendant, you will not charge me interest on this note if you stay on the place till spring, Heckard, Defendant, said "Oh no! that would not be right" something said concerning some rails, I don't know whether Heckard wanted to give Sayre the rails, or to make him some rails, nothing was said in either conversation that I remember of, as to the time in the spring that Heckard was to remain = Along in the winter of 1857-8 Heckard, Defendant, came into the office again, and said he wanted to rent the premises of Mr. Sayre the Plaintiff. He said this to Mr. Sayre the Plaintiff he (Heckard) said he would like to rent the premises for the next season. Sayre (Plaintiff) told him (Heckard) he would just as lieve he (Heckard) would have the premises as anyone else, as he (Heckard) was living on the premises, if they could agree upon the terms. The Plaintiff wanted to know of Defendant what share of the crops he would be willing to give for the

rent of the place. The Defendant replied that, he would give the Defendant one third of the corn, shucked & in the crib, and one third of the small grain in the shocks, Mr. Sayre said that that would not suit him, that he wanted his share of the small grain in the bushel, that he could not attend to threshing the small grain out. Heckard said he would see about it, and went off. In two or three weeks after this time, Defendant came back into the office of Mr. Sayre, as aforesaid, and told him he would not take the place, but that Mr. Meeker would take it. I think this was some time in February 1858.

At half past five O'clock the further taking of the foregoing Depositions was adjourned until tomorrow morning at 9 O'clock ~~at 9 O'clock~~.
 Thursday August 16th. 1860 9 O'clock A.M.
 Parties all met at the said office and the taking of the foregoing Depositions was resumed, Milton Cain being recalled, in answer to interrogatories propounded to him made answer as follows =

Question 5th. If in any of the conversations referred to by you in your last answer anything was said by or between either of the Parties Plaintiff or Defendant in regard to Hungarian Grass in connection with the premises referred to, will you state what was so said & by whom, & when, & where?

Ans. When Mr. Heckard came in to Mr. Sayre's Office to rent the place aforesaid the first time in February, A.D. 1858. Mr. Sayre Defendant said to him (Heckard) that he (Sayre) wanted to reserve three or four acres to sow some Hungarian Grass. Heckard said he could do that. Mr. Sayre (Plaintiff) asked the Defendant Heckard if he (Heckard) would do the work if he (Mr. Sayre) would pay him for it; he answered that he would. Heckard then went away, and came back again to said office in two or three weeks & said to Mr. Sayre that he could not take the place, but that Mr. Meeker would. Sayre asked him concerning the Hungarian Grass. Heckard said that if Meeker did not sow the grass spoken of that he (Heckard) would.

Question 6th. Please to state what has been your occupation for the last three or four years?

Ans. Clerking in Mr. Sayre Circuit Clerk's office, and am still so engaged

Question 7th Do you know whether the Plaintiff Sayre, had any person assisting him during the year 1858 and especially, during the August Special Term of that year in performing the duties of clerk of the Court, and state whether or not he himself performed all such duties alone?

Ans. No, he did not have any one in Court with him or any one performing the duties of clerk in said Court

Question 8th I will ask you to state whether at any time since you have been acting as clerk in the Recorder's Office and prior to the year 1860 the said Plaintiff has had any person to perform or assist him in performing the duties of clerk of the Circuit Court, and state also how long you have been so acting as clerk in said Recorder's Office, and whether or not your duties have not been confined exclusively to the recording branch of said office?

Ans. De Witt C. Bryant was assisting him (Sayre) in the office about four months in the year 1857 before Court commenced. With that exception he has never had any one in the office assisting him in his duties as Circuit clerk, before Jan'y. 1860, and since I have been in the Recorder's office I have been employed in said office since the 1st December 1856, & my duties have been confined to the Recording branch of the office

Question 9th Please to state what you know about the Plaintiff's performing his duties as clerk of the Circuit Court for the August Special Term A.D. 1858, or in other words state what you know as to the time he was occupied in the performance of those duties?

Ans. He was occupied all the time during the day, and I went to bed about 10 O'clock at night generally and left Mr. Sayre the Plaintiff still at work on his Court Records

Milton Cain

Deposition of Jacob Deary who being first duly sworn testifies as follows in answer to the following interrogatories; to wit=

Question 1st What is your name, age, occupation and place of residence?

Ans. my name is Jacob Deary, my age is fifty seven years my occupation is Treasurer of Fulton County Illinois. my residence is in Leavittown, Fulton County. Illinois

Question 2nd Do you know the parties Plaintiff & Defendant to this suit and if so how long have you known them, and do you know the tract of land described as fifty acres off of the north end of the East half of the South West quarter of section twenty six in Township five north of Range three East of the fourth principal meridian?

Ans. I know them, I have known the Plaintiff Mr. Sayre for the last ten years or more. I have known the Defendant (Heckard) since the seventh of September 1858. I know the piece of land upon which the Defendant Heckard lived on at that time (7th September 1858)

Question 3rd Will you state whether or not during the month of September A.D. 1858 you offered any money to the Defendant Heckard & if yes, state for whom, at whose request, and for what purpose you so offered the same, stating the amount, and the conversation which took place (if any) between yourself & the said Defendant at the time, or between the said Defendant and any other person in your presence at the same time giving also the place of such offer and conversation, and giving the particulars in full. And if on the same day any other person offered the said Defendant any money, please state the particulars in full if it was in your presence, and if you answer that any money was offered to Defendant, please state if you know what afterwards became of said money?

Ans. On the 7th of September A.D. 1858 Mr. Sayre the Plaintiff & myself started down to Mr. Heckards the Defendant in the fore part of the day. When we got to Mr. Heckards we found him chopping wood

at the wood-pile. Mr. Sayre, the Plaintiff, spoke to him, and I do not know but I passed the time of day. Mr. Sayre, the Plaintiff, told him that he had come now to lift that bond, and get the Deed, that he was ready to pay him the money, he pulled out of his pocket some gold in his hand. & Mr. Heckard said "you hadn't the money when I talked to you last." Mr. Sayre told him he had the money now and wanted the deed for that land, and asked him to take the money. Mr. Heckard replied he would not take it. There was some other conversation took place between the said Plaintiff & Defendant but I cannot recollect exactly what it was. Mr. Sayre then handed me the money that he had been holding in his hand & told me to make a tender of that money to him (Heckard) the Defendant & demand a deed. I counted the money and there was three hundred dollars in gold, and fifty cents in silver which said fifty cents Mr. Sayre stated was interest, as I understood on the said three hundred dollars. I then offered the Defendant, Heckard, the money and asked him if he would make Mr. Sayre the Plaintiff a deed for that land. He started off to where his horses were hitched to the plow in the field. Sayre the Plaintiff & myself following. I asked him again if he would take the money and give Mr. Sayre the Plaintiff a deed for the land. He refused to do it. He remarked that Sayre hadn't the money when he saw him, and now he would not take it. There was other conversation took place between Mr. Heckard & Mr. Sayre, but I cannot recollect what it was. I retained the money in my possession for the purpose of paying over to said Heckard the same whenever the deed was made & I told Heckard at the time that I would keep it for that purpose & I yet hold the money in readiness for the purpose specified.

Question 14th. State if you know whether or not there has been a financial crisis in this country within the last few years, and if yes, when did the same commence, how long did it continue, giving the effect, in your answer upon the monetary affairs in Illinois?

Ans. In November or December A.D. 1857 a financial crisis

was commenced, it appears to continue yet, and has continued ever since the said time above mentioned. It has been the hardest time to collect money I ever experienced, it prostrated money matters very much, and rendered it very difficult to procure money.

Question 5th Now I will ask you to state whether or not you heard Jacob Meeker tell the Plaintiff Edward Sayre, on the road between the Town of Lewisston, and said premises on which said Defendant Heckard was living on the said 7th September 1858. and on or about the said seventh day of September 1858. and in your presence that he said Jacob Meeker had sold his own share of the crop on said premises to Defendant, Heckard, and that he Heckard had bound himself to crib Plaintiff Sayre's share of the crop on the place for said Sayre, as rent for the place?

Ans. - I did, on the said 7th day of September A.D. 1858.

Question 6th Will you give the language used by the said Meeker at the time, and the circumstances calling it out

Ans. We, Mr. Sayre, the Plaintiff, & (myself met Mr. Jacob Meeker as we were returning to Lewisston from the said premises on that day, Mr. Sayre asked him to the best of my recollection asked said Meeker why he let Heckard into the House on the premises. My recollection is that Meeker answered that he could not avoid it. Mr. Heckard moved in. Mr. Sayre then asked him if he (Meeker) had sold his (Meeker's) part of the crop to Heckard. Meeker stated he had. Mr. Sayre then asked him what he had done with his (Plaintiff's) part of the crop. He stated that Mr. Heckard was to crib it on the farm for Sayre that he had bound himself to do it, as rent for the place.

Question 7th Will you state whether or not at the time & place referred to in the two last interrogatories and answers, the said Jacob Meeker stated to the Plaintiff Sayre in your presence that the Defendant Heckard knew that he stood in his Meeker's place as Sayre's tenant and would have to pay the rent to Sayre?

Ans. I cannot recollect

Jacob Deary.

Deposition of Leonard F. Ross who being first duly sworn testifies as follows in Answer to the following interrogatories to wit;

Question 1st State your name, age occupation & place & residence & business?

Ans. My name is Leonard F. Ross, my age thirty seven years my place of residence Lewistown, Illinois. My business, Merchant.

Question Second = are you acquainted with the parties Plaintiff & Defendant in this cause & if so how long have you known them? and have you not in the last few years ^{been} dealing largely in money matters? & real estate? And state further whether you know what has been the financial condition of the country, and especially in Fulton County & in Illinois, since about the 1st of August A.D. 1857 & if yes, state what the same has been and the effect upon monetary matters in this State & especially in this region of the same?

Ans. I am acquainted with the parties Plaintiff & Defendant I have known the Plaintiff some 16 or 17 years and the Defendant perhaps five or six years. I have in the last few years been engaged in the land business I am acquainted with the financial condition of this section of the country since August 1857. Money matters have been in a very low & depressed condition the effect on money matters was that money was difficult to obtain by loans collections or any other way.

Leonard F. Ross

State of Illinois }
County of Fulton } S.S. I, Isaiah C. Worley an acting
Notary Public at Lewistown within and for the said Town of Lewis-
town, in said County and State, do hereby certify that previous to the exam-
ination of the said De Witt C. Bryaul, Peter Brooke, Leonard F. Ross,
Allen S. Mc Gehee, Jacob Deary and Milton Cain in the said suits between
the said Edward Sayre and Nathaniel Heckard they were severally duly

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sworn by me to testify to the truth in relation to the matters in controversy between the said Edward Sayre and Nathaniel Heckard, so far as they should respectively be interrogated concerning the same. That the said Depositions were taken by me at the office of the Circuit Clerk for said County of Fulton in Leavittown Illinois, on the fifteenth and sixteenth days of August A.D. 1860 Between the hours of 10 O'clock A.M. and 3 O'clock P.M. of said days. The said parties Plaintiff & Defendant and their Attorneys all being present upon such examination; and after said Depositions were taken by me as aforesaid the interrogatories and answers thereto as written down were read to over to said Witnesses respectively, and thus ~~thereupon~~ ^{thereupon} the same were signed and sworn to by the said witnesses, before me, the oaths being having been administered to them by me at the place, and on the days and year aforesaid. Witness my hand and notarial seal at my office in Leavittown this 16th day of August A.D. 1860



[Signed]

Isaiah C. Worley

Notary Public

(Exhibit "A")

Nathaniel Heckard

Sir

I demand of you the immediate surrender of the possession of Fifty acres off of the North end of the East half of the South West quarter of section Twenty-six in Township five north of range three east of the fourth principal meridian which you unlawfully withhold from me

Edw. Sayre

State of Illinois }
Peoria county }

I, Enoch T. Sloan, clerk of the circuit court in and for said county and State, do hereby certify that the foregoing is a full, true and complete transcript of the papers filed in, and of the record of the proceedings of our said court appertaining to the cause wherein Edward Jayne is complainant and Nathaniel Heckard is defendant, as the same remains on file and of record in my office.

Given under my hand and seal of said court at Peoria this 20th day of March AD 1862. Enoch T. Sloan, Clerk

Assignment of Errors

~~The Court~~

Nathaniel Westland } Supreme Court
Jefferson } Grand Jurors
Edmund Dyer }
Sept 1870

The Said Plaintiff in Error assigns the following errors.

- 1 The Court below erred in rendering the decree rendered by said Court -
- 2 The Court erred in decreeing that plaintiff in Error should make the said specified in said decree
- 3 The Court erred in ~~rendering~~ a decree against the defendant below for costs -

There are other causes for Error in said Report -
namely ~~misdirection~~
for ~~Jefferson~~ Error

And now comes the said defendant by
W.C. Gandy & H.M. Mead his attorneys saying
that in the judgment & proceedings aforesaid
and in the record aforesaid no such error have
intervened as is alleged above & that he prays may
be enjoined of by the County W.C. Gandy
H.M. Mead
Attorneys

202 — 20
Nathaniel Richard
(2)
Edward Sayre

Transcript of Record
& Encls.

Filed Apr. 22. 1862
L. Ireland
Clerk.

Spec. for
Fidelity Co. —

Recd of Manning & McCulloch
thirteen (\$13) dollars for this Record
Wm. H. Moore, cl