

No. 14433

# Supreme Court of Illinois

Edwards

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vs.

Edwards

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142

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 187

Reported 31/11

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*Edward  
Edward*

1863

1863

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187-142

SUPREME COURT OF ILLINOIS—THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ABSTRACT,

AND

POINTS FOR APPELLANTS.

GLOVER, COOK & CAMPBELL, Attorneys!

JAMES O. EDWARDS, et al.,  
vs.  
GEORGE J. EDWARDS, et als.

} APPEAL FROM MERCER.

*Filed May 6, 1867.*  
*DeLant*  
*Ch.*

OTTAWA, ILL.:

PRINTED AT THE REPUBLICAN OFFICE.

1863.

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SUPREME COURT OF ILLINOIS--THIRD GRAND DIVISION.

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JAMES O. EDWARDS AND  
LEWIS W. THOMPSON,

vs.

GEORGE J. EDWARDS,  
ROBERT A. EDWARDS AND  
JAMES M. MANNON,

FOR THE USE OF GEORGE J. EDWARDS.

APPEAL

FROM MERCER.

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This was an action of debt, brought by Appellees, upon an Injunction Bond given by Appellants to them.

1 Declaration alleges in

1st Count, that plaintiff, George J. Edwards, at the September term of Rock Island Circuit Court for 1857, recovered a judgment in ejectment against the defendant, James O. Edwards, for the N.E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$  of section 9-13-2, in Mercer County, which remains in full force and effect; that a writ of possession issued to the sheriff, (Pltff., James M. Mannon,) Feb'y 20, 1860, and was placed in his hands same day; that while the writ was in his hands, on the 8th of March, 1860, the said James O. Edwards filed a Bill in Chancery, in the Circuit Court of Mer-

cer County, against the said plaintiffs, praying, among other things, an injunction, from proceeding to execute said writ, might be issued against them. That on the same day, the Master in Chancery of said County allowed said injunction, on condition of said James O. Edwards filing bond to plaintiffs in the sum of \$1500, with approved security, conditioned as the law directs. That on the same day, said defendants made and executed their writing obligatory, sealed, &c., and shown to Court, by which they acknowledged themselves held and bound to plaintiffs in the penal sum of \$1500, to be paid to the said plaintiffs if default should be made in the conditions following, that is to say, after reciting that the above-bounden James O. Edwards had prayed out an injunction, enjoining and restraining the said plaintiffs from dispossessing the said James O. Edwards from the possession of the aforesaid real estate, it was provided that in case the said James O. Edwards *should pay and satisfy all the costs and damages that might be adjudged against him, if said suit of injunction should not be sustained on its trial, or if it should prove to be improperly sued out*, then said bond to be void, otherwise in full force and effect. That defendants filed said bond in the office of Circuit Clerk of said County, as a good and sufficient injunction bond for the use and security of said plaintiffs.

That on the same day a writ of injunction issued out of said clerk's office, &c., directed to the coroner of said Mercer County, commanding the said plaintiffs that they absolutely and entirely desist from any further proceedings in the matters complained of in the bill, until they should appear and answer the complaint of said James O. Edwards, and the Court should make further order in the premises.

That, on the same day, said writ was placed in the hands of the coroner of said county, to execute; that the writ was, on the 10th of March, 1860, duly served on the plaintiff, James M. Mannon, he then being sheriff of said county, and on the 16th of April, 1860, returned not found as to the other two plaintiffs, and served as to the said plaintiff, Mannon, and the said writ of possession was thereby enjoined.

That afterwards, such proceedings were had upon said bill in

said Court, that said bill was dismissed, and was not sustained on its trial, and the said writ of injunction proved to be improperly sued out, and was dissolved, and said plaintiffs recovered a judgment against said James O. Edwards for \$2.25 costs.

And plaintiffs aver that, by the force and effect of said writ of injunction, said plaintiff, George J. Edwards, was kept out of the possession of the said premises, and deprived of its use and enjoyment of the same, and of the rents, issues and profits thereof from the 10th of March, 1860, to the 10th day of 5 September, 1860, being from the issuing of the injunction till the dissolution of the same, and that plaintiff, George J. Edwards, sustained damage thereby \$1500, and that defendant had not paid \$2.25 costs,—by means whereby an action had accrued, &c., for \$1500.

2d Count substantially the same as the first; but after alleging the judgment, writ, &c. in ejectment, and the filing of the bill in Chancery, and allowance of the writ, sets out the bond which was given as follows:

7 “Know all men by these presents, that we, James O. Edwards, Lewis W. Thompson, are held and firmly bound unto George J. Edwards, Robert A. Edwards, and James M. Mannon, in the penal sum of \$1500, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness our hands and seals, this 8th day of March, 1860.

The condition of the above obligation is such, that, whereas the above-bounden James O. Edwards has prayed out an injunction, enjoining and restraining George J. Edwards, Robert A. Edwards, and James M. Manning, from dispossessing the said James O. Edwards from the possession of the following described tracts of land, to wit: North-east quarter of section nine (9), and the east half of the north-west quarter of section nine (9); both tracts are in township thirteen (13), north of range two (2) west, in Mercer County, State of Illinois. Now if the said James O. Edwards shall pay and satisfy all the costs and damages that may be adjudged against him if said suit of injunction shall not be sustained on its trial, or if it shall prove to be improperly sued

out, then this obligation to be void, otherwise to remain in full virtue.

JAMES O. EDWARDS. [Seal.]  
LEWIS W. THOMPSON. [Seal.]

8 That the bond was filed, &c., and a writ of injunction issued, directed to the coroner to execute, &c., and commanding the said plaintiffs, among other things, that they absolutely and entirely desist from any further proceedings in the matters complained of in the bill, until they should appear and answer, &c., which said writ of injunction was, on the said 8th day of March, 1860, placed in the hands of Edward Atchison, he then and there being acting coroner of said Mercer county, which said last mentioned writ of injunction was by the said *David* Atchison afterwards, to wit: on the 10th day of March, 1860, duly served on said plaintiff, James M. Mannon, he being then acting sheriff of said Mercer County, and said writ was afterward returned, &c.; and the said writ of possession was thereby enjoined.

And the plaintiff avers that, afterwards, such proceedings were had that, upon the said bill in said Circuit Court, at the September term, 1860, the bill was dismissed, and was not sustained on its trial. And said writ proved to be improperly sued out, and was dissolved, and plaintiff recovered judgment for \$2.25 costs. That plaintiff, George J. Edwards, was kept out of possession, by reason of the writ, from March 10th, 1860, to Sept. 10th, 1860, and thereby sustaining damage \$1500; that James O. Edwards has not paid said costs. Whereby an action hath accrued, &c.

12 Demurrer to declaration.

13 Demurrer overruled.

Defendants abide by the demurrer and order by the Court "that plaintiff have judgment for the debt, and damages herein, and inasmuch as the same are unknown to the Court, that a jury be empanelled to assess the amounts."

18 Record, after title of cause, says—

“This day came the parties by their attorneys, and issue being joined for trial, put themselves upon the country, thereupon came a jury, to wit: (here follow the names,) who being duly empanelled and sworn to well and truly try the issues joined herein, after hearing the evidence, upon their oaths say—We, the jury, find for the plaintiffs, debt \$1500, and assess his damages at the sum of \$372.25.”

Motion for a new assessment, and in arrest of judgment.

19 Motions overruled, and judgment rendered upon the verdict as follows:

“It is ordered by the Court that plaintiffs have and recover of defendants the sum of \$1500, the debt so found by the jury; and that said debt be discharged upon the payment of the sum 20 of \$372.25, the damages so assessed by the jury as aforesaid, and that plaintiff also recover his costs herein, for which judgment and costs an execution may issue.

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#### BILL OF EXCEPTIONS.

The plaintiffs offered, and read in evidence, the bond, a copy of which is hereinbefore set out.

21 Defendant objected, Court overruled, and defendant excepted,

*Harrison Brown* testified:—I knew the parties and the land in controversy; the value of the use of the premises from March 10th, 1860, to September 1st, 1860, would be two dollars per acre for the cultivated land, and one dollar per acre for the grass. There was about 40 acres in grass.

*Cross Examined.* The use of the land from Sept. 1st, 1860, to March 10th, 1861, would be worth something; the house, stable, lots and grass pasture, about eight to ten dollars per month; and the stalks, 25 to 50 cents per acre; there were over 150 acres under cultivation. The land was occupied during the year 1860 by the defendant.

*William Chilson* testified:—I have known the parties and premises eight or nine years. Was in possession of 80 acres of it in 1860, under defendant, Edwards. One-fourth of the land is slough, the balance was under cultivation that year. The cultivated land not worth over a dollar and a half per acre for an entire year.

23 *Cross Examined.* I had 70 acres of corn on the land, defendant, Edwards, had 40 acres; none of it was gathered on the 1st of September, 1860.

*Question.*—"What would the use of the premises be worth to any one from the 10th of March to the 1st of September, 1860, if on the 1st of September, 1860, they had to be surrendered, with all the crops then standing and growing thereon?"

Plaintiff objected to witness answering, Court sustained objection, and defendant excepted.

Witness further stated, in answer to a question of the Court,— "that he gathered the crop from his part, as tenant of defendant, Edwards, and gave him the landlord's share, and the other tenants did the same thing. Plaintiffs didn't get possession of the lands that fall, nor any benefit from the crops.

24 Plaintiff then read in evidence the following record from fee book of the Circuit Clerk of Mercer County :

|                                            |   |             |
|--------------------------------------------|---|-------------|
| JAMES O. EDWARDS,                          | } | INJUNCTION. |
| vs.                                        |   |             |
| GEORGE J. EDWARDS,                         |   |             |
| ROBERT N. EDWARDS, and<br>JAMES M. MANNON. |   |             |

DEFENDANT'S COSTS.

Ap. 15. 2 ords. fig. Pleas, 40. Ord. fig. Demr., 20. Mo. to dis. Bill, 20. Ord. sust. same, 20. Ent. Judgt. 20. Final do. 25. Sat. do. 15. Ent. ord. for ex. 20. Bill costs, 30. 2.25.

Defendant objected to said record being read, the Court overruled, and defendant excepted.

Plaintiff then read in evidence the following order from the records of Circuit Court of said Mercer County:

|                                                                                                                                             |   |             |
|---------------------------------------------------------------------------------------------------------------------------------------------|---|-------------|
| <p>“JAMES O. EDWARDS,<br/> <i>vs.</i><br/>         GEORGE J. EDWARDS,<br/>         ROBERT A. EDWARDS, and<br/>         JAMES O. MANNON.</p> | } | INJUNCTION. |
|---------------------------------------------------------------------------------------------------------------------------------------------|---|-------------|

25 This day came the defendants herein by their attorney, and, on their motion, it is ordered by the Court that this suit be dismissed at the complainants. It is therefore ordered by the Court, that the defendants recover of complainant their costs by them about this suit expended, and may have execution therefor.”

This was all the evidence.

The defendant then entered his motion in said cause, that the Court exclude all of the evidence given in said cause, except said record from said fee book, said order dismissing said bill and said bond.

The Court overruled the motion, and said defendant excepted:

The following instruction was then given to the jury on the part of said plaintiffs:

The Court instructs the jury, on the part of plaintiffs, that if they find for the plaintiff, they will find the amount of their debt, to wit: the penalty in the bond, and also assess the damages at such sum as they believe, from the evidence, the plaintiffs to have sustained by reason of being deprived of the possession of the premises mentioned, from the 10th of March, 1860, to the 1st of September, 1860.

Defendant excepted to the giving of the same.

Defendant asked the Court to give the following instructions to the jury:

No. 1.—The Court will instruct the jury that the plaintiff is not entitled to recover, in this case, anything more than his costs

adjudged him on the dismissal of the injunction case of James O. Edwards vs. George J. Edwards et al.

No. 2.—The jury are instructed that they are not to regard any evidence of the value of the use of the premises, except such evidence as relates to the actual value of their use, from the 10th March, 1860, to the 1st September, 1860.

The Court refused to give said instructions, or either of them, and defendant excepted.

The Court then, of its own motion, instructed the jury as follows:—

The jury are instructed that they are not to regard any evidence of the value of the premises, except such evidence as will help them to fix the actual value of their use from the 10th March, 1860, to the 1st September, 1860.

To the giving of said instruction by the Court, defendant excepted.

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#### ERRORS ASSIGNED.

1st. The Court erred in overruling the said defendant's demurrer to the said plaintiffs declaration, and each of the counts thereof severally.

2d. The Court erred in swearing the jury to "try the issues in the case," instead of swearing them to find the debt and assess the damages.

3d. The Court erred in admitting improper evidence on the part of said plaintiff.

4th. The Court erred in refusing to admit proper evidence offered by the defendants.

5th. The Court erred giving to the jury the instruction on the behalf of the plaintiff.

6th. The Court erred in refusing to give to the jury the said 1st and 2d instructions asked by defendant, and each of them

7th. The Court erred in giving to said jury the said instruction given upon its own motion.

8th. The Court erred in refusing to allow said defendant's motion for a new assessment, and in arrest of judgment, and each of them.

9th. The Court erred in rendering judgment upon said verdict.

10th. The Court erred in rendering the judgment aforesaid, in manner and form aforesaid.

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## POINTS FOR APPELLANT.

### I.

The demurrer to said declaration was well taken.

Each of the counts are substantially the same, and only differ in the 2d setting out in full the bond sued on, and the 1st stating its substance.

Damages are claimed under the penalty in the bond, for the following reasons:—

1st.—That, in the injunction case, the bill was dismissed, a judgment for \$2.55 costs rendered against the said complainant in the bill, who is one of defendants in this case, in Court below. This suit is brought by all the obligees in the bond, for the use of the obligee, George J. Edwards. Now this plaintiff, George J. Edwards, was not served in the Chancery case as the declaration alleges, and therefore would not be bound for the costs in any event, although the obligor in bond, James O. Edwards, has not paid them; and therefore there can be no presumption that plaintiff, George J. Edwards, *has* paid them, and there is no averment in either of the counts that he, or either of the plaintiffs, have paid them; and, therefore, under the allegations of the counts, no damage can have resulted to him by reason of the non-payment of the costs.

2d.—The counts, as a further ground of damage, allege that the plaintiff, George J. Edwards, has, by means of the writ of

injunction, been kept from the possession of the premises in controversy, from March 10th, '60, to Sept. 1st, 1860, and that he was damaged thereby in the sum of \$1500.

Now, although the facts alleged may have been true that plaintiff, Edwards, was so damaged by the issuing of the injunction, yet he cannot recover the damage in this suit upon the bond, because the bond is not conditioned to pay any such damage.

By reference to the bond, record page 7, it will be seen that it was conditioned as follows:

"Now if the said James O. Edwards shall pay and satisfy all the costs and damages that may be adjudged against him if said suit of injunction shall not be sustained on its trial, or if it shall prove to be improperly sued out, then this obligation to be void, &c."

Now this suit being against James O. Edwards, the principal, and Lewis W. Thompson, the surety, the recovery must be strictly within the terms and conditions of the bond; and the condition of the bond is, by its terms, restricted to costs and damages *adjudged* against James O. Edwards. 9 Ohio 17-73

The surety was not liable to pay, then, until they are fixed by judgment. His agreement is to pay such damages as should be *adjudged*; until they are adjudged, no liability accrues.

Hence the rule of damages fixed by the Court, and the instructions given, were erroneous.

*Edwards v. Pope*, 3d Scam., 465.

*Insurance Co. v. Roberts*, 4 Sandf. Chy., 592.

*Lockwood v. Saffold*, 1 Kelly, 72.

*Ausley v. Mock*, 8 Ala., 444.

*Roberts et al. v. Dust*, 4 Ohio, 502.

*Blakeny v. Ferguson*, 18 Arkansas, 347.

*See also Laws of 1861*, page 173, as declaratory of the same.

*Tarply vs Shellenbarger* 10 Cal 390

*Anderson vs Falever* 34 Miss. 599

*Heall vs Wdlymson* 9 Ohio (95) 17

*Mitchell vs Gibson* 14 Ark. 229

The Chancellor has full authority to assess the damages on the dissolution of the injunction

*Edwards vs Pope* 3 Scam. 465

*Insurance Co. vs Roberts* 4 Sandf. Chy. 592

*Cook vs Barry* 13 Texas 431

*Mueller vs James* 31 Eng. Let & Eng. 280

## II.

After the judgment had been rendered on the demurrer, and a jury ordered to find the amount of the debt and damages, the jury were sworn "to try the issues joined herein," and nothing more. They proceeded to find the debt and damages, and we say the Court had no right to swear them "to try the issues," for the issues had already been tried by the Court, and found for plaintiff, and there were no issues to try.

*Miles v. Rose, 1 Hemp., 37.*

And the jury having been sworn to "try the issues," had no right or authority whatever to find the debt and damages.

There is no doubt but that if there had been issues joined to the country, and a jury sworn to try them, they would have been authorized to find the debt and damages, as they would thus be a part of the issue. But when the only issues in the case are already disposed of, they could not be included in what did not exist.

## III.

All of the evidence with regard to the value of the premises, introduced by the plaintiff, was irrelevant, and should have been excluded, if the law is as we have hereinbefore insisted, that the damages for being kept out of possession was not included in the condition of the bond.

*See authorities above cited.*

The record read from the fee book was irrelevant, and should not have been read to the jury, as it did not tend to prove that any sum had been taxed as costs in the injunction case, as there was no mark whatever to show whether the figures indicated dollars, cents, mills, pounds, shillings, or pence, or any other money whatever.

We presume the ruling of this Court in the Tax cases, herein below cited, are sufficient authority on that point.

*Lawrence v. Fast*, 20 Ill., 338.

#### IV.

The Court should have allowed the witness, Chilson, to have answered the defendant's question—"What would the use of the premises be worth to any one, from the 10th of March, 1860, to the 1st September, 1860, if they had to be surrendered, with all the crops then standing and growing thereon?" Although it may have been true that the defendant remained in possession long after the 1st of September, and after that time gathered the crops, yet, if he did so, he must have done it by the consent of the plaintiff, for the bill restraining the execution of the writ of possession was dismissed on that day, and the plaintiff could have had the writ executed the next day, and been put into the possession of the premises, with the crops on them, on the next day; if he did not choose to exercise this right, and either by laches, or by a specific agreement, permitted the defendant, after the dissolution of the injunction, to retain the possession and gather the crops, he could not recover for the damage thus sustained, in this action.

There can be no doubt but that if he had exercised his legal rights, and been placed in possession of the premises, and crops thereon, the day after the dismissal of the bill, he would have been more than compensated for any damages previously sustained.

*The recovery is limited to the damages that may be sustained from the issuing of the injunction to the dissolution thereof*

*Wallis vs Lilly 7<sup>th</sup> Md. 237*

## V.

The instruction given by the Court on the part of the plaintiff is not the law.

They ought not to have been instructed to find any debt or damage whatever, until they had been sworn to do so, as suggested in the second point.

They ought not to have been instructed to assess his damages at such sum as they believed, from the evidence, he had sustained by reason of being deprived of the possession of the premises, &c., for this damage was not covered by the condition of the bond.

*Lockwood v. Safford*, 1 Kelly, 72.

*Ausley v. Mock*, 8 Ala., 444.

*Roberts v. Dust*, 4 Ohio, 502.

*Blakeley v. Ferguson*, 18 Arkansas, 347.

*Anderson vs Falconer* 34 Miss. 267  
*Jaspey vs Schallenburger* 10 Cal. 590

## VI.

The 1st instruction of defendant was the law, and should have been given, as it covered exactly the ground which the condition of the bond does, and excluded everything else.

*See authorities above cited.*

## VII.

The 2d instruction asked for the defendant is the law, and should have been given, for the same reasons as are urged above in favor of allowing the witness, Chilson, to answer the question as to what would be the value of the premises from 10th March, 1860, to 1st September, 1860, if they had then to be surrendered with the crops.

## VIII.

The Court should have allowed a new assessment of damages on defendant's motion.

1st.—Because the jury were improperly empanelled and sworn as is suggested above.

2d.—Because improper evidence was admitted, as suggested above.

3d.—Because proper evidence was excluded, as is suggested above.

4th.—Because the jury were improperly instructed, as suggested above.

## IX.

The motion in arrest should have been sustained.

Because no judgment could be rendered upon the verdict, it having been rendered by a jury who were not sworn to find the debt and assess the damages.

GLOVER, COOK & CAMPBELL,  
*For Appellants.*

Supreme Court of Illinois  
April Term A.D. 1863

James O Edwards vs  
vs  
George F Edwards vs } Appeal from Mercer

Brief for defendant in Error  
By H M Mead

This is an action brought to recover upon a Bond executed by the defendants below for the purpose of obtaining an Injunction to arrest the service & execution of a Writ of habere facias possessionem.

The Bond is in the usual form & contains this condition "that in case the said James O Edwards should pay & satisfy all the costs & damages that might be adjudged against him, if said writ of Injunction should not be sustained on its trial, or if it should prove to be improperly sued out."

The declaration alleges that the Injunction was not sustained but was dismissed by the Court & judgment rendered in favor of the defendants in that suit, <sup>for costs</sup> <sup>costs</sup> which <sup>had not</sup> been paid. And that by reason of the wrongful suing out of the Injunction, the defendant lost the use of the premises.

ing 240 acres of land for one season  
& the jury assessed those damages under the  
direction of the Court at \$372.25.

The case was tried twice in the court below  
and after the damages had been assessed on  
the first trial, the ~~verdict~~ and a motion for a  
new trial overruled, the verdict was set  
aside by agreement, & a new assessment  
had, which resulted in finding a new  
verdict for about the same amount.

It is now contended by the Counsel  
for P. P. in error that under the Bond, the  
condition of which is "to pay & satisfy all  
" cost & damages that may be adjudged against  
" him" &c, ~~that~~ no recovery can be had be-  
cause the damages were not assessed in  
the Injunction case. The condition in the  
Bond does not require that the damages  
should be assessed in that particular case.

By the Bond the obligors undertake to  
satisfy all damages that may be assessed  
in any case, or any court, by reason of the  
wrongful suing out of the Injunction.  
The object & purpose of the Bond is to  
afford security to the party aggrieved  
that all damages occasioned by the wrongful  
suing out of the Bond shall be paid.

In the case of Phelps & al vs Foster & al 18th  
Illinois, 309. this court held as follows "I can  
" find no warrant in the statute for awarding  
" damages upon the dismissal of an Injunction  
" Bill "

In the case of Gorton vs Brown  
27th Illinois Rep 495 the court say "We  
" hold the remedy on the bond given on obtaining  
" the Injunction is all the remedy to which the in-  
" jured party can resort. It is designed by the  
" party statute to cover all the damages, the party  
can possibly sustain, and it is in the power  
of the judge or officer granting the writ to  
to require a bond sufficient to cover all  
conceivable damages .

This would seem to be decisive  
of the question and establishes the proposition  
that the plaintiff below pursued the only  
possible remedy to recover his damages

As this is the only point deemed of sufficient  
importance to require an answer, the under-  
signed on the part of the defendant in error  
most respectfully submits the case

J. W. Meade

Atty for Deft

187-142 46  
James O Edwards & Co

v2

George J Edwards & Co

Brief for Deft in Error

Filed May 9, 1863

J. L. Leland MR

Supreme Court of Illinois  
April Term A.D., 1863

James O Edwards & al }  
vs } Appeal from Mercer  
George F Edwards & al }

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afford security to the party aggrieved  
that all damages occasioned by the wrongful  
suing out of the Bond shall be paid.

~~Edwards~~

Mr. Chief Justice Caton delivered the opinion of the Court:

~~Edwards~~

~~Caton C. J.~~ We have decided the main question here presented in Brown v. Easton, <sup>anti, #4165</sup> ~~at this term~~ and shall spend no more time with it now. There are some questions presented me presume as make weights upon the assessment of damages. One is that the jury was sworn to try issues instead of to assess the damages. As the defendants were present <sup>and</sup> ~~present~~ and contested the assessment of damages, <sup>and</sup> ~~took~~ a bill of exceptions, they should have objected to the form of the oath so that the proper oath could have been administered.

The principal question, however, on the assessment of damages, is as to the rise of the land. The injunction was issued early in the spring <sup>and</sup> ~~was~~ dissolved in September, and during that time restrained the party from taking possession of a farm. The defendants insisted that the measure of damages was the <sup>value of the</sup> use of the land up to the time when the injunction was dissolved. We think the Court properly allowed the evidence to take a wider range and show that by being kept out of the land till the first of <sup>September</sup> ~~Sept~~ occasioned the loss of the crops for the season. The question is not what the land was worth to the con-

# Will Mr. Whitmarsh please put in the page.

plaintiff in the injunction suit, but  
what was the damage to the defendant  
for being kept out of possession during  
that period. We see nothing wrong  
in the rule laid down by the court.  
Some other minor questions are raised  
which we do not think necessary to  
examine in detail.

The judgment is affirmed.

Judgment affirmed.

Edwards  
in

Edwards

Opinion

Location

OK

Recorder Book 13

p/2 741

Company

State of Illinois }  
Mercer County }

Tuesday April 16<sup>th</sup> 1861

Pleas before the Honorable Aaron Tyler Judge of the Tenth Judicial Circuit of the State of Illinois at a Court began and held at the Court House in the Town of Aledo in said County on the Tuesday after the third Monday in the month of April in the year of our Lord one thousand eight hundred and sixty one. It being the sixteenth day of said month in said year.

Present, Honorable Aaron Tyler Judge &c.  
James H Stewart State Atty  
Sheriff Sanders & H Rogers  
James W Mannon Clerk

Be it known that heretofore, to wit, on the 15<sup>th</sup> day of February 1861 came B. C. Galiaferro + W B Spaulding Attorneys at this bar and filed a Declaration, Precipe + Bond for costs in said Court in case of Geo. J Edwards et al. vs James O Edwards et al. which said Declaration Precipe + bond for costs are in the words and figures, following, to wit:

State of Illinois } In the Mercer County Circuit Court Ill.  
Mercer County } April Term A.D. 1861.

George J Edwards, Robert A Edwards and James W Mannon who sue for the use of George J Edwards plaintiffs in this suit complain of James O Edwards and Lewis W Thompson defendants in this suit in an action of debt. For that whereas the said George J Edwards heretofore to wit at the September terms of the Circuit Court of the County of Rock Island in said State of Illinois A.D. 1857 recovered a judgment against the said defendant James O Edwards in said Court in a certain action of Ejectment then pending therein wherein the said George was plaintiff and the said James defendant for the recovery of the following

described real estate to wit. The North East quarter of Section nine and  
the East half of the North West quarter of said section nine in Township  
Thirteen North of the base line in Range two West of the fourth Principal  
Meridian situated in the County of Mercer and State of Illinois, which said  
judgment remains in full force and effect never having been in any manner  
reversed, annulled, cancelled or in any manner satisfied and discharged,  
And the said judgment so being in full force as aforesaid the said plaintiff  
George J Edwards afterwards to wit on the 21<sup>st</sup> day of February AD 1860 sued  
out of the Clerk's Office of the said Circuit Court of said Rock Island County,  
a writ of possession directed to the Sheriff of said Mercer County to execute,  
commanding him among other things that without delay he deliver to  
the said George J Edwards the possession of the aforesaid real estate so  
recovered by him of the said James O. Edwards as aforesaid, and after  
wards to wit on the day and year last aforesaid said plaintiff, George  
J Edwards placed the same in the hands of the said Sheriff of said  
Mercer County, and the said James O. Edwards afterwards to wit on the 8<sup>th</sup> day  
of March AD 1860, and whilst the said writ was in the hands of the said  
Sheriff of said Mercer County to wit at the County of Mercer aforesaid, filed  
his bill in Chancery in the Circuit Court of said last mentioned County  
on the Chancery side thereof against the said plaintiffs praying among  
other things, that a writ of injunction might be issued out of and under  
the seal of the Honorable Court of said Mercer County, and that said  
proceedings, (meaning said proceedings on said judgment in Ejectment)  
might be stayed and that said judgment in Ejectment might be enjoined  
and that said plaintiffs and each of them might be enjoined from any  
further proceedings in the premises (meaning on said judgment in Ejectment  
and that said plaintiff James M. Mannon then Sheriff of said Mercer County  
might be enjoined from the execution of said writ (meaning said writ of pos-  
session), and that said Injunction might be perpetual, and thereupon

afterwards to wit on the 8<sup>th</sup> day of March AD 1860, to wit at the County of Mercer  
aforesaid before the Master in Chancery of said last mentioned County an  
injunction as prayed for in said bill was allowed by said Master in Chan-  
cery of said last mentioned County to be continued till the further order of said  
Circuit Court of said Mercer County on condition of the said James O. Edwards  
filing bond to the said plaintiffs in the sum of Fifteen hundred dollars with  
approved security conditioned as the law directs, And thereupon afterwards  
to wit on the day and year last aforesaid to wit at the County of Mercer  
aforesaid the said defendants made and executed their certain writing  
obligatory of that date sealed with their seals and now in the Court there  
shown, whereby the said defendants acknowledged themselves to be held and  
firmly bound unto the said plaintiffs in the penal sum of fifteen hundred  
dollars, to be paid to the said plaintiffs if default should be made in the  
conditions following, that is to say, after reciting that the above bounden James  
O. Edwards had prayed out an injunction enjoining and restraining the  
said plaintiffs from dispossessing the said James O. Edwards from the  
possession of the aforesaid real estate it was provided that in case the  
said defendant James O. Edwards should pay and satisfy all the costs and  
damages that might be adjudged against him if said writ of injunction  
should not be sustained on its trial or if it; (meaning said writ of injunction,  
should prove to be improperly sued out then the said writing obligatory was  
to be void otherwise the same was to remain in full force and effect.  
And the said defendants then and there filed said bond in the Office of  
the Clerk of said Circuit Court of said Mercer County as a good and  
sufficient injunction bond for the use and security of said plaintiffs.  
And thereupon afterwards to wit on the day and year last aforesaid at the  
County of Mercer aforesaid a writ of injunction of that date was issued out of  
the Office of the Clerk of said Circuit Court of said Mercer County under the  
hand of the Clerk of said Circuit Court last mentioned and of the seal of

4  
said Circuit Court last mentioned directed to the Coroner of said Mercer County to execute and commanding the said plaintiffs among other things that they absolutely and entirely desist from any further proceedings in the matters complained of in the said bill for injunction until they should appear and answer the complaint of the said James O. Edwards and the court should make further order in the premises, and afterwards to wit on the day and year last aforesaid at the County of Mercer aforesaid the said writ of injunction was placed in the hands of Edward Atchison he then being acting coroner of said Mercer County, to execute which said writ of injunction was by the said Edward Atchison afterwards to wit on the 10<sup>th</sup> day of March A.D. 1860, duly served on the said plaintiff James M. Mannon he then being Sheriff of said Mercer County and afterwards to wit on the 16<sup>th</sup> day of April A.D. 1860 returned into the Office of the Clerk of said last mentioned Court not found as to the said plaintiffs George J. + Robert W. Edwards + served as to the said Plaintiff Mannon, and the said writ of possession was thereby enjoined. And the plaintiffs aver that afterwards such proceedings were had in and upon said bill for injunction in said Circuit Court of said County of Mercer that by the consideration of said Court at the September thereof A.D. 1860 the said bill for injunction was dismissed and was not sustained on its trial and the said writ of injunction proved to be improperly sued out and was dissolved and said plaintiffs recovered a judgment against the said James O. Edwards for their costs in that behalf expended amounting to a large sum to wit the sum of two dollars and twenty five cents all of which will more fully and at large appear reference being had to the records and files of the said Circuit Court of said Mercer County. And the plaintiffs further aver that by the force and effect of the said writ of injunction the said plaintiff George J. Edwards was kept out of the possession of the above described tracts of land and deprived of the use and enjoyment of the same

and of the rents issues and profits thereof for a long space of time to wit, from the time of the service of the said writ of injunction on the said plaintiff James M. Mannon to wit, on the tenth day of March A.D. 1860 till the dissolution of the same, and the dismissal of said bill for injunction to wit on the 16<sup>th</sup> day of September A.D. 1860, to wit at the County of Mercer aforesaid whereby the said plaintiff George J. Edwards sustained damage to a large amount to wit, the sum of Fifteen hundred dollars, and the said defendant James O. Edwards though after requested has not paid the same or any part thereof nor has he paid the said judgment for two dollars and twenty five cents or any part thereof. By means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said sum of Fifteen hundred dollars in said bond mentioned. Yet the said defendant although often requested have not nor has either of them paid the same or any part thereof, but so to do have hitherto wholly neglected and refused and still do neglect and refuse.

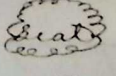
And whereas also the said plaintiff George J. Edwards heretofore to wit at the September Term of the Circuit Court of the County of Rock Island in the State of Illinois A.D. 1857 recovered a judgment against the said defendant James O. Edwards in said Circuit Court in a certain other action of Ejectment then pending in said Court wherein the said George was plaintiff and the said James was defendant for the recovery of the following described tracts of land, to wit, The North East quarter of Section nine and the East half of the North West quarter of said section nine in Township thirteen North in Range two west of the fourth principal meridian situated in the County of Mercer in said State of Illinois, which said judgment is in full force and effect never having been reversed, annulled, set aside, cancelled or in any manner satisfied or discharged, and the said judgment so being in full force as aforesaid the said plaintiff George J. Edwards afterwards to wit, on the 20<sup>th</sup> day of February A.D. 1860 sued out

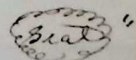
of the Clerk's Office of the said Circuit Court of said Rock Island County  
a certain writ commonly called a writ of possession directed to the Sheriff  
of said County of Mercer in said State of Illinois to execute commanding  
him among other things that without delay he deliver to the said plaintiff  
George J. Edwards possession of the premises so recovered with the appurten-  
ances. And afterwards to wit on the day + year last aforesaid the said  
plaintiff George J. Edwards placed the said writ of possession in the  
hands of the Sheriff of said Mercer County and the said James C. Edwards  
afterwards to wit on the 8<sup>th</sup> day of March A.D. 1860 and whilst the said writ  
of possession was in the hands of the said Sheriff of said Mercer County  
and in full force, to wit at the County of Mercer aforesaid filed his bill in  
Chancery in the Circuit Court of said Mercer County on the Chancery side  
thereof against the said plaintiffs praying among other things that a writ  
of injunction might be issued out of and under the seal of the said Honorable  
Court of said Mercer County. And that said proceedings (meaning said pro-  
ceedings on said judgment in Ejectment) might be stayed and that said  
judgment in Ejectment might be enjoined and that said plaintiffs and  
each of them might be enjoined from any further proceedings in the premises,  
(meaning on said judgment in Ejectment) and that the said plaintiff James  
M. Marnon then acting Sheriff of said Mercer County might be enjoined  
from the execution of said writ (meaning said writ of possession) and that  
said injunction might be perpetual. And thereupon afterwards to wit on the  
8<sup>th</sup> day of March A.D. 1860 to wit, at the County of Mercer aforesaid before the  
Master in Chancery of said last mentioned County an injunction as prayed  
for in said bill was allowed by said Master in Chancery for said County  
of Mercer to be continued till the further order of the said Circuit Court of  
said Mercer County on condition of the said James C. Edwards filing  
bond to the said plaintiffs in the sum of Fifty hundred dollars with ap-  
proved security conditioned as the law directs. And thereupon afterward

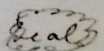
to wit on the day and year last aforesaid to wit; at the County of Mercer  
aforesaid the said defendants made and executed their certain other writing oblig-  
atory of that date sealed with their seals and now to the Court here shown  
and which said writing obligatory is in the words and figures following to wit:

"Know all men by these presents that we James O. Edwards, Lewis W. Thompson  
are held and firmly bound unto George J. Edwards, Robert A. Edwards and  
James M. Mannon in the penal sum of fifteen hundred dollars for the pay-  
ment of which well and truly to be made we bind ourselves our heirs, executors  
and administrators jointly severally and firmly by these presents, witness  
our hands and seals this 8<sup>th</sup> day of March A.D. 1860.

"The condition of the above obligation is such that whereas the above bounden  
James O. Edwards has prayed out an injunction enjoining and restraining  
George J. Edwards, Robert A. Edwards and James M. Mannon from dis-  
possessing the said James O. Edwards from the possession of the following  
described tracts of land to wit North East quarter of section nine (9) and the  
East half of the North West quarter of section nine (9), both tracts are in  
Township thirteen (13) North of Range two (2) West in Mercer County State  
of Illinois. Now if the said James O. Edwards shall pay + satisfy all the  
costs and damages that may be adjudged against him if said suit  
of Injunction shall not be sustained on its trial or if it shall prove to be  
improperly sued out then this obligation to be void, otherwise to remain  
in full force + virtue

James O. Edwards 

Lewis W. Thompson 

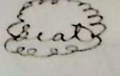


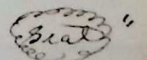
And the said defendants then and there filed said last mentioned bond in  
the office of the clerk of said last mentioned Circuit Court as a good and sufficient  
injunction bond for the use and security of the said plaintiffs. And thereupon  
afterwards to wit on the day and year last aforesaid at the County of Mercer  
aforesaid a certain other writ of injunction of that date was issued out of the

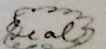
to wit on the day and year last aforesaid to wit; at the County of Mercer  
aforesaid the said defendants made and executed their certain other writing oblig-  
atory of that date sealed with their seals and now to the Court here shown  
and which said writing obligatory is in the words and figures following to wit:

"Know all men by these presents that we James O. Edwards, Lewis W. Thompson  
are held and firmly bound unto George J. Edwards, Robert A. Edwards and  
James M. Mannon in the penal sum of fifteen hundred dollars for the pay-  
ment of which well and truly to be made we bind ourselves our heirs, executors  
and administrators jointly severally and firmly by these presents, witness  
our hands and seals this 8<sup>th</sup> day of March A.D. 1860.

"The condition of the above obligation is such that whereas the above bounden  
James O. Edwards has prayed out an injunction enjoining and restraining  
George J. Edwards, Robert A. Edwards and James M. Mannon from dis-  
possessing the said James O. Edwards from the possession of the following  
described tracts of land to wit North East quarter of section nine (9) and the  
East half of the North West quarter of section nine (9), both tracts are in  
Township thirteen (13) North of Range two (2) West in Mercer County State  
of Illinois. Now if the said James O. Edwards shall pay + satisfy all the  
costs and damages that may be adjudged against him if said suit  
of Injunction shall not be sustained on its trial or if it shall prove to be  
improperly sued out then this obligation to be void, otherwise to remain  
in full force + virtue

James O. Edwards 

Lewis W. Thompson 



And the said defendants then and there filed said last mentioned bond in  
the office of the clerk of said last mentioned Circuit Court as a good and sufficient  
injunction bond for the use and security of the said plaintiffs. And thereupon  
afterwards to wit on the day and year last aforesaid at the County of Mercer  
aforesaid a certain other writ of injunction of that date was issued out of the

8  
office of the clerk of the said Circuit Court of said Mercer County under the seal thereof and under the hand of the clerk of said last mentioned Circuit Court directed to the coroner of said Mercer County to execute, and commanding the said plaintiffs among other things that they absolutely and entirely desist from any further proceedings in the matters complained of in the said last mentioned bill for injunction until they should appear and answer the said last mentioned complaint of the said James O. Edwards. And the Court should make further order in the premises, and afterwards to wit on the day and year last aforesaid at the County of Mercer aforesaid the said last mentioned writ of injunction was placed in the hands of Edward Atchison the then then being acting coroner of said Mercer County, which said last mentioned writ of injunction was by the said David Atchison afterwards to wit on the 10<sup>th</sup> day of March A.D. 1860 duly served on the said plaintiff James M. Mannon he then being acting Sheriff of said Mercer County. And afterwards to wit on the 16<sup>th</sup> day April A.D. 1860 duly returned into the office of the clerk of said Circuit Court of said Mercer County not found as to the said plaintiffs George J. Edwards and Robert A. Edwards + served as to the said Mannon. And the said writ of possession was thereby enjoined. And the plaintiffs aver that afterwards such proceedings were had in and upon said last mentioned bill for injunction in said Circuit Court of said County of Mercer that by the consideration of said Court at the September term thereof A.D. 1860 the said last mentioned bill for injunction was dismissed and was not sustained on its trial. And the said last mentioned writ of injunction proved to be improperly sued out and was dissolved and the said plaintiffs recovered a certain other judgment for their costs in that behalf laid out and expended amounting to a large sum to wit, the sum of two dollars and twenty five cents, all of which will more fully and at large appear reference being had to the records and files of the said Circuit Court of said

8  
office of the clerk of the said Circuit Court of said Mercer County under the seal thereof and under the hand of the clerk of said last mentioned Circuit Court directed to the coroner of said Mercer County to execute, and commanding the said plaintiffs among other things that they absolutely and entirely desist from any further proceedings in the matters complained of in the said last mentioned bill for injunction until they should appear and answer the said last mentioned complaint of the said James O. Edwards. And the Court should make further order in the premises, and afterwards to wit on the day and year last aforesaid at the County of Mercer aforesaid the said last mentioned writ of injunction was placed in the hands of Edward Atchison the then then being acting coroner of said Mercer County, which said last mentioned writ of injunction was by the said David Atchison afterwards to wit on the 10<sup>th</sup> day of March A.D. 1860 duly served on the said plaintiff James M. Mannon he then being acting Sheriff of said Mercer County. And afterwards to wit on the 16<sup>th</sup> day April A.D. 1860 duly returned into the office of the clerk of said Circuit Court of said Mercer County not found as to the said plaintiffs George J. Edwards and Robert A. Edwards + served as to the said Mannon. And the said writ of possession was thereby enjoined. And the plaintiffs aver that afterwards such proceedings were had in and upon said last mentioned bill for injunction in said Circuit Court of said County of Mercer that by the consideration of said Court at the September term thereof A.D. 1860 the said last mentioned bill for injunction was dismissed and was not sustained on its trial. And the said last mentioned writ of injunction proved to be improperly sued out and was dissolved and the said plaintiffs recovered a certain other judgment for their costs in that behalf laid out and expended amounting to a large sum to wit, the sum of two dollars and twenty five cents, all of which will more fully and at large appear reference being had to the records and files of the said Circuit Court of said

Mercer County. And the plaintiffs further aver that by the force and effect of the said last mentioned writ of injunction the said plaintiff George J Edwards was kept out of the possession of the above described tracts of land and deprived of the use and enjoyment of the same and of the rents issues and profits thereof for a long space of time to wit, from the time of service of the said last mentioned writ of injunction on the said plaintiff James W Mason, to wit on the tenth day of March AD 1860 till the dissolution of the same and the dismissal of said last mentioned bill for injunction to wit on the 10<sup>th</sup> day of September AD 1860. to wit at the County of Mercer aforesaid, whereby the said plaintiff, George J Edwards sustained damage to a large amount to wit the sum of Fifteen hundred dollars and the said defendant James O. Edwards although often requested has not paid the said last mentioned damages nor any part thereof nor has he paid the said last mentioned judgment for two dollars and twenty five cents nor any part thereof. By means whereof an action hath accrued to the said plaintiffs to demand and chase of and from the said defendants the said sum of fifteen hundred dollars in said last mentioned bond specified. Yet the said defendants although often requested have not nor have either of them paid the same or any part thereof but so to do have hitherto wholly neglected and refused and still do neglect and refuse. By means of the said several premises in this declaration mentioned the plaintiffs have sustained damage to the amount of Fifteen hundred dollars therefore they bring suit &c.

Taliaferro & Paulding  
Atty for plffs.


Copy of writing obligatory sued on


9

Know all Men by these presents that we James O. Edwards Lewis W Thompson are held and firmly bound unto George J Edwards, Robert A Edwards and James W. Mason in the penal sum of fifteen hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs, executors

10

+ administrators jointly severally & firmly by these presents. Witness our hands and seals this 8<sup>th</sup> day of March A.D. 1860. The condition of the above obligation is such that whereas the above bounden James O. Edwards has prayed out an injunction enjoining and restraining George J. Edwards, Robert A. Edwards and James M. Mannon from dispossessing the said James O. Edwards from the possession of the following described tracts of land to wit, North East quarter of Section nine (9) and the East half of the North West quarter of Section nine (9) both tracts are in Township in Thirteen (13) North of Range two (2) West in Mercer County State of Illinois. Now if the said James O. Edwards shall pay and satisfy all the costs and damages that may be adjudged against him if said suit of injunction shall not be sustained on its trial or if it shall prove to be improperly sued out then this obligation to be void otherwise to remain in full & virtue

James O. Edwards 

Lewis W. Thompson 

Approved by me this 8<sup>th</sup> March 1860. D. S. Dexter Clk

George J. Edwards, Robert A. Edwards and James M. Mannon who sue for the use of George J. Edwards  
vs  
James O. Edwards & Lewis W. Thompson

In the Circuit Court of the County of Mercer April Term A.D. 1861


Debt \$3000.

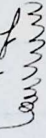
Damages \$1500.

The Clerk will please issue proper summons in above case returnable according to law & oblig etc  
Taliaferro & Spaulding  
Attys for plffs

We hereby enter ourselves security for the costs in the above entitled cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this cause either to the opposite party or to any of the officers of this court in pursuance of the laws of the State of Illinois.

Aledo Jay 27<sup>th</sup> 1860

Taliaferro & Spaulding 

Approved by me this 15<sup>th</sup> day of  
Feb'y 1861. J. M. Mannum clerk 

Upon the filing of which Declaration, Precept and Bond for costs, summons issued herein in the words and figures following to wit:

State of Illinois } ss

Merced County } The people of the State of Illinois,

To the Sheriff of Merced County, Greeting:

We command you to summon James O. Edwards and Lewis W. Thompson if to be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be held at the Court House in Aledo, on the third Monday of April next, then and there to answer unto George J. Edwards, Robert A. Edwards and James M. Mannum who sue for the use of George J. Edwards of a plea of Debt, to this Debt in the sum of Three Thousand Dollars (\$3000) and to this damages in the sum of Fifteen hundred (1500) Dollars, as they say; and have you then there and this writ, and make return thereon in what manner you execute the same.

Witness, James M. Mannum clerk of our Circuit Court, and the seal thereof, at Aledo, this 15<sup>th</sup> day of February in the year of our Lord one thousand eight hundred and sixty one.

J. M. Mannum clerk

By N. P. Brown Depty



On the back of which summons is the following.

I have served the within summons by reading the same to the within named James O. Edwards & Lewis W. Thompson this 3<sup>rd</sup> day of April A.D. 1861.  
Filed 11<sup>th</sup> Apr 1861 J. M. Mannum clerk S. H. Rogers Sheriff

12

And afterwards, to wit on the 19<sup>th</sup> day of April 1861, being one of the days of the April Term of said Court the following proceedings were had, to wit:

141

|                         |   |      |
|-------------------------|---|------|
| George J. Edwards et al | } |      |
| vs.                     | } | Debt |
| James O. Edwards et al  | } |      |

The defendants in this case by their Attorney came and filed their demurrer to Plaintiff's Declaration.

Which demurrer is in the words and figures following to wit:

|                   |   |                      |
|-------------------|---|----------------------|
| State of Illinois | } | Mercer Circuit Court |
| Mercer County     | } | April Term AD 1861   |


|                                                       |   |         |
|-------------------------------------------------------|---|---------|
| George J. Edwards Robert A. Edwards + James M. Maunon | } |         |
| vs.                                                   | } | In Debt |
| James O. Edwards + Lemuel W. Thompson                 | } |         |

And the said defendants by Thompson & by their Attorneys comes and defends the wrong and injury when & cravesoyer of the Bond sued on in this case and it is read to him in the words and figures following, to wit: Know all men by these presents that we James O. Edwards, Lemuel W. Thompson are held and firmly bound unto George J. Edwards Robert A. Edwards and James M. Maunon in the penal sum of fifteen hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors & administrators jointly, severally & firmly by these presents. Witness our hands and seals this 8<sup>th</sup> day of March AD 1860. The condition of the above obligation is such that whereas the above

bounden James O. Edwards has prayed out an injunction enjoining and restraining George J. Edwards, Robert A. Edwards and James M. Mannon from dispossessing the said James O. Edwards from the possession of the following described tracts of land, to wit, North East quarter of Section No. 19 and the East half of the North West quarter of Section No. 19, both tracts are in Township in Thirteen (13) North of Range Two (2) West in Mercer County State of Illinois. Now if the said James O. Edwards shall pay and satisfy all the costs and damages that may be adjudged against him if said suit of Injunction shall not be sustained on its trial or if it shall prove to be improperly sued out then this obligation to be void otherwise to remain in full + virtue.

Approved by me this 8<sup>th</sup> Mch<sup>r</sup> 1860. H. S. Senter Clk

James O. Edwards 

Genie W. Thompson 

And that the said first and second counts in said Plaintiffs Declaration and each of said counts severally and the matters in each of said counts contained in manner and form as the same as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendants and that they the said defendants are not bound by law to answer the same and this they are ready to verify. Wherefore by reason of the insufficiency of the said first and second counts of the said Declaration in this behalf the said defendants pray judgment and that the said Plaintiff may be barred from having or maintaining this aforesaid action thereof against them + c.

Thompson & Ray  
Atty's for Defts.

And afterward to wit, on the day + year last aforesaid came the Plaintiffs by their Attorneys and filed their answer in defendants demurrer, herein as follows, to wit:

14

George J. Edwards et al  
vs  
James O. Edwards et al

Merced Circuit Court Ill. April Term 1861

And now comes the said plaintiffs and say pre-  
clude now &c because they say that their said declaration & the matters  
and things therein contained are sufficient for the said plaintiffs to  
have and maintain their aforesaid action against the said defendants,  
wherefore &c

Taliaferro & Spaulding

p 9

And afterward, to wit, on the 29<sup>th</sup> day of April 1861, the following order was  
made in said case in said court; to wit:

George J. Edwards, Robert A. Edwards and

James M. Mannon who sue for the use of George J. Edwards

vs

James O. Edwards & Lewis W. Thompson

In Debt

141

This day came this cause on to be heard on Defendants Demurrer to  
plaintiffs declaration herein, and the court having considered said demur-  
rer doth order that the same be overruled. Thereupon came defendants and  
stipulate to stand by their Demurrer. Thereupon it is ordered by the court  
that plaintiff have judgment on said demurrer against said defendants  
for the amount of their debt and damages herein and as those amounts  
are unknown to the court, it is ordered that a jury be empaneled  
herein at the next term of this court to assess said amounts.

And afterward to wit on the 9<sup>th</sup> day of September 1861 the following  
proceedings were had in said case in said court, to wit:

George J. Edwards, Robert A. Edwards  
and James M. Mannon who sue for the use of  
George J. Edwards

78

vs

In Debt

James O. Edwards & Lewis W. Thompson

This day came the parties  
by their attorneys, and it appearing to the court that there was a default  
taken herein at the last term of this court and a jury ordered to assess  
the damages herein. Thereupon by Order of court came a jury, to wit: Wm.  
M. Miller, George Brown, Daniel Ebner, William Kiddoo, Isaac Larus,  
Richard Shields, Wm Rutherford, Martin West, L.R. Moore, Thomas  
Reinold, Watson P. Leonard and John Allison who having been duly sworn  
to well and truly assess plaintiffs damages herein and having heard  
the evidence upon their oaths do say we the jury assess plaintiffs dam-  
ages at the sum of Three hundred and thirty nine dollars and seventy  
five cents.

And afterward to wit on the day and year last aforesaid  
came the said Defendants by their Attorneys and filed in said court their  
Reasons for motion for new trial and in arrest, therein as follows to wit:

State of Illinois }  
County of Mercer }

George J. Edwards et al

vs

James O. Edwards et al

In Debt

And now comes the said Defendants & moves  
the court to set aside the assessment of damages in this case & to grant a new  
trial and in arrest of judgment for the following reasons, to wit:

15

10

1<sup>st</sup> Because on the hearing of said assessment the court admitted improper evidence on the part of the Plff. and rejected proper evidence on cross examination for defts.

2<sup>d</sup> The court permitted improper questions to be propounded to + answered by witnesses on the part of the plff. against the objections of the Defendants.

3<sup>d</sup> Because the court admitted testimony on the part of the plffs. against the objections of the Defendants wholly irrelevant + improper.

4<sup>th</sup> There was no evidence to authorize the assessment of the amount of damages returned by the jury of inquest.

5<sup>th</sup> There was not sufficient evidence to warrant any assessment of damages for the plffs.

6<sup>th</sup> Because the assessment is contrary to law and the evidence

7<sup>th</sup> Because the pleadings did not warrant the finding of the jury or of the introduction of the plffs' evidence.

Thompson & Ray Atys for Defts.

And afterward to wit, on the 10<sup>th</sup> day of September 1861 the following proceedings were had in said case in said court, to wit:

George J. Edwards, Robert A. Edwards  
and James M. Mannon who sue for the use  
of George J. Edwards,

In Debt

78 vs James O. Edwards + Lewis W. Thompson

This day came the defendants by their Attorney and entered their motion to set aside the assessment of the jury, and also for a new trial herein and the court having considered said motions and being advised in the premises doth order that said motions be overruled. Thereupon again came defendants by attorney and entered their motion for an arrest of judgment herein and the court having considered said motion overrules the same, to all which the defendants by their Attorney except and pray an appeal to the Supreme Court, which is granted by the court upon the defendants giving bond in the sum of six hundred dollars with security, to be approved by the clerk, by agreement, said bond to be filed within thirty days from this date.

And afterwards, to wit on the

14<sup>th</sup> day of September 1861 the following order was made in said court.

George J. Edwards, Robert A. Edwards  
and James M. Mannum who sue for the use of

George J. Edwards

vs

In Debt

James O. Edwards + Lewis W. Thompson

On Motion of Plaintiffs

Attorney it is ordered by the court that the order herein made granting an appeal to the Supreme Court in this case be set aside and also that the judgment of the court in overruling the motion for a new assessment herein and also in overruling the motion in arrest of judgment herein be set aside. It is further ordered by the court that a new assessment be had herein at the next term of this court.

And afterwards, to wit, on the 22 day of April 1862, being one of the days of the April Term 1862 of said court, the following proceedings were had, to wit:

78

17

18

George J. Edwards + Robert A. Edwards  
James M. Mann who sue for the use of  
George J. Edwards

36

vs

In Debt

James O. Edwards + Lewis W. Thompson

This day came the parties by their attorneys and issue being joined for trial put themselves upon the country. Thereupon came a jury to wit: Frank Lovett, James H. McCreight, Wm Baster, John D. Greer, William Prouty, Joseph Thompson, Thomas Hillman, G. S. Rickey, M. L. Marsh, Curtis Wright, Proctor Dent + P. W. Willott, who being duly empaneled and sworn to well and truly try the issues joined herein, after hearing the evidence, upon their oaths do say. "We the jury find for plaintiffs debt fifteen hundred dollars, and assess their damages at the sum of (\$372.25). Three hundred and seventy two dollars and twenty five cents." Whereupon counsel defts. and entered their motion for a new assessment, and also for an arrest of judgment herein,

The following is the Verdict of the jury.

We the jury find for the plaintiffs Debt fifteen hundred dollars, and assess the Damages at three hundred and seventy two <sup>25</sup>/<sub>100</sub> dollars.

G. S. Rickey Foreman.

The following is the Instruction given in behalf of the Plaintiff

The Court instructs the jury on the part of the plaintiffs that, if they find for the plaintiff they will find the amount of their debt, to wit: the penalty in the bond and also assess the damages at such sum as they believe from the evidence the plaintiffs to have sustained by reason of being deprived of the possession of the premises mentioned from the 10<sup>th</sup> of March 1860. to the 1<sup>st</sup> of September 1860.

The following is the instruction given for the Defendant

The jury are instructed that they are not to regard any evidence of the value of the use of the premises, except such evidence as will help them to fix the actual value of their use from the 15<sup>th</sup> March 1860 to the 1<sup>st</sup> Sept 1860.

The following is the instruction refused for Defendants.

Edwards Et al

vs

Defts Instructions

Edwards Et al

The court will instruct the jury that the plaintiff is not entitled to recover in this case anything more than his costs adjudged him at the dismissal of the injunction case of James O. Edwards vs George J. Edwards Et al.

And afterward to wit, on the 26<sup>th</sup> day of April 1862 proceedings were had in said court, which are in the words and figures following, to wit:

George J. Edwards, Robert A. Edwards &

James M. Mannon vrs sue for the use of

George J. Edwards

vs

For Debt

James O. Edwards & Lewis W. Thompson

This cause now coming on to be heard on defendants' motion for a new assessment, and in arrest of judgment the court overruled said motion and orders that judgment be rendered on the verdict of the jury. It is therefore ordered by the court that plaintiffs recover of defendants the sum of fifteen hundred dollars the debt so found by the jury. And that said debt be discharged upon the payment

of the sum of (\$372.25) three hundred and seventy two dollars and twenty five cents the damages so assessed by the jury as aforesaid & that plaintiff also recover his costs herein for which judgment and costs an execution may issue. Thereupon defendants excepted to the ruling of the court in overruling the motion for a new assessment and in arrest of judgment, and for rendering judgment on the verdict of the jury, and prayed an appeal to the supreme court, which is allowed upon condition that defendants file an appeal bond herein in the sum of eight hundred dollars within sixty days from the date hereof with security to be approved by the clerk by consent of the parties hereto. And also by consent of the parties the Bill of Exceptions to be filed in forty five days from this date.

And afterward, to wit on the 7<sup>th</sup> day of June 1862 came the Defendants by their Attorneys and filed their Bill of Exceptions, herein as follows. to wit.

State of Illinois, County of Mercer sp.

Circuit Court to April Term AD 1862.

George J. Edwards, Robert A. Edwards & James M. Mannon for the use of George J. Edwards

vs

James O. Edwards & Lewis W. Thompson

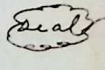
Be it remembered that on the trial of this cause the plaintiffs to maintain

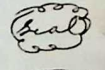
the issues on their part offered in evidence the following Bond.

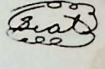
Know all Men by these presents that we James O. Edwards, Lewis W. Thompson are held and firmly bound unto George J. Edwards, Robert A. Edwards and James M. Mannon in the penal sum of fifteen hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors & administrators jointly severally & firmly

by these presents. Witness our hands and seals this 8<sup>th</sup> day of March A.D. 1860.  
 The condition of the above obligation is such that whereas the above-bonded  
 James O. Edwards has prayed out an injunction enjoining and restraining  
 George J. Edwards, Robert A. Edwards and James M. Mannon from  
 dispossessing the said James O. Edwards from the possession of the following  
 described tracts of lands to wit, North East quarter of Section No. 9, and  
 the East half of the North West quarter of section No. 9, both tracts are  
 in township thirteen (13) North of Range two (2) West in Mercer County  
 State of Illinois. Now if the said James O. Edwards shall pay & satisfy  
 all the costs and damages that may be adjudged against him  
 if said suit of Injunction shall not be sustained on its trial or if it  
 shall prove to be improperly sued out then this obligation to be void  
 otherwise to remain in full & virtue.

Approved by me this 8<sup>th</sup> Mch 1860

James O. Edwards 

Levie W. Thompson 

No S. Senter 

and the defendants being by their Attorneys present, objected to the introduc-  
 tion of said Bond as evidence; but the Court overruled said objection and  
 permitted the same to be read in evidence, which was done, to the decision  
 of the Court in overruling the defendants objection & allowing said Bond  
 to be read in evidence, the said defendants, then & there by their Attorneys  
 in open Court excepted & still except.

The said plaintiffs then called Harrison Brown as a witness in their  
 behalf who, after being duly sworn testified I am acquainted with the  
 parties; know the land in controversy, lies about four miles from the land;  
 the value of the use of the premises described in the declaration from the  
 10<sup>th</sup> of March 1860 to the 1<sup>st</sup> day of September A.D. 1860, would be two dollars  
 per acre. I do not know how many acres are under cultivation. It is  
 not all tillable land inside the farm. I suppose there is somewhere  
 in the neighborhood of 500 hundred acres in cultivation - maybe some.

22

thing more or something less. I believe the land not in cultivation is mowed. I don't know how much. The plaintiff then asked the witness the following question "How much is it - the grass land - worth per acre". To the asking of which question as well as to all the foregoing testimony, the said defendants by their Attorneys then & there in open court objected, but the Court overruled the objection and permitted the said questions to be asked as well as all the foregoing testimony to be introduced; to which several rulings of the Court the said defendants by their Attorneys then & there in open Court excepted & still except. In answer to said questions the witness then answered that it was worth one dollar per acre, and that there was about forty acres in grass.

On crop examination the witness testified as follows: I think there are more than one hundred & fifty acres in cultivation. In that neighborhood in 1860 the fair value of this land would be two dollars per acre of the farming land and one dollar per acre for the grass or plough land. The use of the premises would be worth something from 1<sup>st</sup> September 1860 to 15<sup>th</sup> March 1861. The use of the house, stable, lots & grass pasture would be worth during that time eight or ten dollars per month. The pasture of stocks would be worth from twenty five to fifty cents per acre. I do not know how much corn there was on the place that year. The premises would be worth from the 15<sup>th</sup> March 1860 to 1<sup>st</sup> September 1860 two dollars per acre and would be worth no more for the entire year. The land was occupied during the year 1860 by the defendant James O. Edwards and has ever since been occupied by him or his tenants.

The plaintiffs then called William Chilson as a witness who testified as follows: I have known the parties & premises for 8 or 9 years. I was in possession of Eighty acres in the year 1860 under defendant Edwards. The entire premises I know well: they are one fourth plough land &

the balance of it was under cultivation that year. I would not give more than one dollar + a half per acre of the farming land for its use from March 10 1860 to Sept 1. 1860. It would be worth that.

On crop examination the witness testified that he would not give any more than \$1<sup>50</sup> per acre for the farming land for one entire year. And that that was all the premises were worth per acre of farming land.

I had as Def<sup>t</sup> Edwards' tenant that year seventy acres of the land under cultivation in corn. Def<sup>t</sup>. Edwards had forty acres and on the 1<sup>st</sup> of September 1860 it was all on the premises + ungathered. The witness then further testified that he gathered his corn on the place after the 1<sup>st</sup> September 1860 + so did defendant Edwards gather his. The Defendants then asked the witness the following question to wit: "What would the use of the premises be worth to any one from the 10<sup>th</sup> March 1860 to the 1<sup>st</sup> September 1860, if on the 1<sup>st</sup> September 1860 they had to be surrendered with all the Crops then standing + growing thereon."

This question was objected to by pl<sup>ts</sup>. counsel, whereupon the Court asked the witness who gathered the corn crop for that year. The witness replied that he gathered it as tenant of the defendant and delivered the landlords share to the defendant Edwards. That the other tenants did the same thing, and that the plaintiffs did not get possession of the land that Fall nor get any benefit from the crops. The Court then refused to allow the witness to answer the question to which decision of the Court the Defendants Attorney then and there excepted and still excepts.

Benjamin F. Brown was then called as a witness by said plaintiff who being duly sworn testified that the usual time of sowing wheat spring + fall raised in his neighborhood was from 20<sup>th</sup> March to the middle of April + harvested in July + August

On cross examination the witness said that the usual crops on farms in this neighborhood were wheat, oats, corn + sometimes rye. Wheat & clover raised on these premises in the year 1860.

The plaintiffs in this suit then offered Harvey S. Senter as a witness who testified that in 1860 he was locum tenens clerk of Mercer County and that the record he held in his hand was the fee book of said locum tenens clerk. The plaintiffs then offered in evidence the following fee bill.

James C. Edwards

vs

George J. Edwards, Robert A. Edwards  
+ James M. Mannon

Injunction

Defendants costs

113

belks fee

H. S. Senter,

Apr. 15. 2 ords filg Pleas 40. Ord filg demr. 20 Mo. to dis bill 20 Ord. Sust. same  
20 ent. Judgt. 20 final do. 25. Ser. do 15. ent. ord. for 24 20. bill costs 30 2.25

To the introduction of which the defendants then & there by their Atty. objected, but the court overruled their objection + admitted the same in evidence. To the decision of the court in admitting the same as evidence, + overruling defts objections, the said Defendants then & there by their Attorneys excepted in open court + still except. The said plaintiffs then offered in evidence the Record of the said locum tenens clerk dismissing the injunction suit of James C. Edwards vs George J. Edwards & al, which is in these words to wit:

James C. Edwards

vs

George J. Edwards, Robert A. Edwards  
+ James M. Mannon

Injunction

113

This day came the Defendants herein by their Attorney and on their motion it is ordered by the Court that this suit be dismissed at the Complainants costs. It is therefore ordered by the Court that the Defendants recover of Complainant their costs by them about this suit expended and may have execution therefor.

To the introduction of which is evidenced the said Defendants then & there by their Attorneys objected; but the Court overruled the objection and admitted the same as evidence. To the decision of the Court overruling said objection & admitting said Record as evidence, the Defendants then & there in open Court by their Counsel excepted & still except.

This was all the evidence in the case.

The Defendants by their Counsel then moved the Court to exclude from the jury all the evidence introduced by the Plaintiff except the Record of Bill of Costs, Record of Dismissal of said injunction & the Bond aforesaid, on the ground that it was irrelevant and improper; but the Court overruled said motion and refused to exclude the same from the jury; To which decision of the Court in overruling said motion & refusing to exclude the said testimony, the said Defendants then & there in open Court by their Attorneys excepted & still except.

The said Plaintiff then asked the Court to give the following instructions, to wit;

The Court instructs the jury on the part of the plaintiffs that if they find for the plaintiff they will find the amount of their debt, to wit: the penalty in the Bond and also assess the damages as such sum as they believe from the evidence the plaintiffs to have sustained by reason of being deprived of the possession of the premises mentioned from the 10<sup>th</sup> of March 1860 to the 1<sup>st</sup> of September 1860. To the giving of which the said Defendants then & there by their Attorneys in open Court, objected, but the Court overruled said objection and gave the same to the jury.

To the decision of the Court in overruling said Defendants' objections to said instructions, and giving the same, the defendants then & there by their attys. in open Court excepted & still except.

The said Defendants on their part by their Attorneys then asked the Court to give to the jury the following instructions.

Edwards et al

vs

Defrs. Instructions

Edwards et al

No 1

The Court will instruct the jury that the plaintiff is not entitled to recover in this case anything more than his costs adjudged him in the dismissal of the injunctive case of James O. Edwards vs George J. Edwards Et al.

No 2.

The jury are instructed that they are not to regard any evidence of the value of the use of the premises except such evidence as relates to the actual value of their use from the 10<sup>th</sup> March 1860 to the 1<sup>st</sup> Sept 1860.

But the Court refused to give the same but gave the following as modified and in lieu thereof.

No 2. The jury are instructed that they are not to regard any evidence of the value of the use of the premises except such evidence as will help them to fix the actual value of their use from the 10<sup>th</sup> March 1860 to the 1<sup>st</sup> September 1860.

To the refusal of the Court to give the instructions asked by said Defendants & to the modification by the Court of said instructions and giving the same as modified, the defendants by their Attorneys in open Court then & there excepted & still except. Whereupon the jury found for the plaintiffs as follows to wit:

We the jury find for the plaintiffs Debt fifteen hundred dollars, and assess the damages at three hundred and seventy two <sup>25</sup>/<sub>100</sub> dollars.

L. B. Pickney Foreman

The Defendants then and there in open court by their Atty. entered their motion for a new trial or for a re-assessment and also in arrest of judgment on the finding of the jury for following reasons, to wit: 1<sup>st</sup> The verdict or finding of the jury is informal & illegal. 2<sup>d</sup> That it is contrary to evidence. 3<sup>d</sup> That the declaration is insufficient to support a judgment of any kind. 4<sup>th</sup> That the court erred in admitting improper testimony for the plaintiffs. 5<sup>th</sup> That the court refused to allow the Defendants to put proper cross-questions to the witnesses for the plaintiffs. 6<sup>th</sup> The court gave improper instructions asked by the plaintiffs. 7<sup>th</sup> The court refused to give proper instructions asked by Defendants. 8<sup>th</sup> The court erred in modifying some of the instructions asked by Defts. & in giving them thus modified. 9<sup>th</sup> The court erred in overruling Defendants motion to exclude from the jury improper & irrelevant testimony on the part of the plaintiffs. But the court overruled the motions for new trial or for a re-assessment & for arrest of judgment and rendered final judgment on the verdict or assessment of the jury as follows, to wit:

George J. Edwards, Robert A. Edwards }  
& James M. Mannum who sue for the use of }  
George J. Edwards } In debt

26

28

James C. Edwards & Lewis W. Thompson

This cause now coming on to be heard on Defendants motion for a new assessment, and in arrest of judgment, the court overrules said motion and orders that judgment be rendered on the verdict of the jury. It is therefore ordered by the court that plaintiffs

recover of defendants the sum of fifteen hundred dollars the debt so found by the jury. And that said debt be discharged upon the payment of the sum of (\$372.25) three hundred and seventy two dollars and twenty five cents the damages so assessed by the jury as aforesaid & that plaintiff also recover his costs herein for which judgment and costs on execution may issue. Thereupon defendants excepted to the ruling of the court in overruling the motion for a new assessment and in arrest of judgment and for rendering judgment on the verdict of the jury, and prayed an appeal to the Supreme Court, which is allowed upon condition that defendants file an appeal bond herein in the sum of Eight hundred dollars within sixty days from the date hereof with security to be approved by the clerk by consent of the parties hereto. And also by consent of the parties the Bill of Exceptions to be filed in forty five days from this date.

To the decision of the court in overruling said motions and entering final judgment on the verdict of the jury the said defendants by their Attorneys then & there in open court excepted and still except.

And inasmuch as the foregoing facts do not appear of Record, the said defendants pray that this, their Bill of Exceptions may be signed, sealed and made a part of the record herein which is accordingly done

C. B. Lawrence Seal

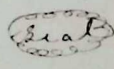
And afterwards, to wit on the 25<sup>th</sup> day of June 1862 came the Defendants and filed their Appeal Bond which is in the words and figures following, to wit:


Know all Men by these presents that we James O. Edwards and Lewis N. Thompson as principals & Elisha Miles as security; all of the County of Mercer State of Illinois are held and firmly bound unto George J. Edwards, Robert W. Edwards & James M. Mannon who sue for the use of George J. Edwards, in the penal sum of Eight Hundred Dollars lawful money of the United States


for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals this 24<sup>th</sup> day of June A.D. 1862.

The conditions of the above Bond is such that whereas the said George J. Edwards Robert A. Edwards & James M. Mannon who sued for the use of George J. Edwards before the Circuit Court within and for the County of Mercer and State of Illinois at the April Term A.D. One Thousand Eight Hundred and Sixty Two (1862) on the 22<sup>d</sup> day of said month recovered judgment against the above bounden James O. Edwards & Lewis W. Thompson, Defendants, in an action of debt, for the sum of Fifteen Hundred Dollars, Debt, and Three Hundred, seventy Two Dollars and twenty five cents damages (said Debt to be discharged upon the payment of said Damages) and the costs of said suit; from which said judgment the said Defendants themselves prayed and obtained an appeal to the Supreme Court of said State of Illinois. Now if the said James O. Edwards & Lewis W. Thompson shall well and truly pay said judgment, costs, interest and damages in case the said judgment shall be affirmed by said Supreme Court stand by and perform whatever judgment may be rendered by said Supreme Court in the premises and shall also duly prosecute their said appeal, then the foregoing bond to be void; otherwise to be and remain in full force and effect.

Signed, sealed & delivered  
in presence of

James O. Edwards 

Lewis W. Thompson 

Elisha Miles 



On the back of said Bond is the following endorsement, to wit:  
Approved & filed 25<sup>th</sup> June 1862. J. M. Mannon Clerk

State of Missouri  
 Mercer County & J. James M. Mammou Clerk  
 of the Circuit Court in and for  
 said County certify that the foregoing is a full true  
 and perfect copy of the conveying order of Court at the  
 April Term A.D. 1863 of said Court of the Declaration, Pleadings  
 and bond for costs filed in said case; of the Summons  
 issued therein, with the return of the Officer therein; of  
 Defendants Demures to Declaration; of Plaintiff's joinder  
 in Demures; of defendants reasons for motion for new  
 trial and in arrest of judgment; of the verdict of the jury  
 on the trial of the said case, of the instructions given on the  
 part of Plaintiff and Defendants; of the Bill of Exceptions  
 and appeal bond filed therein and also a true and  
 perfect copy of all orders of Court made in said case  
 and which includes a full true and perfect copy of all  
 the record and files in said case, all of which appear  
 to me from the books and files of my office.

In Testimony of which I hereunto set  
 my name and affix the seal of  
 said Circuit Court at my Office  
 in Wells in said County this 16<sup>th</sup>  
 day of April A.D. 1863.

J. M. Mammou Clerk  
 By H. B. Brown Deputy



Now Come. the Seinel Appellants by  
Glover Cook. Plaintiff their Atty and say  
that in the record - proceedings aforesaid  
and in the execution of judgment aforesaid  
there is manifest Error in this to wit

1<sup>st</sup> - The Court erred in overruling said Defendants  
Demurrer to said Plaintiff declaration and each  
of the Counts thereof

2<sup>d</sup> The Court erred in swearing the jury to "try  
the issues in the case" instead of swearing them  
to find the debt and assess the damages.

3<sup>d</sup> The Court erred in admitting improper evidence  
on the part of said Plaintiff

4<sup>th</sup> The Court erred in refusing to admit  
proper evidence offered by the Defendants

5<sup>th</sup> The Court erred in giving the jury the In-  
structions on behalf of the Plaintiff

6<sup>th</sup> The Court erred in refusing to give to the  
jury the said 1<sup>st</sup> & 2<sup>d</sup> instructions asked  
by the Deft each of them

7<sup>th</sup> The Court erred in giving to the jury the  
said instruction given of its own motion

8<sup>th</sup> The Court erred in refusing to allow said Defendants Motion for a new assessment and in arrest of judgment each of them -

9<sup>th</sup> The Court erred in rendering judgment upon said Verdict

10<sup>th</sup> The Court erred in rendering the judgment aforesaid in manner of same aforesaid

Howe, Cook & Campbell  
Attys for Appellants

187  
Edwards et al

Edwards et al  
Record

Filed April 22, 1863.  
L. Deland  
Clk.

79.65

And now comes the said defendants in error saying that in record of proceedings aforesaid & in the judgment aforesaid, no such errors hath intervened as is alleged above.  
By J. M. Wood  
their attorney