

No. 13218

Supreme Court of Illinois

Gehr

vs.

Hageman

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 149.

Gehr
vs
Hagman

13218

Prepared

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Tazewell _____ Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit _____ Courts of Tazewell County, before the Judge thereof, between Ulrich Gehr _____

plaintiff, and James Hagerman _____

defendant....., it is said that manifest error hath intervened, to the injury of the said plein tiff _____

_____ as we are informed by his _____ complaints _____ the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said James Hagerman _____

that he _____ be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he _____ shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said James Hagerman _____

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
J. B. R. Deputy

149

Wm. G. H. G.

No. vs. James Hagerman

SCIRE FACIAS.

Filed April 18th 1861 A. D. 1861

L. Leland

Clerk

Last day of Service
April 6th 1861

Roberts

Served by reading the within writ to the within named
James Hagerman this 4th day of April 1861
C. Williamson S. G.
By J. B. Hicks Detty

Servant 30
Travel 25
Out 10
135

TO THE CLERK OF
SUPREME COURT
STATE OF ILL.

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1861.

ULRICH GEHR

vs.

JAMES HAGERMAN.

ERROR TO TAZEWELL.

ABSTRACT OF RECORD.

This was an action of assumpsit brought by plaintiff in error against defendant in error, and tried before Harriott, Judge, and a jury, at the June term, 1860.

Declaration.
Record, 3 to 5.

The declaration contained the common money counts.

Pleas.
Record, 7 to 10.

Defendant filed plea of general issue, and three special pleas.

Second plea averred that the money was paid by plaintiff for purchase of land of defendant, and that defendant delivered possession to plaintiff, and that the deed was to be made at the convenience of the parties, and that defendant made a deed and tendered it.

The third plea avers that the money was paid plaintiff as the purchase money of certain land sold by defendant to plaintiff, and that the equitable interest vested in plaintiff, and that judgments were obtained against plaintiff, which were a lien upon the said land for a greater amount than the sum of money claimed from defendant.

The fourth plea avers that one James Hamson had obtained a judgment against said plaintiff to the amount and value of the land so sold to said plaintiff, which judgment was then a lien upon said premises, and was then subject to sale to satisfy said judgment, and that said judgment so remained a lien long after the commencement of this suit, and long after the making and tendering the deed, during all of which time plaintiff was sole possessor of the land.

Bill of exceptions.
Record 12.

The following was the bill of exceptions:

Phares Meixsell said that he was present at an interview between the plaintiff and defendant, on the seventh day of January, 1857, at which time defendant sold to plaintiff ten acres of timber land, description not mentioned by parties; that plaintiff was to pay two hundred dollars purchase money for the land, one hundred dollars of which was then and there paid in cash by plaintiff to defendant, and the following receipt given: "Received of Ulrich Gehr one hundred dollars, paid on ten acres of timber sold him." Dated Jan. 18th, 1857.

That the balance was to be paid according to the tenor and effect of two

promissory notes, one due April 1st, 1857, and one due 1st of September, 1857. The notes were shown to witness, and recognized as the same notes. That defendant agreed that he would make a deed for the timber land to plaintiff whenever requested by him to do so; did not know whether plaintiff ever requested defendant to give him the deed or not.

Record. 14. James Hamson testified that the notes referred to in Meixsell's testimony were given to him by defendant, and that plaintiff had paid him the money for them; that plaintiff told him that the notes were given for the purchase money of timber land—no description of the land was mentioned.

The following evidence was given by the same witness on cross-examination:

Record. 15. Never saw plaintiff take off any wood from land owned by Hagerman, but he was at plaintiff's house on the prairie and saw fire-wood there; that the timber land owned by defendant was forty acres in section 7; did not remember town or range; did not think defendant owned any other timber land in Tazewell county than the forty acres in section seven. A deed was here shown witness by defendant's counsel. Witness thought the land described in the deed about where defendant's land was situated; that plaintiff lived on prairie about five miles from timber, from date of notes until January, 1860, and removed to Logan county in March; that witness had a judgment against plaintiff and sold his prairie land under it; that time of redemption expired January, 1860. To all of which statement by witness on cross-examination plaintiff objected as irrelevant, but the objection was overruled, and the evidence admitted, and exception taken.

Record. 16.

Theodore Nicodemus testified that he heard plaintiff ask defendant to make him a deed to the land in question in the fall of 1857. Defendant said he would make a deed any day plaintiff would set; plaintiff then said he would have it made next Saturday. Defendant said he could not on that day, as he had some other business to attend to on that day. No other day was named when defendant would make the deed.

Witness also stated on cross-examination, that plaintiff had made rails off a timber lot on the Mackinaw bluff; that plaintiff had no other timber land that witness knew of; that plaintiff said he bought the timber of defendant; which evidence was duly objected to and exceptions taken by plaintiff.

Record. 17.

Martin Gehr heard plaintiff ask defendant for a deed at the time spoken of by Nicodemus; that the deed was to be delivered in Pekin; witness went to Pekin with plaintiff; Hagerman was there; said he had other business to attend to, and no deed was made.

On cross-examination, witness said plaintiff got his fire-wood off the lot he said he bought of defendant on Mackinaw bluff. No timber taken from it

after the commencement of the suit ; that poles were cut off the lot in question, and a pole stable built with them on the premises occupied by plaintiff, when he first went there ; that some saw logs were also cut on the timber lot ; which was also objected to as irrelevant.

Record, 18.

Peter Murry testified that some time in January, 1860, he saw defendant at plaintiff's house, when defendant told him he had made him a deed to the timber lot, and handed a deed to the plaintiff. Plaintiff said he did not want the deed then ; that he was going to leave that part of the country, and the lawyers would settle it, and asked defendant why he had not made the deed before. Defendant said he had so much to attend to that he neglected it ; did not know what kind of a deed it was, it was not opened.—The deed hereafter mentioned was then shown to witness ; he thought it was the same.

Record, 19.

Henry Vogel testified that plaintiff told him he had bought timber land of defendant, and paid for it ; that he requested defendant to make him a deed for the land several times, but could not get him to do so ; that he had left his prairie farm and moved to Logan county, and did not want the timber land.

Record, 19.

Henry Shurp saw plaintiff split well curbing on the lot in question ; did not know how much ; knew of plaintiff's son hauling wood from there ; which was also objected to as irrelevant.

Record, 20.

Record 23.

The defendant then offered in evidence a general warranty deed from defendant to plaintiff for S. E. S. W. N. E. of 7, 23, 4, dated February 1st, 1860. To the reading of which in evidence the plaintiff objected, because it was executed subsequent to the commencement of this suit, because it is not shown to have been the same land bargained for ; which objections were overruled, and exceptions taken.

Record, 24.

The defendant then offered in evidence a judgment recovered by James Hamson against plaintiff, for \$444 20, recovered at February term, 1859, which was satisfied ; to the reading of which plaintiff duly objected and excepted ; which was all the evidence.

Plaintiff's instructions, 25.

The plaintiff then asked the court to give the following instructions to the jury :

ULRICH GEHR
vs.
JAMES HAGERMAN.

} PLAINTIFF'S INSTRUCTIONS.

1. The court is requested to instruct the jury that if they believe from the evidence that Hagerman agreed with the plaintiff to sell him a piece of land, and that the plaintiff paid him the money for the same, and that the

[4.]

defendant failed or refused to tender him a deed for said piece of land at the time agreed upon, they will find for the plaintiff.

2. The court is further requested to instruct the jury that a tender of a deed after the commencement of this suit, is no defense to this suit.

3. The court is further requested to instruct the jury that although Gehr may have taken possession of the land purchased, yet if they further believe from the evidence that Hagerman agreed to make a deed to the same by a certain time, and refused to do so, and that plaintiff paid him the price of the same, they will find for the plaintiff the amount so paid, with interest.

4. The court is further requested to instruct the jury, that although the plaintiff may have taken possession of the land, yet, if the jury believe from the evidence that Hagerman refused to make a deed of the land according to his agreement, Gehr would have the right to quit the possession of the land, and recover the money paid for the same.

5. If the jury believe from the evidence that the contract in regard to the land was so uncertain that the land cannot be located, the plaintiff is entitled to recover whatever money he may have paid upon the same.

6. Unless the defendant has proved that the land described in the deed is the same land sold by Hagerman to plaintiff, and also believe from the evidence that plaintiff has paid the money for the land, and that Hagerman refused to convey the same, they will find for the plaintiff the amount so paid, with interest.

7. Unless the defendant has shown that the defendant had a good title to the land in question, they will find for the plaintiff.

8. The court instructs the jury that the taking possession of the land and cutting timber upon it is no defense to this action, if Hagerman refused to perform his part of the contract; and the refusal of Hagerman to perform his part of the contract would entitle Gehr to rescind the contract.

The court instructs the jury that if they believe from the evidence that the plaintiff paid the defendant money for land that defendant was to convey to plaintiff, and that the defendant refused to convey the land at the time agreed upon, they will find for plaintiff the amount so paid, with interest.

All of which instructions the court refused to give; to which refusal of the court to give the said instructions plaintiff at the time excepted, and at the request of defendant the court gave the following instructions to the jury:

land of Hagerman and took possession of the same, and cut and took timber from it, and used the timber and land up to the time of the commencement of this suit, he could not rescind the contract and recover the purchase money until he had first returned the possession to Hagerman, and placed him in the same condition that he was when the contract was made; and unless they believe from the evidence that Gehr did, before we commenced his suit, return or offer to return the possession of the land to Hagerman, in the same condition as it was when received by him under the contract, they will find for the defendant.

Unless the jury believe from the evidence that Gehr, at the time he commenced his suit, had done everything the law required him to do to rescind the contract, they will find for the defendant.

That a judgment under the law is a lien upon the real estate, both legal and equitable, of the judgment debtor, from the last day of the term at which the judgment was rendered, in the county where the judgment was rendered; and that if they believe from the evidence that the contract attempted to be rescinded was for land in Tazewell county, and that the defendant paid for it and took possession of it in the county of Tazewell, where the judgment was rendered, and that if they further believe that at the commencement of this suit there was an unsatisfied judgment against Gehr in the circuit court of the said Tazewell county, where the land was situated, then the judgment so rendered was a lien upon the land in question, and Gehr could not, while it existed, place Hagerman, as to the land, as when the contract was made, and they will find for the defendant.

If the jury believe from the evidence that Hagerman offered to convey, or tendered a deed to Gehr to a tract of land, and Gehr did not object to it for the reason that it was not the tract of land sold and designed to be conveyed, it is a circumstance from which the jury may infer that the deed described the land intended to be purchased and conveyed to Gehr.

The jury are instructed that in law, possession of land is evidence of title in fee, and that if they believe from the evidence that Hagerman had possession of, and used and exercised ownership over the land which he sold to Gehr, and put Gehr in possession of, then the possession of Hagerman is evidence of his title to the same.

To the giving of which instructions the plaintiff at the time excepted. Jury found for defendant.

Motion for new trial, 31.

Plaintiff moved for a new trial, because the court gave improper instructions for defendant, and refused proper instructions for plaintiff, and admitted improper and irrelevant evidence; which motion was overruled, and exceptions taken.

ROBERTS & IRELAND,
For Plaintiff in Error.

No 149 #27

Ulrich Gehr
m

James Hagerman

Abstract

Filed Apr. 18. 1861

Leland

Clare

Shas

To a term of the Circuit Court
begun and held at the Court
House in Pekin within and
for the County of Tazewell
and State of Illinois on the
first Monday in the month
of February A.D. 1860. Present
the Honorable James Harriott
Judge of the 21st Judicial
Circuit of the State of Illinois
composed of the Counties of Mason, Tazewell &c
Hugh Fullerton Prosecuting
Attorney, Thomas C. Reeves
Sheriff and Merrill C. Young
Clerk

Be it remembered, that on the 2^d day of
January A.D. 1860 a precept was filed in the
Office of the Clerk of the Circuit Court of
Tazewell County in the words and figures
following to wit:

State of Illinois } ss. In Circuit Court
Tazewell County } February Term 1860

Ulrich Gehr }
vs } Assumpsit
James Hageman } Damages \$300.00

(2)
The Clerk will please issue as above
to the Sheriff of Tazewell

Roberts & Ireland

A M Green

attys for Plaintiff

And afterwards, to wit: on the same
day a summons was issued from the office
of the Circuit Clerk in the words and figures
following, to wit:

State of Illinois } ss. The People of the State of
Tazewell County) Illinois to the Sheriff of
Said County, Greeting:

We command you that you summon
James Naguman if he shall be found
in your county, personally to be and appear
before the Circuit Court of Tazewell County
on the first day of the next Term thereof, to
be held at the Court House in Pekin, in said
county, on the first Monday of February
next, then and there to answer unto Ulrich
Gehr in plea of Assumpsit to the damage
of said plaintiff as he says in the sum of
Three hundred dollars, \$300.

And have you then and there this
writ with an endorsement thereon in
what manner you shall have created

(3)

the same

Seal

Witness M. C. Young, Clerk of the
said Court and the Seal thereof, at
Pekin aforesaid, this 2nd day of January 1860
Merrill C. Young Clerk Circuit Court
Pr S. W. Stone Deputy cks

Which said summons was on the 27th
day of January 1860 returned with the following
endorsement thereon, to wit:

State of Illinois } ss.
Tazewell County } I have duly served the
within by reading the same to the within
named defendant James Hagerman this
5th day of January AD 1860
J. B. Reeves Sheriff T. C.
By J. B. Reeves Deputy

And now afterwards; to wit: on the 26th
day of January 1860, a declaration was filed
in said Court in the words and figures
following to wit:

State of Illinois } In the Tazewell County Circuit
Tazewell County } Court February Term AD 1860.

Which goes the plaintiff

(4)

in this cause by Green Roberts & Ireland
his attorneys complain of James Hager-
man the defendant in this cause, who
has been summoned to answer the said
plaintiff in a plea of Trespass on the case
upon promise

For that whereas the said
Defendant heretofore, To wit: on the 1st day
of December A.D. 1860, at To wit: Fagewell
County aforesaid, was indebted to the said
plaintiff in the sum of Three hundred
dollars for so much money by the said
plaintiff before that time paid laid
out and expended to and for the use of
the said Defendant at his special instance
and request: And in the further sum
of Three hundred dollars for so much
money by the said Defendant before
that time had and received to and for the
use of the said plaintiff, and in the
further sum of Three hundred dollars
for money found to be due from the
said Defendant to said Plaintiff
upon an account then and then stated
between them. And being so indebted
he the said Defendant in consideration
thereof afterwards, To wit: on the day and
year aforesaid, To wit: at Fagewell County

(5)

aforesaid, undertook and then and there faithfully promised said plaintiff to pay him the said several sums of money when he the said Defendant should be thereunto afterwards requested.

Nevertheless the said Defendant not regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf hath not as yet paid the said several sums of money, or any or either of them, or any part thereof to the said plaintiff, although often requested so to do, but the said Defendant to pay him the same hath hitherto wholly neglected and refused and still doth neglect and refuse to the damage of the said plaintiff of Three hundred dollars; And therefore he brings his suit &c.

Roberts & Ireland
Plffs atty

Account sued on	
James Hagerman	Dr
To Ulrich Gehe	
To money paid laid out and expended	\$300-
" " had and received	\$300-

(6)

" " found to be due on an ac stated between them \$300.
" " paid defendant on oral contract for
sale of land which defendant refused to convey \$300.

And now afterwards to wit: at
a Term of the Circuit Court begun and
held at the Court house in Pekin within
and for the County of Tazewell and
State of Illinois on the first Monday
in the month of September A.D. 1860.
Present the Honorable James Harriott
Judge of the 21st Judicial Circuit
of the State of Illinois, composed of
the Counties of Mason Tazewell &c
Hugh Fullerton Prosecuting Attorney
Thomas C. Reeves Sheriff and
Merrill C. Young Clerk, the following
proceedings were had to wit:

Wednesday September 5th 1860
Now on this day comes the Defendant
by his Attorney Pettyman and files his
pleas in the words and figures following
to wit:

U Gehr	}	Of the Tidy Term of the Taz & Ch Ad 1860
J. Kagerman		

(7)

And the said Defendant comes and defends the wrong & injury when he says actio non because he says that he did not undertake and promise in manner and form as he the said Def hath there alleged against him and of this he puts himself upon the country,
Pettyman for Deft

And for further Plea in this behalf said Deft says actio non because he says that the said several sums of money are but one and the same transaction, and that the said money was paid to him by the said Plaintiff in and as the purchase money & consideration for purchase of the South east $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec Seven Township 23 North Range 4 west of the 3^d P. M. in said County, which tract of Land said Plaintiff purchased of said Deft and said Deft then and there delivered him possession thereof & he has used and controlled the same from that time thence forward, and Defendant further avers that the Deed to the Land was to be made at the convenience of the parties at any time after the Contract & purchase & possession aforesaid, and that he accordingly

(8)

did make a Deed of the premises to the said Plaintiff and tendered the same to him as soon thereafter as convenient and he refused to receive the same & Defendant now brings the same Deed into Court & here upon offers the same to the said Plff and this he is ready to verify wherefore he prays Judgment
Prettyman

3^d Plea

And for further Plea in this behalf said Deft says actio non because he says that the said money was paid Plaintiff as the purchase money of a tract of Land in said County sold by Deft to Plaintiff and the equitable interest whereof & therein immediately by the said purchase & payment rested in said Plaintiff and he avers that since the said purchase and payment there have been rendered against said Plaintiff in said County in the Circuit Court thereof divers Judgments which were & are ~~now~~ a voted, & existing lien on the said equitable interest of said Plaintiff in said Land. and for more than the purchase money & notes of the same & for a greater amt than the sum of money so claimed from said Defendant, and the same is liable to be sold for the said debts of Plaintiff and this Defendant is ready to verify

(9)

wherefore &c &c

Pettyman for Deft

4th Plea Lehr

Hagerman

September term of the Fitzgerald
Circuit Court A.D. 1860

And the said Defendant says
ad hoc non because he says that at the time
of the commencement of this suit, the said
Plaintiff was then at the County and State
aforesaid a judgment debt to one James
Hanson to a large amount to wit: to the
amount of the value of the Land so sold
to said Plaintiff, which judgment was
then a valid lien upon said premises, and
unsatisfied, and said premises was then
subject to sale to satisfy the said judgment
to said Hanson & so remained until long
after the commencement of this suit & until
long after the making and tendering of the
deed by Defendant to Plaintiff for said
premises, during all of which time said
Plaintiff was the sole possessor & had the use
& control of said premises & under his contract
had fully paid for the same, and this Defendant
is ready to verify wherefore he prays judgment
&c

Pettyman for Deft

And now afterwards, to wit: on the same day comes the Plaintiff by his attorney and files his replication in the words and figures following, to wit:

State of Illinois } In Circuit Court
Tazewell County } Feb Term 1860

Gehr
vs
Hageman }

And the said plaintiff as to the second plea, the said defendant did not tender the plaintiff a deed as in said plea above alleged before the commencement of this suit, nor within a reasonable time after making the said contracts and this he prays may be inquired of by the Country &c

And for a further replication says that said deed was to be made and delivered to plaintiff by defendant whenever called on by plaintiff, and plaintiff did call on said defendant for said deed before the commencement of this suit who refused to make said deed and this he prays may be inquired of by the Country &c
James Roberts atty for plaintiff

(11)
And now afterwards, to wit:
on the 6th day of said month of September
it being one of the days of said Term the
following proceedings were had, to wit:

~~24th~~ Thursday September 6th 1883

Ulrich Gehr
vs
James Hagerman } Assumpsit

Now comes as well the
Plaintiff by his Attorneys Roberts & Ireland
as the Defendant by his Attorney Pettymann
whereupon came a Jury of twelve good and
lawful men, to wit: John Kempf, Wm. G.
Eyrse, D. Bowen, Andrew Miles, Sam Rhoads,
R. Shaw, Edward Pratt, L. D. Farnan, Jacob
Soneman, J. W. Moulton, Tho. A. Crane, Mark
Goodyear duly elected, tried and sworn, who
having heard the allegations and proofs of
parties and argument of counsel thereon
for verdict say, we the Jury find for Defendant
whereupon the Plaintiff moved the Court for
a new trial which motion is by the Court
overruled. It is therefore ordered and
adjudged by the Court that the Defendant
have and recover of the Plaintiff the costs and
charges by him about his defence expended.

and that execution issue therefor

And now afterwards to wit: on the 11th day of said month of September 1880 it being one of the days of said term the Plaintiff files his bill of exceptions in the words and figures following, to wit: in

State of Illinois }
 Tazewell County }
 Tazewell County Circuit Court

Ulrich Gehr }
 " } In Assumpsit
 James Hageman }

Be it remembered that on the trial of this cause the following evidence was given on behalf of the Plaintiff. Pharo Weiswell testified that he was present at an interview between the Plaintiff and Defendant on the 7th day of January 1857 at which time the defendant sold to the Plaintiff Ten acres of timber land, the description of which land was not mentioned by the parties, that the bargain was that Plaintiff should pay Defendant Two hundred dollars as purchase money for the land, One hundred dollars of which was there and then paid in cash

to defendant by Plaintiff for which
the following receipt was given;

Deeraw Prairie Jan 8th/57
Recd of Ulrich Gehr One hundred
dollars paid on two acres timber sold him
James Hagerman

that the balance of One hundred dollars
was to be paid according to the tenor and
effect of two promissory notes for Fifty
dollars each signed by the Plaintiff and
payable to defendant, Two notes of the
following description:—

On or before the first day of April next
I promise to pay to the order of James Hagerman
the sum of Fifty dollars it being for value
Recd of him January 7th 1857
Ulrich Gehr

On or before the first of September next
I promise to pay to the order of James
Hagerman the sum of Fifty dollars it
being for value recd of him
January 7th 1857
Ulrich Gehr

were then shown to the witness by Plaintiff

counsel, and recognized by witness to be the same two notes given by Plaintiff to defendant for the aforesaid balance of One hundred dollars, Witness further testified that the defendant agreed that he would make a deed of the timber land to Plaintiff whenever requested by him to do so. Witness further testified that he did not know whether Plaintiff ever requested defendant to give him the deed that he supposed that the land sold was a part of the Timber land owned by defendant in Tazewell County but that the parties at the time of the trade did not describe it by numbers and that he did not know that defendant cut off any wood off of the land.

James Hanson, testified that the notes spoken of in McIsaacs's testimony were given to him by defendant and that Plaintiff had paid him the money for them, that Plaintiff told him the notes were given for the purchase of timber land from defendant, that no number of Section nor any description of the land was mentioned by Plaintiff, the following evidence was also given by Witness on cross examination to the giving of all which, Plaintiff objected

as irrelevant, which objection was overruled by the Court, and the evidence was admitted to which Plaintiff at the time excepted, "that he never saw Plaintiff take off any timber from the land owned by Hageman, but he was at Plaintiff's House on the Prairie and saw firewood there, that the timber land owned by the defendant was 40 acres in Section Seven but he did not remember the town or range, that he did not think defendant owned any other timber land in Tazewell County than the 40 acres in Section Seven, a deed was here shown in witness by defendant's counsel which is hereafter set forth, and Witness stated that he thought the land described in the deed was about where defendant's land was situated, that Plaintiff resided on the Prairie about five miles from the Timber from the date of the note until January 1860, and that Plaintiff moved to Logan County Illinois in March 1860, That he Witness recovered a judgement against Plaintiff and sold Plaintiff's Prairie land under the same, and that the time for redeeming ^{the} same expired in January 1860

Theodore Nicodemus testified that he knew parties, that he heard Plaintiff ask defendant to make him a deed to the land in question, that such request was made on the land in question in the fall of 1857, and defendant said he would make the deed any day Plaintiff would set, Plaintiff then said he would have it made on the next Saturday Defendant then said he could not do it on that day as he had some other business to attend to on that day, no other day was named when Hageman would make the deed, that he worked for Plaintiff nine months and left him in February 1858, the following evidence was given by Witness on cross examination, to the giving of all which Plaintiff objected as irrelevant which objection was overruled by the Court and the evidence admitted to which Plaintiff at the time excepted, That Plaintiff had cut Fire wood and made Rails off of a Timber lot on the Mackinaw Bluff in Iazewell County, that Plaintiff had no other Timber land that Witness knew of, that Plaintiff made 300 Rails and cut one Tree for Posts off of the Timber, and that Plaintiff said he bought the Timber of Defendant.

(17)

Martin Gehr testified that he was the son of the Plaintiff, he heard Plaintiff ask defendant for a deed at the time spoken of by Nicodemus in his testimony, that the deed was to be delivered in Pekin, and that on the day when the parties were to meet there and Hagerman was to deliver the deed, he Witness went to Pekin with Plaintiff and Hagerman was there and said he had other business and no deed was made, the following evidence was given on Cross examination to the giving of which Plaintiff objected as irrelevant and the objection was overruled by the Court and the evidence admitted to which Plaintiff at the time excepted, that Plaintiff got his fire wood off of the timber lot which Plaintiff said he bought of Hagerman on Mackinaw Bluff - that 300 Rails were made and one Tree cut for posts and the fire wood was got off of the same Lot, no wood or timber was taken from the land in question after the commencement of this suit, dont know when this suit was commenced except from Plaintiff's statement that he had sued Hagerman, got fire wood after the commencement of this suit from Maxwell several loads, dont remember how many, and one load from a person whose

name was unknown to witness, That Poles were cut off of the timber Lot in question and a Pole Stable built with them on the premises occupied by Plaintiff on the Prairie at the time when Plaintiff first went there, that some saw logs were also cut on the timber lot, dont remember how many, the logs were left on the land and the Tops used for fire wood, Fire wood was worth 25 cents a load, did not burn a load a week, did not know how much was burned, used two stoves in Plaintiff's house

The following evidence was then offered on the part of the defendant

Peter Murray testified that some time in January 1860 he saw defendant at Plaintiff's house where defendant told the Plaintiff he had made him a deed to the timber lot, that defendant handed out a deed to Plaintiff, who stated he did not want the deed then for he was going to leave that part of the country and that the lawyers would have to settle it, and Plaintiff asked defendant why he had not made the deed before, defendant replied he had so much to attend to that he had neglected it, did not know what kind of a deed it was that defendant

(19)

there tendered Plaintiff, the deed was not opened, a deed which is hereafter set forth was then shown, Witness said he thought was the same deed tendered to Plaintiff by defendant ~~~~~

Henry Vogel then testified that he knew parties ^{that} Plaintiff told him he had bought timber land of Defendant and paid for it that he requested defendant to make him a deed for the land several times but could not get him to do so that he had left his Prairie farm and removed to Logan County and did not want the timber land ~~~~~

Henry Sharp then testified that he saw Plaintiff split well curbing on the timber lot in question, did not know how much, saw him splitting it out of one tree only it was in the winter of 1857, had worked for Hagerman and left him in 1858, used to see Martin Gehr Plaintiff's son hauling wood from timber lot in question, and heard cutting there, to the giving of all which evidence Plaintiff objected as irrelevant, which objection was overruled by the Court and the evidence admitted to which Plaintiff at the time excepted. The following

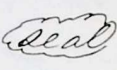
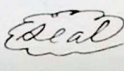
Deed in

This Indenture, made this First day of February in the year of our Lord one thousand eight hundred and sixty, Between James Hagerman and Mary Hagerman his wife of Tazewell County Illinois of the first part, and Ulrich Gehr of the same county and State of the second part, Witnesseth: That the said party of the first part for and in consideration of the sum of Two hundred dollars \$200.00 in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted bargained and sold and by these presents do grant bargain and sell, unto the said party of the second part his heirs and assigns all the following lot, piece or parcel of land situated in the County of Tazewell and State of Illinois to wit: The South east quarter of the South west quarter of the North east quarter of Section Seven, 7, Township Twenty three, 23, North Range four West of the Third principal meridian containing Five acres, be the same more or less - Together with all and singular the Accutiments and Appurtenances therunto belonging or

in anywise appertaining, and the reversion and reversions, remainder and remainders, rents issues and profits thereof; and all the estate, right, title, interest claim and demand whatsoever, of the said party of the first part either in law or equity, of, in and to the above bargained premises with the hereditaments and appurtenances: To Have and to Hold, the said premises above bargained and described with the appurtenances, unto the said party of the second part, his heirs and assigns Forever. And the said James Hagerman party of the first part for himself his heirs, executors and administrators does covenant grant, bargain and agree to and with the said party of the second part his heirs and assigns, that at the time of the sealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect absolute and indefeasible estate of inheritance, in law, in fee simple and has good right, full power and lawful authority to grant bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales liens,

taxes, assessments and incumbrances, of what kind or nature soever; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part, shall and will Warrant and Forever Defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written

James Hagerman 
 Mary Hagerman 

State of Illinois }
 Jazewell County } J. Henry C. Sutton a
 Justice of the Peace in and for said County,
 in the State aforesaid, do hereby certify
 That James Hagerman & Mary Hagerman
 personally known to me as the same persons
 whose names are subscribed to the annexed
 appeared before me this day in person, and
 acknowledged that he signed sealed
 and delivered the said instrument of
 writing as their free and voluntary act

for the uses and purposes therein set forth
 And the said Mary Hagerman wife of
 the said James Hagerman having been by
 me examined separate and apart, and out
 of the hearing of her husband, and the contents
 and meaning of the said instrument of
 writing having been by me fully made
 known and explained to her, acknowledged
 that she had freely and voluntarily executed
 the same, and relinquished her dower to the
 lands and tenements therein mentioned.

without compulsion of her said husband
 and that she does not wish to retract the same

Given under my hand and seal this
 Second day of February A.D. 1860.

H. C. Sutton J. P. Seal

Was then by defendant offered to be
 read in evidence to the jury, to the reading
 of which in evidence Plaintiff objected on
 the ground that it was dated and executed
 subsequent to the commencement of this
 suit, and that the land described in the
 Deed offered to be read in evidence is
 not shown to be the same land bargained
 for, which objection was overruled by
 the Court, and the deed allowed to be
 read in evidence to the jury, to which

(24)

Plaintiff at the time excepted -
The following Judgment was here offered
in evidence

At a term of the Circuit Court begun
and held at the Courthouse in Pekin within
and for the County of Tazewell, and State of
Illinois on the first Monday of the month of
February, ^{AD 1859} and the 8th day of said month it
being the 2nd day of said Term the following
proceedings were had to wit:

James Hamson	}	Assumpsit
^{vs} Theodore Nichodemus		
Ulrich Gehr		

And now comes the
Plaintiff by his Attorney Pettyman on this
day, and the Defendants having been
regularly served with process, were three
times solemnly called came not but made
default. It is therefore considered by the
Court that the Plaintiff hath sustained
damages by reason of the breach of promise
in the Declaration mentioned, But because
those damages are unknown to the Court
the Clerk is ordered to make an assessment
thereof. And he having assessed those

paid him the money for the same and that the defendant failed or refused to tender him a deed for said piece of land at the time agreed upon they will find for the Plaintiff

2nd The Court is further requested to instruct the Jury that a tender of a Deed after the commencement of this suit is no defence to this suit

3^d The Court is further requested to instruct the Jury that although Gehr may have taken possession of the land purchased yet if they further believe from the evidence that Hagerman agreed to make a Deed to the same by a certain time and refused to do so, and that plaintiff paid him the price of the same they will find for the Plaintiff the amount so paid with interest

4th The Court is further requested to instruct the Jury that although the plaintiff may have taken possession of the land yet if the Jury believe from the evidence that Hagerman refused to make a deed of the land according to his agreement, Gehr would have the right to quit the possession of the land and recover the money paid for the same,

5th If the Jury believe from the evidence that the Contract in regard to the land was so uncertain, that the land ^{cannot be located} ~~cannot be located~~ the Plaintiff is entitled to recover whatever money he may have paid for the same.

6th Unless the Defendant has proved that the land described in the deed is the same land sold by Hagerman to Plaintiff and also believe from the evidence that Plaintiff has paid the money for the land, and that Hagerman refused to convey the same they will find for the Plaintiff the amount so paid with interest.

7th Unless the Defendant has shown that the Defendant had a good title to the land in question they will find for the Plaintiff.

8th The Court instructs the Jury that the taking possession of the Land and cutting timber upon it is no defense to this action if Hagerman refused to perform his part of the Contract, and the refusal of Hagerman to perform his part of the Contract would entitle Gehr to rescind the Contract.

The Court instructs the Jury that if

they believe from the evidence that the Plaintiff paid the defendant money for land that Defendant was to convey to plaintiff and that the defendant refused to convey the land at the time agreed upon they will find for plaintiff the amount so paid with interest

all of which instructions the Court refused to give, to which refusal of the Court, to give the said instructions plaintiff at the time excepted, and at the request of Defendant the Court gave the following instructions to the jury

If the Jury believe from the evidence that Gehr purchased the timber land of Hagerman and took possession of the same, and cut and took timber from it, and used the timber & land up to the time of the commencement of this suit, he could not rescind the contract and recover the purchase money until he had first returned the possession to Hagerman and placed him in the same condition that he was when the contract was made and unless they believe from the evidence that Gehr did before he commenced his Suit, return or offer to return the

possession of the land to Hagerman, in the same condition as it was when received by him under the Contract they will find for the defendant ~

Unless the Jury believe from the evidence that Gehr at the time he commenced his suit, had done everything the Law required him to do to rescind the contract they will find for the defendant ~

That a Judgement under the Law is a lien upon the Real Estate, both legal and equitable of the Judgement debtor, from the last day of the term at which the Judgement was rendered in the County where the Judgement was rendered, and that if they believe from the evidence that the contract attempted to be rescinded, was for Land in Tazewell County and that the defendant paid for it & took possession of it in the County of Tazewell where the Judgement was rendered, and that they further believe that at the commencement of this suit there was an unsatisfied Judgement against Gehr in the Circuit Court of the said Tazewell County where the Land was situated then the Judgement so rendered was a lien

upon the land in question & Gehr could not while it existed, place Hagerman as to the Land, as when the contract was made & they will find for the defendant ~~~~~

If the Jury believe from the evidence that Hagerman offered to convey or tendered a deed to Gehr to a tract of land, and Gehr did not object to it for the reason that it was not the tract of land sold & designed to be conveyed, it is a circumstance from which the Jury may infer that the deed describes the land intended to be purchased & conveyed to Gehr ~~~~~

The Jury are instructed that in Law possession of land is evidence of title in fee and that if they believe from the evidence that Hagerman had possession of & used & exercised ownership over the Land which he sold to Gehr & put Gehr in possession of, then the possession of Hagerman is evidence of his title to the same ~~~~~

to the giving of which instructions the Plaintiff at the time excepted, whereupon the Jury found a verdict for the defendant

Whereupon the Plaintiff offered the following motion for a new trial -

State of Illinois } In Circuit Court
Tazewell County } September Term 1860

Ulrich Gehr
vs
James Hagerman

And now comes the plaintiff and moves the Court for a new trial in said cause, because

- 1st The Court give improper instructions for the Defendant
- 2^d The Court refused to give proper instructions for the plaintiff
- 3^d The Court admitted improper and irrelevant evidence, for which said causes said Court is requested to grant a new trial

Green & Roberts for plaintiff

which motion was overruled by the Court, to the overruling of which motion Plaintiff at the time excepted, and now

(32)

prays that this his Bill of Exceptions be
signed and sealed, which is done
James Harriott Seal

State of Illinois }
Tazewell County }

I, Merrill C. Young Clerk
of the Circuit Court within and for said
County do certify that the foregoing thirty
one pages contain a true perfect and
complete copy of the Record of the pro-
ceedings had in the cause therein named
as fully as the same appears of record in
my office

In witness whereof I have
hereunto set my hand and
affixed the seal of said Court
at Pekin this 14th day of
November A.D. 1860

Merrill C. Young Clerk
per H. Griswold Deputy Clerk



State of Illinois } April Term A.D. 1861.
Supreme Court }

Ulrich Gehr }
vs } Assignment of Errors.
James Hagerman }
And now comes the Plaintiff
in error and says that in the Record and proceedings
aforesaid the Circuit Court erred in this Tottit;

1st The Court erred in permitting the evidence of the
Witnesses, James Hagerman Theodore McDermus
and Martin Gehr as given by each of them on
Cross examination to go to the Jury.

2nd The Court erred in permitting the evidence of
Henry to go to the Jury.

3rd The Court erred in admitting the Deed from
Hagerman to Gehr in Evidence

4th The Court erred in permitting the Judgment
of Hamson vs Gehr in evidence

5th The Court erred in refusing the 1st 2nd 3rd 4th
5th 6th 7th 8th and 9th instructions offered on the part of the
Plaintiffs

6th The Court erred in giving the 1st 2nd 3rd 4th 5th

instructions on the part of the Defendant

7th The Court erred in refusing to grant a new trial, and prays that for said error said judgment may be reversed

Robt. Ireland
attys for Plff.

149-27

Ulrich Gehr
n

James Hageman
Ammon

\$800

Filed March 27, 1881

L. Leland
Clerk