

No. 13327

# Supreme Court of Illinois

Musser

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vs.

Salsbury

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State of Illinois }  
Lee County }  
Circuit of the State of Illinois in the matter of  
Elias M. Salisbury }  
vs }  
Samuel W. Waples } In Action of Ejectment

Pear in the Lee County Circuit Court in  
the 22<sup>d</sup> Judicial Circuit of the State of  
Illinois on a change of venue from the  
County of Stephenson in the 14<sup>th</sup> Judicial

Be It Remembered that on the day of the Date  
though to wit on the ninth day of January AD 1858  
the Declaration and notice to the Defendant  
was filed in the Stephenson County Circuit  
Court in the words and figures following  
that is to say -

11  
State of Illinois }  
Stephenson County } In the Circuit Court of Stephenson County in the  
State of Illinois of the December Term A D 1857

Elias W Salisbury the Plaintiff in this writ by M D Meacham his attorney, complains of Samuel Huser the Defendant in this writ who has been duly notified of the filing of this declaration in the Circuit Court of said County. For that whereas the said Elias W Salisbury on the Fifteenth day of November in the year of our Lord One thousand Eight hundred and fifty seven, in the said County of Stephenson was possessed of a certain piece or parcel of land into the appurtenances. Situate in the City of Freeport in the said County of Stephenson and State of Illinois and being known and described as follows To wit

Commencing at the North Easterly corner of Lot No five (5) in Block No fifty four (54) in the original Town now City of Freeport on Exchange Street in said City according to a plat of said City now on Record in the office of the Clerk of the Circuit Court of said County, running thence South Westerly along the Northwesterly line of said Lot Number five to the Northwesterly corner of said Lot. thence South Easterly on the line between said Lot Number five and Lot number four (4) in said Block twenty five feet and nine Inches. thence North Easterly and parallel with Stephenson Street in said City sixty feet to Exchange Street in said City; thence Northwesterly along the line of said Lot number five, and Exchange Street twenty five feet and nine inches to the place of beginning, which said premises with the said appurtenances, the said Elias W Salisbury claims in fee and the said Elias W Salisbury being so possessed thereof, the said Samuel Huser afterwards to wit; on the day and year aforesaid in the said County entered into the said premises and ejected the said Elias W Salisbury therefrom and unjustly withholds from the said;

Elias M Salberry the possessor of the said premises to the damage  
of the said Elias M Salberry of a large sum To wit; the sum of  
Five Hundred Dollars + therefore he brings his Suit + c

M D Meacham  
Atty of P'tiff

To Samuel Murren

You are notified that the Declaration  
with a copy whereof you are now herewith send and to which copy  
this notice is subjoined will be filed on the Ninth day of January  
instant being the Thirtieth day of the present Term of the  
Circuit Court of Stephenson County in the State of Illinois: That  
upon filing the same a rule will be entered requiring you to appear  
and plead to the said Declaration within Twenty days after the  
Entry of such rule, and that if you neglect so to appear and plead  
a judgment by default will be entered against you and the Plaintiff  
will recover possession of the premises specified in the said Declaration

Dated this 7<sup>th</sup> day of January A D 1855.

M D Meacham  
Atty for P'tiff

State of Illinois }  
Stephenson County } D. B. Laird being first duly sworn upon his oath  
deposes and says that on this Ninth day of January  
A D 1855 he left a true copy of the foregoing Declaration  
and notice with the wife of the said Samuel Murren at the dwelling  
house of the said Samuel Murren, a member of his family and a  
white person above the age of ten years, the premises described in  
said Declaration being occupied by the said Samuel Murren he  
residing on the said premises and being absent from home at the  
time the said Declaration and copy were left  
subscribed + sworn to before me this 9<sup>th</sup> day of January 1855  
D. B. Laird  
L M Britton Clerk

State of Illinois  
Stephenson County, ss }

D. B. Laird being first duly sworn upon his oath deposes and says that on the 11th day of January A. D. 1858 at the dwelling house of the within named Samuel Murrey in the City of Freeport in said County; he left a true copy of the within Declaration and notice with the wife of the said Samuel Murrey she being a white person and about the age of ten years & a member of the family of the said Murrey; the said Samuel Murrey being then absent from home the premises described in said Declaration being occupied by the said Samuel Murrey as his dwelling house

Subscribed & sworn to before me  
this 12<sup>th</sup> day of April 1858  
L. M. Kirtman clk

D. B. Laird

Endorsed " Filed Jan 9<sup>th</sup> 1858  
L. M. Kirtman clk

Service	50
Mileage	05
Return	10
	<u>65</u>

J. M. Shaffer Shff  
for D. B. Laird W/ing "

And the Plea by the said Defendant  
filed in said cause is in the words

and figures following, that is to say:—

11 Samuel Murrell  
advs  
Oliver W Salisbury } In the Vicar Court of Stephenson County of  
April Term 1856 Defendant Samuel Murrell  
by J. F. Goodhue his attorney comes and and  
defends the force & injury where to and says that he is not guilty of  
Entering upon and withholding from said Plaintiff the premises  
described in his said Declaration in manner & form as the said  
Plaintiff has above thereof complained against him - And of this  
he puts himself upon the County &c

J. F. Goodhue  
Deft's atty

Endorsed Filed April 19. 1856  
L. W. Brittan clk "

And the motion and affidavit for a change  
of venue is in the words & figures as follows  
to wit:—

"

Elias M. Salisbury }  
vs  
Samuel Mueser }

In the Circuit Court of Stephenson County of the  
September Term A D 1858

Exposition

To The Honorable Benjamin R. Sheldon presiding Judge of the  
Thirteenth Judicial Circuit of the State of Illinois.

Samuel Mueser the Defendant in the above entitled suit  
represents unto your Honor that said suit is now pending and undeter-  
mined in said Court and that this Defendant fears he will not receive  
a fair and impartial trial in this cause, on account and for the  
reason that the inhabitants of said County in which this action is  
pending are prejudiced against this applicant, so that he cannot  
expect a fair trial of this cause, and that the same cause or  
reason exists in the Counties of Winnebago, and Jo. Davis, and that  
the cause or causes above stated have come to the knowledge of this  
applicant within less than Ten days from the date hereof, + the  
making of this application. This applicant therefore Prays that a  
change of Venue in this cause may be granted to some other County  
where the causes complained of do not exist -

Saml Mueser

Elias M. Salisbury }  
vs  
Samuel Mueser }

In the Circuit Court of Stephenson County of the September  
Term A D 1858

Exposition

State of Illinois }  
Stephenson County }

Samuel Mueser the above Defendant being duly sworn  
upon oath says that the above Petition by him signed is  
true in substance and fact

Saml Mueser

Subscribed + sworn to before me this 7<sup>th</sup>  
day of September A D 1858

Luther M. Britian, Clerk

Endorsed " Filed Sept 7<sup>th</sup> 1858

L M Britian Clerk "



And the Record of said Cause from the  
Circuit Court of Stephenson County, is  
in the words and figures, as follows  
to wit:—

## Records from Stephenson

State of Illinois }  
 Stephenson County } Pleas before the Hon. Benj. R. Sheldon Judge of the  
 14<sup>th</sup> Judicial Circuit of the State of Illinois at a  
 regular Term of the Stephenson County Circuit Court  
 begun and held at Freeport in said County in said State on the First  
 Monday of December A D 1857

Present Hon. Benj. R. Sheldon Judge  
 Mahan. D. Meacham States atty  
 J. Wilson. Shaffer Sheriff  
 Luther. W. Guitman Clerk

Be it remembered that on the 9<sup>th</sup> day of January A D  
 1858 - as yet one of the days of said December Term A D 1857  
 of said Court, the following entry appears of Record in a certain cause  
 pending in said Court wherein Elias W. Salisbury is Plaintiff and  
 Samuel Muser is Defendant, To wit. -

347 Elias W. Salisbury }  
 vs } Espectment  
 Samuel Muser }

And now at this day came the said Plaintiff  
 by his Attorney and files his Declaration and Notice to the said Defen-  
 dant, the service of which notice upon the said defendant is duly  
 proven to the satisfaction of the Court it is therefore considered and  
 ordered by the Court that said Defendant appear and answer, to the

7 Said Plaintiff's Declaration within Twenty days - -

And afterwards writ. at the April Term of  
said Court A.D. 1554 the same being one of the regular days of  
said April Term of said Court the following among other Entries  
appear of Record in said Cause

136 Elias W. Salisbury }  
vs } Ejectment  
Samuel Munn }

Now at this day came the said Defendant  
by his attorney and files his Plea to the Declaration herein -

And afterwards on the 22<sup>nd</sup> day of April A.D.  
1554 as yet of said April Term of said Court the following  
entries also appear of Record in said Cause writ

136

Elias W Salisbury

vs

Samuel Mufson

Ejectment

And now at this day came the said Plaintiff by his Attorney and files his affidavit and Notice to Defendant to produce Deed from said Plaintiff and wife to said Defendant

136

Elias W Salisbury

vs

Samuel Mufson

Ejectment

And now came the said parties by their attorneys, and upon issue joined for Trial put themselves upon the Country. Thereupon came a jury of Twelve good and lawful Men to wit: George Elgin, Alexander McCully, G. P. Morgan, Saml Smith, L. D. Smith John Swansey, John B Johnson, Sanford & Biddings Edward S Crain & W Schlott Bernard Studly George A Hicks, who were severally duly elected tried and sworn and after hearing evidence adduced and arguments of Counsel the jury retired in charge of an officer duly sworn to consider of their Verdict. by agreement of parties it is ordered by the Court that the jury seal their Verdict and bring the same in at the incoming of the Court to morrow morning

And afterwards tried on the 23<sup>rd</sup> day of April 1855. as yet one of the days of said April Term of said Court the following Entries appears of Record in said Cause

9  
136

Elias H. Salisbury }  
vs  
Samuel M. Upen }

Exemption

And now again came the parties into their attorney, and also came the jury with their sealed verdict to wit: That they find the Defendant guilty and the fee simple in the Estate described in Plaintiff's Declaration in the Plaintiff, therefore the said Defendant enters his motion for a new trial sued in arrest of judgment -

136.

Elias H. Salisbury }  
vs  
Samuel M. Upen }

Exemption

And now came on to be heard the Defendant's motion for a new trial and arrest of judgment and after arguments of counsel, the Court being fully advised in the premises the motion is overruled, it is therefore further considered and ordered by the Court, That the said Plaintiff have and recover of said Defendant the possession of the Premises in said Plaintiff's Declaration on file in this cause and it is further ordered by the Court that the said Plaintiff have and recover of the said Defendant his costs by him about his suit in this behalf expended and that he have Execution for the same -

On motion of the said Defendant by his attorney it is further ordered by the Court that this judgment be vacated and a new trial granted in this cause upon the payment of the costs, of this suit within Twenty days

And afterwards at the September Term A.D. 1856.  
of said Court. on the 7<sup>th</sup> day of September A.D. 1856 as yet one of  
the regular days of said Term of said Court the following among  
other entries appears of Record in said Court to wit—

70 Elias W. Salisbury }  
vs } Ejectment  
Samuel Maper }

Now at this day came the said Defendant  
by his Attorney and files his affidavits and motion for a change of  
venue in this cause. and the same having come on to be heard  
it is considered and ordered by the Court. that the Venue herein  
be and is changed to the County of Lee in the State of Illinois;  
And that the Clerk of this Court transmit without any unnecessary  
delay to the Clerk of the Lee County Circuit Court all the papers  
now on file appertaining to this cause together with the Record herein

State of Illinois }  
Stephenson County } J. Luther, Clk. Circuit Court  
do hereby certify that the foregoing is a  
true & correct copy of the Records of this Court of  
all the proceedings had in the above entitled cause wherein  
Elias W. Salisbury is Plaintiff and Samuel Maper is Defendant  
And I further certify that all the papers now on file in said cause  
marked respectively A. B. C. D. E. F. G. H. I. J. K. are herewith  
together with the Record transmitted to the Clerk of the Circuit  
Court of Lee County in the State of Illinois  
In Witness whereof I have hereunto set my hand

and Seal of said Court at Freeport in said County  
this 30<sup>th</sup> day of November A D 1859

L. M. Kintan, Clerk

Olias W. Salisbury	} B. Court	Plaintiffs -	
vs Samuel Moyer			
			Doc book 10 <sup>o</sup> app + atty 15 <sup>o</sup> B. l. 30 <sup>o</sup> ctg + seal 35 <sup>o</sup> " 90
			Copy B. l. " 20
			<hr/> 1.10

Defendants Court	
Entg app + atty 15 <sup>o</sup> Entg jug + fily aff + sw 30 <sup>d</sup>	" 45
" Doc chg " 20 <sup>o</sup> Doc transmit record + C 20 <sup>d</sup>	" 40
Copy Record + lctg + seal 10 <sup>o</sup>	2.00
B. l. 30 <sup>o</sup> copy 20 <sup>o</sup> ctg + seal 35 <sup>d</sup>	. 85
	<hr/> 3.70

I certify that the foregoing is a true copy from my "Dee Books  
Witness my hand & seal of said Court

L. M. Kintan Clerk

Entered " Filed Dec<sup>r</sup> 1<sup>st</sup> 1859

J. S. Boardman Clerk

per Joseph Ball DL "

And at a regular Term of See County  
Circuit Court begun and holden at  
the Court House in Dixon in said  
See County on the fourth Monday of  
November Anno Domini One Thousand  
Eight Hundred and Fifty Nine

Present

Hon John C. Cullum Judge

Robert C. Dorchell States Atty

James L. Bowman Clerk

Dexter Handberg Sheriff

It is remembered that on one of the  
regular days of said November Term to wit  
on Friday the 26<sup>th</sup> day of December A.D.  
1860 the following entry appears to us

"Chas W Salisbury } Charge of Venue from Stephenson County  
" } - Exemption -  
Sumner Muddes }

Now on this day comes Andson  
one of his Attorneys, and the Defendant by  
Stevens & Goodhue his Attorneys, also come  
on jury of good and lawful men to wit:

William Sutton, Phillip Mowbray, S. S. Stegman  
& J. Hancock, John Seale, Patrick Mc Corm  
A. F. Shaw, William Hensley, A. D. R Stone  
and Nathan Hill, and the regular panel of  
jurors being exhausted, the Court directed  
the Sheriff to summon two gentlemen from  
the bystanders, whereupon, Jerry Harris



his said Counsel then read three exceptions  
and the said Defendant prayed an appeal  
to the Supreme Court after the following  
judgment was rendered against him to wit:  
It is considered and adjudged by the Court  
that the Plaintiff have had recovery of the  
Defendant an estate in fee simple, together  
with the possession of the same to wit: commencing  
at the North Easterly corner of Lot No. five  
(5) in Block No. fifty four (54) in the  
original Town now City of Freeport and  
Exchange Street in said City, according to the  
plot of said City now on record in the Office  
of the Clerk of the Circuit Court of Stephenson County,  
beginning thence Southwesterly along the Northern  
line of said Lot No. Five to the Northwesterly  
corner of said Lot, thence South Easterly on the  
line between said Lot No. Five and Lot No.  
four in said Block Twenty five feet & nine  
inches, thence North Easterly and parallel  
with Stephenson Street in said City, sixty feet  
to Exchange Street in said City, thence  
Northwesterly along the line of said Lot  
No. Five & Exchange Street, twenty five feet &  
nine inches to the place of beginning, all being  
in the City of Freeport, County of Stephenson  
and State of Illinois: and that a Writ of Possession  
issue therefor: and that the said Plaintiff  
have and recover of the Defendant his costs  
and charges, by him in and about this suit  
expended, and that Execution issue therefor;

And afterwards at another regular day of



11  
State of Illinois } of the November Term of the Lee County Circuit  
Lee County } Court A D 1859

Elias H Salisbury }  
vs } Expectment  
Samuel Mufes } Change of Name from Stephens  
County Circuit Court.

Before the Hon John W Estace Judge of the 22 Judicial  
Circuit

Be it remembered that on this Eighth day of  
December in the year of our Lord One Thousand Eight hundred  
and fifty nine, said Defendant by J. F. Woodhewer & John Stevens  
his attorney came & enter his motion for a continuance in the above  
entitled cause. Said motion being founded upon affidavit of - - -  
Defendant which is in the words & figures following to wit

Elias H Salisbury }  
vs } In the Circuit Court of Lee County of  
Samuel Mufes } November Term A D 1859

State of Illinois }  
Stephens County } Expectment

Samuel Mufes Defendant in above  
entitled suit being duly sworn upon his Oath deposes and says  
that he has a good and substantial defence upon the merits  
in this case as he is advised by his counsel J. F. Woodhewer &  
verily believes - this Defendant further says, that he has been  
sick for the past two days and in consequence thereof has not

Been able to confer with his said counsel and prepare this case for trial. That some of the papers to be offered in evidence for the defence in this case have never been submitted to his said counsel, and he is now for the first time informed by said counsel that they are material for his defence -- this defendant further says that he is now so sick and unwell that he cannot travel from Trenton his residence to Dixon at present without greatly endangering his health, and that it is absolutely necessary that he should be present in person on the trial of this case to instruct and assist his counsel therein

Subscribed & Sworn to before me this } David Meigs  
30<sup>th</sup> day of November A D 1859

David Meigs Police Magistrate  
in and for the City of Trenton and Ex officio Justice of the Peace  
in and for said County "

Which said affidavit together with the certificate of David W. Sunderland clerk of the County Court of Stephenson County attached thereto certifying that David Meigs at the time of signing the forat thereto was a Justice of the Peace in & for said County of Stephenson were filed with the clerk of the Circuit Court of Lee County on said 8<sup>th</sup> day of December A D 1859 aforesaid. And this case coming up for hearing upon said motion the Court thereupon tried; on the day and year aforesaid overruled said motion by said Defendant for a continuance of this case: To which ruling of the Court the said Defendant by his counsel then & there objected

And now on this 16<sup>th</sup> day of December A D 1859  
 come again the said Plaintiff by Wheaton his attorney and the  
 said Defendant by J F Goodhue & John Stevens his attorneys  
 and this cause being up for hearing before a jury the said  
 Plaintiff offered in evidence on his part, first a Deed of Trust  
 from the said Defendant to one J. M. S. Brauley Executed on  
 the 22<sup>nd</sup> day of September A D 1855. Which said Deed of Trust  
 is in the words & figures following to wit-

This Indenture made this Twenty first day of September  
 in the year of Our Lord One Thousand Eight hundred &  
 fifty nine Between Samuel Mufey and Henrietta his wife, of  
 the County of Stephenson and State of Illinois of the first part  
 And J. M. S. Brauley, of the County of Stephenson and State of  
 Illinois of the second part. Witnesseth that the said Samuel  
 Mufey is fully indebted unto E. M. Salisbury in the sum of  
 Two Thousand Four Hundred Dollars. Secured by four certain  
 promissory Notes bearing even date herewith signed by said  
 Samuel Mufey and payable to E. M. Salisbury or order. one Note  
 of Two Hundred Dollars due in six months after date one Note  
 of Five Hundred Dollars due one year after date one Note  
 of Five Hundred Dollars due Eighteen months after date. one Note  
 of One Thousand Dollars due two years after date. all the above  
 described Notes bearing Interest at the rate of ten per cent per  
 annum for Money loaned. the Interest to be paid annually on  
 the Note due Eighteen months after date. and also on the Note  
 due two years after date.

And therefore these presents Witnesseth  
 that the said party of the first part in order to secure the  
 prompt and punctual payment of the said Notes or either of  
 them herein before specified according to its tenor and effect and  
 in consideration of Two Dollars, to the said party of the first

15  
part; paid, the receipt whereof is hereby enclosed. Do hereby Grant Bargain and Sell unto the said party of the second part, and to his Executors or administrators all the following described premises situate lying and being in the County of Stephenson and State of Illinois to-wit:

A part of Lot number Five (5) in Block number Fifty four (54) described as follows to-wit commencing at the Northeastly corner of said Lot number five (5) on Exchange Street running thence Southwesterly with and along the line of said Lot five (5) Sixty (60) feet to the Northwesterly corner of said Lot five (5) thence Southwesterly with and along the line between said Lot five (5) and Lot number four (4) in said Block. Twenty five <sup>(25)</sup> feet and nine (9) inches thence Northeastly parallel with Stephenson Street Sixty (60) feet to Exchange Street thence Northwesterly along the line of said Lot five (5) and along Exchange Street twenty five (25) feet and nine (9) inches to the place of beginning.

The above described tract or parcel of Land being in the Town, now City of Freeport in said County and State:

Together with all and singular the tenements hereditaments and appurtenances therunto belonging or in anywise appertaining: To have and to hold the above described premises unto the said party of the second part and to his Executors or Administrators. . . . In Trust Nevertheless for the following purposes to-wit: In Trust in case default shall be made by the said party of the first part his heirs Executors or administrators to pay the said Notes or either of them above mentioned according to the tenor and effect thereof then on application of the said E. M. Sabburg, or the legal holder or holders of said Notes, and having first given Ten day notice by Publishing the same in a Public Newspaper printed in the County where said premises are situated then it shall and may be lawful for the said party of the second part his Executors administrators or attorney: duly authorized to take possession of the premises aforesaid, and to sell the same

or any part thereof, at Public Sale at such time and place as the said party of the second part his Executors administrators or attorney may appoint or to adjourn said Sale from time to time and up- on making Sale as aforesaid, to make and deliver to the Purch- arer or Purchasers thereof, a good and sufficient Deed or Deeds of Conveyance in the Law for the same in Fee Simple; and out of money arising from such Sale, after first paying all reasonable Expenses growing out of the Execution of the Trust afo- r said; And all Taxes and assessments lined in the premises aforesaid or in such part thereof, as may be sold for the purposes aforesaid, to pay the said E. W. Salisbury his representatives Executors or administra- tors; or the legal holder or holders thereof the amount which may be then due on said Notes above mentioned for principal and Interest rendering the surplus of the proceeds of such Sale (if any there should be) unto the said party of the first part, or his heirs Executors or admin- istrators. — In case no default is made in the payment of the aforesaid Notes then this Conveyance shall be null and void

In case the aforesaid Notes and all Costs and reasonable Expenses of the said Trust shall be satisfied by the sale of part of the premises aforesaid, then the Title to and the right of Entry the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part, and the said unsold residue shall be fully discharged from all liens Executed by the Trust aforesaid

And the said Samuel Mifflin and Henrietta his wife parties of the first part for them and their heirs Executors and administra- tors do hereby Warrant to and with the said party of the second part and his Executors or administrators and to and with the Purchaser or Purchasers at the sale aforesaid, that at the time of the executing and Delivery of these presents they are well seized of the premises above conveyed as of an indefeasible Estate of inher- itance in the Law in Fee Simple and that the same are free from all incumbrances of what nature so ever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will process Warrant and Defend, and that he

will during the continuance of these presents pay all Taxes and assessments levied on the above described premises or any part thereof. Before any advertisement or charge accrues against the said premises.

In Witness Whereof the said party of the first part have hereunto set their hands and seal the day and year first above written

{ Signed }

Samuel Mufser 

Hennette <sup>her</sup> ~~Mufser~~ <sub>mark</sub> 

State of Illinois } ss I, David W Sunderland Clerk of the  
Stephenson County } County Court in and for said County  
in the State aforesaid, Do hereby  
certify that Samuel Mufser personally

known to me as the same person whose name is subscribed to the foregoing Instrument of writing appeared before me this day in person and acknowledged that he signed sealed and delivered the said Instrument of writing as his free and voluntary act for the uses and purposes therein set forth. And the said Hennette Mufser wife of the said Samuel Mufser having been by me examined separate and apart and out of hearing of her said husband and the contents and meaning of the said Instrument of writing having been by me made known to her, she acknowledged that she had fully and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without fear or compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and the seal this 22<sup>d</sup> day  
of September A D 1855

{ Signed }

David W Sunderland Clerk



To which acknowledgment is attached the seal

To which acknowledgment is attached the seal  
of the County Court of Stephenson County

on the Back of said Deed is the following  
Certificate.

State of Illinois }  
Stephenson County } Office of Clerk of Circuit Court. I hereby  
certify that this Trust Deed was Filed  
for Record on the 22<sup>nd</sup> day of September  
A.D. 1855 at 10 o'clock A.M. & Recorded in  
Book "10" of Mortgages Page 456 to 458 and Examined

{ Signed }

Joseph B. Smith Clerk  
Jas R. Ordway Dep

Also the following Endorsement

Received October 31 1857 of F Mr S Bramley  
Trustee in within Deed Five Hundred Dollars on Sale this  
day made by him as Trustee of Estate within conveyed to him  
as Trustee. Said Real Estate on such Sale having been bid in  
by me at \$500. + + this by the highest bid therefor

Tax paid for Maps	\$ 22.91
Expenses of Trust with	8.50
Bal	<u>468.59</u>
	\$ 500.00

E. Mr. Salisbury

To the Introduction & reading of said Deed of Trust in Evidence by the said Plaintiff the said Defendant then & there objected which objection was by the Court over-ruled and said Deed of Trust allowed to be by the Plaintiff read in Evidence to the Jury and to which ruling of the Court and the reading of said Deed of Trust in Evidence the said Defendant then & there Excepted

The Plaintiff then proved by the testimony of one Jacob Curran that he knew the premises described in the Plaintiffs Declaration. that he knows the Defendant Samuel Mufser, that Defendant resides with his family in the house situate upon said premises that he was so residing with his said family in said house at the time of the commencement of this Suit and that he & his family are now living therein. that he is not acquainted with any other man by the name of E. M. Salisbury in Trenton. Except the Plaintiff in this case Cross Examined - Witness stated that he believes Defendant has resided in the house upon said premises ever since he claimed ownership over the same does not know the exact length of time but should think over - three - years believes Defendant lived in the house on said premises with his family at the time of executing the Deed of Trust to said Brawley -- which had been offered in Evidence.

Plaintiff then offered in Evidence to the Jury a Trusts Deed from said Brawley above named to one E. M. Salisbury executed on the Third day of November A. D. 1857 which said Trusts Deed is in the words & figures following to wit

This Indenture made and Entered into this 31<sup>st</sup> day of October in the year of our Lord One Thousand Eight hundred and Fifty Seven. Between J. M. S. Brauley of the County of Stephenson and State of Illinois of the one part and E. M. Sabbury of the County of Hamilton and State of Iowa of the second part  
Witnesseth that whereas Samuel Mufser and Henrietta Mufser wife of the said Samuel Mufser. Did on the Twenty first day of September A. D. 1855. execute a certain Deed of Trust of that date by which they Granted Bargained and Sold to the said J. M. S. Brauley the following described Tract piece or parcel of Land situated lying and being in the County of Stephenson & State of Illinois to wit

A part of Lot number Five (5) in Block number Fifty four (54) Commencing at the North East-ly corner said Lot in Exchange Street running thence South- westerly into and along the line of said Lot Five (5) sixty (60) feet to the Northwesterly corner of said Lot Five (5) thence South easterly into and along the line Between said Lot Five (5) & Lot numbered Four (4) in said Block. Twenty five (25) feet and Nine (9) inches thence North easterly parallel with Stephenson Street sixty (60) feet to Exchange Street thence North- westerly along the line of said Lot Five (5) and Exchange Street Twenty five (25) feet and Nine (9) inches to the place of beginning the above described tract or parcel of Land being in the Town now City of Freeport in said County & State.

In Trust in case default should be made by the said Samuel Mufser in the payment of certain promissory notes bearing even date with said Trust Deed and given by the said Samuel Mufser for the sum of Two Thousand four hundred Dollars and due & payable to E. M. Sabbury or order One Note of Four Hundred Dollars due in six months from date one Note of Five Hundred Dollars due in one year after date one Note of Five Hundred Dollars due in eighteen months after date one Note of One Thousand Dollars due in two years after

date. then on application of the said O M Sabhorny or the legal holder or holders of said notes after having given ten days notice by publishing the same in <sup>Public</sup> newspapers printed in the County where said premises are situated. to take possession of said premises and sell the same or any part thereof at such hour and place as the said J M S Brawley might appoint and out of the proceeds of such sale after first paying all the expenses growing out of the Execution of the Trust in said Trust Deed specified to pay the said O M Sabhorny or the legal holder or holders of said notes, the amount then due on the same and whereas the three last described notes on the Twenty first day of September A D 1857 remained due and wholly unpaid and having been requested by the legal holder of said notes to proceed to sell the said premises above granted for the purpose of satisfying said notes according to the power and trust vested in the said J M S Brawley by the said Deed of Trust and the said J M S Brawley having published a notice in the Freeport Bulletin a weekly newspaper published in the City of Freeport in the County of Stephenson + State of Illinois (a certified copy of which notice is hereto annexed) for ten day previous to the day of sale in accordance with the Equivisions of said Deed of Trust did on the Thirty first day of October A D 1857 between the hours of Ten + Eleven o'clock A M of that day at the door of the Court House in the City of Freeport in the County of Stephenson and State of Illinois, in pursuance of said Notice and said Deed of Trust, proceed to sell the said piece or parcel of Land To wit.

A part of Lot number Five (5) in Block number fifty four (54) described as follows commencing at the North-Easterly Corner of said Lot number five (5) on Exchange Street running thence South-westerly with and along the line of said Lot five (5) sixty (60) feet to the North westerly corner of said Lot five (5) thence South Easterly with and along the line between said lot five (5) and lot number four (4) in said Block

Twenty five (25) feet + nine (9) inches thence North easterly  
parallel into Stephenson Street Sixty (60) feet to Exchange Street  
thence North westerly along the line of said Lot five (5) and along  
Exchange Street. Twenty five (25) feet + nine (9) inches to the  
place of beginning the above described tract or parcel of land  
being in the Town now City of Fairport in the County and  
State of said at Public sale to the highest bidder. and the said  
E. M. Salisbury having bid the sum of Five Hundred Dollars, for  
the above described premises and this being the highest and  
best bid for the said premises. the same was at said Sale  
stricken off to him the said E. M. Salisbury purchases under  
the said Deed of Trust.

It is therefore in consideration of the  
matter and things hereinbefore recited and the said sum of  
Five hundred Dollars to the said J. M. S. Branley in hand paid  
by the said E. M. Salisbury the right whereof is hereby acknowledged  
before the Sealing and delivery of these presents the said J. M. S.  
Branley has according to the Power in him vested by the said  
Deed of Trust granted Bargained and sold. all the right title  
Interest and claim which the said Samuel Moyer and Henrietta  
Moyer his wife had on the Twenty first day of September A. D. 1855  
or which they now have, or which the said J. M. S. Branley has  
in and to the said Tract or Parcel of Land unto the said E. M.  
Salisbury his heirs and assigns forever, To have and to hold the  
same unto the said E. M. Salisbury his heirs and assigns forever

In Testimony whereof I the said J. M. S. Branley as Trustee  
as aforesaid have hereunto set my hand and seal the  
day and year first above written

{ Signed }

J. M. S. Branley, Trustee

Seal

State of Illinois  
Stephenson County

I David W Sunderland Clerk of  
the County Court in and for said  
County in the State of said So

do hereby certify that J M Brawley to me  
known as the real person described in and who executed  
the foregoing deed of Emancipation this day personally  
appeared before me & acknowledged that he had  
executed the same as Trustee for the use and purposes therein  
expressed of his own free act and deed



Witness my hand and the seal of said Court  
at Frankfurt in said County this Third day  
of November A.D. 1857

(Signed)

David W Sunderland  
Clerk

In the margin upon the left hand of said certificate of  
acknowledgment is attached the seal of the County Clerk of  
said Stephenson County

Attached to said Trustee Deed is a printed copy of the notice  
of sale & certificate of the Publisher of the Frankfurt Bulletin  
mentioned and referred to in said Trustee deed and which  
was also read in evidence on the Trial of this cause in  
connection with said Trustee Deed which said notice &  
certificate are in the words & figures following to wit

## Trustee Sale

Thomas Samuel Waples and Henrietta Waples his wife on the twenty first (21<sup>st</sup>) day of September A D 1855 executed to me as trustee a Deed of the premises hereinafter mentioned in trust to secure the payment of certain notes in said Deed mentioned amounting to Twenty five Hundred Dollars and payable to F. M. J. Brawley or order, said Deed being Recorded in the office of the Clerk of the Circuit Court of Stephenson County Illinois in Book 76 of Mortgages, page 456 to 458 and whereas default having been made in the payment of said notes, and on the application of said Brawley, Public Notice is hereby given that I shall sell at Public sale to the highest bidder at the door of the Court house in the City of Freeport in said County at 10 o'clock A M on the 26<sup>th</sup> day of October A D 1857 the premises described in said Deed, viz

A part of Lot number five (5) in Block number fifty four (54) in said City of Freeport described as follows viz commencing at the Northeastly corner of said Lot on Exchange Street in said City running thence South Westly along the line of said Lot sixty (60) feet to the Northwestly corner of said Lot thence South Eastly along the line between said Lot and Lot number four (4) in said Block, twenty five (25) feet and nine (9) inches thence North Eastly on a line parallel with Stephenson Street in said City sixty (60) feet to Exchange Street thence Northwestly along the line of said Lot No five (5) and Exchange Street to the place of beginning for the purposes stated in said Deed of Trust

Freeport Ill Oct 12<sup>th</sup> 1857

F. M. J. Brawley Trustee

Immediately under said notice is the following.

The above sale is adjourned to take place at the door of the Court house in Freeport Stephenson County Illinois on

Saturday the 31<sup>st</sup> day of October 1857 at 10 o'clock A.M.  
of that day  
Oct 26<sup>th</sup> 1857 (Signed) J. M. Brawley Trustee

I, Mr. J. Giles one of the Publishers of the Freeport  
Weekly Bulletin a newspaper published in the City of Freeport  
Stephenson County Illinois. Do hereby certify that the notice  
hereaffixed has been published for Ten days previous to the  
date thereof the 1<sup>st</sup> insertion being on the 15<sup>th</sup> day of October  
A.D. 1857 and the last on the 29<sup>th</sup> of October 1857

(Signed) Mr. J. Giles  
Freeport Nov 2<sup>nd</sup> 1857

on the back of said Trustee Deed is the follow-  
ing Certificate

State of Illinois }  
Stephenson Co. }  
Circuit Clerk's office. }

I certify that this Instrument was  
Filed for Record November 4<sup>th</sup> 1857  
at 9 A.M. and Recorded in Book  
26 of Deeds on page 243

(Signed)

L. M. Kuitman Clerk  
By J. W. Barry Deft

And to the Introduction + reading of said Testis  
Deed from said Brauley to said E. M. Salisbury in evidence by the  
said Plaintiff; the said Defendant then + then objected  
which objection was by the Court overruled and said Justice  
Deed from said Frank Brauley to said E. M. Salisbury as above  
described, was allowed by the Court to be by the Plaintiff read  
in evidence to the jury to which ruling of the Court and to  
the reading of said Testis deed aforesaid in evidence the  
said Defendant then and then Excepted.

Upon the above Evidence  
which was all that was submitted by either party to the jury  
the said Plaintiff and the said Defendant rested their case  
whereupon the jury by their foreman returned into Court  
their written verdict which was and is in the words and figures  
following to wit

E. M. Salisbury }  
vs }  
David Mufson }      Verdict

That the jury in the above entitled case  
find the Plaintiff the owner in fee simple of the premises  
described in the Plaintiff's Declaration and that the Defendant is  
guilty in manner + form as in said Declaration is alleged.

Patrick McNamee  
Foreman

And therefore immediately the said Defendant comes and  
enters his motion in arrest of judgment and for a new Trial



for purposes annexed into this suit.

Affiant further saith that he is informed & truly believes that upon another trial of this cause he can prove that at the time of the commencement of this action in the Circuit Court of Stephen Co. County, the said Salisbury had no valid Subverting Interest in the premises claimed nor any right to receive the same, or to receive the proceeds thereof or any share Interest or portion thereof. But that immediately after said Salisbury acquired possession of the Trusters Deed for said premises from Frank Bradley officer & found in evidence on the trial of this cause & upon which affiant is informed by Counsel said Salisbury relies to prove his right to the possession of said premises, and also before the commencement of this suit said Salisbury conveyed by Deed in fee simple all his right title & interest in & to said premises - Affiant further saith that on another trial of this cause he could prove all of the above facts (if not by the Deed itself from said Salisbury) by the testimony of Seth B. Harwell whose testimony upon another trial Affiant believes he would be able to procure. Affiant further saith this application is not made for delay but that substantial justice may be done

Subscribed & sworn to before me this  
25<sup>th</sup> day of December A.D. 1859

Saml. Murrell

Isaac P. Boardman Clerk  
for people - Ball D.C.

and the Court having heard the argument of counsel upon said motion, said motion by said Defendant in arrest of judgment & for a new Trial in this cause was by the Court overruled to which ruling of the Court the said Defendant then and there excepted

And the said Court thereupon entered judgment for the Plaintiff for possession and for costs from which judgment of the Court the Defendant then & there prayed an appeal

And the said Defendant prays that this his Bill of Exceptions may be signed and sealed which is done

(Signed etc)

Endorsed Filed January 30<sup>th</sup> 1860

J. S. Boardman Clerk  
for Joseph Ball etc

And the ~~Bill~~ Bond filed by the Defendant in said cause is in the words and figures as follows to wit:—

31  
Appel Bond

Know all Men by these presents that the Samuel Mages  
Thomas F Woodhew John M De Armit and David Linn of the  
County of Stephenson & State of Illinois are held and firmly  
bound unto Elias M Salisbury in the penal sum of Five Hundred  
dollars for the payment of which well & truly to be made we bind  
ourselves our heirs executors administrators and legal assigns jointly  
& severally firmly by these presents

Witness our hands & seal this 30<sup>th</sup> day of January AD  
1860

The condition of the above obligation is such that when-  
as the said Elias M Salisbury did on the thirty first day of  
December AD 1859 receive by the consideration of the Circuit Court  
of Lee County Illinois a judgment in Execution against the  
above bounden Samuel Mages establishing the title of the said  
Elias M Salisbury to the following real Estate viz

A part of Lot number five (5) in block number fifty -  
four (54) described as follows to wit commencing at the north-  
easterly corner of said lot number five on Exchange Street running  
thence southeasterly with and along the line of said lot five sixty  
feet to the northwesterly corner of said lot five thence southeasterly  
on the line between said lot five & lot four in said block twenty  
five feet and nine inches thence southeasterly parallel with  
Stephenson Street sixty feet to Exchange Street thence northwesterly  
along the line of said lot five and along Exchange Street twenty five  
feet and nine inches to the place of beginning situate in the City  
of Stephenson County of Stephenson & State of Illinois. and awarding to  
the said Elias M Salisbury a writ of Habere Facias Possessionem  
against the said Samuel Mages, and also a judgment for costs  
of said suit from which said judgment the said

Samuel Mufey has prayed an appeal and obtained an appeal to the Supreme Court of the State of Illinois, for the third Grand Division held at Ottawa in said State of Illinois -

Now if the said Samuel Mufey shall prosecute his said appeal without delay and pay and satisfy the said judgment with interest & costs as may be awarded by the said Supreme Court in case said judgment shall be affirmed in the said Supreme Court and shall also yield up to the said Elias M. Dolsberg the possession of the said parcel of land in case said judgment of said Circuit Court shall be affirmed by the said Supreme Court (Saving the rights of the said Samuel Mufey under and by virtue of the thirty six chapters of the Revised Statutes of Illinois in force September 10<sup>th</sup> 1845 then this obligation to be void, else to remain in full force + virtue

In Presence of }  
J. H. Goodhue }

Samuel Mufey  
J. H. Goodhue  
J. M. De Armit  
David Lewis



Entered Filed January 30<sup>th</sup> 1860

J. H. Boardman Clerk

Elias W. Salisbury

Samuel Musser

Bill of Costs  
In Lee County Circuit Court

2<sup>nd</sup> Do. suit 20 Centee 20 40

Amount of  
Costs

ap. atts 25 fil & pas 70, 2 affs 20, 2 outts 10 95

mo for rule 20 Ent rule, 20 certifying rule 40 50 90

portage 30, 2 sps of 4<sup>th</sup> 80, and out pay 20, and for call 20 1.50

call pay etc 15 Ent verdict 10, and over mo in arrest 20 215

and over mo for new trial 20 Ent just 25 Jury, and Wit 20 75

Wit of possession 40 Ent for out 20 and for Ex 20 80

and as to Bill 20 This Transcript etc 12.50 12.70

Bill of Cost 30 Copy 20 Cost & Seal 35 85

Jury Fees 300 3.00

Witness for Jacob Centron Day 80 mile 10.00 10.00

32.30

Dependants  
Cost

ap. atts 25 - fil & pas 30 - 2 sps of 4<sup>th</sup> 30 - 4 affs 40 1.25

2 outts 10 - Ent mo in arrest 20, mo for new trial 20 50

Ent exception 20 - Ent prayer for appeal 20 40

and as to Bill of except 20 Bill of Cost 30 Copy 20 85

Docket Fees 2.50 2.50

Cost in Stephenson Circuit Court } 5.50

Side Board thereof supra } Total

State of Illinois  
Lee County

I, Isaac S. Bowman Clerk of the  
Lee County Circuit Court do hereby certify  
that the foregoing is a correct copy of Costs  
in this Court in said Cause

Isaac S. Bowman Clerk

State of Illinois  
Lee County

Ad. I. James S. Boardman  
Clerk of the Circuit Court in & for said County,  
in the State of Illinois do hereby certify  
that the foregoing is a full, true & complete  
exemplification of all the proceedings in  
the foregoing cause, as appears by the  
Records and papers on file in my Office.

In Witness whereof I hereunto set  
my hand and affix the Seal  
of said Court, at Dixon this 14<sup>th</sup>  
day of April A.D. 1860  
James S. Boardman Clerk

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Saml. Messer  
of  
Ellis Falshury  
Transcript

Filed Apr. 21. 1860  
L. Island Ck.

13827

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