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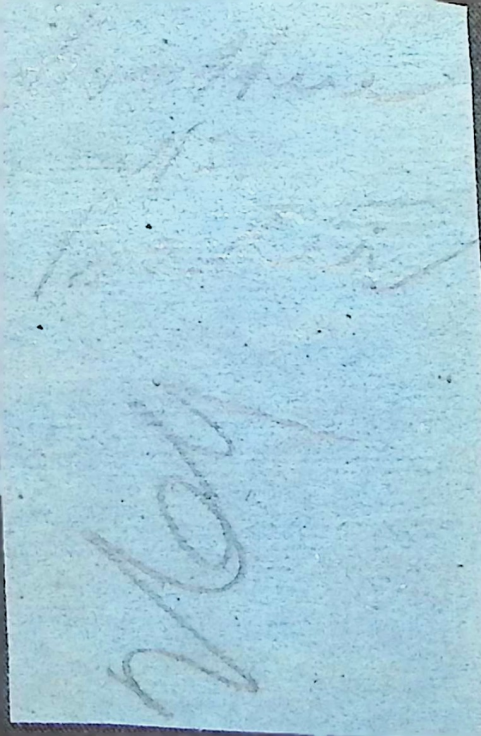
No. _____

Supreme Court of Illinois

Goodhue.

vs.

Baker.



Fred. Blake

269

12776

1859

State of Illinois
of Daviess County
14th Judicial Circuit

Pleas in the Circuit
Court in & for said

County in the State aforesaid, at the
May Term AD 1858. Begun and held
at the Court House in Galena in said
County on the third Monday in the
Month of May AD 1858 To wit on
the 17th day of May AD 1858. Present
Hon^{ble} Benjamin R. Sheldon Judge
W. D. Melicham Prosecuting Atty.
Wm. R. Rowley Clerk
J. K. Mills Sheriff

Frederick Baker

vs
Thomas F. Goodhue Ejectment
Be it remem-
bered that heretofore
to wit on the 16th day of February AD
1857. The parties to the above entitled
suit filed in the office of the Clerk
of the 14th Judicial Circuit and
the following transcript to wit

United States of America.
State of Illinois
Stephenson County

Pleas before the Hon. Benjamin

R. Sheldon Judge of the fourteenth Judicial District
of the State of Illinois at a Term of Stephenson County
Circuit Court began and held at the Court House in Freeport
in the said county of Stephenson in pursuance of law
on the first day of September A.D. one thousand eight
hundred and fifty six

Present Hon. Benjamin R. Sheldon Judge
William Brown States Attorney
Isaac Aleckner Sheriff
Attest Joseph B. Smith, Clerk

Be it remembered that heretofore to wit on the
13th day of September A.D. 1856 at the said September
Term A.D. 1856 of said Stephenson County Circuit Court
the following among other proceedings were had in said Court

Frederick Baker

vs

Thomas F. Goodhue

Ejectment

And now at this day comes the
said plaintiff by Bright & Smith his attorneys and files
his Declaration in an action of Ejectment together with
notice and affidavit of service thereof Whereupon it is
ordered by the Court that this suit be docketed and
that the said Defendant be ruled to appear and file
his plea to said plaintiffs Declaration within twenty
days from this day

And afterwards to wit on the 6th day of December
A.D. 1836 at the December Term A.D. 1836 of the
said Stephenson County Circuit Court began and held
in pursuance of law at the Court House in Freeport
in said County of Stephenson on the first Monday in
December A.D. 1836 the following among other proceedings
were had to wit-

Frederick Baker
vs
Thomas F. Goodhue } Ejectment

And now came to be heard the Demurrer
of the Defendant heretofore filed to the Plaintiffs
Declaration and after hearing the Arguments of Counsel
it is ordered by the Court that the Demurrer be overruled

And afterwards to wit on the 8th day
of December A.D. 1836 at said December Term of
said Stephenson County Circuit Court the following proceedings
were had in said cause to wit-

Frederick Baker
vs
Thomas F. Goodhue }

And now comes the said Defendant by his
Attorney and files his plea to the plaintiffs Declaration

And afterwards to wit on the 13th day of
December A.D. 1836 at the said December Term of said

Count the following proceedings were had in said cause
to wit —

vs
15 Frederick Baker

Thomas L. Goodhue } Ejectment

On Petition of the Defendant verified
by his affidavit heretofore filed it is considered and ordered
by the Court that the venue herein be changed to Joe Davis
County And it is further ordered by the Court that the
clerk of this Court transmit to the clerk of the Joe Davis
County Circuit Court all the papers and files in this cause
and the record herein before the first day of the next term
said Circuit Court

Illinois

Johnson County } ss. I Luther W. Guiteau clerk
of the Circuit Court in and for said county do hereby certify
that the foregoing is a true and correct copy from the records
of my office of all the proceedings had in said cause and
that the return and notice marked "A" Demurrer
marked "B" Plea marked "C" Affidavit and
Petition for change of venue marked "D" are all the
papers on file in my office appertaining to said cause

In witness whereof I have hereunto set my hand
and affixed the Seal of our said Circuit Court
at Freeport this 13th day of February A.D. 1857

Attest — L. W. Guiteau, Clerk

Endorsed, Filed Feb^y 16th 1857

— W. R. Rowley, Clerk

The Declaration and Notice filed in the above entitled cause is in the words and figures following to wit

State of Illinois } 33 In the Circuit Court of Stephenson
Stephenson County } County of the September Term A. D. 1856

Frederick Baker the plaintiff in this action by Bright Smith his Attorney, Complains of Thomas F. Goodhue the defendant in this action in a plea of Ejectment

For that whereas on the fifteenth day of March the year of our Lord one thousand eight hundred and fifty two the said plaintiff was seized and possessed in Fee Simple of the following described tract of land or premises situate and being in the County of Stephenson and State of Illinois to wit Lot Number five (5) in Block number fourteen (14) in the Town of Freeport (now City of Freeport) in said county and State aforesaid together with the dwelling house and out houses situated thereon and all and singular the appurtenances thereunto belonging and being so possessed thereof that the said Defendant afterwards to wit on the said fifteenth day of March in the year of our Lord one thousand eight hundred and fifty two entered into the said above described land, and premises with the appurtenances, and that he the said Defendant unlawfully withhold, from the said plaintiff the possession thereof

is the damage of the said plaintiff of Two thousand
Dollars and therefore he brings his suit &c.
by Bright & Smith
Atty for Plff.

To Thomas F. Goodhue
Sir

You will please take notice that on the thirteenth
day of September A.D. 1856 it being the September term
of the Circuit Court in and for the County of Stephenson
which was commenced to be holden at the Court House
in the City of Freeport Stephenson County Illinois on
the first Monday of the month of September A.D. 1856
I shall file the foregoing Declaration in said Circuit Court
That upon filing said Declaration a Rule will be
laid requiring you to appear and plead to said
Declaration within twenty days after the entry of said
Rule and that if you neglect to appear and plead a
Judgment by default will be entered against you for
the recovery of the premises described in said Declaration
and the said plaintiff will recover possession of said premises.

Yours for

Bright & Smith

Atty for Plaintiff

Served by reading and delivering a true copy of this writ to
the within named Thomas F. Goodhue this 12th day of
September A.D. 1856 - Isaac Fleckner Shff.

Isaac H. P. Marmore Depy

State of Illinois

Stephenson County } ss

Personally appeared before me this 13
day of September A. D. 1856 W. P. Naramore who being
duly sworn according to law doth depose and say, that
he served a true copy of the within declaration and
notice on the within named Thomas F. Goodhue
on the 12th day of September A. D. 1856 by
delivering the same to him in person and further
saith not.

W. P. Naramore

Subscribed and sworn to

on this 13th day of

Sept. A. D. 1856 - Joseph B. Smith

Clerk

Endorsed filed September 13th 1856

J. B. Smith Clerk

The Demurrer to the Plaintiffs Declaration filed
by the Defendant is in the words and figures following

to wit -

State of Illinois

Stephenson County } ss

Frederick Baker

vs

F. Goodhue

In the Circuit Court of

Stephenson County of December

Term 1856

Ejectment

And the said Defendant Thomas
F. Goodhue by S. A. Hullbert his Attorney comes and

defends the wrong and injury when he And says that the said plaintiff declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant and he the said defendant is not bound by the law of the land to answer the same And this he is ready to verify and wherefore by reason of the insufficiency of said declaration the said defendant prays judgment and that the said plaintiff be barred from having or maintaining his aforesaid action thereof against him and that the said declaration may be quashed and declared void &c

And for grounds of Special Demurrer to said declaration the said defendant assigns

The said declaration is entitled of the September term of said Court, whereas it should have been entitled specially as of the December term of said Court—

It does not definitely appear by any averment in said declaration that the defendant entered upon the premises therein described before or after said plaintiff alleged he was seized and possessed of the same

The premises are not sufficiently or definitely described - And the affidavit and notice attached to the said declaration are informal insufficient - and for other reasons - S. A. Hurlburt, Deft. Atty

9
Endorsed, Filed Oct. 3rd 1856
Joseph B Smith Clerk.

The Plea filed by the Defendant in this cause is
in the words and figures following to wit

95.

Thomas F. Goodhue } In the Stephenson County Circuit
ad } Court of the December Term A.D.
Muelick Baker } 1856 — Ejectment

And the said Defendant Thomas F. Goodhue
by S. A. Hurlburt his attorney comes and defends the
peace and injury when he and says that he is not
guilty of the said supposed trespass and ejectment above
said to his charge or of any part thereof in manner
form as the said plaintiff has above thereof complained
against him and of this the said Defendant puts
himself upon the Country &c

S. A. Hurlburt

Defts Atty.

Endorsed filed Dec. 8th 1856

L. W. Guiteau, Clerk.

The Affidavit and Petition for change of Venue
of the Defendant is in the words and figures following
to wit—

Muelick Baker } In the Stephenson County
v. F. Goodhue } Circuit Court of the

December Term A. D. 1856

Ejectment

To The Honorable Benjamin R. Sheldon
Presiding Judge of the fourteenth Judicial circuit
for the State of Illinois

Thomas F. Goodhue the defendant in
the above entitled suit represents unto your honor
that the above entitled suit is now pending and
undetermined in the above court and this Defendant
fears that he will not receive a fair trial in this
cause in said Court on account or for the reason that
the adverse party the plaintiff in this suit has an
undue influence over the minds of the inhabitants of
said county of Stephenson in which said action is
pending and that the same cause or reason exists in
the county of Winnebago. This deponent therefore prays
for change of venue in this cause according to the form
of the Statutes in such case made and provided

T. F. Goodhue

Frederick Baker

vs

Thomas F. Goodhue

State of Illinois

Stephenson County

Stephenson County Circuit Court of

the December Term A. D. 1856

Ejectment

Thomas F. Goodhue the above
Defendant being duly sworn says that he has read the
above Petition by him signed and that the same is true
in substance and fact - T. F. Goodhue

Subscribed & Sworn to before me
this 13th day of December A. D. 1856
L. W. Guiteau, clk

Endorsed Filed Dec^r 13. 1856

L. W. Guiteau, clk.

And afterwards to wit on the 18th day
of March A.D. 1858 at the March Term
A.D. 1858 of the said Daviess County Circuit
Court in the record of the proceedings
hereof in said cause appears the
following entry to wit

Frederick Baker

vs

Exemption

Thomas F. Goodhue

Now at this

come the parties by

their attorneys and upon issue joined
thereupon came a jury of good and
lawful men to wit D. S. Chapin.
Thomas Crummer. John Goldthorpe
John Weisson John L. Charles Valentine
Weck. John Bernard Elmer A. Sanford
John McCallister. John G. Doest
B. Craig and Edward Rogers who
were duly elected tried and sworn
and after hearing the evidence and

arguments of Counsel retired to consider
of their verdict - and by agreement
of the parties by their Attorneys it
is ordered by the Court - that when
they shall have agreed upon a
verdict they may seal the same
and return it into Court to morrow
morning

And afterwards to wit on
the 12th day of March A.D. 1858 as yet of
the said March Term A.D. 1858.
of said, Goddard County Circuit
Court in the Record of the proceed-
ings thereof in said Cause appears
the following entry to wit -

Fredrick Baker

vs

Thomas F. Goodhue ^{Ex. Ejectment - Change of Venue} _{Sporn Stephenson Co}

Now at this day come
again the jury heretofore impaneled,
in this cause and return the following
sealed verdict - To wit: We the Jury
find the Defendant Guilty and the
claim established, in the plaintiff to be
his estate in fee. And the defendant
by his attorney moves the Court for
a new trial

And afterwards to wit on the 2nd day of April A.D. 1858 as yet of the said March Term A.D. 1858 of said, for Daviess County Circuit Court in the Record of the proceedings thereof in said Cause appears the following entry to wit

Frederick Baker

vs

Ejectment

Thomas F. Goodhue } The Defendant
by his Attorney comes
and files his Motion & reasons for a
new trial

The Motion referred to
in the last recited entry is in the
words and figures following to wit:

Frederick Baker

vs

In the Circuit Court
of Daviess County
of March Term A.D. 1858

Thomas F. Goodhue

Ejectment

Now at this day comes the said def-
endant by M. V. Johnson his Attorney and
moves in arrest of Judgment and
for a new trial in this case for the
reasons following
1st The verdict is against the law & evidence

2nd It was not sufficiently proved, by the oral testimony (Casters) or by any other evidence that the defendant was in the possession of the premises in dispute at the time of this suit was commenced ~~and~~ or the Declaration issued and the return of the officer who served the Declaration does not establish that fact.

3^d Both instructions given by the Court in behalf of the plaintiff are improper and tended to mislead the jury.

4th The Court erred in not receiving the first verdict presented by the jury.

5th The verdict of the Jury which was received by the Court was & is uncertain, informal & insufficient in not accurately, definitely describing the land, and for other reasons.

6th The plaintiff failed or neglected to join or take issue on Defendant's plea.

7th The Sheriff's Deed should have been excluded from the jury for the reason that it appears from inspection to have been altered, defaced and interlined & contradicts the transcript of the Judgment which was in

65
evidence and does not appear to
be properly and legally acknowledged

W. J. Johnson
Deft. Atty

Endorsed.

Filed April 2nd 1858

Wm. Rowley clerk

And afterwards to wit on the 26th day
of May Ad 1858 at yet of the said May
Term Ad 1858 of said So. Davis County
Circuit Court in the record of the proceed-
ings thereof in said Cause appears the
following entry to wit-

Frederick B. Baker

vs

Exemption

Thomas J. Goodhue

Now at this day
comes on to be heard the

motion heretofore filed by Defendant by
his attorney for a new trial and for
arrest of Judgment which motion
is ruled by the Court to which
Defendant by his attorney excepts
and the plaintiff moves the Court for
judgment on the verdict of the
jury heretofore returned in this

cause. It is thereupon considered by the Court that the plaintiff have and recover of the Defendant: The possession of the property described in his Declaration to wit - Situated and being in the County of Davis Stephenson and State of Missouri to wit Lot Number five (5), Block Number fourteen (14) in the Town of Freeport (Now City of Freeport) in said County and that he have a writ of possession for that purpose. And it is also ordered that the Defendant pay the costs herein and that Execution issue against him therefor.

And afterwards to wit on the 2nd day of June A.D. 1858 at the City of the said, May Term A.D. 1858 of said, Davis County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit

Fredrick Baker

vs

Ejectment

Thomas F. Goodhue

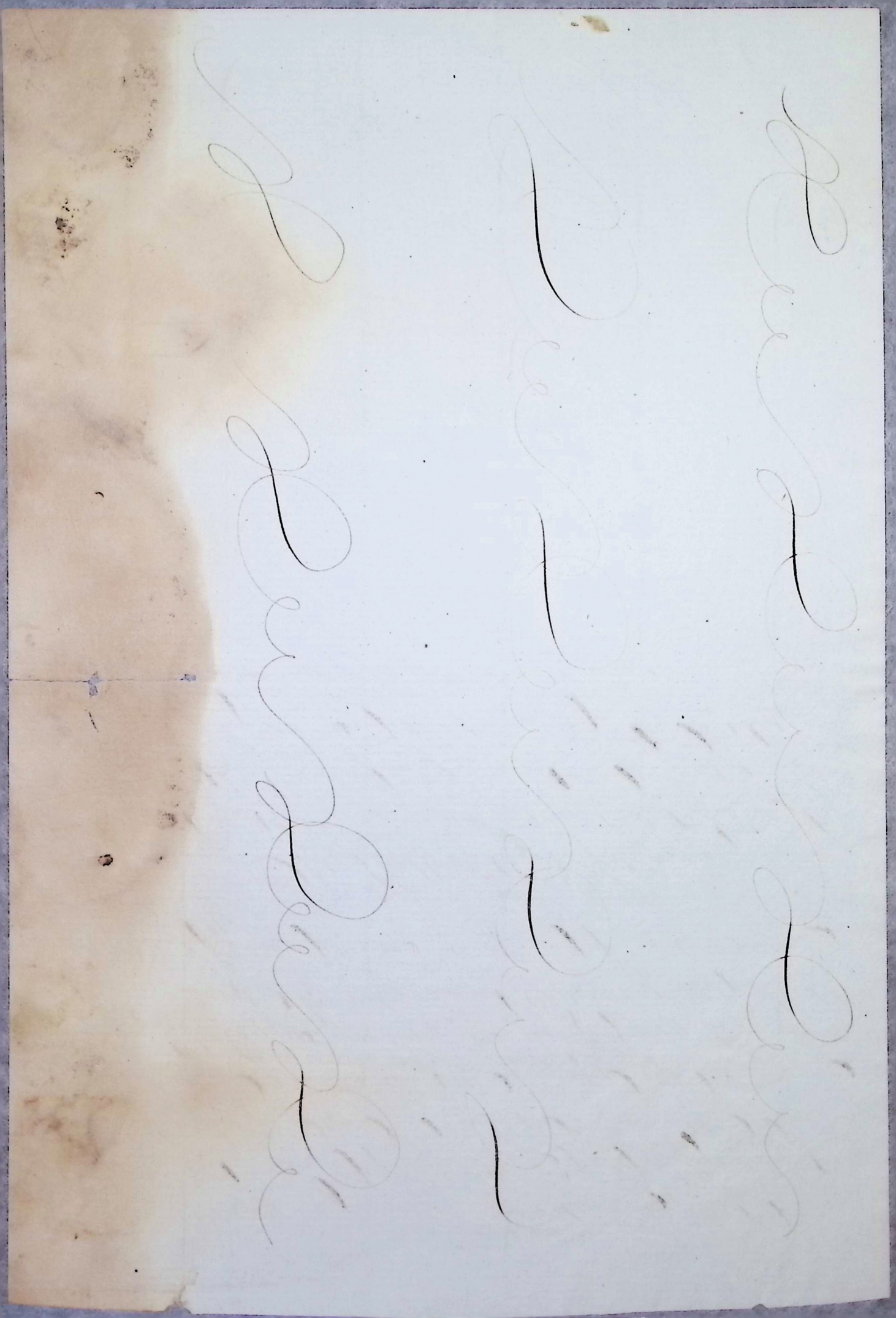
The Defendant

by his Attorney comes and prays an appeal to the Supreme Court

which is granted conditioned, that he enter
into an appeal Bond, properly conditioned
with Geo St Hall & Frederick J Koecker
as sureties in the sum of Five hundred
Dollars. within Ten days from this date.
and the defendant comes and files Bill
of exceptions and appeal Bond

The Bill of Exceptions filed
by the Defendant & certified by
the Court is in the words and
figures following to Wit:

[Faint, illegible cursive text, likely bleed-through from the reverse side of the page]



The Bill of Exceptions filed by the parties in
this cause is in the words and figures following to wit
Frederick Baker

vs } In the Circuit Court of So Daviess
Thomas F. Goodhue } County of the May Term 1858 To wit
on the day of May A. D. 1858

Be it remembered that on the trial of the above entitled
cause before the Honorable B. R. Sheldon Judge of the
14th Judicial Circuit of the State of Illinois the following
testimony was heard and the following proceedings had
thereon (for see our plea and answer)

The plaintiff to sustain his action introduced Marcus
Center as a witness who being duly sworn testified that
he knows the lot or premises described in the declaration
That the defendant commenced to build a brick house
on the same in the fall of 1848 and has resided in the
same with his family since 1849 or 1850 and that
said lot is situated in the county of Stephenson in said
State of Illinois - The plaintiff further proved by
said witness that Frederick A. Strockey was the acting
Sheriff of said county of Stephenson from the fall of
A. D. 1848 until the year A. D. 1850 - That from the
fall of the year A. D. 1850 to the fall of A. D. 1852
Peter D. Fisher was the acting Sheriff of said
county of Stephenson - The Plaintiff further to
sustain his action offered in evidence to the Jury a
transcript of a Judgment of which following is a
copy

Illinois

fourteenth Judicial Circuit

Stephenson County

} Pleas before the Hon. Benjamin

R. Sheldon presiding Judge of the fourteenth Judicial Circuit of said State at a term of the Circuit Court begun and held in the Court House in Freeport in said Judicial Circuit and in the county and State aforesaid on the 25th day of March A.D. 1850 -

Present The Hon Benjamin R. Sheldon Judge

H. B. Stillman State Attorney

Frederick A. Stockes Sheriff

John A. Clarke clerk

Orville C. Pratt

vs

Thomas F. Goodhue

Elias H. D. Sanborn

} Be it remembered that at

this same term of the Circuit

Court to wit On the 6th day of March A.D. 1850 -

Orville C. Pratt Plaintiff in this suit by his attorney appeared and filed in the said Court his process in the said suit of Orville C. Pratt against Thomas F. Goodhue and Elias H. D. Sanborn in the words and figures following to wit

Orville C. Pratt

vs

Thomas F. Goodhue &

Elias H. D. Sanborn

} Assumpsit

20
The Clerk will issue a Summons in this case
Damages \$600 x x - Thos J. Turner Plffs Atty

Endorsed C. C. Pratt

vs

Thos F. Goodhue et al.

} procepe

Filed March 6th 1850 John A. Clark Clerk

And on the same day to wit On the 6th day of March
1850 the Plaintiff by his Attorney filed in said Circuit
Court a Bond for costs in said suit in the words and
figures following to wit

Bond for Costs

Illinois

Jefferson County & Circuit } ^{set.} In the Circuit Court

March Term A.D. 1850

Reville C. Pratt, Plaintiff

vs

Thomas F. Goodhue &

E. D. Sanborn . . . Defendants

} In Assumpsit

I do hereby enter myself security for costs in
this cause and acknowledge myself bound to pay or cause to
be paid all costs which may accrue in this action either to
the opposite party or to any of the officers of this Court
in pursuance of the laws of this State

Thos J. Turner Esq

at Freeport this 6th day of March A.D. 1850

approved John A Clark

Clerk of Stephenson County Circuit Court
upon which Bond is "Endorsed"
O. C. Pratt

Goodhue Sanborn } Filed March 6th 1850
John A Clark Clerk

and at the same day to wit there issued out of said
Circuit Court a summons in the words & figures
following to wit -

State of Illinois

Stephenson County ss. } The People of the State of
Illinois To the Sheriff of
said County Greeting

We command you that you summon Thomas
Goodhue and Elias H. D. Sanborn if they shall be
found in your county personally to be and appear before
the Circuit Court of said County on the first day of the
next term thereof to be holden at the Court House in
the Town of Freeport in the said county on the 14th
Monday in the month of March inst. to answer unto
Oville C. Pratt in a plea of Assumpsit to the damage
of the said Plaintiff as he says in the sum of six
hundred Dollars and have you then and there this
writ with an endorsement thereon in what manner
you shall have executed the same

Witness John A Clark Clerk of our said Court



and the seal thereof at his Office in said county this 6th day of March A.D. 1850

John A. Clark Clerk

upon which "summons" is endorsed the following to wit
O. C. Pratt

vs
Thos F. Goodhue } Executed the within by reading
E. H. Sanborn } to the within Thomas F. Goodhue
March 7, 1850 and to E. H. S.
Sanborn March 8th 1850

Service	1.00
Mileage	20
Return	10
	<u>1.30</u>

F. A. Strockey Sheriff per
F. Baker Depy

and at this same term to wit on the 6th day of March A.D. 1850 the plaintiff by his attorney filed in the said Court the following Narr in the words and figures following to wit

State of Illinois

Stephenson County } ss. In the Circuit Court of
Stephenson County of the March
Term A. D. 1850

Thomas F. Goodhue and Elias H. D. Sanborn of said county were summoned to answer Orville C. Pratt of a plea in Assumpsit and thereupon the said Orville C. Pratt by Thomas J. Turner his Attorney complains for

that whereas the said Defendant heretofore to wit on the second day of October in the year of our Lord one thousand Eight hundred and forty nine at Freeport that is to say at Stephenson County aforesaid made their certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay thirty days after the date thereof to the said Plaintiff or order the sum of Four hundred and twenty five dollars lawful money of the United States for value received and then and there delivered the said promissory note to the said Plaintiff by means hereof and by force of the Statutes in such case made and provided the said Defendants then and there became liable to pay to the said Plaintiff the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year aforesaid at Stephenson County aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said sum of money in the said promissory Note specified according to the tenor and effect thereof

And whereas also the said defendants afterwards to wit on the day and year last aforesaid at Stephenson County aforesaid were indebted to the said Plaintiff

24 in the further sum of Four hundred and twenty five Dollars of like lawful money for so much money before that time by them had and received of and from the said plaintiff and to and for the use of the said Defendants and being so indebted the said Defendants in consideration thereof afterwards to wit on the day and year last aforesaid at Stephenson County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said Defendants should be thereunto afterwards requested

And whereas also the said defendants afterwards to wit on the day and year last aforesaid at Stephenson County aforesaid accounted with the said Plaintiff and concerning divers other sums of money from the said defendants to the said Plaintiff before that time due and owing and then in arrear and unpaid and upon such accounting the said Defendants were then and there found to be in arrear and indebted to the said Plaintiff in the further sum of Four hundred and twenty five dollars of like lawful money and being found so in arrear and indebted they the said Defendants undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be thereunto afterwards requested nevertheless the said Defendants not regarding their said several promises and undertakings but contriving and intending to defraud

and deceive the said plaintiff in this behalf have 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 defendants to pay him the same have hitherto
neglected and refused and still do neglect
and refuse to the damage of the said Plaintiff
of five hundred Dollars and therefore he sues of
Turner Atty for Plff.

Copy of the note sued on

#125 Thirty days after date For value received
We jointly and severally promise to pay to the order
of C. C. Pratt or bearer Four hundred and twenty
five dollars

J. F. Goodhue

4.22 1846

Elias H. Sanborn

upon which 'declaration' is the following 'Endorsement'
to wit

C. C. Pratt

vs

J. F. Goodhue et al

Xarr

}

Filed March 6th 1850

John A. Clark Clerk

and afterwards to wit at this same term of the S.
Circuit Court there appeared upon the records of said
Court the following entry to wit

Thursday March 28th 1850

278
Orville C. Pratt

vs

Thomas F. Goodhue

Elias H. D. Sanborn

Assumpsit

And now at this day came the said Plaintiff by his Attorney and the Defendants by their Attorney withdraw their appearance and thereupon the said Defendants being three times solemnly called came not but made default whereupon it is considered by the Court that the said Plaintiff have his Damages But as those damages are not certainly known and it appearing to the Court that the suit was brought upon a certain promissory note for the payment of money only It is ordered by the Court that the Clerk assess the same and the Clerk having reported the same at the sum of Four hundred and thirty three Dollars and ninety four cents which report is approved by the Court It is thereupon considered and adjudged by the Court that the said Plaintiff have and recover of and from the said Defendants the said sum of Four hundred and thirty three dollars and ninety four cents his damages so as aforesaid assessed together with his costs by him about his suit in this behalf expended and that he have execution for the same

And afterwards to wit on the 27th day of
May 1850 there issued out of the office of the
Clerk of said Circuit Court an execution in the
words and figures following to wit

State of Illinois

Stephenson County

} ss The People of the

State of Illinois To the Sheriff

of said county Greeting

We command you ^{that} of the goods and chattels
lands and tenements of Thomas F. Goodhue and
Elias H. Sanborn in your county you cause to be
made the sum of Four hundred and thirty three
and 00 Dollars which by the Judgment of our Circuit
Court within and for said County of Stephenson
at the March term thereof A.D. 1850 Orville C.
Pratt recovered against the said Thomas F. Goodhue
and Elias H. D. Sanborn for his Damages sustained
by reason of the not performing certain promises
and undertakings then lately made by the said
Thomas F. Goodhue and Elias H. D. Sanborn to the
said Orville C. Pratt and also the further sum of
Five Dollars and 25 cents which were adjudged to
him for his costs and charges in that behalf expended
whereof the said Thomas F. Goodhue and Elias
H. D. Sanborn stand convicted as appears to us of
Record and have that money ready in ninety days
from the date hereof to render to the said Orville C.

28 Pratt for his damages and costs aforesaid Hereof
fail not and make return of this writ in ninety
days from the date hereof with an endorsement thereon
as to the manner in which you executed the same



Witness John A. Clark Clerk of our said
Circuit Court and the seal of said
Court at Freeport this 27th day of
May A.D. 1850 -

John A. Clark Clerk

The Sheriff of said county will collect interest on
the above from the 28th day of March A.D. 1850

John A. Clark Clerk

Received this Execution for collection this 30th day
May in the year of our Lord one thousand eight
hundred and fifty at 4 o'clock P.M.

J. A. Strocky Sheriff of Stephenson County
said Execution has an endorsement thereon in the
words and figures following to wit

Fi. Fa.

Stephenson county Circuit Court

William C. Pratt vs Thos F. Goodhue & Elias H. Shubert

Damages	\$433.94	} Judgment March 28, 1850 This writ issued May 31, 1850 Return Day Aug. 26, 1850
Costs	5.25	
Total Amount	\$439.19	

Sheriff's fees returning execution 10[¢]

Returned by order of Plaintiffs Atty Sept. 2nd 1850
F. A. Strocky Sheriff
per F. Baker Dep't.

And afterwards to wit on the 3rd day of September
there issued out of the office of the Clerk of said
Circuit Court an (alias) Execution in the words and
figures following to wit

State of Illinois

Stephenson County } The People of the State of
Illinois to the Sheriff of said county
Greeting We command you again that of the goods
and chattels lands and tenements of Thomas F. Goodhue and Elias H. Sanborn in your county you
are to be made the sum of Four hundred and thirty
three $94/100$ Dollars which by the Judgment of our
Circuit Court within and for said County of Stephenson
at the March Term thereof A. D. 1850 Orville C. Pratt
recovered against the said Thomas F. Goodhue and
Elias H. Sanborn for his damages sustained by reason
of the not performing certain promises and undertakings
then lately made by the said Thomas F. Goodhue and
Elias H. Sanborn to the said Orville C. Pratt and
also the further sum of Six dollars and thirty five
cents which were adjudged to him for his costs and
charges in that behalf expended whereof the said
Thomas F. Goodhue and Elias H. Sanborn stand

convicted as appears to us of Record And have that money ready in ninety days from the date hereof to render to the said Oville C. Pratt for his damages and costs aforesaid -

Whereof fail not and make return of this Writ in ninety days from the date hereof with an endorsement thereon as to the manner in which you executed the same



Witness John H. Clark Clerk of our said Circuit Court and the Seal of said Court at Freeport this 3rd day of September

A.D. 1850 - John H. Clark Clerk

The Sheriff of said county will collect interest on the above from the 28th day of March A.D. 1850

John H. Clark Clerk

Received this Execution for collection this 4th day of Sept. in the year of our Lord one thousand eight hundred and fifty (at 9 o'clock A.M.)

J. A. Stockey Sheriff of Stephenson Co
per J. Baker Dep^y

which execution appears the following endorsement

By virtue of this execution I have this day levied the following land to wit "Lot N^o 5 Block N^o 14 in the town of Freeport as the property of E. H. Sanborn & J. F. Goodhue

J. A. Stockey Sheriff

Nov. 9. 1850.

per J. Baker Dep^y

The property levied on by virtue of this execution I have
this day sold according to law and T. J. Turner bid the
sum of Four hundred and sixty nine $4\frac{1}{100}$ dollars and
being the highest and best bidder became the purchaser
thereof

F. A. Strocky Sheriff

, 1850

Recd on the within execution Four hundred & sixty
nine $4\frac{1}{100}$ Dollars being the amount in full for debt &
costs by sale of Real Estate

Dec. 2, 1850

Thomas J. Turner

Atty for Plff.

vs 1037 fi. fa

Oville L. Pratt

vs

Thomas F. Goodhue &

Elias H. S. Sanborn

Damages / 433. 94

Costs 6. 35

Total Amount 440. 29

Judgment March 28th 1850

This Writ issued Sep. 8th 1850

Return Day Dec. 2nd 1850

Sheriff's fees

2 miles travel 10

Commission on 457. 9. 82

Duplicate & Recording - 50

Return Execution - 10

Total Amount \$11. 52

The within execution satisfied in full by sale of
Real Estate

F. A. Strocky Sheriff

32 The fee Bill or Bill of costs accompanying the above execution are in the words and figures following to wit

O. C. Pratt

vs
Thomas F. Goodhue +
E. H. S. Sanborn

Plaintiffs costs recover^d Defdt
Bill of costs, clerks fees

Filing 5 Papers 25. Bond for costs 10	35	
Sums 35. Dockg. caused 10	45	
Entering appearance & atty 15. Entg order for dam. ²⁰	35	
Entg. order clerks assess 20. Appg. Retg. 20	40	
tg Judg ^t 25 Dockg. 20. Entg Sub. 15	60	
uing & filing Ex. 45. Dockg 10. Entg Shfts ret. 10	65	
aking & Entl. Bill costs	30	3.00

Sheriffs fees Baker Executing & atty sums 1.30

Same Defendants costs

vs	{	Entg. app. & atty 15. Entg withdrawal app. 20.	35
Same		Entg Default 20	20

Making & Entg Bill of costs	30	85
		<u>5.25</u>

Additional costs

Shiffs fees on Ex Baker	10	
Shiffs fees for filing & filing alias ⁴⁵ - filing process - 50		
Dockg al. Ex. 10 - Entg. Shfts ret. 10		
Making & Entg Bill of costs 30	50	1.10

6.35

State of Illinois

County of Stephenson } ss I Lusher W. Guiteau
Clerk of the Circuit Court in and for said County
do hereby certify that the foregoing is a full and
complete copy of all the record in my office and also
a true and complete copy of all the original papers
as appears of the record and files in the suit
pending and determined in said Court wherein
Orville L. Pratt is plaintiff and Thomas F. Goodhue
and Elias H. D. Sanborn are Defendants



Witness my hand and the seal of our
said Court at Freeport in said County
this 13th day of August A.D. 1857
Lusher W. Guiteau Clerk

To the introduction of which the Counsel for the
defendant objected to generally and on the ground and
for the reason that the Record itself was the best evidence
and that said transcript was not properly certified And
further that said transcript contained what purported
to be a copy of a certificate of purchase assigned to
said plaintiff which certificate could not be proved by
copy but that the original must be presented or its absence
legally accounted for - All of which objections were
overruled by the Court and the transcript read to
the jury and to which ruling of the Court the Counsel
for defendant excepted. The plaintiff then offered in

evidence two Executions of which the following are copies

State of Illinois

Stephenson County }^{ss} The People of the State of
Illinois To the Sheriff of said County
Greeting We command you of the goods and chattels
lands and tenements of Thomas F. Goodhue and
Elias H. D. Sanborn in your county you caused to be
made the sum of Four hundred and thirty three ⁷⁴/₁₀₀
Dollars which by the Judgment of our Circuit Court
within and for said county of Stephenson at the
March term thereof A. D. 1850 Orville C. Pratt
recovered against the said Thomas F. Goodhue
and Elias H. D. Sanborn for his Damages sustained
by reason of the not performing certain promises
and undertakings then lately made by the said
Thomas F. Goodhue and Elias H. D. Sanborn to
the said Orville C. Pratt and also the further sum
of Five dollars and 25 cents which were adjudged
to him for his costs and charges in that behalf
incurred whereof the said Thomas F. Goodhue
and Elias H. D. Sanborn stand convicted as appears
by the Record and have that money ready in
ninety days from the date hereof to render to the
said Orville C. Pratt for his damages and costs
aforesaid Hereof fail not and make return of
this writ in ninety days from the date hereof with

an endorsement thereon as to the manner in which you executed the same.

Witness John A. Clark clerk of our said circuit court and the seal of said Court at Freeport this 27th day of May A.D. 1850

John A. Clark clerk

Sheriff of said County will collect interest on the above from the 28th day of March A.D. 1850

John A. Clark clerk

Received this Execution for collection this 31st day of May in the year of our Lord One thousand Eight hundred and fifty at 4 o'clock P.M.

F. A. Stockey Sheriff of Stephenson County said Execution has an endorsement thereon in the words and figures following to wit
No 1037 Fi. Fa.

Stephenson County Circuit Court

Orville C. Pratt vs Thomas F. Goodhue + Elias H. D. Linton	
Damages	\$433.94
Costs	<u>5.25</u>
Total Amount	\$439.19
	} Judgment March 28, 1850
	} This writ issued May 27, 1850
	} Return day Aug. 26 1850

Sheriff's fees returning execution 10[¢]

Returned by order of Plaintiffs Attys. Sept. 2^o 1850

F. A. Stockey Sheriff

per J. Baker Dep't.

State of Illinois

Stephenson County^{ss} } The People of the State of
Illinois to the Sheriff of said County

Greeting We command you again that of the goods
and chattels lands and tenements of Thomas F. Goodhue
and Elias H. D. Sanborn in your county you cause to
be made the sum of four hundred and thirty three
94/100 Dollars which by the judgment of our Circuit
Court within and for said County of Stephenson at
the March term thereof A.D. 1850 Orville C. Pratt
recovered against the said Thomas F. Goodhue and
Elias H. D. Sanborn for his damages sustained
on reason of the not performing certain promises
and undertakings then lately made by the said Thomas
Goodhue and Elias H. D. Sanborn to the said
Orville C. Pratt and also the further sum of Six
dollars and 35 cents which were adjudged to him
for his costs and charges in that behalf expended,
whereof the said Thomas F. Goodhue and Elias
H. D. Sanborn stand convicted as appears to us
of record and have that money ready in ninety days
from the date hereof to render to the said Orville C.
Pratt for his damages and costs aforesaid Hereof fail
not and make return of this Writ in ninety days from
the date hereof with an endorsement thereon as to the
manner in which you executed the same

Witness John A. Clark, Clerk of our
said Circuit Court and the seal of said

Court at Freeport this 3rd day of September
A. D. 1850

Seal

John A. Clark Clerk

The Sheriff of said county will collect interest on the
sum from the 28th day of March A. D. 1850

John A. Clark Clerk

~~By virtue of this~~ Received this Execution for collection
this 4th day of September in the year of our Lord one
thousand eight hundred and fifty at 9 o'clock A.M.

J. A. Shockey Sheriff of Stephenson County

per J. Baker Dep^y

and Execution has an Endorsement thereon in the words
and figures following to wit

N^o 1037 Fr. Fa

Stephenson County Circuit Court

Orrville C Pratt vs Thomas F. Goodhue & Elias H. Sander

Damages	\$433.94	Judgment March 28, 1850 This writ issued Sep. 3, 1850 Return day Dec. 2 1850
Costs	6.35	
Total Amount	\$440.29	

Sheriffs fees

Issuing Execution	50
Advertising Property	25
2 miles travel	10

Commission on \$457.	9	82
Certificate of Purchase	25	
Duplicate & Recording	50	
Returning Execution	10	<u>\$11.52</u>

The within execution satisfied in full by sale
of real estate F. A. Strocky, Shff.

By virtue of this Execution I have this levied on
the following land to wit Lot No 5 Block No 14
in the town of Freeport as the property of E.H. Sanborn
& J. F. Goodhue Nov. 9th 1850

F. A. Strocky Shff

Pr. F. Baker Dep^t.

The property levied on by virtue of this execution I have
this day sold according to law and J. I. Turner bid the
sum of four hundred and sixty nine ⁴¹/₁₀₀ dollars & he
being the highest and best bidder became the purchaser
thereof F. A. Strocky Shff

on the within execution four hundred and
ninety nine ⁴¹/₁₀₀ dollars being the amount in full
of debt & costs by sale of real Estate —
2nd 1850

Thos I. Turner

Atty for Plff

The introduction of which was objected to

on the ground that they were improperly issued and did not follow or correspond with the transcript of the Judgment, which objection was overruled by the Court. the executions read to the jury & the ruling of the Court excepted to by defendants Counsel. Plaintiff then offered in evidence the Sheriffs Certificate of purchase a Copy of which is as follows -

Sheriff's Certificate of Purchase
{ Execution } N^o 1037

State of Illinois

Stephenson County } ss

Deville C. Pratt

v

Thomas F. Goodhue &
Elias H. D. Sanborn

This will certify that by
virtue of an Execution in
the above entitled cause issued

out of the Clerks Office of the Circuit Court
of Stephenson County and to me directed and delivered
being dated the 3rd day of September 1850 upon a
Judgment rendered at the March Term 1850 have
levied upon the following described Real Estate to
wit: Lot five in Block fourteen in the town of
Freeport as the property of the said Thomas F.
Goodhue and Elias H. D. Sanborn Defendant and
that I proceeded to advertise the same for sale by
posting up Advertisements in three of the most public
places in said county twenty days previous to the

day of sale stating that I should proceed to sell
the same on the 2^d day of December 1850 to the
highest bidder for cash to satisfy said Execution
and at the same time and place last mentioned I
proceeded to sell all the right title interest and claim
of the above named Defendant in and to the above
described premises for cash and that T. J. Turner
bid the sum of four hundred & sixty nine ⁴/₁₀₀ dollars
and he being the highest and best bidder became the
purchaser thereof. And that T. J. Turner or
legal Representatives Will be entitled to a Deed
for the same after the expiration of fifteen months
from the date hereof unless it shall be redeemed
according to law Given under my hand this 2^d
day of December 1850

J. A. Stocky Sheriff
Stephenson Co

7 469. 41

Recd March 13. 1852 of Peter D. Fisher
Sheriff of Stephenson County a Deed for the
described land - F. Baker

We have received & hereby assign and transfer the
within Certificate to Frederick Baker, Sheriff
Stephenson Co

Turner the int
of Dec. 25th 1851

Turner

the introduction of which was
objected to by defendants severally
on the ground that the assignment
in the name of the Assignor was
not proved nor the receipts thereon
endorsed And further that the
Sheriffs Certificate was not
assignable and if so was not
properly assigned which objections
were overruled by the Court &
the certificate read to the Jury
in evidence and the ruling of
the Court excepted to by the
Defendants Counsel Plaintiff
further to sustain his action
offered in evidence the Sheriffs
Deed a copy of which is as follows

Wm. H. H. H.

Wm. H. H. H.

Wm. H. H. H.

Whereas Orville C Pratt did at the March
Term of the Circuit Court for the County of
Stephenson and State of Illinois A.D. 1850
recover a Judgment against Thomas
J Goodhue and Elias A D Sanburning
the County of Stephenson and State of
Illinois for the sum of Four hundred
& thirty three $9\frac{1}{100}$ Dollars and cost of
suit upon which Judgment and
Execution was issued, dated on the
third day of September A.D. 1850. directed
to the Sheriff of said County. to execute.
and by virtue of said execution, the
said Sheriff levied upon the land herein
after described, and the same was
struck off and sold to J Turner he
being the highest and best bidder there
for and the time and place of the
Sale thereof having been duly advertised
according to law and the said J
Turner Thos J Turner, having assigned, the
premises of purchased to Frederick Baker
Therefore know all by this Deed that
J. M. D. Fisher Sheriff of said County
of Stephenson, in consideration of the pre-
mises, have granted, bargained, and sold
and do hereby convey to the said Frederick
Baker and to his heirs and assigns, the following

described tract of Land to wit
Lot Number five (5) in Block Number
fourteen (14) in the Town of Freeport in the
County of Stephenson and State of Illinois

To have and to hold the said
premises, with all the appurtenances
thereto belonging; to the said,
Merrick Baker his heirs and assigns
forever. Witness my hand and seal this thirteenth
day of March in the year of Our Lord one
thousand eight hundred and fifty two.

Peter D Fisher Sheriff Seal

State of Illinois

Stephenson County

John A Clark Clerk of the
Circuit Court within and

said County do hereby certify that
Peter D Fisher Sheriff within and for said
County, whose signature appears to the deed
on the Reverse hereof, and who is personally
known to me to be the real person whose name
is subscribed to said Deed as having
executed the same this day appeared
before me personally and acknowledged,
that he had signed, sealed and delivered
said Deed as Sheriff as aforesaid, as
his free act and deed for the uses and purposes
therein expressed,

In testimony whereof

seal

Herunto subscribe my name and
affix the seal of the said Circuit
Court of said County this thirteenth
day of March Anno Domini eight-
teen hundred and fifty two

John A. Clark Clerk

Endorsed

State of Illinois
Stephenson County Office of Clerk of
Circuit Court

Recorded March 13th 1852. at 7 O'clock P.M.
in Book 3N of Deeds page 40, 41

John A. Clark, Clerk

To the introduction of which the defend-
ant's Counsel objected generally.

Marcus Carter was then recalled by
plaintiff and testified that the defendant
had been in possession of the land
in question since 1849 in the town of
Port-Stephenson County Illinois the
defendant further objected to the intro-
duction of the Sheriff's deed on the ground
that there was no evidence that
Solon Fisher was Sheriff of Stephenson
County at the date of the deed or ever
had been. Which fact the plaintiff then

proved and the Deed read, And because
the Amount stated in the recital of
the Deed did not correspond with
the Amount of the Judgment mentioned
in the transcript - and that the

Deed was not properly acknow-
ledged which said objections were
overruled by the Court - and the Deed
read in evidence to the jury, to whom
the defendants Counsel excepted.
Here the testimony closed & which was
all the evidence given by the plaintiff
in the case. The Plaintiff's Counsel
then asked the Court to give to the
jury the two following instructions

"The Counsel for the plaintiff ask
the Court to instruct the jury as follows"
That all the plaintiff is required by the
law to prove to entitle him to recover
in this action is the Judgment against
Dgt Goodhue & Sanburn, the Execution
upon said Judgment, the levy upon
and sale under it of the said, Lot
No five 57 in Block 24 in the Town
of Newport County of Stephenson
State of Illinois by the Sheriff of St.
Stephenson County. The certificate of purchase

to Turner and his assignment thereof
to Plf Baker and the Sheriff ^{Deed} of Stephens
County to Baker the Plaintiff and that Defendant
Goodhue was in possession of said lot
at the time of such levy & sale and was
also in possession of said lot at the
time of the commencement of this suit

The Court is the sole judge of the
admissibility of the papers offered
in evidence -

which the Court gave & to the giving of
which the defendants Counsel objected
& excepted - the Jury returned the
following verdict, to wit We the
Jury find the Defendant Guilty and
the Estate established in the Plaintiff
to be an Estate in fee

Whereupon the Defendants Counsel
moved for a new trial & an arrest of
judgment which motion is in the
words and figures following to wit

Derrick Baker

vs

Thomas F. Goodhue

In the Circuit Court

of So Davies County of

March Term A.D. 1858

Ejectment

And now at this day comes the said defendant by M. Y. Johnson his attorney and moves in arrest of Judgment and for a new trial in this case for the reasons following

The Verdict is against the Law & Evidence

1st It was not sufficiently proved by the oral testimony (Carthers) or by any other evidence that the defendant was in the possession of the premises in dispute at the time this suit was commenced or the declaration served and the return of the Officer who served the declaration does not establish that fact—

3rd Both instructions given by the Court in behalf of the plaintiff are improper and tended to mislead the jury.

4th The Court erred in not receiving the first verdict presented by the jury.

5th The verdict of the Jury which was received by the Court was his

uncertain, informal & insufficient in
not accurately & definitely describing the
land And for other reasons

6th The plaintiff failed or neglected to
join or take issue on Defendants plea

7th The Sheriffs Deed should have been
excluded from the jury for the reason that
it appears from inspection to have been
altered defaced & interlined - Contradicts
the transcript of the Judgment which
was in evidence and does not appear to
be properly or legally acknowledged

M. Y. Johnson

Defts Atty

Endorsed Filed April 2nd 1858

W. R. Rowley CLK

which motions were both overruled by
court and the Defendant then and there
said and prays his exceptions may be
signed and sealed which is done

(Signed, Benj. R. Sheldon) 

Endorsed Filed June 2nd 1858

W. R. Rowley CLK

The Appeal Bond filed by the Defendant
is in the words and figures following to wit

Now all Men by these Presents That
We Thomas F. Goodhue and George H
Frederick P. Kohler of the County
of Stephenson and State of Illinois are held
and firmly bound unto Frederick Baker
of the same place in the penal sum of
Five hundred Dollars for the payment of
which well and truly to be made we bind
ourselves our heirs, executors administrators
assigns jointly and severally firmly by
these presents Given under our hands & seals
at Freeport in said County this 28th day of
May A.D. 1858 -

The condition of the above obligation
is such that whereas the said Frederick B.
Baker did on the 26th day of May A.D.
1858 by the consideration of the Circuit Court
of Jo Daviess County Illinois recover a
judgment in Ejectment against the said
Thomas F. Goodhue establishing the title
of the said Frederick Baker to Lot number
five (5) in Block number fourteen (14) in
the town of Freeport now City of Freeport

in said county of Stephenson and awarding
to the said Frederick Baker a Writ of
Habere Possessionem against the said Thomas
F. Goodhue and also a judgment for one
cent damages and costs of suit - from which
said judgment the said Thomas F. Goodhue
has prayed for & obtained an appeal to the
Supreme Court of the State of Illinois for
the third grand division held at Ottawa in
said State -

Now if the said Thomas F. Goodhue
shall prosecute his said appeal and without
delay and also pay and satisfy the said
judgment for damages interest & cost as may
be awarded by said Supreme Court in case
said judgment shall be affirmed & shall
also yield up to the said Frederick Baker
the possession of the said lot or parcel of
land in case said judgment of the said Circuit
Court shall be affirmed by the said Supreme
Court ^{saying} ~~reserving~~ the rights of the said Thomas
Goodhue under & by virtue of the Thirty
chapter of the revised Statutes of
Illinois in force September 10th 1845) then
his obligation to be void otherwise to remain
in full force and effect Thomas F. Goodhue
Morgan Dotts (as to Goodhue & Hall) Geo H. Hall
as Dotts as to J.P. Köhler J. P. Köhler

Endorsed Filed June 2nd 1838

H. R., Rowley, Clk

Illinois
County of *Jefferson* *Wm R Rowley* Clerk
of the Circuit Court
for said County hereby cert
the foregoing to be a true and
correct transcript from the Record
of the proceedings which were had in
said Circuit Court in the aforesaid
Case of Baker vs Goodhue

In testimony whereof I have
hereunto set my name and
affixed the Seal of said
Court at my office in
Salem this 19th day of
April AD 1859

Attest Wm R Rowley Clerk

Thomas H. Goodhue

75

Chamick B. Parker

*In the Supreme
Court of the Third
Grand Revision
of the Term of April
1859.*

Appeal from The Circuit Court of

To Harris County Ct.

And now comes the said Appellant by R. S.
Blackwell his Attorney and says that in
the view of the proceedings aforesaid and
the condition of the judgment aforesaid
manifest error hath intervened to his
prejudice to wit

1st That the said Circuit Court Erred in
overruling the motion of the said Appellant
to annul the judgment aforesaid

Wherefore the said Appellant
prays &c.
R. S. Blackwell
Att. for Appellant

In Supp
Frederick

ms
Jno & Goodhue
April

Filed April 21, 1859
L. Leland
Clerk

\$22. paid by
J. & Goodhue

tirely free from doubt in our own minds, that we would not, were it not insisted upon with apparent earnestness by the distinguished gentleman on the other side, that it is insufficient, trouble the Court with anything further on the subject.

The following authorities, however, shed some light on the question of the sufficiency of the verdict, and of the time when its formal defects, if any, should have been pointed out.

Little vs. Bishop, 9 B. Monroe, 240.
Salmons vs. Webb, 12 B. Monroe, 368.
Minkhart vs. Hankler, 19 Ill., 47.
Lockwood vs. Drake, 1 Manning, 14.
State Bank vs. Batty, 4 Scam., 200.
Schlencker vs. Risley, 3 Scam., 488.
Eyman vs. The People, &c., 1 Gilm., 4.

LELAND & LELAND,
For Appellee.

In reply to the additional error assigned, May 6th we say,
1st That the evidence of Carter on pg. 18 & on his rec^o on pg. 44 clearly shows, that the defendant was in possession of the lot from 1849 until the time when the witness was testifying.

2^d The case of Coody vs Hough 20 Ill. 43 decides in a case exactly similar, that the fact of possession is not in issue under a plea of not guilty only.

The motion for a new trial was for Specified reasons, excluding the idea that it was a motion under the Statute. The record does not show that the costs had been paid, which should have been made to appear to entitle defendant to a Statute new trial. We also suggest ~~that~~ on the other point, that the exception to the form of the verdict should appear to have been made before the jury separated.

Leland & Leland

269 = 135

Goodhue vs Baker

Brief of Appeal

Filed May 6. 1839

L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

THOMAS F. GOODHUE vs. FREDERICK BAKER.

Appeal from Joe Daviess County.

DEFENDANT'S BRIEF.

THE premises being well described in the declaration, which is in compliance with the statute, and the plea of the general issue being the old common law one of not guilty of the said supposed trespass and ejectment in manner and form as plaintiff hath complained against him, instead of the statute one of not guilty of unlawfully withholding the premises claimed by the plaintiff as alleged in his declaration, the verdict, in these words, "We, the jury, find the defendant guilty, and the estate established in the plaintiff to be an estate in fee," is surely one which, when applied to the issue submitted to the jury, is certain and intelligible, and entirely free from doubt, and contains substantially every necessary requisite of the statute, and would be, also, we conceive, sufficient under the statute form of the issue.

If, after the word "guilty," the words "of said trespass and ejectment in the declaration mentioned" had been inserted, it would have been technically accurate; and this being the issue under which the defendant is found guilty, of course this is what the verdict means, though not repeated in it.

There is no statutory requirement that a verdict for ^{one} plaintiff, for the whole of the premises described in the narr., should name the plaintiff or describe the premises, and there is no good reason why it should, any more than that a verdict in trespass, *de bonis asportatis*, or in trover, should contain an invoice of the chattels in controversy. (Of course, where the verdict is in favor of some of several plaintiffs, or for a portion of the premises, then the names of such plaintiffs and a description of such portion should be mentioned in the verdict.)

332 We think the statute evidently does not require a description in a case like the present. The language is, "If the verdict be for all the premises claimed as specified in the declaration, it shall *in that respect* be for such premises generally." Sec. 24. "If for part of the premises described in the declaration, it shall *particularly specify* such part." Our statute is, we believe, the same as the one in New York. In the case of *Vrooman vs. Weed*, 2 Barbour S. C. Rep., on page ³³² ~~332~~, the Judge, as we think, *Correctly* takes it for granted that when the verdict is for all the premises, they need not be described in the verdict; and he says that in such case possession is to be delivered according to the description in the declaration.

The question of the sufficiency of the verdict in this case, is one so en-

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

THOMAS F. GOODHUE vs. FREDERICK BAKER.

Appeal from Joe Daviess County.

THIS was an action of ejectment by appellee against appellant, for the recovery of Lot 5, Block 14, in Freeport, Stephenson Co., Ill. The cause originated in Stephenson Co., but came to Joe Daviess county by change of venue. The action was commenced on the 12th Sept., 1856. The cause was tried on the 11th March, 1858, and a verdict had in behalf of the appellee. The appellant moved for a new trial and in arrest of judgment, and also in the course of the trial objected to certain evidence offered by the appellee. The motions and objections offered by the appellant were overruled by the Court, and a judgment rendered upon the verdict aforesaid.

The appellant reserved the objections by a bill of exceptions, and prosecutes this appeal to reverse the judgment aforesaid. *Page 18*

Upon examining the record one error alone is believed to be tenable, to wit: The verdict was insufficient to warrant the judgment below.— The declaration is for Lot 5, in Block 14, town of Freeport, County of Stephenson, State of Illinois.

P 12.
15. The verdict of the jury was and is in these words. "We, the jury, find the defendant guilty, and the estate established in the plaintiff to be an estate in fee." The appellant having moved an arrest of judgment, presents the question to this Court as to the sufficiency of the verdict aforesaid.

ERROR ASSIGNED.

The said Circuit Court erred in overruling the said appellant's motion, in arrest of the judgment aforesaid.

R. S. BLACKWELL,
Attorney for the Appellant.

The court also erred in overruling the appellants motion for a new trial.

J. Marsh
for appellant

POINTS AND AUTHORITIES.

The verdict does not conform to the ejectment law of this State.

1. The plaintiff, in an action of ejectment, must at the time of the commencement of the action, have "a valid subsisting interest in the premises claimed" in his declaration. Sec. 3.

2. The statute provides that the "premises claimed shall be described in the declaration with such certainty from the description that the possession of the premises claimed may be delivered by the sheriff to the plaintiff, if he establishes his title upon the trial." Sec. 7.

3. The statute provides that in every case where the action is instituted for the purpose of recovering an estate, (other than dower,) that the plaintiff shall state in his declarations "whether he claims in fee, or whether he claims for his own life, or the life of another, or for a term of years, specifying such life or the duration of such term." Sec. 8.

4. The law further provides that in all cases "the verdict shall specify,

1st. The estate which shall have been established upon the trial by the plaintiff.

2d. Whether such estate be in fee, for the life of the plaintiff, for the life of another, or whether it be for a term of years, and specifying the duration of the term." Sec. 24, clause 7.

5. The law also provides, in Sections 22, 24, and 25, for *special* recoveries, which shows to the Court the importance of an *accurate* verdict.

6. The writ of *habere facias possessionem* shall describe "the premises recovered, with the like certainty," as provided in the preceding sections referred to. Sec. 28.

7. The 29th Section provides, "that the *verdict* rendered in manner and form as aforesaid, together with the judgment rendered thereon, shall be conclusive evidence of the title established upon the trial of the said action of ejectment."

8. The plea provided for in Sec. 7 of the ejectment law is, "that the defendant is not guilty of *unlawfully withholding* the premises claimed by the plaintiff, as alleged in his declaration."

It will be perceived by the Court, upon a critical examination of the sections above quoted, that the verdict in this cause is insufficient, for these reasons, to wit:

1st. That the verdict is not responsive to the issue in the case. It does not state that the defendant is guilty of unlawfully withholding from the plaintiff the particular premises described in the said declaration.

2d. That the verdict does not specify the legal character or extent of the estate, which was in point of fact *established* by the plaintiff upon the trial of the cause in the Court below.

3d. It does not appear from said verdict, that the plaintiff did establish, upon the trial of said cause, a title in fee simple to the premises described in the declaration aforesaid.

4th. The premises, the title to which were established upon the trial of said cause, are not described by metes and bounds, by legal designation, by words of reference to the declaration aforesaid, or by any other certain description; on the contrary, no attempt is made by the jury in their verdict to point out or identify the parcel of land to which the plaintiff established his title upon the trial of said cause.

These suggestions to the Court ought to be sufficient to reverse this judgment. But there is an obvious reason upon one of the mooted points, which would seem to be conclusive. At common law, the mode of describing an estate in fee simple, not only in the declaration but in all the subsequent proceeding in an action of ejectment, or any other action where the title to real estate was assumed as the ground of action, was to state that the plaintiff was seized or possessed "*in his own demesne as of fee*." Again, the definition of fee simple, at common law, was in substance an absolute state of inheritance, freed from *all* conditions, qualifications, encumbrances, and limitations.

Our statute provides that the plaintiff shall aver, in his declaration, that he was "*possessed*" of the premises in question.—Sec. 7. "This Section farther provides, that he shall describe the premises with *convenient certainty*." While the declaration does not in terms require the extent or legal character of the estate to be described, yet, in Section 24, Clause 7, the jury are required to designate in a legal manner, in other words, to "specify the estate which shall have been established by the plaintiff upon the trial of the cause." The evident design of the legislature in remodeling the common law as to the action of ejectment, was to repudiate the common law doctrine, that the action of ejectment was simply possessory in its character. Your honors undoubtedly remember that at common law, trials in ejectment were *farces*; that recoveries could be had *ad infinitum*, and also defeats; that the only remedy of the party who gained several consecutive verdicts, was to appeal to the Court of Chancery for relief, for the reason that the interposition of that Court would prevent a multiplicity of actions. It accordingly became a settled maxim in the Court of Equity, that two concurring verdicts at law were conclusive as to the rights of the parties. Yet the declaration claimed the possession, and not the right. Under our statute, several very distinctive differences with the common law appear. Fictions are abolished. We have no John Does or Richard Roes. The form of our declaration in ejectment is substantially like the common law form, but Sec. 23, Clause 7, of our ejectment law, provides that our jury, in their verdict, shall designate the estate instead of the plaintiff. This duty thus imposed upon the jury, as your honors will perceive, has been omitted by the men of the vicinage who tried this cause. Another distinctive difference between our statute and the common law, which is important in its bearing upon this particular question, is that the verdict and judgment in this form of action under our statute, becomes conclusive upon the question of *title and possession*, unless the verdict is set aside and the

judgment vacated in pursuance of the statute. And while the plaintiff is not required in his declaration to specify his title in cases where he sues for the fee simple, the jury upon the trial of the case are required by Sec. 24, Clause 7, to ascertain and designate the particular title or estate which the plaintiff, under his general declaration, seeks to recover, and, in point of fact, established to the satisfaction of the jury upon the trial of the cause.

On further reflection, a point equally conclusive upon the question of reversal now suggests itself to my mind. The jury in their verdict was not only, under Sec. 24, Clause 7, bound to "specify the estate" established by the plaintiff upon the trial, (of course distinguishing between the interest of the plaintiff in the estate, and the description by metes and bounds, or otherwise, of the estate itself,) but to describe it. This was not done by the jury in their verdict, either by positive words of designation, or by words of reference to the declaration, which of course is the only document in the record to which reference could be made.

R. S. BLACKWELL,

Att'y for the Appellant.

The second error assigned involves the consideration of the 30th section of the Actment Act. 1 Pers. St 508, 530

The ground assumed is, that upon the application of the defendant below for a new trial, it was not a matter of discretion—the Court was bound to allow a new trial simply on condition of the defendant paying the costs &c.

The Statute preemptorily imposes two obligations; the one for the Court to grant a new trial; the other—for the defendant to pay the costs &c. The particular form or manner of the defendant's application, can be of no account.

The Court should also have granted a new trial, for the reason that there had been no sufficient proof of the defendant being in possession, or occupancy of, or claiming any interest in the premises at the time of the commencement of this suit. The only proof is in the evidence of Carter on page 18 of the record, as follows—"that the defendant commenced to build a brick house on the same in the fall of 1848. & has resided in the same with his family since the fall of 1849, or 1850."

No construction of the language of this witness would warrant even an inference that Goodhue continued to reside there from "1849 or 1850" to the commencement of this suit, Sept 12, 1856.

*J. Mark
for appellant.*

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Thomas F. Goodhue

N

Frank R. Drake

Abstract

for the judges

Filed May 4, 1889

L. Selmer

clerk

Proven