

No. **12199**

# Supreme Court of Illinois

Turney

---

vs.

Penn, et al

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71641  7

Bloomington Ill.

May 4, 1855

Dear Sir

I received yesterday  
your favor of 1st inst. In the  
Case of Thompson vs Strain I  
most assuredly sent you \$500  
with the record. I have a distinct  
and clear recollection of it. Did  
you open all the papers I sent?  
But lest you should not find it  
I send you a draft for \$1500  
which will pay \$500 on the cost  
of that case and \$500 in case of  
Cooper Henderson ~~vs~~ vs McBlair  
\$500 in the Case of James Turvey  
vs John J Penn & John Chinnalls  
The record of which I send you  
Send me process to this County  
on both of these two last named  
Cases. In the Case of Cooper &c  
vs all the defendants named in  
the Bill and in the Case of Turvey  
vs Penn & Chinnalls. Your prompt  
attention will oblige

Truly your friend  
J. Walker

L. Seland Esq,  
Attorney Ill.



STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *McLean* - Greeting:

**BECAUSE** in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McLean* - county, before the Judge thereof, between

*James Tunney, plaintiff and*  
*John J. Penn & John Nicolls* -

defendants; it is said that manifest error hath intervened, to the injury of the said *plaintiff*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

*John J. Penn & John Nicolls* -

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2<sup>d</sup>* Monday in *June* - next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendants* -

notice, together with this writ.

*John D. Caton*  
WITNESS, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *7<sup>th</sup>* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

*L. Leland*

Clerk of the Supreme Court.



Executed by sending to the within name John Penn  
and John P. Wells May 15 1835  
per J. P. Wells 110 France 7 ms 35 Postage 3 \$ 1.48

James Turney  
John J. Penn et al.  
Dec. 14. —

Filed May 18. 1855.  
L. Kellogg Clk.



Proceedings Continued & held at the  
Court House in Bloomington in the County  
of McLean & State of Illinois. before the Hon.  
David Davis. Presiding Judge of the Eighth  
Judicial Circuit of said State. within which  
Circuit is the County of McLean. at the April  
Term of the Circuit Court held within and  
for said County - to wit - on the Twenty first  
Day of April. in the year of our Lord. One  
Thousand Eight Hundred & fifty five =

No. 931 = James Turney  
C. L. = vs.  
John J. Penn &  
John Nicolls = In Debt =

Be it remembered  
that heretofore - to wit - on the Twenty Ninth  
Day of March A. D. 1855. the Plaintiff in  
the above entitled Cause by his Attorney.

James C. Walker. filed in the office of the  
Clerk of the Circuit Court aforesaid. a  
Praecipe & Bond for Costs - in words and  
figures following - to wit =

Praecipe

State of Illinois

McLean Circuit Court =

James Turney - Plaintiff -

vs.

Debt \$200. =

John J. Penn & John Nicolls - Defendants -



The Clerk of the McLean Circuit Court. will issue summons in the above entitled Cause. returnable to the next term - Debt \$200.00 = Damages Two Hundred Dollars = J. C. Walker

Atty. for Plaintiff =

Bond for  
Costs =

I do hereby enter myself security for Costs in the above entitled Cause and acknowledge myself bound to pay or cause to be paid. all costs that may accrue in this Action. either to the opposite party or to any of the officers of the Court in pursuance of the laws of the State =

Dated this 29<sup>th</sup> March - 1855 =

J. C. Walker =

And thereupon afterwards. to wit. on the day & year last aforesaid - sued out of said Clerk's Office a Writ of Summons against the Defendants aforesaid. in words and figures following - to wit =

Summons

State of Illinois  
McLean County

3 ss. The People of the  
State of Illinois =

To the Sheriff of said County - Greeting =  
We command you to summon John J. Penn & John Nicolls. if found in your



County. personally to 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 Bloomington. on  
the Second Monday in the Month of  
April next. to answer unto James  
Turney in a plea of Debt. that they  
render unto him the sum of Two Hun-  
-dred Dollars. which they justly owe &  
unjustly detain from him. to his  
Damage Two Hundred Dollars. as he  
says = And have you then @ there this  
writ @ make return thereon in what  
manner you execute the same =



Witness. William McCullough.  
Clerk of the said Circuit Court  
@ the Seal thereof hereto affixed  
at Bloomington this 29<sup>th</sup> day  
of March - A. D. 1835 =

Wm McCullough - Clerk  
by H. Burr -

Dpty. Clk =

Which said Writ of Summons was  
returned into the Clerks Office aforesaid  
with the following endorsement - to wit -

"Served by reading to the within  
named Nicolls @ Burr - March 30: 1835 =

J. J. Price Shff. by J. H. Moore.  
Dpty. "

Endorsement



And thereupon. afterward - to wit on the  
Thirtieth Day of March. in the year aforesaid.  
said Plaintiff by his Attorney. filed in  
said Clerks Office. his Declaration ag-  
-ainst the said Defendants. in the plea  
aforesaid - And also Certain Articles of  
Agreement. made & entered into by and  
between the parties herein. he filed  
therewith = Said Declaration & Articles  
of Agreement. are in words & figures fol-  
-lowing - to wit =

Declaration

McLean Circuit & County =

James Turney. Plaintiff Comps-  
-lains of John J. Run & John Nicolls.  
Defendants. bring in the Custody & = of a  
plea of Debt that they render unto him.  
the sum of Two Hundred Dollars. which  
to him they owe. & from him unjustly & =  
-tain = For that whereas. the said Plain-  
-tiff. heretofore - to wit - on Second day  
of December - A. D. 1853 - at Bloomington  
to wit - at the Circuit & County aforesaid.  
demised or sented by writing obligatory  
now here to the Court shown. a certain  
farm therein named. to said Defendants  
John J. Run. To have & to hold the same  
to the said Defendant. for a certain term.



to wit - for the term of one year from 1<sup>st</sup>  
day of March - 1854 - paying therefor  
the sum of Two Hundred Dollars Rent.  
that is. on the first day of March. 1855 =  
And the said Defendant John Nicolls  
by writing, signed by himself. annexed  
at the foot of said Lease. now here to the  
Court shown. on the day & year first af-  
-oresaid. in consideration of said demise  
acknowledged himself security for  
said John J. Penn for the rent specified  
in said Lease - That is. jointly bound  
with the said Defendant. John J. Penn.  
for the payment of said sum of Two Hun-  
-dred Dollars rent according to the tenor  
and effect of said Lease = And the  
Plaintiff avers. that by virtue of said  
Lease. the said Defendant. John J. Penn.  
entered into said demised premises.  
& was possessed thereof for the term of  
One year from the first day of March. 1854.  
when a large sum - to wit - the sum  
of Two Hundred Dollars rent aforesaid  
for the space of one year. ending on 1<sup>st</sup>  
day of March. 1855. became & was due  
& payable from the said Defendants  
to the said Plaintiff. and is still in  
arrear & unpaid to the said Plaintiff.



to wit - at the Circuit & County aforesaid -  
whereby an action has accrued to the said  
Plaintiff. to have & demand of & from the  
said Defendants. the sum of Two Hundred  
Dollars. above demanded =

2<sup>nd</sup> - And whereas said Defendants. afterwards  
to wit - on second Day of December A.D. 1853.  
by their certain other writing obligatory.  
now here to the Court shown. the date  
whereof is the day & year aforesaid. ack-  
nowledged themselves indebted to the  
said Plaintiff. in the further sum of  
Two Hundred Dollars to be paid on the  
first day of March. 1855 - And although  
said sum of money in said writing.  
has long since been due and payable.  
according to the tenor & effect thereof. yet  
the said Defendants, or either of them.  
have not. although often requested so to  
do. paid said sum of Two Hundred Dollars  
or any part thereof. but so to do. have here-  
tofore wholly refused and failed =

3<sup>rd</sup> - And whereas. also afterwards. to wit.  
on the second day of December A.D. 1853.  
at the Circuit & County aforesaid. the  
said Plaintiff leased to the said Defend-  
ants a certain farm. for the term of  
one year from the first day of March.



to wit - for the term of one year from 1<sup>st</sup>  
day of March - 1854 - paying therefor  
the sum of Two Hundred Dollars Rent.  
that is. on the first day of March. 1855 =  
And the said Defendant John Nicolls  
by writing, signed by himself, annexed  
at the foot of said Lease. now here to the  
Court shown. on the day @ year first af-  
-orsaid. in consideration of said demise  
acknowledged himself security for  
said John J. Penn for the rent specified  
in said Lease - That is. jointly bound  
with the said Defendant. John J. Penn.  
for the payment of said sum of Two Hun-  
-dred Dollars rent according to the tenor  
and effect of said Lease - And the  
Plaintiff avers. that by virtue of said  
Lease. the said Defendant. John J. Penn.  
entered into said demised premises.  
@ was possessed thereof for the term of  
one year from the first day of March. 1854.  
when a large sum - to wit - the sum  
of Two Hundred Dollars rent aforesaid  
for the space of one year. ending on 1<sup>st</sup>  
day of March. 1855. became @ was due  
@ payable from the said Defendants  
to the said Plaintiff. and is still in  
arrear @ unpaid to the said Plaintiff.



to wit - At the Circuit & County aforesaid -  
Whereby an action has accrued to the said  
Plaintiff. to have & demand of & from the  
said Defendants. the sum of Two Hundred  
Dollars. above demanded =

2<sup>nd</sup> - And whereas said Defendants. afterwards  
to wit - on second Day of December A.D. 1853.  
by their certain other writing, obligatory.  
now here to the Court shown. the date  
whereof is the day & year aforesaid. ack-  
nowledged themselves indebted to the  
said Plaintiff. in the further sum of  
Two Hundred Dollars. to be paid on the  
first day of March. 1855 - And although  
said sum of money in said writing.  
has long since been due and payable.  
according to the tenor & effect thereof. yet  
the said Defendants, or either of them.  
have not. although often requested so to  
do. paid said sum of Two Hundred Dollars  
or any part thereof. but so to do. have here-  
tofore wholly refused and failed =

3<sup>rd</sup> - And whereas. also afterwards. to wit.  
on the second day of December A.D. 1853.  
at the Circuit & County aforesaid. the  
said Plaintiff leased to the said Defend-  
ants a certain farm. for the term of  
one year from the first day of March.



A.D. 1854. yielding & paying therefor  
the rent of Two Hundred Dollars. to be  
paid on the first day of March. A.D.  
1855 = By virtue of which said lease  
the said Defendants entered into said  
demised premises & were possessed  
thereof. from first day of March - 1854 -  
to the 1<sup>st</sup> day of March - 1855 - when a  
large sum of money - to wit - the sum of  
Two Hundred Dollars rent aforesaid.  
for the space of one year ending on the  
day & year last aforesaid. became &  
was due & payable from the said  
Defendants & still is in arrear and  
unpaid to the said Plaintiff - to wit -  
at the Circuit & County aforesaid -  
Whereby an action has accrued to the  
said Plaintiff to have and demand  
of said Defendant, the said sum of  
Two Hundred Dollars above demanded.  
4<sup>th</sup> - And whereas. also. afterwards -  
to wit - on Second Day of December A.D.  
1853. at the Circuit & County aforesaid.  
the said Plaintiff & the said Defendants  
made & signed their Certain Agreement  
in writing. substantially in the words  
& figures following - to wit =  
Articles of Agreement made



" And entered into this Second day of  
" December. A.D. 1853 - between James  
" Turner. of the County of Alleghany @  
" State of Penna. of the one part - and  
" John G. Penn of the County of McLean  
" and State of Illinois of the other part.  
" Witneseth - That the said Turner has  
" rented or leased unto the said Penn  
" all that certain farm situated in  
" Dry Grove. McLean County. Ills. now  
" occupied by said Penn for the term of  
" one year from the first day of March  
" A.D. 1854 - for the sum of Two Hundred  
" Dollars = The said Turner is to dig a  
" well @ put in a Chain pump therein.  
" providing the costs of said well @ pump  
" shall not exceed in cost the sum of  
" Forty Dollars = It is understood that  
" the said Penn is to dig said well. but  
" before digging he is to bore for water.  
" And if a good permanent vein of  
" water cannot be found. then and  
" in that case. the well is not to be dug.  
" The said Turner is to furnish the  
" necessary lumber to make a fence  
" around the house @ garden. and  
" the said Penn agrees to put up the  
" said fence at his own costs =



" The said Pinn hereby agrees to pay the rent as  
" as aforesaid at the termination of this lease  
" that is. on the first of March - 1855 - And  
" will keep good care of the premises and  
" at the expiration of this lease. he is to give  
" quiet & peaceable possession thereof to the  
" said Turney. his agent or attorney. & leave  
" the same in as good repair as the same  
" are now in or may be put in. usual wear  
" & tear thereof and fire and other Casualty  
" only excepted = The said Pinn is to have  
" what fire wood that may be necessary  
" for household use = This Lease can be  
" extended for the term of Two years at  
" the option of said Turney & if it is to be  
" continued. the said Turney agrees to  
" notify said Pinn to that effect within  
" two or three months from this date = In  
" case said Lease is continued. the rent  
" herein specified is to be paid at the  
" end of each year =

" In witness whereof the said parties  
" have hereunto set their hands & seals  
" at Bloomington. the day and year be-  
" fore written

James Turney *J.S.*  
John J. Pinn *J.S.*

" I hereby become security for John J.



"Sum for the rent specified in the within-  
"lease = John Nicolls =

By means whereof the said Plaintiff leased a certain farm therein described. for the term of one year from the first day of March A.D. 1854 - for the sum of Two Hundred Dollars rent and agreed to dig a well & put a chain pump therein - And further agreed to furnish the necessary lumber to make a fence around the house and garden - And by means whereof the said Defendants agreed to pay Plaintiff the rent as aforesaid - to wit - the sum of Two Hundred Dollars. at the expiration of the said lease - to wit. on the first - that is first day of March 1855 = And the said Plaintiff avers that he did dig a well & put in a Chain pump therein on said farm on day & year aforesaid - And further avers that he did furnish the necessary lumber to make a fence. around the house & garden on said farm. on day of . . . And the Plaintiff avers further that by reason of said agreement. the said Defendant then & there became liable to pay Plaintiff



said sum of Two Hundred Dollars  
specified in said Agreement in writing  
on the first day of March A. D. 1835=  
And although said sum of money  
has long since been due & payable.  
yet the said Defendants have not. al-  
though often requested so to do. paid  
said sum of any part thereof. where-  
-by an action has accrued to Plaintiff  
to have & demand of the said Defend-  
-ants. said sum of Two Hundred Dollars.  
aforesaid =

And whereas also. the said Defendants  
afterwards. to wit = on      day of  
at the Circuit & County aforesaid were  
indebted to said Plaintiff in the fur-  
-ther sum of Two Hundred Dollars -  
for the use & occupation of a certain  
farm of the said Plaintiff. by the said  
Defendants - And at their special inst-  
-ance & request and by the sufferance  
and permission of the said Plaintiff  
for a long time before then elapsed.  
to wit = for the term of one year. had  
held. used. occupied. possessed and  
enjoyed. and to be paid by the said  
Defendants to the said Plaintiff. when  
they. the said Defendants. should be



theremto afterwards requested =

Whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid. an action has accrued to the Plaintiff to demand & have of the said Defendants. the sum of Two Hundred Dollars =

And whereas. also. the said Defendants afterwards to wit. on      day of      1858. at the Circuit & County aforesaid. accounted with the said Plaintiff of & Concerning divers other sums of money. before that time & then due & owing and in arrear & unpaid from the said Defendants to the said Plaintiff. And upon that accounting the said Defendants were then & there found to be in arrear & indebted to the said Plaintiff in the further sum of Two Hundred Dollars to be paid by the said Defendants to the said Plaintiff. when they, the said Defendants. should be theremto afterwards requested. Whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid. an action hath accrued to the said Plaintiff to demand & have of & from the said defendants. said last mentioned sum of money.



Yet the said Defendants. although often requested so to do. have not. nor has either of them. paid the said several sums of Two Hundred Dollars above demanded. or any part thereof to the said. But they or either of them to do. hitherto wholly refused & still do refuse to the damage of Plaintiff Two Hundred Dollars & therefore he brings his suit & —

J. C. Walker —  
att. for Pltff —

Copy of Account sued =

John Nicolls &

John J. Penn =

To James Turney = Ds.

To use & occupation of farm \$200.00

" Account stated 200.00

" Lease 200.00

\$600.00

Articles of  
Agreement

Articles of Agreement made and entered this Second day of December. A.D. 1853. between James Turney of the County of Alleghany & State of Penn<sup>a</sup>. of the one part & John J. Penn of the County of McLean & State of Illinois of the other part. Witnesseth - That the said Turney has rented or leased unto the said Penn. all that certain farm situated in Dry Grove. Mc



Lean County, Ill. now occupied by said  
Pum. for the term of one year. from the  
first day of March A.D. 1854. for the sum  
of Two Hundred Dollars = The said Turney  
is to dig a well & put in a chain pump  
therein. providing the Cost of said well and  
pump shall not exceed in Cost. the sum  
of Forty Dollars = It is understood that  
the said Pum is to dig said well. but before  
digging. he is to bore for water. and if a  
good permanent vein of water cannot be  
found. then & in that Case. the well is not  
to be dug = The said Turney is to furnish  
the necessary lumber. to make a fence  
around the house and garden. and the  
said Pum agrees to put up said fence  
at his own Cost = The said Pum hereby  
agrees to pay the rent as aforesaid. at  
the termination of this lease. that is. on the  
first of March. 1855 - and will keep good  
Care of the premises. and at the expiration  
of this lease. he is to give quiet & peaceable  
possession thereof. to the said Turney.  
his agent or attorney. and leave the same  
in as good repair as the same are now  
in. or may be put in. usual wear and  
tear thereof & fire & other Casualty only  
excepted - The said Pum is to have what



firewood that may be necessary for house-  
hold use = This lease can be extended  
for the term of two years. at the option of  
said Turney; and if it is to be continued.  
the said Turney agrees to notify said  
Perrin to that effect. within two or three  
months from this date = In case said  
lease is continued. the rent herein  
specified is to be paid at the end of each  
year = In witness whereof the said  
parties have hereunto set their hands &  
seals at Bloomington. the day & year first  
before written =

James Turney 

John J. Perrin 

I hereby become security for John  
J. Perrin for the rent specified in the within  
in lease =  
John Nicolls =

And thereupon afterwards to wit -  
on the Fourth day of April. A.D. 1855 - said  
Plaintiff. by his Agent F. Price. filed in the  
Clerks Office aforesaid. a praecipe for  
witnesses. to be subpoenaed in behalf of  
said Plaintiff. in words and figures  
following - to wit =



Receipts for  
Witnesses

James Turney

vs.

John J. Runn &

John Nicolls

April Term - 1855 =

Clerk of Circuit Court  
will issue Subpoena for Wolford Wyatt  
in the above entitled suit. on behalf of  
Plaintiff = F. Price - Agent

for James Turney =

And thereupon afterwards - to wit  
on the day @ year last aforesaid. sued  
out of said Clerks office a writ of Subpoena  
in words @ figures following - to wit =

Subpoena

State of Illinois

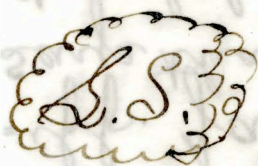
McLean County ss.

The People of the State of Illinois -  
To the Sheriff of Said County - Greeting =

We command you to Summon  
Wolford Wyatt. if found in your County  
personally to be @ appear before the Circuit  
Court of said County. on Wednesday. the  
third day of the next term thereof. to be  
holden at the Court House in Bloom-  
ing-ton. on the second Monday in the month  
of April inst. to testify and the truth  
to speak in a certain case now pend-  
-ing and undetermined in said Cir-  
-cuit Court. wherein James Turney is



Plaintiff, and John J. Burr and John  
Nicolls are Defendants. in behalf of the  
Plaintiff, and this he shall in no wise  
omit. under penalty of what the law  
directs = And have you then @ there  
this writ and make return thereon  
in what manner you execute the same.



Witness Wm McCullough. Clerk  
of the said Circuit Court. @  
the Seal thereof hereto affixed  
at Bloomington. this 4<sup>th</sup> day  
of April - 1855 =

Wm McCullough - Clerk  
by H. Burr - Dpty. Clk =

Which said Subpoena was retur-  
ned into said Clerks Office. with the  
following indorsement of service thereon  
to wit =

Sheriffs  
Return

"Served by reading to the within  
named Welford Wyatt - April 4<sup>th</sup> 1855 =

J. J. Price. Shff.

by J. H. Moore. Dpty =

And thereupon afterwards. to wit.  
at the April Term of said Circuit Court.  
to wit - on the Ninth Day of April A.D.  
1855 - the Defendant aforesaid by his



Attorney, filed in said Circuit Court.  
in this behalf. an affidavit. in words &  
figures following - to wit =

affidavit

James Turney

vs.

John J. Penn  
John Nicolls

In Debt

State of Illinois

McLean County ss -

John J. Penn -

one of the Defendants in the above enti-  
-tled Cause. duly sworn. says That  
he has good reason to believe and does  
believe that the said suit was commenc-  
-ed and is being prosecuted. without  
the knowledge or consent of the Plaint-  
-iff. James Turney = Affiant further  
says that he has good reason to believe &  
does believe that the Attorney J. C.  
Walker. who commenced said Cause.  
had no authority. and still has no  
authority to commence or prosecute  
said suit. from the said Plaintiff James  
Turney or from any agent of said  
Plaintiff. authorized by said Turney  
to commence said suit = Affiant



further says that he believes. that one  
Franklin Price. officiously and without  
any authority, whatever. ordered and re-  
-quested said Attorney to Commence this  
suit. for the express purpose wilfully  
to annoy and harass John Nicolls.  
Affiant's Codefendant herein this suit =

Affiant further says that when the  
Contract was made. upon which said  
suit was brought. said James Turney.  
Plaintiff in said suit. requested affi-  
-ant to pay the money to one Kersey H.  
Fell =

John J. Penn

Subscribed & sworn to  
before me this 9<sup>th</sup> April 1835..

Wm Mc Cullough, Clk.

And thereupon  
said Defendants moved the Court. that.  
by reason of the matters & things contained  
in said affidavit. this suit be dismissed  
which said motion was by the Court  
overruled. as by the Records of said  
Court. in this behalf. will appear = Said  
Record is in words & figures following -

Records = to wit =

931 =  
C.S.

James Turney

vs..

John J. Penn & John Nicolls

In Debt



62  
31  
And now at this day came  
the Defendants by their attorneys @ move  
the Court here to Dismiss this Suit - And  
for reason thereof. present to the Court  
the affidavit of one of the Defendants  
herein. showing to the Court that said  
Suit was commenced without the know-  
ledge or Consent of said Plaintiff - And  
the Court being sufficiently advised in  
the premises. is of opinion that said  
motion be overruled at the Costs of the  
said Defendants =

And thereupon afterwards - to wit -  
at the Aprile Term aforesaid - to wit - on the  
Twenty first day of Aprile. in year last  
aforesaid. Said Defendants by their Att-  
orneys. filed herein their Demurrer to the  
said Plaintiffs Declaration. in words @  
figures following - to wit =

Demurrer

John J. Penn @  
John Nicolls  
ads.

James Turney



McLean Circuit Court =  
Aprile Term - A.D. 1855 =  
In Debt =

And the Defendants  
by Bradley @ Wickizer. their Attorneys. come  
@ defend the wrong and injury when @ =



And crave oyer of the said supposed  
written article of agreement in the said  
Declaration mentioned and it is read to  
them. And which is in the words and  
figures following - to wit =

"Articles of agreement made and  
"entered into this Second day of December  
"A.D. 1853 - between James Turney of the  
"County of Alleghany, and State of Penna.  
"of the one part and John J. Penn of the  
"County of McLean @ State of Illinois of the  
"other part - Witneseth That the said  
"Turney has rented or leased unto the  
"said Penn all that certain farm. sit =  
"uated in Dry Grove, McLean Co. Ills. -  
"now occupied by said Penn for the term.  
"of one year from the First day of March  
"A.D. 1854. for the sum of Two Hundred  
"Dollars = The said Turney is to dig a  
"well @ put in a chain pump therein.  
"providing the Cost of said well and  
"pump shall not exceed in Cost the  
"sum of Forty Dollars = It is understood  
"that the said Penn is to dig said well,  
"but before digging, he is to bore for water  
"and if a good permanent vein of water  
"cannot be found. then and in that  
"Case. the well is not to be dug = The



" said Turney is to furnish the necessary  
" lumber to make a fence around the  
" house & garden - and the said Penn  
" agrees to put up said fence at his own  
" cost - The said Penn hereby agrees to  
" pay the rent as aforesaid. at the ter-  
" mination of this lease. that is, on the  
" first of March - 1855 - And will keep  
" good care of the premises. and at the  
" expiration of this lease. he is to give  
" quiet and peaceable possession there-  
" of to the said Turney. his Agent or at-  
" torney, and leave the same in as good  
" repair as the same are now in. or  
" may be put in. usual wear and tear  
" thereof & fire & other casualty alone  
" excepted - The said Penn is to have  
" what firewood that may be necessary  
" for household use - This lease can be  
" extended for the term of two years.  
" at the option of said Turney - And if it  
" is to be continued. the said Turney ag-  
" rees to notify said Penn to that effect  
" within two or three months from this  
" date - In case said lease is continued  
" the rent herein specified is to be paid  
" at the end of each year -  
" In witness whereof the said



" parties have herewith set their hands  
" and seals at Bloomington. the day &  
" year first before written =

" James Turney S.S.  
" John J. Penn S.S.

" Thereby become security for John J.  
" Penn. for the rent specified in the  
" within lease = John Nicolls =

And said Defendants say  
that the said Declaration and the matters  
therein contained. in manner & 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 Defendants = And they the  
said Defendants are not bound by law  
to answer the same = And this they are  
ready to verify = Wherefore by reason of  
the insufficiency of the said Declara-  
-tion in this behalf. the said Defendants  
pray judgment. And that the said  
Plaintiff may be barred from having  
or maintaining his aforesaid action.  
thereof against them &c &c =

Bridley & Wickizer  
Defts. attys. =



Joinder in  
Demurrer =

And the said Plaintiff saith that the said Declaration and the matters therein contained, are sufficient in Law for him, the said Plaintiff to have & maintain his aforesaid action thereof against the said Defendants - and the said Plaintiff is ready to verify & prove the same as the Court here shall direct and award = Whereupon, inas-  
= much as the said Defendants have not answered the said Declaration nor hitherto in any manner denied the same, the said Plaintiff prays Judgment &c &c =

J. C. Walker -  
Atty. for Pltff =

And thereupon afterwards, to wit - at the said April Term of said Circuit Court - to wit - on the day & year last aforesaid, the said Demurrer of said Defendants, to said Plaintiffs Declaration & the Joinder of said Plaintiff therein being submitted to our said Court & the parties being fully heard in this behalf - the following order was made by said Court in this behalf - as appears of Record - to wit =



931 =

C.S. =

Records =

James Turney

vs.

John J. Kim  
John Nicolls

In Debt =

And now again

at this day come the said Defendants by their Attorneys and file herein their Answer to the said Plaintiffs Declaration

And the same being fully argued & the Court being sufficiently advised in the premises = It is Considered by the Court that said Declaration is insufficient in law to be answered unto by the said Defendants = And thereupon Comes said Plaintiff by his Attorney & says that he will no further prosecute his Suit. as to the Fifth and Sixth Counts in his Declaration aforesaid = And now the said Plaintiff electing to abide by his Declaration - It is further Considered by the Court that said Defendants recover of said Plaintiff their Costs in this behalf expended - And that they have execution therefor =

State of Illinois

McLean County

ss.

I William McCullough. Clerk of the



Circuit Court. within & for said County  
in the State aforesaid. do hereby certify  
that the foregoing is a correct and  
complete Transcript of the Proceedings  
continued & held in our said Circuit  
Court in the above intitled Cause - as  
taken from the papers filed in my  
office and from the Records of said  
Circuit Court in this behalf =

In witness whereof I have here-  
unto set my hand & affixed  
the seal of said Circuit Court  
at Bloomington. this Fourth  
day of May, in the year of our  
Lord. One Thousand Eight Hund-  
red & Fifty Five =

William McCullough. Clerk  
by his Deputy =  
Hudson Burr =

Received of J. C. Walker - atty.  
for James Sumner - Thirteen <sup>50</sup>/<sub>100</sub> -  
Dollars. fees for this transcript =

Bloomington May 4. 1855 =

Wm McCullough. Clerk  
by H. Burr. Dpty. Clerk



State of Illinois  
James Turney, Supreme Court  
vs } On a writ of  
John J. Penn Error to a judgement  
of the Circuit Court  
John Stevens

The plaintiff in Error  
herein James Turney assigns  
for Error that that the Circuit  
Court Erred to his prejudice  
in its judgement at the April  
Term 1855.

1<sup>st</sup> The Court Erred to his  
prejudice in adjudging the  
declaration of the plaintiff  
insufficient and in sustaining  
the defendants demurver thereto  
2<sup>nd</sup> In not overruling the said  
defendants demurver to the plaintiff  
declaration

3<sup>rd</sup> In rendering judgement  
against the plaintiff

4<sup>th</sup> The judgement of the said  
Circuit Court at the April

Term 1855 is erroneous in  
every respect and should  
be reversed

Wherefore he prays a reversal  
Sanallor  
atty for plff in Error



State of Illinois } Le June Term  
Supreme Court } 4<sup>th</sup> 1865

James Turney } Plaintiff in Error

vs  
John J. Penn } Defendant in Error  
John C. Riccetto }

I hereby Enter myself  
as Surety, for Cost. in the  
above Entitled Cause in  
the Supreme Court & acknowledge  
myself bound to pay or cause  
to be paid all Cost. that may  
arise either to the opposite  
party or to any of the officers  
of the Court in pursuance of  
the Laws of this State  
May 4<sup>th</sup> 1865 - H. Walker

And now comes the defendant in error and  
say that in the record & proceedings aforesaid  
and in the rendition of the Judgment  
aforesaid there is no error wherefore they  
pray Judgment &c

Blelock

p.d.



<sup>46</sup>  
No. 931 = C.S.

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James Turney

vs.

John J. Penn  
© John Nicolls

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Transcript of Record

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Filed May 7, 1855.  
L. Veland Clk.

Fees - \$13.50.

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J. C. Walker, Plffs. Atty. =



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Gen. Turney  
vs  
J. J. Penn et al.

1855

1279