

No. 12737

Supreme Court of Illinois

Dexter

vs.

Parkins

89.

John Dexter

John Parkins

89

1859

12737

Thrupp

State of Illinois; Supreme Court
Third grand division
1838.

Wm Dexter Appellant
vs
John Parkins Appellee

And now Comes
the said John Dexter by Sidney Lumsden
Attorney, and says that in the record
and proceedings of said County Court
there is Manifest & Manifold Error, and
assigns for Error.

- 1st Said Court erred in allowing Mrs Smallbridge
wife of the defendant in execution to testify in
said Cause
- 2nd The Court erred in refusing the first instruc-
tion as asked for by said Dexter
- 3rd The Court erred in committing the 5th 6th &
7th instructions asked for by said Dexter
- 4th The Court gave wrong instructions asked
for by said Parkins
- 5th The Verdict of the jury is against the
Instructions of the Court
- 6th The Verdict of the jury is against the evidence
- 7th The Verdict is against Law
- 8th There is no Law or evidence in this Cause to
Support the Verdict of the jury

9th The said Court Erred in not granting
said Dexter a new trial for the reasons
stated in said motion.

10th The said Court Erred in overruling
the motion of said Dexter for a new trial
for the reasons stated in said Motion

Wherefore, for the Erros aforesaid, the
said John Dexter prays that the said
Judgment of said County Court may
be reversed, set aside and for nought
had, held and esteemed

Lincoln J. Lancer
pro Appellans

Parker
at
Dexter

In the Supreme Court
2^d April Term 1858

And the said Appellans
comes & says that there is an error
in the record & proceeding in the ven-
dition of Judgment in this case & that
he prays may be engaged of the Court

Thos Atty

for Appellans

State of Illinois }
Peoria County } County Court of Peoria County.

John Parkin }
vs. }
John Dexter }
Sworn in the words and figures following To Wit:

"Know all men by these Presents that we John Parkin William Spruck and J. Garretson are held and firmly bound unto John Dexter in the penal sum of One hundred Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals this 30th day of December A.D. 1857

Wm Spruck
The conditions of the above obligation is such that whereas the said John Dexter did on the 28th day of December A.D. 1857 before W. W. Miller a Justice of the Peace and a juror of the County of Peoria, recover a Judgment against the above bounden John Parkin for the sum of Fifty and 4/100 Dollars Costs in a trial of the right of Property lived on by G. W. Miller Contests by virtue of an Execution issued by W. W. Miller a Justice of the Peace for the County of Peoria and State of Illinois in favor of John Dexter and against John Parkin - from which Judgment the said John Parkin has taken an appeal to the County Court of Peoria County and State of Illinois. Now if the said John Parkin shall prosecute his appeal with effect and without delay and shall pay whatever costs have accrued or may accrue on the dismissal or trial of such appeal by the said Court then the above obligation to be null and void otherwise to remain in full force and effect."

Approved Dec. 31st 1857

Charles Nettelle Clerk. per

Geo H. Kellie, spe

John Parkin Seal
J. Garretson Seal
Wm Spruck Seal

John Parkin
vs.
John Dexter.

Filed December 31st 1857
Charles Nettelle, Clerk per
Geo H. Kellie, spe

And on the same day, To Wit: on the 31st day of December 1857. there issued from the office of the Clerk of the County Court of Peoria County, a Summons in the words and figures following To Wit:

" State of Illinois }
Peoria County, } ss. The People of the State of Illinois to the Sheriff
of said County - Greeting:

We Command You that you Summon John Dexter if he shall be found in your County, personally to be and appear before the County Court of said Peoria County, on the first day of the next Term thereof, to be holden at the Court House in Peoria, in said Peoria County, on the First Monday of February, 1858, to answer unto John Parker in a suit lately appeared to our County Court from before W. W. Miller a J. P. in said County.

And have you then and then this Wit with endorsement thereon, in what manner you shall have executed the same."

(Seal)

Witness, Charles Kettelle, Clerk of our said Court and the Seal thereof at Peoria, aforesaid, this 31st day of December A.D. 1857. Charles Kettelle Clerk! Geo. McKelley ssg

County Court of Peoria County Court.

J. Parker vs J. Dexter

State of Illinois }
County Court.

I have duly served the within by reading the same to the within John Dexter

as then thereon commanded Jan 14 - 1858.

Wm Smith Sheriff by J. S. Hanson Sept.

Fees - 50
Charges - 90
Returns - 1.50

Filled in County Court this 12 day of January 1858 Cha Kettelle Clerk.

W. W. Owen Attorney

And on the same day, To Wit: on the 31st day of December 1857. there issued from the Office of the Clerk of the County Court of Peoria County, a Supersedeas. in the words and figures following To Wit:

" State of Illinois }
Peoria County, } ss. The People of the State of Illinois:
To W. W. Miller Esquire, one of the Justices of the Peace, and G. W. Miller a Constable in and for said County -
Greeting
Whereas in a certain cause lately pending before you the said

Justice of the Peace, wherein John Parkin Plaintiff, and John Dexter defendant, judgment has been given by you against the said John Parkin as it is said, from which judgment an appeal has taken by the said John Parkin to the County Court of said County, and a bond duly approved and filed in the office of the clerk of said County Court. Therefore we command and enjoin you, the said Justice of the Peace and Constable, to suspend all further proceedings on said judgment, and cease from further molesting the said John Parkin on occasion thereof, until the further order of said County Court.

(Seal)

Witness Charles Kettelle Clerk of said Court, And the Seal thereof, at Peoria in said County. This 31 day of December. A.D. 1857.

Charles Kettelle Clerk.
Geo H. Kettelle, Spty. CLK.

Supersedeas
Peoria County Court
J. Parkin
vs.
J. Dexter
W. W. Miller Justice
vs. W. Miller Constable
State of Illinois
Peoria County, ss
I have duly served this writ by reading
to the within named
W. W. Miller, J. and Geo Miller
Constable this 4th day of January
A.D. 1858.
Fees. 1.00
Service 1.00
Mileage .20
J. W. Smith Sheriff
vs. J. P. Dawson Spt
Filed in County Court this
12 day of January
A.D. 1858
Charles Kettelle Clerk.

And afterwards To Wit on the 12th January, 1858. There was filed in the Office of the Clerk of the County Court of said County, a Transcript of the Proceedings in above entitled cause, in the following words and figures following To Wit:

cc Dec 18th 1857.

John Parkin
vs.
John Dexter.

Justice Court before the undersigned defendant. having obtained a judgement before the undersigned against John Smallbridge and execution issued and levied on one car load of Coal in the City of Peoria and two bay mares and two horse waggons and a set of double harness taken as the property of said John Smallbridge, the court, was notified by Plaintiff that the property levied on belonged to him a trial for the right of property was set for the 18th of Dec 1858. 18th Defendant being duly sworn said that he could not proceed to trial on account of the absence of a ma.

Serial witness. cause continued to the 21st Dec. 1857. 21st parties appeared and went to trial the following named jurors being empanelled Wm Vinson Daniel Bower A D Hutchinson John Hutchinson Joseph Bower & John Flemming their being some informality in the notice to the Constable said notice by agreement was waived the evidence being heard the case was submitted to the jury who could not agree and by consent of parties the jury was discharged and the cause continued to the 28th Dec. 1857. 28th parties appeared and parties being ready for trial the following jurors were empanelled Wm White Austin Nacew. Alvy Rathburn Elias Hain. John Bissell & Daniel Smlew the Evidence being heard the cause was submitted to the jury who brought in as their verdict that the property did not belong to John Perkins plaintiff with the exception of one mare which they decided to be the property of said plaintiff judgment was therefor rendered against said plaintiff for costs.

State of Illinois }
Peoria County } I W W Miller one of the JPs within and for said County do hereby certify that the foregoing Transcript and judgment of John Perkins vs. John Dexter is truly copied from the files and Books in my office.
Given under my hand and Seal this 6th day of January 1858. W W Miller C. J.

And afterwards. To Wit. on the 1st day of February 1858. there was filed in the office of the County Clerk of said County an affidavit and motion in words and words following To Wit.

State of Illinois, Peoria County
John Perkins } Peoria Circuit Court February Term.
vs } A.D. 1858
John Dexter } John Dexter the Defendant in the above
entitled cause being first duly sworn deposes and says that he is informed and has good reason to believe and does believe that the Plaintiff in the above entitled cause and William Spunk and J. Garrison who executed the appeal bond in said cause with said Plaintiff, as securities are

each & both of them unable to pay the judgment and Costs or costs
alone in case the said cause should be Determined against
said Plaintiff, that they are peculiarly embarrassed and ir-
responsible. That said Securities are not owners & holders of
Real Estate, as said deponent is informed and believes. And
that the Costs of the officers of this Court. are in danger of
being lost unless additional and better security be given
therein And he therefore prays that said Plaintiff be ruled
to file additional & better Security

Subscribed & Sworn to before me
February 1st A.D. 1858.
Charles Kettelle. Clerk per Geo H. Kettelle, Dpty Clerk.

And now comes said Defendant and makes his Motion
that the Plaintiff in the above entitled cause be ruled to
give further and better security for costs for grounds stated
in above affidavit.

By Kellogg atty for deft.

John Perkins

vs.

John Dexter

affidavit

motion

Filed February

9-1858

Charles Kettelle

per Geo H. Kettelle

Dpty.

And afterwards To Wit on the 3rd day of Feby. 1858 There was filed in the office
of the Clerk of the County Court of said County an additional Bond in
words and figures following - To Wit -

Know all men by these presents that we John Perkins & Garrison
Wm Spurck and E. C. Ryneau are held and firmly bound unto
John Dexter in the penal sum of one hundred Dollars lawful money
of the United States for the payment of which well and truly to be made
we bind ourselves our heirs executors & administrators jointly severally
and firmly by these presents witness our hands and seals this 3rd
day of February 1858. The condition of the above obligation is such
that whereas the above John Dexter did on the 28th day of Dec 1857
before W. W. Kettelle J. C. for the County of Peoria recover a judgment
against the above bounden John Perkins for the sum of \$ 75 47 1/2

from which judgement the said John Parkins has taken an appeal to the County Court of the County of Scovia and State of Ill now if the said John Parkins shall prosecute his appeal with effect and shall pay what ever judgement may be rendered by the Court upon dismissal on trial of said appeal then the above Obligation to be void otherwise remain in full force and effect.

John Parkins
J. Garretson
Wm. Spunk
E. C. Ryneason

*Add "and need Bond"

Filed only 8th 1858
Chs. Stille. Clerk
to Geo. H. Hinkle
29th

And afterwards, To Wit: on the 10th day of February A D 1858. There was filed in the Office of the Clerk of the County Court, the following Bill of Exceptions in Words and Figures as follows. To Wit:

State of Illinois } County Court Scovia County
Scovia County } February Term AD 1858.

John Parkins
vs.
John Deeter

Trial Right Property -

Remt Remembered that on the trial of said cause the plaintiff offered the wife of the defendant in execution Jane Smallridge, as a witness on the trial of said cause. To which the defendant objected. The Court overruled the objection and allowed the said witness to give testimony in said cause. To which Ruling of the Court the defendant then and there objected. Jane Smallridge testified that John Parkins claimant was the son in law of John Smallridge - that she kept her husband's accounts and books that her husband could not write, that she knew and kept an account of all money paid out by her husband to all persons. That Parkins claimant had worked for her husband and had loaned her husband money amounting in all to about the sum

*and afterwards to wit on the 5th of Feb 1858. when was filed the Bond of the Jury as follows. To Wit: John Deeter
Jm Deeter
Dated 2nd day of Feb 1858

of Seven Hundred Dollars, which was the consideration of Bill
of Sale. (here inserted as follows to Wm)
"Know all men by these presents that I John Smallridge of the
County of Peoria and State of Illinois of the first part. for and in
consideration of the sum of seven Hundred lawful money of the
United States to me in hand paid, at or before the sealing of these
presents by John Parkin of the same place of the second part.
the receipt of which is hereby acknowledged have bargained and
sold and by these presents do bargain and sell unto the said party
of the second part his Executors Administrators and assigns
Two Horses and one Mare, Two horse Colts, One man Colt, Two
Two horse Wagons, Plows and Cultivators, One Harrow, and
Harnes, and One one horse Carts Six head of hogs, nineteen
head of cattle. To have and to hold the same unto the said
party of the second part his Executors Administrators and as-
signs forever And I do further bind myself, my heirs
Executors and administrators to Warrant and Defend the Sale
of the said goods and Chattels hereby sold unto the said party
of the second part his Executors Administrators and assigns
against all and every person and persons whomsoever.
And the said party of the first part. does hereby transfer and
deliver the possession of the said goods and Chattels to the said
party of the second part. In Witness Whereof. the said
party of the first part. has hereunto set his hand and seal
this 3rd Day of March A.D. 1857."

Witness John ^{his} Smallridge
mark

Wm Owen

Executed by John Smallridge her husband to Claimant
That said Bill of Sale, was executed at the time of the date
thereof, and at the time of its execution Parkins was living,
some 3 or 4 miles from her husband, Smallridge, and for
some time after said sale in said Bill of sale to Claimant.
But Smallridge used said property from time to time as her
husband had from time to time borrowed said horses and
wagon and harness and Parkins had no means of keeping
said property on his premises, and that Parkins was in the
habit of using said horses wagon and harness, and that her
husband never used said horses, except when he borrowed
the same, and that the nineteen head of cattle contained

in said Bill of Sale should have been mine instead of mine
Elen - That the Coal levied upon belonged to Parkins

John Blutchford. Testified that some time about the
1st December 1857 he went to work for Parkins. That Smallridge
had agreed with him at 14 - Dollars per month but sent him to
Parkins to see if Parkins would give him 14 Dollars per month
and that Parkins used the horses and waggon contained in said
Bill of Sale in hauling coal. Smallridge told Witness he must
look to Parkins for his pay. That he boarded with Smallridge
and worked at hauling Coal. and that Parkins dug the Coal
and Witness hauled Coal for Parkins. and he looked to Parkins for
his pay. Parkins had paid him part of his wages.

Thomas Steers. Testified That Parkins claimant worked
for him Witness. from the 9th August 1856 untill 26th Sep
tember 1857. That he saw no property about the premises of Parkins
during that time - did see at one time a Horse and Cart there -
but there was no continued possession of said property. there was
some Hogs. these the property of Parkins. Parkins lived some 3
or 4 miles from Smallridge and was at the time working at Limekilns
for Witness. and he saw Parkins dig the team and levied on several
times. and in his possession. That Parkins left the Lime Kiln
about the first of September & moved to where he now lives & it was
after he moved that witness saw the horses & waggon in Parkins poss-
ession

George Parkins. Testified that he had seen the Horses and
Waggon included in Bill of Sale in the possession of John Par-
kins for the last 3 months. by using them - but the Horses were
kept at Smallridge most of the time during the Summer. One
of the Horses his brother John Parkins had possession of for
10 months. Witness hauled hay last Summer about 2 weeks
with said team. Which Hay belonged to Parkins and Smallridge

Frank Lunde Testified that he worked for Smallridge during the last Summer - That Smallridge was his uncle. That he saw the horses in the possession of both Parkins and Smallridge. ~~but both Parkins and Smallridge~~ but both Parkins and - Smallridge said the team belonged to Parkins That Parkins had worked for Smallridge on the Rail Road 14 1/2 months at 17 \$ per month & in the farm 36 days at 1 \$ per day & 5 mo with leave at 35 \$ per month & from Oct to March 1855 at 15 \$ per month & Smallridge borrowed 100 \$ of Parkins & Smallridge never claimed property after the Sale.

Sam Toucher Testified - That Parkins work for Smallridge on the Rail Road but could not say how long.

Longdale Testified That he sold Parkins one of the mares in said team Some 16 months ago he knew the mare well had raised her, and that Smallridge drove said mare in his team on right side. The same team of horses lived in the one he sold, Parkins had a few white hairs in forehead the other one had a star in the forehead.

Evidence for Defendant

Constable Miller Testified that the following Execution
To Wit.

"State of Illinois }
Peoria County, } ss. The People of the State of Illinois, to any
Constable of said County. Greeting:

"We command you, That of the Goods and Chattels of John Smallridge in your county, you make the Sum of 110 Dollars and 00 Cents debt. And 12 Dollars and 30 Cents cost (with interest at the rate of 100 per cent. per annum from the 5th day of Dec 1857, when judgment was rendered,) which John Dexter lately recovered before me on a certain plea against the said John Smallridge and thereof make return to me within seventy days from this date. Given under my hand and seal this 5th day of Dec 1857
W W Miller J.P. [seal]

By virtue of this writ 3 horse
 teams of about 250 bushels of
 coal on Car No 159 in Person
 I have also levied on two Bay
 mares One set of harness the
 two horse waggon as the property
 of John Smallridge this
 13th day of Dec 1857
 E W Miller Const.

Execution
 John Gentry
 John Smallridge
 Edward \$ 119.30
 cents 1 00
 fee 1 00

was held by him and that he made the levy as described on said Execution. That the Horses Waggon &c was in possession of John Smallridge when he made the levy about 2/4 of a mile from the residence of Smallridge. That Smallridge told constable that team belonged to Parkins that the load of coal in the Waggon was Parkins that he had no property that it belonged to Parkins. Parkins was there and claimed the property and said he would control the right of property Smallridge said team should not go until fed.

William Rutherford Testified that he purchased of John Smallridge on the 1st December last a Car load of Coal that he was to give him 7 1/2 cents per Bushel. That he did not know Parkins in the Contract. That Coal was shipped in the name of John Smallridge and numbered 159 and that the said Coal was levied on in said Execution held by constable Miller

Samuel Wrench That the Bill of Shipment was in the name of John Smallridge and in the hand writing of J Edwards the agent at Edwards Station on the Rail Road and that Smallridge told agent the Coal was ready for shipment and that Smallridge and hands had hauled the Coal to the Car and that Smallridge gave the notice when Car was ready to ship and Witness told Edwards to ship Car in the name of Smallridge but Smallridge gave no such direction as witness knew of

Sylvester Williamson Testified That he worked for Smallridge that he used his own team and was employed by Smallridge and Brotherson and in hauling Coal Smallridge used the team of Horses and Waggon levied on by constable Miller. Smallridge drove the team used it himself claimed

the team and called it his own team. Have seen the team in smallridges possession. from time to time ever since and saw it in his possession at the time the levy was made. Witness was at work hauling coal for Smallridge & Brotherson. That Smallridge turned Witness off. because he could not use 2 teams. and stated, that if any team worked he must use his own team, which was the team levied on. Stated at the time he discharged Witness he could not keep Witness and team, That Witness quit in June, (and the coal hauled by Smallridge was before Witness quit)

Henry Duckworth Testified That Smallridge put the last 3 load of Coal in the Car No 159 levied on, and that he used the horses in dispute, in hauling said coal, saw the horses levied on some 14 or 15 head of cattle several head of hogs. Plough & Cultivator and 2 colts. about and on the premises of John Smallridge during the last summer from time to time as he was passing by said premises and that he went past said place very often during the last summer. and that he had occasion during the last summer to pass by the premises of Parkins from time to time during last summer and he saw no property around the premises of Parkins and that Parkins levied some 3 miles from Smallridge

Harvey Bricket Testified that his farm joined Smallridge have seen several head of cattle 2 colts. 2 Waggons, and horses levied on on the premises and in the possession of John Smallridge during the last summer from time to time. The cattle broke into premises of Witness and he claimed damage from John Smallridge who remarked that he had a right to turn his stock in said field as he had purchased the corn stocks in said field. and in other conversations he called them his own cattle.

John Mitchell Later End of last March Witness sold John Parkins a Sow and Pigs. never saw any property around the premises of Parkins. did see him drive a team of horses several times have seen Smallridge drive the same team Have seen the team in possession of both, but oftner in the possession of Smallridge than in Parkins. Have seen

Smallridge drive team to Parkins' House and then back Home
Parkins is a hard working man

Mathew McReynolds. Told John Smallridge 80 acres
of land, paid me some. Got Dollars has a written agree-
ment for a deed when the land is paid for.

Henry Duckworth. Testified that on the land purch-
ased by Smallridge of McReynolds he
Smallridge had a coal Bank out of which he was digging
coal. And that the coal Bank worked by Parkins was on
the same 80 acres of land. That the coal Bank worked by
Parkins was not the one worked by Smallridge.

The Claimant asked the Court to give the following
Instructions

1. The Claimant asks the following Instructions.

1. If the jury believe from the evidence that the property in
controversy belongs to the Claimant they should find for
the Claimant

2. If the jury believe from the evidence that the Claimant bought
the property in controversy part from Landsdale & part from
Smallridge ^{and for a bona fide and valuable consideration} in good faith and that there was no adverse possession
of said property by any other person under ^{in their own right} claim, of title the jury
should find for the Claimant

3. If the jury believe from the evidence that the Claimant bought
the property in controversy ^{and paid therefor a valuable consideration} or any part thereof from Smallridge
and claimed and exercised acts of ownership over such property
at and for some time before Dexter recovered judgment against
Smallridge the jury should find for the Claimant

Given

Given as awarded

Given as awarded

To Which the Defendant excepted -

The defendants asked the Court to instruct the jury as follows

1st If the jury believe from the evidence that there was no delivery of the property mentioned in the Bill of Sale offered in Evidence by the Plaintiff at the time of the Execution of said Bill of Sale they will find for the Defendant.

2^d To constitute a Delivery the property sold must be identified separated & distinguished from all other goods & property.

3^d That a Bill of Sale that by its terms conveys possession of the Chattels therein specified to the vendee is evidence of the Sale, Provided possession did actually follow according to the terms thereof.

4th If the jury believe from the evidence that possession did not follow the Bill of Sale according to the terms thereof They will find for the Defendant. They will find for the Defendant.

5th That a Bill of Sale is fraudulent & void, as to Creditors and Third Persons unless possession of the property specified therein actually followed from the Vendor to the Vendee, according to the terms of said Bill of Sale.

6th That possession is *Prima facie* evidence of Ownership, and in case of Sale of Goods or Chattels possession of said Goods remain with the Seller or vendor, the Sale is fraudulent.

word per se of itself as to Creditors and Third persons,
and cannot be rebutted by Evidence of fair intention

7. That the Sale of Goods really consists in the delivery
thereof from the Vendor to the Vendee

8. That all Sales of personal property, without a delivery-
accompanying the Bill of Sale are fraudulent and void
as to the Claims of Judgment Creditors -

9. That unless Smallridge delivered possession of said
Property over to Perkins at time of Bill of Sale said prop-
erty was liable to be taken for the debts of Smallridge by
any Judgment Creditor of Smallridge -

10. That no part of the evidence of Mrs Smallridge is to
be taken except such Testimony as is against the
interest of her husband

But the Court refused to give the instructions as asked but
modified them by adding the following:

W. W. R.

"Whereupon the Court refused the 1st Instruction asked for on
the part of the Defendant. And amended the 5th instruction
by inserting the Words "not being a preferred creditor." After
the Words. Vendor and Vendee in said 5th instruction. And
amended the 6th instruction. by adding the words unless such
Sale was to a preferred creditor And in payment of a just debt
And amended the 7th instruction by adding thereto, unless such
Sale was made in good faith And without fraud to a
preferred creditor before such judgments were obtained And
unless in the Case it should appear from the Evidence such
Sale was made to defeat the collection of the debts owing
by the Vendor.

Whereupon the Defendant excepted to the de-
cision of the Court refusing the first instruction as asked
for by defendant And excepted to the Amendment to the
5th instruction as asked for by defendant.

And excepted to the Amendment to the 6th instruction as asked
for by defendant. And excepted to the Amendment the 7th
instruction as asked for by defendant. And defendant
excepted to all of said Instructions as given by
the Court.

Wellington Loukes
County Judge

Let a supersedeas go. Bond in the sum of \$300.

The Defendant entered a Motion for a new Trial, which is in the following words and figures. To wit:

John Parkins
vs:
John Dexter: } The defendant in this Cause enters a Motion for a new Trial, for the following reasons.

The Court gave improper instructions to the Jury.

The Court refused to give proper instructions to the Jury.

The Court made wrong and illegal modifications to instructions offered by defendants which instruction was conflicting and calculated to mislead the Jury.

The Court allowed improper testimony to go to the Jury.

The Court admitted and allowed Witnesses to testify in said Cause which were by law incompetent to testify in said Cause.

The Verdict is against Law.

The Verdict is against Evidence.

W P Kellogg.

London & Lande

for defendant.

Which was overruled by the Court. To the Order of the Court. overruling said Motion the defendant then and there excepted Wellington Smiths C. Judge

Overruled

Proceedings of the County Court Teoria County, State of Illinois,
began and held at the Court House in the City of Teoria in
said County on Monday February 1st 1858. for judicial and other
business. Present Hon Wellington Loomis Judge. Charles
Kettelle Clerk, and Francis Smith Sheriff.

John Parkin
vs. John Dexter Trial Right of Property. appeal from S.C.

On Motion of defendant by his attorney it is ordered
by the Court, that the said Plaintiff, file an additional Security
by Wednesday at 4 O'clock P.M. - or satisfy the Court that the
Security given is sufficient.

Thursday February 4th 1858.

John Parkin
vs. John Dexter appeal from J.P. Trial of right of Property.

This day came the said J.P. by Groves and McCoy his
attys and the said J.P. by W. Pitt Kellogg and J. T. Lindsay his
attys and it is ordered by the Court that a jury be empanelled to try
said cause. Whereupon came a jury of twelve good and lawful
men to wit. A. D. Garrett, John Wetzel, John Micham, Isaac Moore,
Michael Fash, Ephraim Morrison, J. M. Johnson, Jacob Farrell, David
Maxwell, John H. Floyd, Sarah Fisher and James T. Murden
who were duly chosen, tried and sworn well and truly to try the said cause
and a true verdict render according to the evidence given. The jury hav-
ing heard the Evidence in the case and the arguments of counsel re-
turned to consider of their verdict.

Friday February 5th 1858.

John Parkin
vs. John Dexter appeal from J.P. Trial right of Property.

This day came again the parties in this suit also the
jury empanelled in this cause and returned into Court the following

verdict: "We the jury find for Plaintiff the defendant" Therefore
the said defendant, by his ally and entered his motion for a new trial
of this cause. The Court being fully advised in the premises doth over-
rule the said Motion - Thereupon was ordered by the Court that the said
John Dexter or his agent or the officer making the levy make due return
to the said John Parkins of the goods so detained by him and further
considered by the Court do have and recovery of and from the said John
Dexter his costs and charges by him in this suit in his behalf ex-
pended in the Court and the Court below and that he have execution
thereof. Thereupon the said defendant prays an appeal of this
cause to the Supreme Court of this State which was ordered to be allowed
on his entering into Bonds in the penal sum of Three Hundred
Dollars within ten days conditional according to Law with
Richard Gregg as Security.

And afterwards To Wit on the 15 day of February 1838. there was
filed in the Office of the Clerk of the County Court of said County.
an appeal Bond, in words and figures following To Wit:

"Know all men by these Presents That we John Dexter and Richard
Gregg both of Peoria County Illinois we held and firmly bound
unto John Parkins in the Penal Sum of Three Hundred Dollars.
The payment of which we do bind ourselves our heirs executors and
administrators firmly by these presents Witness our hands and seals
this fifteenth day of February A.D. 1838

The condition of this obligation is such, That Whereas. The said
Bound John Dexter has prayed an appeal in a certain cause in
the County Court of Peoria County Illinois wherein John Parkins
is Plaintiff and John Dexter defendant to the Supreme Court of
the said state which trial is the right of property. Now in case the
said John Dexter shall pay all judgment for costs which may be
awarded against him by reason of said appeal and shall pay all
costs which may be awarded against him in said County Court
in said cause and shall keep the said John Parkins harmless from
any costs or damages which by Law the said Dexter should pay
then this Obligation shall be void else to remain in full force and virtue

John Dexter By John L. Lindsay his
Attorney in fact

Richard Gregg

3

State of Illinois
Peoria County.

I Charles Kettell Clerk of the
County Court of said County.

Do hereby certify that the foregoing is a
true ^{full and complete} copy of the Papers filed in said entitled
Cause, and Bill of Exceptions Appeal and
and a true ^{full and complete} Transcript of the Records in
said Cause being a full and perfect Record of said cause.

Witness my Hand and Seal
this 19th day of April 1857.

Charles Kettell CLK
per Geo W Kettell Spt.

Let a supersedeas go. Bond \$500. Richard Gregg
Surety,

J D Carson

89-19

John Westcott
vs
John Perkins appellee

Records

Filed June 15th 1838
Leland
Clk.

~~Westcott~~
~~Perkins~~
vs
~~Westcott~~

BRIEF OF APPELLANT.

| | | |
|---------------|---|---------------------------------|
| JOHN DEXTER, | } | STATE OF ILLINOIS, ss. |
| vs. | | IN THE SUPREME COURT AT OTTAWA, |
| JOHN PARKINS. | } | OF THE APRIL TERM, A. D. 1859. |

The County Court erred in refusing the first instruction, and amending the 5th, 6th and 7th instructions by inserting the words, "not being a preferred creditor," after the words "vendor and vendee," in the said 5th instruction.

And in amending the 6th instruction by adding the words "unless such sale was to a preferred creditor, and in payment of a just debt."

And in amending the 7th instruction by adding thereto, "unless such sale was made in good faith, and without fraud, to a preferred creditor, before such judgments were ~~entered~~ ^{entered}, and unless in the case it should appear from the evidence such sale was made to defeat the collection of the debts owing by the vendor."

A sale of personal property without delivery accompanying the sale, is void as to judgment creditors.

Jennings vs. Gage, 13 Ills., page 611.

Low vs. Freeman, 12 Ills., page 469.

The Court erred in allowing the wife of the defendant in execution to testify in said cause.

Purple's Statutes, page 1028, sect. 12.

1st Greenleaf, sects. 341 and 407.

LINDSAY & FOWLER, for Appellant.

89-17
John Dexter
vs
John Parkinson

Brief of Plff in
Error

Filed April 22, 1889
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

DEXTER
vs.
PARKINS.

}

DEFENDANT'S BRIEF AND POINTS.

1st. Mrs Smallridge was a competent witness. This court held the husband to be competent. See Breese, page

The statute renders the husband incompetent; but that statute does not render the wife incompetent.

2d. The plaintiff did not prove any judgment against Smallridge, and was therefore not in a position to impeach the sale to Parkins.

Jackson vs. Hobson, 4 Gil. 416.

Cook vs. Miller, 11 Ill. 612.

3d. The evidence shows the sale to Parkins to be bona fide.

GROVE,
For Defendant in Error.

89-19

John Dexter

vs

John Parkins

Depts Brief & Points

Filed April 20. L. Helms
Clk.

Know all Men by these presents that
we John Dexter as principal and
Richard Gregg as surety are held
and firmly bound unto John
Parkins in the penal
sum of Three Hundred ——— Dollars
lawful Money of the United States
for the payment of which sum well
and truly to be paid we hereby bind
ourselves our heirs Executors and
Administrators jointly severally
firmly by these presents witness
our hands and seals this 15th day of
June 1858.

The Condition of the above obli-
-gation is such that whenever the
above bound John Dexter has
prosecuted a writ of Error to the Supreme
Court of the State of Illinois to the
third grand Division thereof in a
certain Cause wherein the said John
Dexter was ~~plaintiff~~^{defendant} and John
Parkins Plaintiff which Cause was
decided by and before the County Court
of the County of Peoria in the State of
Illinois at the February Term thereof
1858. against said Dexter to reverse
which judgment the said Dexter has

prosecuted his said writ of Error
to said Supreme Court

And whereas on the application
of said Dexter a Supersedeas has been
and is awarded to the said Dexter
from said Supreme Court suspen-
ding the enforcement of the said
judgment in said County Court
pursuant to law

Now if the said John Dexter
shall prosecute his said writ of Error
with effect and shall well and
truly pay or cause to be paid to the
said John Perkins whatever judgment
damages, Costs and interest may be
adjudged and rendered in case said
judgment shall be affirmed then
the above obligation to be void
else to be and remain in full
force and effect

John Dexter. Seal
B. E. G. Seal

69-19
John Dexter
John Perkins
Supersedeas

Filed June 15, 1838
J. L. Leland
clerk

BRIEF OF APPELLANT.

JOHN DEXTER, } STATE OF ILLINOIS, ss.
vs. } IN THE SUPREME COURT AT OTTAWA,
JOHN PARKINS. } OF THE APRIL TERM, A. D. 1859.

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And in amending the 6th instruction by adding the words "unless such sale was to a preferred creditor, and in payment of a just debt."

Jennings vs. Gage, 13 Ills., page 611.

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The Court erred in allowing the wife of the defendant in execution to testify in said cause.

Purple's Statutes, page 1028, sect. 12.

1st Greenleaf, sects. 341 and 407.

LINDSAY & FOWLER, for Appellant.

89-17
John Seely
no

John Parkins

Brief of Pp
in Error

Filed April 22, 1859

Seely
Parkins

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

DEXTER
vs.
PARKINS.

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2d. The plaintiff did not prove any judgment against Smallridge, and was therefore not in a position to impeach the sale to Parkins.

Jackson vs. Hobson, 4 Gil. 416.

Cook vs. Miller, 11 Ill. 612.

3d. The evidence shows the sale to Parkins to be bona fide.

GROVE,
For Defendant in Error.

89-17

John Dexter

vs
John Perkins

Defts. Brief & Points

Filed April 20. 1859

L. Leland
Clerk

*John Dexter Appellant, Supreme Court
 vs.
 John Parkins Appellee } Second Division
Peoria to Peoria*

~~JOHN PARKINS,~~
vs.
~~JOHN DEXTER.~~

} IN PEORIA COUNTY COURT,
 DECEMBER TERM, 1858.

APPEAL FROM JUSTICE OF THE PEACE.

The property in question was levied upon by virtue of an execution in favor of John Dexter against John Smallridge, dated 5th December, 1857, on judgment recovered by said Dexter against Smallridge on 5th Dec., 1857, for \$110 and costs, and the property levied upon as the property of Smallridge by a constable on the 15th day of December, 1857.

Parkins claimed the property as his, and had a trial of the rights of property before the Justice of the Peace, on which trial the jury rendered a verdict in favor of Dexter against the claimant, from which trial an appeal was taken to said County Court.

At the December term of said County Court, 1857, a jury trial was had, and verdict was rendered for the claimant, from which last trial this appeal is taken.

On the trial of said cause in the said County Court, the defendant Dexter filed his bill of exceptions showing in substance as follows:

STATE OF ILLINOIS, }
 PEORIA COUNTY. } ss.

COUNTY COURT, PEORIA COUNTY,
 FEBRUARY TERM, A. D. 1858.

JOHN PARKINS,
vs.
 JOHN DEXTER.

} TRIAL RIGHT PROPERTY.

Be it remembered, that on the trial of said cause the plaintiff offered the wife of the defendant in execution, Jane Smallridge, who acted as clerk and agent of her husband in the transaction of his business, as a witness on the trial of said cause, to which the defendant objected. The Court overruled the objection, and allowed the said witness to give testimony in said cause, to which ruling of the Court the defendant then and there objected.

JANE SMALLRIDGE testified that John Parkins, claimant, was the son-in-law of John Smallridge. That she kept her husband's accounts and books. That her husband could not write. That she knew and kept an account of all money paid out by her husband to all persons. That Parkins, claimant, had worked for her husband and had loaned her husband money, amounting in all to about the sum of seven hundred dollars, which was the consideration of the bill of sale here inserted as follows, to-wit:

Know all men by these presents that I, John Smallridge, of the county of Peoria and state of Illinois, of the first part, for and in consideration of the sum of seven hundred dollars, lawful money of the United States, to me in hand paid at or before the ensealing of these presents by John Parkins, of the same place, of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell unto the said party of the second part, his executors, administrators and assigns, two horses and one mare, two horse colts, one mare colt, two two-horse wagons, plows and cultivators, one harrow and harness, and two one-horse carts, six head of hogs, nineteen head of cattle. To have and to hold the same, unto the said party of the second part, his executors, administrators and assigns, forever. And I do further bind myself, my heirs, executors and administrators, to warrant and defend the sale of the said goods and chattels hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever. And the said party of the first part does hereby transfer and deliver the possession of said goods and chattels to the said party of the second part. In witness whereof, the said party of the first part has hereunto set his hand and seal this 3d day of March, A. D. 1857.

his
JOHN † SMALLRIDGE.
mark.

Witness: M. R. OWEN.

Executed by John Smallridge, her husband, to claimant. That said bill of sale was executed at the time of the date thereof, and at the time of its execution Parkins was living some 3 or 4 miles from her husband, Smallridge, and for some time after said sale in said bill of sale to claimant. But Smallridge used said property from time to time as her husband had from time to time borrowed said horses and wagon and harness, and Parkins had no means of keeping said property on his premises; and that Parkins was in the habit of using said horses, wagon and harness; and that her husband never used said horses except when he borrowed the same; and that the nineteen head of cattle contained in said bill of sale should have been nine instead of nineteen. That the coal levied upon belonged to Parkins.

JOHN BLITCHFORD testified that some time about the 1st December, 1857, he went to work for Parkins. That Smallridge had agreed with him at fourteen dollars per month, but sent him to Parkins to see if Parkins would give him fourteen dollars per month, and that Parkins used the horses and wagon contained in said bill of sale in hauling coal. Smallridge told witness he must look to Parkins for his pay. That he boarded with Smallridge and worked at hauling coal, and that Parkins dug the coal and witness hauled coal for Parkins, and he looked to Parkins for his pay. Parkins had paid him part of his wages.

THOMAS STEERS testified that Parkins, claimant, worked for him, witness, from the 9th August, 1856, until 26th September, 1857. That he saw no property

about the premises of Parkins during that time. Did see at one time a horse and colt there, but there was no continued possession of said property. There was some hogs there, the property of Parkins. Parkins lived some 3 or 4 miles from Smallridge, and was at the time working at limekiln for witness, and he saw Parkins drive the team levied on several times, and in his possession. That Parkins left the limekiln about the first of September, and moved to where he now lives, and it was after he moved that witness saw the horses and wagon in Parkins' possession.

GEORGE PARKINS testified that he had seen the horses and wagon included in bill of sale in the possession of John Parkins for the last three months by using them, but the horses were kept at Smallridge's most of the time during the summer. One of the horses his brother, John Parkins, had possession of for sixteen months. Witness hauled hay last summer about 2 weeks with said team, which hay belonged to Parkins and Smallridge.

FRANK FERND testified that he worked for Smallridge during the last summer. That Smallridge was his uncle. That he saw the horses in the possession of both Parkins and Smallridge, but both Parkins and Smallridge said the team belonged to Parkins. That Parkins had worked for Smallridge on the railroad 14½ months at \$17 per month, and in the farm 36 days at one \$1 per day, and 5 months with team at \$35 per month, and from October to March 1, 1855, at \$15 per month, and Smallridge borrowed \$100 of Parkins, and Smallridge never claimed property after sale.

SAMUEL FOUCHER testified, saw Parkins work for Smallridge on the railroad, but could not say how long.

LONGSDALE testified that he sold Parkins one of the mares in said team some 16 months ago, he knew the mare well had raised her, and that Smallridge drove said mare in his team on nigh side. The same team of horses levied on the one he sold Parkins had a few white hairs in forehead, the other one had a star in the forehead.

EVIDENCE FOR DEFENDANT.

Constable MILLER testified that the following execution, to wit:

STATE OF ILLINOIS, } ss.
PEORIA COUNTY.

The people of the state of Illinois, to constable of said county greeting:

"We command you that the goods and chattels of John Smallridge, in your county, you make the sum of 110 dollars and 00 cents debt, and 2 dollars and 30 cents cost, (with interest at the rate of six per cent. per annum, from the 5th day

of December, 1857, when judgment was rendered,) which John Dexter lately recovered before me in a certain plea against the said John Smallridge, and there- of make return to me within seventy days from this date. Given under my hand and seal this 5th day of December, 1857.

[Seal]

W. W. MILLER, J. P.

By virtue of this writ I have levied on about 250 bushels of corn on car No. 159, I have also levied on two baymares, one set of harness, one two horse wagon, as the property of JOHN SMALLRIDGE, this 15th day of Dec., 1857.
G. W. MILLER,
Constable.

EXECUTION.
JOHN DEXTER
vs.
JOHN SMALLRIDGE.
Demand, \$112 30
Services, 1 00
Lev'd, 1 00

was held by him, and that he made the levy as described on said execution. That the horses, waggon &c. was in possession of John Smallridge when he made the levy, about $\frac{3}{4}$ of a mile from the residence of Smallridge. That Smallridge told constable that team belonged to Parkins, that the load of corn in the waggon was Parkins's, that he had no property, that it belonged to Parkins. Parkins was there and claimed the property, and said he would control the right of property. Smallridge said team should not go until fed.

WILLIAM RUTHERFORD testified that he purchased of Smallridge on the 1st of December last, a car load of coal. That he was to give him $7\frac{1}{2}$ cents per bushel. That he did not know Parkins in the contract. That coal was shipped in the name of John Smallridge, and numbered 159, and that the said coal was levied on in said execution held by constable Miller.

SAMUEL WRENCH, That the bill of shipment was in the name of John Smallridge, and in the handwriting of S. Edwards, the agent at Edwards station on the rail- road; and that Smallridge told agent that the coal was ready for shipment; and that Smallridge and hands had hauled the coal to the car; and that Smallridge gave the notice when car was ready to ship; and witness told Edwards to ship car in the name of Smallridge, but Smallridge gave no such directions as witness knew of.

SYLVESTER WILLIAMSON testified that he worked for Smallridge; that he used his own team; and was employed by Smallridge & Brotherson; and in hauling coal Smallridge used the team of horses and wagon levied on by constable.

MILLER testified that Smallridge drove the team; used it himself; claimed the team and called it his own team. Have seen the team in Smallridge's possession from time to time ever since. And saw it in his possession at the time the levy was made. Witness was at work hauling coal for Smallridge & Brotherson. That Smallridge turned witness off because he could not use 2 teams, and stated that if any team

worked he must use his own team, which was the team levied on. Stated at the time he discharged witness he could not keep witness and team. That witness quit in June; and the coal hauled by Smallridge was before witness quit.

HENRY DUCKWORTH testified that Smallridge put the last 3 load of coal in the car, No. 159, levied on; and that he used the horses in dispute in hauling said coal. Saw the horses levied on, some 14 or 15 head of cattle, several head of hogs, plough and cultivator and 2 colts, about and on the premises of John Smallridge during the last summer, from time to time, as he was passing by said premises; and that he went pass said place very often during the last summer; and that he had occasion during the last summer to pass by the premises of Parkins from time to time during last summer; and he saw no property around the premises of Parkins; and that Parkins lived some some 3 miles from Smallridge.

HARVEY BICKER testified that his farm joined Smallridge's; have seen several head of cattle, 2 colts, 2 wagons and horses levied on on the premises and in the possession of John Smallridge during the last summer from time to time. The cattle broke into premises of witness, and he claimed damage from John Smallridge, who remarked that he had a right to turn his stock in said field as he had purchased the corn stocks in said field, and in other conversation he called them his own cattle.

JOHN MITCHELL. Latter end of last March witness sold John Parkins a sow and pigs; never saw any property around the premises of Parkins; did see him drive a team of horses; several times have seen Smallridge drive the same team. Have seen the team in possession of both, but oftener in the possession of Smallridge than in Parkins'. Have seen Smallridge drive team to Parkins's house and then back home; Parkins is a hard working man.

MATTHEW McREYNOLDS. Sold John Smallridge 80 acres of land; paid me some 600 dollars; has a written agreement for a deed when the land is paid for.

HENRY DUCKWORTH, testified that on the land purchased by Smallridge of McReynolds, he Smallridge had a coal bank out of which he was digging coal, and that the coal bank worked by Parkins was on the same 80 acres of land. That the coal bank worked by Parkins was not the one worked by Smallridge.

The claimant asked the court the following instructions:

1. If the jury believe from the evidence that the property in controversy belongs to claimant they should find for the claimant.
2. If the jury believe from the evidence that the claimant bought the property in controversy, part from Landsdale and part from Smallridge, in good faith, and for a bona fide and valuable consideration, and that there was no adverse

possession of said property by any other person under claim in his own right of title, the jury should find for the claimant.

3. If the jury believe from the evidence that the claimant bought the property in controversy, and paid therefor a valuable consideration, or any part thereof, from Smallridge, and claimed and exercised acts of ownership over such property at and for some time before Dexter recovered judgment against Smallridge the jury should find for the claimant.

To which defendant excepted.

The defendants asked the Court to instruct the Jury as follows :

1. If the Jury believe from the evidence that there was no delivery of the property mentioned in the bill of sale, offered in evidence by the plaintiff at the time of the execution of said bill of sale, they will find for the defendant.

2. To constitute a delivery, the property sold must be identified, separated and distinguished from all other goods and property.

3. That a bill of sale that by *its terms* conveys possession of the chattels therein specified, to the vender in evidence of the sale, provided possession did actually follow according to the terms thereof.

4. If the Jury believe from the evidence that possession *did not* follow the bill of sale according to the tenor thereof, they will find for the defendant.

5. That a bill of sale is fraudulent and void, as to creditor and third persons, unless possession of the property specified therein actually followed from the vendor to the vendee, according to the terms of said bill of sale.

6. That possession is prima facie evidence of ownership, and in case of sale of goods or chattels, possession of said goods remain with the seller or vendor ; the sale is fraudulent and void *per se* (of itself,) as to creditors and third persons, and cannot be rebutted by evidence of fair intention.

7. That the sale of goods really consists in the delivery thereof from the vendor to the vendee.

8. That all sales of personal property without a delivery accompanying the bill of sale, are fraudulent and void as to the claims of judgment creditors.

9. That unless Smallridge delivered possession of said property over to Parkins at time of bill of sale, said property was liable to be taken for the debts of Smallridge, by any judgment creditor of Smallridge.

10. That no part of the evidence of Mrs. Smallridge is to be taken, except such testimony as is against the interest of her husband.

But the Court refused to give the instructions asked, but modified them by addressing the following, to wit:

"Whereupon the Court refused the 1st instruction asked for on the part of the defendant, and amended the 5th instruction by writing the word "not being a preferred creditor," after the words vendor and vendee in said 5th instruction, and amended the 6th instruction, by adding the words "unless such sale was to a preferred creditor, and in payment of a just debt; and amended the 7th instruction by adding thereto, "unless such sale was made in good faith and without fraud to a preferred creditor, before such judgments were obtained, and unless in the case it should appear from the evidence such sale was made to defeat the collection of the debts owing by the vendor.

Whereupon the defendant excepted to the decision of the Court refusing the first instruction asked for by defendant, and excepted to the amendment to the 5th instruction as asked for by defendant, and excepted to the amendment to the 6th instruction as asked for by defendant, and excepted to the amendment to the 7th instruction as asked for by defendant, and defendant excepted to all of said instructions as given by the Court.

WELLINGTON LOUCKS, *County Judge.*

Proceedings of the County Court, Peoria County, State of Illinois, began and held at the Court House, in the City of Peoria, in said County, on Monday February 1st, 1858, for Judicial and other business. Present Hon. Wellington Loucks, Judge, Charles Kettelle, Clerk, and Francis Smith, Sheriff.

JOHN PARKINS *vs.* JOHN DEXTER.

TRIAL RIGHT OF PROPERTY.—APPEAL FROM J. P.

On motion of defendant, by his attorney, it is ordered by the Court, that the said plaintiff file an additional security by Wednesday at 4 o'clock P. M., or satisfy the Court that the security given is sufficient.

THURSDAY, FEBRUARY 4th, 1858.

APPEAL FROM J. P. TRIAL OF RIGHT OF PROPERTY.

JOHN PARKINS *vs.* JOHN DEXTER.

This day came the said plaintiff by Grove and McCoy, his Att'ys, and the said

defendant by W. Pitt Kellogg and J. T. Lindsay, his Att'ys; and it is ordered by the Court that a Jury be empanelled to try said cause. Whereupon came a Jury of twelve and lawful men, to wit: A. O. Garrett, John Wetzel, John Milehan, Isaac Moore, Michael Fash, Ephraim Morison, J. M. Johnson, Jacob Farrell, David Maxwell, John H. Floyd, Isaiah Fisher, and James F. Murden, who were duly chosen, tried and sworn, well and truly to try the said cause, and a true verdict render according to the evidence given. The Jury having had the evidence in the case, and the argument of counsel retired to consider their verdict.

FRIDAY, FEBRUARY 5th, 1858.

APPEAL FROM J. P. TRIAL RIGHT OF PROPERTY.

JOHN PARKINS *vs.* JOHN DEXTER.

This day came again the parties in this suit; also the Jury empanelled in this cause, and returned into Court the following verdict: "We, the Jury find for plaintiff, the claimant." Therefore the said defendant, by his Att'y and entered his motion for a new trial of this cause. The Court being fully advised in the premises, doth overrule the said motion. Therefore, it is ordered by the court that the said John Dexter, or his agent, or the officer making the levy, make due return to the said John Parkins, of the goods so detained by him, and further considered by the court, do have and recover of and from the said John Dexter, his costs and charges by him in this suit, in his behalf expended in this court and the court below, and that he have execution therefor. Therefore the said defendant prays an appeal of this cause, to the Supreme Court of this State, which was ordered to be allowed, on his entering into bonds in the penal sum of three hundred dollars, within two days conditional according to Law, with Richard Gregg as security.

And afterwards, to wit: on the 15th day of February, 1858, there was filed in the office of the Clerk of the County Court of said county, an appeal bond, in words and figures following, to wit:

"Know all men by these presents,—That we, John Dexter and Richard Gregg both of Peoria county, Illinois, are held and firmly bound unto John Parkins in penal sum of three hundred dollars, the payment of which we do bind ourselves, our heirs, executors and administrators firmly by these presents. Witness our hands and seals, this fifteenth day of February, A. D 1858.

The condition of the above obligation is such, that whereas, the said bound John Dexter has prayed for an appeal in a certain cause in the county court of Peoria county, Illinois, wherein John Parkins is plaintiff, and John Dexter, defendant, to the Supreme Court of the said State,—which trial is the right of property. Now in case the said John Dexter shall pay all judgments for costs which may be awarded against him by reason of said appeal, and shall pay all costs

which may be awarded against him in said county court, in said cause, and shall keep the said John Parkins harmless from any costs or damages, which by law the said Dexter should pay, then this obligation shall be void, else to remain in full force and virtue.

JOHN DEXTER, [L. s.]
By JOHN T. LINDSAY, his Att'y in fact.
R. GREGG, [L. s.]

STATE OF ILLINOIS, }
PEORIA COUNTY. }

I Charles Kettelle, Clerk of the County Court of said County, do hereby certify that the foregoing is a true copy of the papers filed in said entitled cause, and bill of Exceptions, Appeal Bond, and a true transcript of the records in said cause being a full and perfect record of said cause.

Witness my hand and seal, the 19th day of April 1858.

CHARLES KETTELLE, Clerk.
Per. GEO. H. KETTELLE, Deputy.

JOHN PARKINS,
vs.
~~JOHN DEXTER.~~

STATE OF ILLINOIS,
SUPREME COURT, THIRD GRAND DIVISION.
APRIL TERM, A. D. 1858.

And now comes the said John Dexter, by Lindsay & Lander, Attorneys, and say that in the records and proceedings of said County Court there is manifest and manifold error, and assign for error,—

1. Said Court erred in allowing Mrs. Smallridge, wife of the defendant in execution, to testify in said cause.

2. The Court erred in refusing the first instruction, as asked for by ~~defendant~~ *John Dexter*.

3. The Court erred in amending the 5th, 6th and 7th instructions, as asked for by ~~defendant~~ *John Dexter*.

4. The Court gave wrong instructions, as asked for by ~~complainant~~ *John Parkins*.

5. The verdict of the jury is against the instructions of the Court.

6. The verdict of the jury is against the evidence.

7. The verdict is against law.

8. There is no law or evidence in this cause to support the verdict of the jury.

9. The said Court erred in not granting defendant a new trial.

10. The said Court erred in overruling the motion of ~~defendant~~ *John Dexter* for a new trial, or the reasons stated in said motion.

Wherefore, for the errors aforesaid, the said John Dexter prays that the said judgment and ~~decrees~~ *County Court* of said Circuit Court may be reversed, set aside, and for nought had, held and esteemed.

LINDSAY & LANDER, for Appellant.

Walter 89-19
by
Puckris

Abstract

W 11

Filed Apr June 16-1858

L. Leland
Clerk

Prepared