

No. 13674

# Supreme Court of Illinois

Harris

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vs.

Pres.& Trustees of the  
Town of Newark

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

---

No. 140.

---

1862

Harmon

25

Press

# SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1882

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140 ISAAC HARRIS  
vs.  
THE PRESIDENT AND TRUSTEES OF THE TOWN OF NEWARK. } *Appeal from Kendall.*

141 SAME. }  
vs. } *Same.*  
SAME. }

142 SOLOMON C. BARNETT }  
vs. } *Same.*  
SAME. }

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## POINTS AND AUTHORITIES SUBMITTED BY THE APPELLANT.

The ordinances, before they can take effect, must be published. (Scate's Stat., p. 197, Sec. 7.)

There is no evidence showing that this was done.

The corporation had no power to declare the sale of liquor by the gallon a nuisance, or impose a penalty for the same.

The general law providing a penalty for selling liquor without a license, in less quantity than one gallon, by implication legalized the sale in larger quantities. The charter only authorizes the Corporation to make such ordinances to prevent and remove nuisances as are not inconsistent with the laws or constitution of the state. (Scate's Stat., p. 196, Sec. 5.)

The Corporation had no power to impose a penalty of more than five dollars for a violation of their ordinance. (Scate's Stat., p. 197, Sec. 8.) The act extending the powers of the President and Trustees of the town of Oswego, which provides for a greater penalty, is not in force in the town of Newark. It having been once rejected by a vote of the town, no subsequent vote can ratify or give force to its provisions. (Laws of 1857, p. 1331, Sec. 7.)

None of the acts give the Corporation power to pass an ordinance prohibiting the giving away of liquor.

D. P. JONES,  
*Att'y for Appellant.*

7 140. 1-2

8 Harris et al

9 vs

Town of Newark

PRINTED BY  
D. P. TAYLOR

Filed May 12, 1842

L. L. Leland  
clerk

State of Illinois  
Supreme Court - April term A.D. 1862

Isaac Harris

vs

The President & trustees  
of the Town of Newell

Appeal from the Circuit Court

And now come  
the said defendants by Arus  
Woy their Attorney and say that  
in the record and proceedings  
aforesaid & in the rendition of  
the judgment aforesaid there is no  
error and they therefore pray  
that the said judgment may  
be sustained

Arus Woy  
Atty for Defs

State of Illinois  
Supreme Court  
April Term 1862

Isaac Harris

vs

The President & Trustees  
of the town of Newark  
Illinois

Filed April 23<sup>rd</sup> 1862  
L. Leland  
Clerk.

United States of America  
State of Illinois } 58  
Kendall County

Shew before the Honorable  
Madison E. Hollister Judge  
of the ninth judicial Circuit  
of the State of Illinois and  
presiding Judge of the Circuit Court of Kendall County at  
a Term Chief Sesson and held at the Court House in  
Olwego in said County on the thirtieth day of Jan-  
-uary A. D. 1862 being the second Monday of Jan-  
-uary A. D. 1862 and the Eighty sixth year of the Independence  
of the United States of America.

Present the Hon. M. E. Hollister Judge of said  
David P. Jones Peter atty.  
G. M. Kallentank Clk.  
Squire Todd Sheriff.

Attest G. M. Kallentank Clk.

Exhib opened by Proclamation.

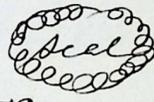
Be it Reminded that hereof to wit on  
the 13<sup>th</sup> day of July A. D. 1861 there was filed  
in the office of the Clerk of the Circuit Court <sup>as said</sup> a  
transcript and proceeding in a certain matter in  
the words and figures following that is to say

State of Illinois  
Kendall County

The People of the State of  
Illinois to any Constable of said  
County, Greeting,

You are hereby commanded to summon Isaac  
Harris to appear before me at my office in Newark on  
the 3<sup>d</sup> day of July A<sup>d</sup> 1861 at 1 O'clock P.M. to answer the  
complaint of the President & Trustees of the Town of Newark  
on an action of debt for a failure to pay them a certain sum  
not exceeding one hundred dollars and hereof make due  
return as the law directs.

Given under my hand & seal this 28<sup>th</sup> day of June A<sup>d</sup> 1861,

Asa Manchester   
Justice of the Peace

The following is the indorsement on the back of the above.

Summons

President & Trustees  
vs  
Isaac Harris

Demand \$100<sup>00</sup>/<sub>00</sub>  
Just Costs . 80

Served the within by reading the same to the  
within named defendant this 29<sup>th</sup> day of June A<sup>d</sup> 1861.

Fees Service . 25

Milroy 5  
30

Alex. Hamilton  
Constable

Manuscript

State of Illinois }  
Kendall County } In Justice Court before A. Hamilton  
Summons issued June 28<sup>th</sup> 1861 returnable July  
3<sup>rd</sup> 1861 and given to Alexander Hamilton Court.

Summons returned June 29<sup>th</sup> 1861, Served by reading  
to defendant 29<sup>th</sup> day of June 1861 by A. Hamilton

Court: fees 50<sup>cts</sup>, One subp. issued on the part of  
plaintiffs returned - Served by reading to the  
within named persons fees - 85<sup>cts</sup>

July 3, Parties in Court, Names called, & parties  
answer by their Counsel.

Plaintiffs declare against Deft, for a breach of an  
ordinance passed May 15<sup>th</sup> 1859, (2<sup>d</sup> Section, against  
selling vinous, malted and spirituous liquors, Also for  
giving away vinous, malted & spirituous liquors

Deft, moved to dismiss suit because there is no  
ordinance authorizing the conviction under an action  
of debt, and that there is a variance between the  
summons & the ordinance.

Court overruled the motion, Also Deft, says  
there is no corporation and he is not guilty.

Callet Warner, Augustus Culverton, S. C. Barnett and  
others sworn as witnesses

After hearing the proofs & allegations the Court  
concludes & adjudges that the plaintiffs have a  
Judgment against the deft, for twenty dollars damages  
and two <sup>30</sup>/<sub>100</sub> dollars costs and that they have execution therefor

Bond approved and filed for appeal and filed for  
appeal July 6<sup>th</sup> 1861,

I hereby certify that the above is a correct true  
copy of the proceedings in the above entitled cause,

4  
had before me, and herewith are inclosed all the papers  
appertaining thereunto except the subp. which is lost.

July 8<sup>th</sup> 1861,

Asa Manchester J.P.

Bond.

Know all men by these presents that we Isaac  
Harris and Selah Gridley are held and firmly bound  
unto the President & Board of Trustees of the Town of Newark in the  
penal sum of sixty dollars Lawful money of the  
United States for the payment of which well & truly  
to be made We bind ourselves our heirs & administrators  
jointly severally and firmly by these presents

Witness our hands & seals this fifth day of July 1861 —

The condition of the above obligation is such  
that whereas the said President and Board of Trustees  
of the Town of Newark did on the third day of July  
AD 1861 before Asa Manchester a Police Magistrate  
in and for the said Town of Newark County of Kendall  
and State of Illinois recover a Judgment against the  
above bounden Isaac Harris for the sum of twenty dollars,  
from which Judgment the said Isaac Harris has taken an  
appeal to the Circuit Court of the County of Kendall aforesaid  
& State of Illinois. Now if the said Isaac Harris shall prosecute  
his appeal with effect and shall pay whatever judgment  
may be rendered by the Court upon dismissal or trial of  
said appeal the above obligation to be void, otherwise to  
remain in full force and effect.

Isaac Harris

Seal

Selah Gridley

Seal

This Bond approved July 6<sup>th</sup> 1861 by me  
Asa Manchester J.P.

State of Illinois } ss  
Kendall County } 3

The People of the State of Illinois, To  
the Sheriff of said County, Greeting;

Whereas in a certain cause lately pending before  
Ara Manchester Esquire one of the Justices of the Peace  
within and for said County wherein the President &  
Board of Trustees of the Town of Newark were plaintiffs  
and Isaac Harris was defendant, Judgment was  
rendered by said Justice against the said Defendant  
from which Judgment the said Defendant has  
appealed to the Circuit Court of said County,

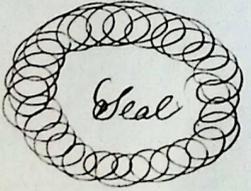
We therefore Command you that you summon  
the said President and Board of Trustees of the Town of  
Newark to be and appear before said Circuit Court on  
the first day of the next term thereof to be held at  
the Courthouse in Oswego on the first Monday in  
September next at ten o'clock in the forenoon & abide  
by and perform the Judgment of said Court in the premises

Witness G. M. Kollenback Clerk of said Court

and the seal thereof at Oswego in said County

this 14<sup>th</sup> day of August A.D. 1861

G. M. Kollenback, Clerk



The following indorsement appears on the above  
Kendall Circuit Court

President & Trustees of Newark  
Isaac Harris, appellant,

State of Illinois } ss  
Kendall County } 3

I have duly served this writ by reading  
the same to the President & Board of Trustees of the Town of Newark  
to wit Lucien Farnum, Isaac Lott, Joseph S. Bibber  
William Williams and Henry P. Fowler this 16<sup>th</sup> day

The summons to the Plaintiff is in the usual case of a summons following Court

6  
of August A. D. 1861

Leight Sudd  
Sheriff

Filed in Circuit Court this 2<sup>o</sup> day of September  
A. D. 1861

G. M. Hollenbush

Clerk.

And Afterward to wit on the 17<sup>th</sup> day of January A. D.  
1862 the same being one of the days of the January Term  
A. D. 1862 of the Kendall County Circuit Court the following  
among other proceedings were had in said Court and entered  
of Record to wit,

The President and Trustees  
of the Town of Newark

v.

James Harris

Appeal

And now come the Plaintiff  
by (of this Attorney and

the said Defendant by Helms & Smith his Attorney as well  
as in his own proper person who comes and by a consent  
of the parties a jury in this cause is waived and the  
same submitted to the Court for trial and the Court after  
hearing Evidence not being fully advised in the premises  
take the suit under advisement.

And Afterward to wit on the 18<sup>th</sup> day of January A. D.  
1862 the same being one of the days of the Term of the  
Court aforesaid the following among other proceedings  
were had in said Court and entered of Record to wit

7

The President and Trustees of  
the Town of Newark

v.  
Isaac Harris

Appeal

And now Come again  
the parties to this suit  
and the Court being now fully advised in the premises  
finds the issues in this cause joined in favor of the  
Plaintiffs and assesses their damages herein at Twenty  
Dollars - It is therefore Considered by the Court that  
the Plaintiffs have and recover of and from the said Defendants  
the said sum of Twenty Dollars as well as the Costs and  
Charges by them in this behalf Expended and that they have  
Execution therefor.

And afterwards to wit, on 22<sup>d</sup> day of January A. D. 1862  
the same being one of the days of the Term of the Court  
aforesaid, the following among other proceedings were had  
in said Court and entered of Record to wit;

The President and Trustees of  
the Town of Newark

v.  
Isaac Harris

Appeal

And now Comes the Defendant  
by Fuchs his attorney and moves  
the Court for a new Trial herein and Charges come again  
the Plaintiffs by Cox their attorney and the Court after hearing  
the parties in relation to the Defendants motion for a new trial  
herein and being fully advised in the premises Consider that  
said Motion be overruled and a new trial Denied It is  
therefore Considered by the Court that Plaintiffs still have  
and recover of and from the said Defendants the said sum  
of Twenty Dollars as well as the Costs and Charges

8

by them in their behalf Expended and that they have  
Execution thereon. And Champion Comes the Defendants  
by Park's his Attorney and pray an appeal to the ~~Court~~  
Supreme Court which said Appeal is Granted upon  
Condition that he enter into Bond in the Penal sum  
of one Hundred Dollars with Seth Gridley as  
Security.

And afterward Comes the Defendants to wit on  
the 23<sup>rd</sup> day of January <sup>the same year from of the day of the Court of said</sup> A. D. 1862, and files his  
Bill of Exceptions & Appeal Bond as follows  
to wit;

9

of August 1858,  
 Wright Lane, Sheriff  
 vs. Green      \$ 2.00  
 Miller           . 2.00  
 Ryan           . 2.00  
 -----  
 6.00

~~Wright Lane Sheriff~~  
 G. W. Robertson Clerk

The President & Trustees } Rendall Co. Cir. Court  
 of the Town of Newark } January Term  
 vs. } A.D. 1862.  
 Isaac Harris }

Be it remembered that upon the trial of the above case by the Court, a jury having been waived It was admitted that the Record Book of Plaintiff showed that the Village of Newark was incorporated on the 10<sup>th</sup> of February A.D. 1849 under the general Incorporation act of A.D. 1845, that the following facts appear upon the face of the records of said Corporation in Addition. —

[The following is a part of the proceedings of the Pres. & Board of Trustees of the town of Newark at a meeting held May 17<sup>th</sup> 1858.]

On a Motion of A. D. Newton the Clerk was ordered to post notices of an election to adopt or reject an act passed by the Legislature in 1857 and approved Feb. 18. 1857 entitled An Act to extend the Jurisdiction and powers of the President and Trustees and Constables of the towns of Oswego and Newark in the County of Kendall.

Said election to be held at the public School house on the 29<sup>th</sup> day of May, instant, between the hours of One and five O'clock P.M., Ballot to be "For the Act" or "Against the Act"

Section 2<sup>nd</sup>  
of an Ordinance  
passed by the Past and  
Board of Trustees of the  
Town of Newark.  
Apr. 30. 1858.

Any person who shall sell, barter, give away or exchange any spirituous, vinous, malt, fermented, mixed or intoxicating liquors within the Corporate limits of said Town, or who shall upon the sale barter or exchange of any goods chattels, wares Merchandize, property, choses in action, or upon any contract or agreement, expressed or implied deliver or furnish, or cause to be delivered or furnished, or knowingly suffer to be taken or received any spirituous vinous, malt fermented, mixed or intoxicating liquors shall be considered and adjudged guilty of a nuisance, and every such person upon conviction thereof shall forfeit and pay to said Town the sum of twenty dollars for each and every offence.

Clerks Office May 29<sup>th</sup> 1858

At an election held at the public School house pursuant to notice in the Town of Newark on the 29<sup>th</sup> day of May 1858 for the purpose of adopting or rejecting an act entitled "An Act to extend the jurisdiction and powers of the President and Trustees and Courtables of the Towns of Oswego and Newark in the County of Kendall and State of Illinois at which election W. H. Lewis was Moderator and Cha. Winn Clerk, The result was declared by the Moderator after canvass to be as follows.

For the Act,	No. of votes	52
Against the Act	No. of votes	54

Valentine Vermilye, Clerk of the Board  
of Trustees for the Corporation of Newark

11  
Part of the proceedings of the President & Board of Trustees of  
the Town of Newark March 13<sup>th</sup> 1860 —

It was also ordered that the Clerk post three  
notices of an election to be held in the public school house  
in the Town of Newark on the 24<sup>th</sup> day of March inst. to adopt  
or reject an act passed by the Legislature in 1857 entitled  
"An Act to extend the jurisdiction and powers of the President  
and Trustees and Constables of the towns of Oswego & Newark  
in the County of Kendall, Said election to be held between  
the hours of 1 and 5 o'clock in the P.M. and the form of Ballot  
to be For the Act — and — Against the Act.

March 14, 1860, I hereby certify that I this day posted three  
copies each of the above ordinance in relation to taxes &  
notices for the election on the 24<sup>th</sup> Inst. One copy of each  
at the P.O. One copy of each at the Newark Drug Store, one  
copy of each at N. S. Barnard's Store

Albert Cook

Clerk of the Corporation

March 24. 1860

At an election held at the public School house in the  
Town of Newark pursuant to notice on the 24<sup>th</sup> day of  
March 1860 between the hours of One & five o'clock in the  
P.M. of said day for the purpose of adopting or rejecting  
an Act passed by the Legislature in 1857 entitled  
"An Act to extend the jurisdiction and powers of the  
President & Trustees and Constables of the towns of Oswego  
and Newark in the County of Kendall, at which election  
S. S. Wright acted as Judge and Albert Cook as Clerk  
The result was declared by the Judge to be as follows,

For the Act,	thirty nine votes	39
Against the Act,	None	

We hereby certify that the above is the true and correct result of the election this day held for the purpose as above stated

Dated Newark March 24. 1860

Attest Albert Cook } Clerk of the election }  
 Sam. S. Wright } Judge of the Election }

I hereby certify that the above & foregoing are true copies from the Book of Records of the Corporation of Newark now in my possession

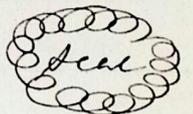
Newark January 29, 1862.

Albert Cook

Clerk of the Corporation.

It is further admitted that the defendant gave away some whiskey without any pay to some men working on the road in the Village of Newark on the 5<sup>th</sup> day of July A. D. 1861 and within the limits of the Corporation of the Plaintiffs which was all the facts & proofs in the case, and no other proof being offered the Court gave judgment on those facts for Plaintiffs for twenty Dollars, To the rendition of which judgment by the Court the Defendant at the time excepted & pray that this his bill of exceptions may be signed and sealed by the Court, which is done

M. C. Hollister



Filed Jan. 23. 1862.

G. M. Hollister

Clerk

## Bond

Know all men by these presents that we Isaac Harris as principal and Selah Gridley as Surety, are held and firmly bound unto the President & Trustees of the Town of Newark in the penal sum of One hundred dollars lawful money, for the payment of which well and truly to be made we bind ourselves our heirs & legal representatives firmly by these presents,

Witness our hands & seals this 23<sup>rd</sup> day of January A.D. 1862,

The condition of the above obligation is such that whereas at the January term of the Mendall County Circuit Court for A.D. 1862 The said President & Trustees of the Town of Newark received a Judgment against the above bounden Harris for twenty dollars besides costs from which said Judgment the said Harris prayed an appeal to the Supreme Court of the State of Illinois Now if the said Harris shall prosecute his Appeal with effect and without delay and pay whatever judgment, interest, damages & costs which may be rendered against him in the Supreme Court on the dismissal or trial of said appeal then the above obligation to be void, Otherwise to be and remain in full force and effect.

Isaac Harris

Selah Gridley



Filed Jan 23<sup>rd</sup> 1862

G. M. Kollenba, K. Clerk.

State of Illinois  
Kendall County

I George M. Hollenback  
Clerk of the Circuit Court

do hereby Certify that the Above and foregoing  
is a true and Complete Transcript and Copy  
of all proceedings had and returned of Record  
in said Court together with a copy of all papers  
filed <sup>in my office</sup> in the Case of the President and Trustees of  
the Town of Newark against Isaac Harris  
in

Witness my hand  
at the Court of said County and  
the seal thereof at Oswego this  
26<sup>th</sup> day of January A.D. 1862  
G. M. Hollenback

Clerk,



15  
State of Illinois - Supreme Court  
April Term thereof A.D. 1862

Isaac Harris }  
vs } Appeal from  
The President & Trustees } Kendall  
of the Town of Newark }

And now comes the said  
Isaac Harris by D. D. Jones his  
attorney & says that in the record  
& proceedings aforesaid and  
in the rendition of the judgment  
aforesaid, manifest error hath  
intervened, to his prejudice, in  
this, to wit:

1<sup>st</sup> The court erred in finding the issue  
in favor of the plaintiffs and against  
the defendant

2<sup>nd</sup> The court erred in rendering  
judgment against the defendant

3<sup>d</sup> The court ~~erred~~ erred in  
overruling the motion for a  
new trial

Therefore, and for other errors in the  
record & proceedings aforesaid he  
prays that the judgment aforesaid  
may be reversed, annulled, and for  
wrought esteemed  
D. D. Jones  
Atty for appellant

140

Isaac Harris

The Pres. & Trustees of the  
Town of Andover

Recd



Filed March 29, 1862.  
S. Ireland  
Clk.

1  
State of Illinois }  
LaSalle County }  
} Pres. before the Honorable Madison E. Kellerton  
} Judge of the Circuit judicial  
} district of the State of Illinois and the  
} presiding judge of the LaSalle County Circuit Court at a term  
} of said Court commenced and held at the Court House in  
} Ottawa in said County in the second Monday in November  
} the same being the tenth day of November in the year of  
} our Lord one thousand eight hundred and fifty six, and of the  
} Independence of the United States of America the eighty first.  
} Present the Honorable Madison E. Kellerton Presiding judge  
} John F. Stack Clerk  
} William H. S. Walker State Attorney  
} Francis Warner Sheriff

It is remembered that on Saturday November 29<sup>th</sup> 1856 the  
Court being one of the days of the November term of said Court  
for the year 1856 an order was entered of record in the words  
and figures following viz:

" David S. Kough }  
} Ejectment  
Richard Cook } This day the plaintiff comes and by leave  
of the Court files his declaration, and  
moves for a rule upon the defendant to plead to said  
declaration in twenty days, which motion is sustained  
by the Court."

Said declaration is in the words and figures following  
to wit:

" State of Illinois LaSalle County ss. LaSalle County  
Circuit Court November term AD 1856 - David S. Kough  
Complainant of Richard Cook for that whereas on the 28<sup>th</sup> day  
of November AD 1856 the said David S. Kough was  
possessed of Lot five (5) in Block one hundred & nineteen

(119) in the city of Sadalle, in the County of Sadalle & State of  
Illinois & was sepossessed thereof with a full simple title  
thereof, and being sepossessed thereof, the said Richard  
Cody afterwards to wit: on the 29<sup>th</sup> day of November A.D. 1836  
entered into and took possession of said premises &  
unlawfully withholds possession thereof from the said  
David S. Hough, to his damage one hundred dollars  
& therefore he sues &c David S. Hough Plaintiff

"Richard Cody Esq

You will please take notice that the  
above declaration in ejectment will be filed with the Clerk of the  
Court of the Circuit Court for the County of Sadalle & State of  
Illinois on the 18<sup>th</sup> day of the present term of said Court, that  
upon filing the same, a writ will be entered requiring  
you to appear & plead to said declaration within twenty  
days after the entry of such writ & that if you fail or  
neglect so to appear & plead, a judgment of default will  
be entered against you & the Plaintiff in said declaration  
mentioned will recover possession of the premises in said  
declaration mentioned, now occupied by you.

Sadalle November 29, 1836

David S. Hough

"State of Illinois by John St. Bedard King, just duly sworn  
in and duly sworn with depositions & says that on the 29<sup>th</sup> day  
of November A.D. 1836 he served a true  
copy of the within declaration in ejectment & notice on  
Richard Cody of delivering the same to him personally,  
Subscribed & sworn to before me by J. St. Bedard  
this 29<sup>th</sup> day of November A.D. 1836  
Nicholas Duncan J.P."

And afterwards to wit: on Monday February 9<sup>th</sup> 1837 the  
said King, one of the Clerks of the February special term of said  
Court for the year 1837 another order was entered of record

in said case in the words and figures following  
to wit:

"David A. Hough

Richard Lord <sup>vs</sup> Ejectment  
 This day the plaintiff comes in his  
 own proper person and the defendants  
 of W. H. S. Wallace his attorney and of consent of parties it  
 is ordered by the Court that the said heretofore entered  
 return shall be amended until the tenth day of February  
 instant.

The defendant filed his plea on the 9<sup>th</sup> day of  
 February 1857 in the words and figures following viz:

"Sasalle County Circuit Court February Special Term  
 1857 - David A. Hough vs Richard Lord - Ejectment  
 I do come the said defendant by John Clark & Wallace  
 his attorneys and defend the same and in jury where  
 I say that he is not guilty of the said supposed trespasses  
 upon said to his charge & of this he puts himself upon  
 the Country &c.  
 John Clark  
 & W. H. S. Wallace for Defn."

On the fifth day of December 1857 (the same being one of  
 the days of the November Term 1857 of said Court the plaintiff  
 filed an affidavit in the words and figures following to wit:

"David A. Hough vs Richard Lord - Sasalle County  
 Circuit Court November Term A.D. 1857 - State of Illinois  
 Sasalle County ss - David A. Hough being first duly sworn  
 according to law, on oath deposes and says that he is  
 plaintiff in the above entitled cause, that the said cause  
 is an action of ejectment & the property in controversy is  
 set first in Book one hundred & nineteen in the

City of LaSalle in said County & State - That affiant  
 claims title to said property by virtue of a judgment in  
 favor of the People of the State of Illinois against one Isaac  
 Cook rendered by the aforesaid Circuit Court & a sale  
 of said property to affiant upon an execution legally  
 issued upon said judgment & a Sheriff's deed to  
 affiant of the property thus sold. And affiant further  
 says that at the time of said judgment & of said sale  
 said Cook was the owner of said property by virtue of a  
 patent for the same issued in his favor by the State  
 of Illinois, which said patent is recorded in the office  
 of the recorder of deeds for the County aforesaid in  
 Book of deeds No 12 page 531. And affiant further  
 says that said Cook claims title to said property by virtue  
 of a deed from said Cook bearing date August 29, 1854  
 & recorded in the office of the recorder of deeds for said  
 County in Book 41 pages 676 & 677. And affiant  
 further says that said Cook is the real defendant  
 in said suit, & that the attorneys of record for the defense  
 in said suit are employed by said Cook. And affiant  
 further says that said patent is not in his possession  
 nor under his control nor within his power nor  
 has it ever been at any time in the possession of affiant  
 or under his control or within his power.

Subscribed & sworn to before me

David L. Hough

this 1<sup>st</sup> day of December A.D. 1857

J. F. Smith Clerk

And afterwards to wit: on said first day of December next  
 aforesaid the same being one of the days of the November  
 Term of said Court for the year 1857 the following further  
 proceedings were entered of record in said cause to wit:

David S. Mough

Ejectment

Richard Cook

This day the plaintiff comes by Subaud & Subaud his attorneys and the defendant by Green Cook & Wallace his attorneys, and thereupon come the following jury of a jury to wit: William T. Denny, Thomas J. Wade, D. A. Nicholson, George B. Macy, Donald Nicholson, Delphis Clark, John Schuler, Ephraim Beaudry, James Wall, James Perkins, M. M. Dierck, and David N. Sherman an duly sworn and sworn to well and truly try the issues herein according to the evidence; and after hearing the testimony and arguments of counsel, the jury retires to consider of their verdict; and after due deliberation thereon had return into court the following verdict to wit: "We the jury find the defendant guilty of wrongfully withholding from the plaintiff the premises in the declaration mentioned to wit: Lot five in Block one hundred and nineteen in the city of Sasalle in the County of Sasalle and State of Illinois in manner and form as alleged in said declaration and that the said plaintiff is seized of an estate in fee simple to said premises", defendant commit more more the Court for a sum of money which amount is awarded by the Court.

It is therefore considered by the Court that the plaintiff have and receive of the defendant the possession of the premises set forth in plaintiff's declaration according to said verdict that is to say: Lot five in Block one hundred and nineteen in the city of Sasalle in the County of Sasalle and State of Illinois, and that a writ of possession issue therefor, also that the plaintiff have and receive of the defendant his costs and charges herein herein expended and that he have execution therefor.

Defendant's attorneys pray an appeal herein to the Supreme Court, which is granted upon condition that the defendant file with the Clerk of this Court within

6  
July day from and after the adjournment of this Court, an  
affidavit was made payable to the plaintiff in the penal sum of  
One hundred and fifty dollars with Isaac Cook as his  
Security."

On the second day of December AD 1857 the  
Court being one of the days of the November Term of said  
Court for the year 1857 the defendant filed his bill of  
exceptions in the words and figures following viz

" State of Illinois In said County & Circuit Court thereof  
November Term AD 1857 - David S. Hough vs Richard  
Cook - Ejectment - It is remembered that on the  
first day of December AD 1857 the Court being one of the  
days of the November Term AD 1857 of said Court this  
cause came on to be tried upon a jury - and on said  
trial to maintain the issues on his part the plaintiff  
offered in evidence to the Court

First - an affidavit of plaintiff in the words and figures  
following that is to say (See Houghs affidavit above)  
The defendant by his counsel objected to the sufficiency  
of said affidavit to enable plaintiff to introduce  
secondary evidence of the contents of the patent described in  
said affidavit - but the Court overruled defendants  
objection and decided that said affidavit was sufficient  
to enable plaintiff to give secondary evidence of the contents  
of said patent, to which decision of the Court the defendant  
by his counsel then and there excepted - It was conceded  
that plaintiffs counsel had served upon defendants  
counsel on the evening of the day before the commencement  
of the trial a written notice to produce said patent and  
it was also conceded that Isaac Cook the patentee  
named in said patent resided in Chicago eighty  
miles distant from the place of trial, and was not  
present at the trial - and that this cause was set for

7 trial on this day more than three days before the day  
of trial.

Second - The plaintiff there offered in evidence to the jury  
a record Book (bearing first from that the same  
was one of the books of records of deeds kept in the  
recorder's office of Adams County) containing what  
purported to be a record of a patent from the Governor  
of the State of Illinois to Isaac Cook for the lot  
described in the plaintiff's declaration, which record  
was in the words and figures following;

"I, James Ford Governor of the State of Illinois do all  
to whom these presents shall come Greeting;  
Whereas it appears by the final certificate of Jacob Fay late  
acting Commissioner of the Illinois and Michigan  
canal, and now Senator on the part of the State, that in  
pursuance of the second section of an act entitled "An act  
for the relief of James Ryan of Wild Cat and others"  
approved March 1<sup>st</sup> 1845 Joshua Pucker did on the  
21<sup>st</sup> day of May 1845, sell at auction five (5) in  
block number one hundred and nineteen (119) in  
the town of Adams, the said lot having been formerly  
appraised at the sum of one hundred and twenty five  
dollars and forfeited to the State by non-payment  
of installment and interest and which said lot was  
admitted to be sold on the 21<sup>st</sup> day of May 1845  
and purchased by him up to that time. And whereas  
the said Joshua Pucker has assigned the said lot to  
Isaac Cook.

Now know ye that under and by virtue of the power and  
authorities contained in the several acts of the General  
assembly of the State of Illinois, there is granted to the  
said Isaac Cook his heirs and assigns the lot of  
said land described to them and to hold the same  
with the appurtenances unto him the said Isaac

Look his heirs and assigns forever.

On Testimony Taken caused these letters to be made patent and the seal of state to be affixed, Done at Springfield this third day of December in the year of our Lord one thousand eight hundred and forty five and of the Independence of the United States

*(Seal)*

the Seventh - By the Governor Thomas Ford  
Thompson Comptrol Secretary of State.

The defendant by his counsel objected to the introduction of said record in evidence but the Court overruled the objection and permitted said record to be read in evidence, to which decision of the Court in overruling defendants objections and in permitting said record to be read in evidence the defendant by his counsel then and there excepted.

Third - The plaintiff then offered in evidence the record of a judgment of the Circuit Court of DuSalle County at the November term of said Court AD 1833 (having first shown that the book containing said record of judgments was one of the books of record of the judgments and proceedings of said Court) which record of judgments was in the words and figures following:

"Friday December 16<sup>th</sup>"

The People of the State of Illinois vs. the People of Wallace their surety John Barringer, the defendant by Kellerton his attorney who waives service of notice herein and enters the appearance of the said defendant. And it appearing to the Court that an execution was issued out of the DuSalle County Circuit Court on the fourth day of June AD 1830 on a judgment obtained therein by the People of the State of Illinois against Matthias Appf for the sum of twenty dollars and twenty eight and a half cents interest.

Do the Sheriff of Cook County to receive, and that said  
 Execution was received by Grace Cook the Sheriff of said  
 County of Cook by John C. Miller his deputy on the 6<sup>th</sup> day of  
 June A.D. 1830 at 9 o'clock am of that day, and it further  
 appearing to the Court that another Execution for the sum  
 of fourteen <sup>4</sup><sup>1</sup>/<sub>2</sub> per dollars was issued out of said Court on  
 the same day on another judgment obtained by the same  
 plaintiffs against the same defendant and directed to  
 the same Sheriff to receive and that the same was received  
 by him by his said deputy John C. Miller on the same  
 6<sup>th</sup> day of June A.D. 1830 at 9 o'clock am. And it also  
 appearing to the Court that on the 29<sup>th</sup> day of July A.D. 1830  
 the said Grace Cook who was Sheriff of said County of  
 Cook on that day by the hand of his said deputy John C.  
 Miller, received from the defendant therein the sum  
 of ten dollars on said Executions, or one of them in part  
 thereof. And it also appearing that on the 19<sup>th</sup> day  
 of August A.D. 1830 the said Grace Cook who was Sheriff  
 of said County of Cook on that day by the hand of his said  
 deputy John C. Miller, received from the defendant the  
 further sum of ten dollars on said Executions or one of  
 them in part thereof, and it further appearing that said  
 Executions have been returned by the said Sheriff by his  
 said deputy to the office of the Clerk of this Court without  
 any endorsement thereon of the receipt of said sums of  
 money and that neither the amount thereof nor any  
 part thereof has been paid over to the said People of the  
 State of Illinois, the plaintiffs therein and that the same  
 has been retained by the said Sheriff Grace Cook in the  
 hands of his said deputy John C. Miller.

And it appearing to the Court that the interest on the  
 aforesaid sums from the time the same were collected  
 unto this date at the rate of twenty per cent per annum  
 amounts to the sum of thirteen dollars and forty one cents  
 which said sums of principal & interest being computed.

together amount to the sum of thirty three dollars and forty one cents.

It is therefore considered by the Court that the People of the State of Illinois have and receive of said Court both the said sum of thirty three dollars and forty one cents, and their costs and charges by them herein expended & that they have execution therefor.

The defendant by his Counsel then and there objected to the introduction of said record of judgment in evidence but the Court overruled defendants objections and admitted said record of judgment in evidence to which decision of the Court in overruling defendants objections to said record of judgment & in admitting said record of judgment in evidence the defendant by his Counsel then and there excepted

Fifth - The plaintiff then offered in evidence to the jury a fee book (having just duly from the same to him one of the fee books kept by the Clerk of said Circuit Court) containing the record of a fee bill and bill of costs which fee bill and bill of costs run in the words and figures following

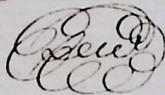
" The People vs  
 23 Rock to pay our money  
 Lane Clerk Peoples Costs  
 Marriages - Apprais 15, Judge for dcs 24, fee costs 20 55  
 and fees 24, bill of costs 34, copy 24, copy of judge 30 1,00  
 Court & seal 35, Salary 15 50  
 Arrtd. \$ 2,05  
 Clerk's fee - Carriage Case 44, fid 1st 15, Shiffs order 10 .65  
 Arrtd. \$ 2,70

The defendant by his Counsel objected to the introduction of said fee book but the Court overruled said objections and admitted said fee book in evidence to which

decision of the Court in annulling defendants objections  
to said fee book and in admitting the same in evidence  
the defendant & his counsel there and there excepted,

Said - The plaintiff there offered in evidence to the jury an  
execution and the return thereon which said execution  
was in the words and signs following

"State of Illinois, The People of the State of Illinois to the  
County of 3 Sheriff of said County Greeting:  
Command you that of the lands and  
personal goods and chattels of Isaac Cook defendant  
in said cause to be made the sum of thirty  
three dollars and forty one cents which the People of the State  
of Illinois plaintiffs satisfy in the Circuit Court of said  
County at a term thereof begun and hold at Ottawa in  
said County on the 14<sup>th</sup> day of November last past  
returned against the said defendant and which by the  
said Court was adjudged to the said plaintiffs for  
their damages. And also the further sum of two  
dollars and seventy cents which was adjudged to said  
the plaintiffs for their costs and charges in that behalf  
expended whereby the said defendant is convicted as  
appears to us of record. And that you these moneys  
ready to render to the said plaintiffs for their damages  
and costs aforesaid and make return of this writ with  
an endorsement thereon in what manner you shall  
have executed the same in ninety days from the date  
hereof. Witness this Sealed Clerk of said Court and  
the seal of said County at Ottawa this 27<sup>th</sup> day of February  
AD 1854



P. Suddley Clerk"

(The Clerk made an endorsement on the back  
of said execution in the words and signs following viz)

"The People vs Isaac Cook - Execution Damages \$33.41

Bills of costs 2.70 = \$ 36.11 - Collected interest from Dec  
16<sup>th</sup> 1833.

The return endorsed on said execution was in the words  
and figures following

"Served on sub four and five in  
13<sup>th</sup> week one hundred & nineteen City of Paducah Feb 28<sup>th</sup>  
1834 R. Thomas Sheriff.

and on the 27<sup>th</sup> day of April 1834 I served upon the East  
quarter South East quarter of sec. 6. 33. 41 - R. Thomas Sheriff,  
and on the 18<sup>th</sup> day of May AD 1834 I sold Lot 5. Block 119  
in City of Paducah to David L. Krough for twenty dollars and  
Lot 4 1/2 Block 119 City of Paducah to John L. Mack for ten  
dollars and C for SE 1/4 sec. 6. T. 33. R. 41 to Thos. Dindley  
for thirteen 1/100 dollars which satisfies this execution  
R. Thomas Sheriff"

The defendant objected to the introduction of said execution  
and return in evidence - the Court overruled said  
objection and admitted said execution and return in  
evidence to which decision of the Court in overruling  
defendants objection to said execution and return and  
in admitting the same in evidence the defendant  
of his counsel then and there excepted.

Served on the plaintiff then appeared in evidence to the jury a  
deed from Francis Warren to the plaintiff which deed  
was in the words and figures following

"Whereas the People of the State of Illinois did at the November  
term AD Eighteen hundred and fifty three (1853) of the  
Circuit Court for the County of Paducah render a judgment  
against Isaac Cook for the sum of thirty three dollars &  
forty one cents & cents of said sum which judgment an  
execution was issued dated on the 27<sup>th</sup> day of February AD 1854.

directed to the Sheriff of said County of Sadale to execute & by virtue of said Execution Richard Thorne who was then the said Sheriff of said County of Sadale seized upon the lands hereinafter described & on the 18<sup>th</sup> day of May A.D. 1834 the same were struck off & sold to David S. Hough for the sum of twenty dollars he being the highest & best bidder therefor & the terms the place of the sale thereof having been duly advertised according to law

and in pursuance of all of this deed that I Francis Warner Sheriff of the said County of Sadale & the successor in office of the said Richard Thorne late Sheriff of the said County of Sadale in and consideration of the premises have granted bargained & sold & do hereby convey to the said David S. Hough his heirs & assigns the following described tract of land to wit: Lot five in Block one hundred & nineteen in the City of Sadale County of Sadale and State of Illinois To Have and to hold the said described premises with all the appurtenances thereto belonging to the said David S. Hough his heirs & assigns forever.

Witness my hand and seal this 28<sup>th</sup> day of November in the year of our Lord one thousand eight hundred and thirty six Francis Warner  
 Sheriff of the County of Sadale

State of Illinois It is known that on the day of the date Sadale County Illinois personally appeared before me John H. Cook Clerk of the Circuit Court within and for said County Francis Warner Sheriff of the County aforesaid personally known to me to be the said person whose name appears subscribed in the foregoing deed of conveyance having executed the same in the capacity of Sheriff of said County and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed. In Witness Whereof I have hereunto set my hand and the seal of said Court at Illinois this 28<sup>th</sup> day of November A.D. 1836 J. H. Cook Clerk of Circuit Court

On connection with the offering of said deed plaintiff called John F. Nash as a witness and offered to prove by him that Francis Warner was the successor in office of Sheriff of Asalle County of Richard Thorne - dependent upon the competency of the proof and the Court overruled the objection to which decision of the Court the defendant by his counsel then and there excepted - The witness Nash being sworn then testified that Francis Warner was the successor in office of Richard Thorne as Sheriff of said County and that he (Warner) was acting Sheriff of said County on the day said deed was date and on the day of the acknowledgment thereof - The plaintiff then offered said deed in evidence - the defendant objected - the Court overruled the objection and admitted said deed in evidence to which decision of the Court in overruling said objection and admitting said deed in evidence the defendant by his counsel then and there excepted.

Eighth - The plaintiff then called on E. J. Bull as a witness who being sworn stated that he knew the lot in controversy (Lot 5 Block 119 Asalle) all he knew about the occupancy of said lot was that prior to November 1886 & since that time the fence enclosing said lot was in the house in which defendant then and still lives - The house is on an adjoining lot (Lot 6 Block 119 Asalle) and the same connects with the lot in controversy, except the part of the boundary which is on the street - The fence commences at the corner of the house & passes round ten rods to the lot (5 & 6) - is attached to the house at opposite corners thereof -

On cross examination the witness Bull testified that he did not know who put up the fence spoken of that he never saw defendant exercise any acts of ownership over the lot in controversy - that there was no division fence between the lot in controversy and lot 6 in which defendant resides

The plea was all the evidence given or offered in the case  
The plaintiff asked the Court to instruct the jury as follows

"State of Illinois vs. Sallie Combs - Circuit Court thereof  
Nov. 1837 - David S. Hough vs. Richard Combs  
With the Court instructed the jury that the patent from  
the State to Cook the judgment execution for both &  
things and which had been given in evidence make  
a prima facie case in the plaintiff and he is entitled  
to your verdict." Which the Court gave to the jury  
and in the giving of said instruction the defendant  
gave his Combs there and there excepted.

The defendant then asked the Court to instruct  
the jury as follows

"Before the jury can find a verdict  
for the plaintiff in this cause they must believe from the  
evidence that the defendant was in possession of the lot  
named in plaintiff's declaration at the time of the commence-  
ment of this suit. Which instruction the Court  
refused to give to the jury, to which decision of the  
Court in refusing to give said instruction the  
defendant gaves his Combs there and there excepted.

The jury found the defendant guilty  
as charged in the declaration, and that plaintiff was  
seized of a fee simple title to the lot in controversy.

The defendant moved the Court for a  
writ of error - the Court overruled the motion and gave  
the jury on the verdict - to which decision of the Court  
in overruling said motion for a new trial & in  
rendering judgment on said verdict the defendant  
gaves his Combs there and there excepted and says the  
Court that this his bill of exceptions may be signed sealed  
and made a part of the record which is done in  
open Court

M. E. Hullett  
Judge of said Court

On the 30<sup>th</sup> day of December A.D. 1837 the defendant, John, his appeal bond in the words and figures following that is to say

"Know all men by these presents that we Richard Cady of Ash Grove County Illinois and Isaac Cook of Cook County Illinois are held and firmly bound unto David S. Hough of LaSalle County Illinois in the penal sum of One Hundred and fifty dollars lawful money of the United States for the payment of which well & truly to be made we do hereby bind ourselves our heirs executors & administrators jointly & severally firmly by these presents.

Witness our hands & seals this 28<sup>th</sup> day of December A.D. 1837.

The condition of the above obligation is such that whereas the above named David S. Hough died at the September term A.D. 1837 of the LaSalle County Circuit Court in said State to wit; on the 1<sup>st</sup> day of December 1837 versus a judgment against the above named Richard Cady in an action of Ejectment for Lot 5 in Block 119 in the City of LaSalle in said LaSalle County and also in the costs of said suit from which said Cady has appealed to the Supreme Court of said State. That said Richard Cady shall prosecute his said appeal with effect without delay and shall pay the said judgment together with the interest and costs that have accrued or shall accrue thereon and all such damages as may be awarded against the said Cady in said suit then the above obligation to be void otherwise in full force & interest. Richard Cady *Ed*

Isaac Cook *Ed*

By B. C. Cook his atty in fact

19  
State of Illinois of J. F. Nash Clerk of the  
Said County of Bureau Court in and for said  
County and State do hereby certify  
that the above and foregoing comprises a true  
and correct copy of the record in the case of  
David L. King's Estate as the same  
appear on record and on file in my office

In Testimony Whereof I have hereunto set my hand  
and the seal of said Court at Ottawa this 21<sup>st</sup>  
day of January AD 1838

J. F. Nash Clerk

- 18 And now comes the said Appellant by Glover & Cook & Wallace his attorneys & says that in the record & proceedings aforesaid & in the rendition of the judgment aforesaid in this writ
- 1<sup>st</sup> The court erred in admitting in evidence the record of the patent from the state to Isaac Cook for the Lot in controversy
  - 2<sup>nd</sup> The court erred in admitting in evidence the record of the patent against Isaac Cook in the Saballe les
  - 3<sup>rd</sup> The court erred in admitting said fee book in evidence
  - 4<sup>th</sup> The court erred in admitting the execution aforesaid & the return thereon in evidence
  - 5<sup>th</sup> The court erred in admitting parole proof to show that Francis Warner was successor in office to Richard Thomas as sheriff of Saballe les
  - 6<sup>th</sup> The court erred in admitting in evidence the deed from Francis Warner to the Plff
  - 7<sup>th</sup> The court erred in ~~getting~~ giving the instruction asked by the Plff
  - 8<sup>th</sup> The court erred in refusing the instruction asked for by the Deft
  - 9<sup>th</sup> The court erred in overruling motion for new trial
  - 10<sup>th</sup> The court erred in rendering the judgment aforesaid in manner & form aforesaid.

And now comes the said Appellant in and says that the said Appellant prays that the said judgment be reversed and

Glover & Cook  
& Wallace  
for appellant.

And now comes the appellee by Leland Stel and & says there is no error in said record & proceedings & prays an affirmance of the judgments

Leland Stel and

Richard Sedg  
to  
Dante L. Hough  
Grand

1858  
Grand  
OK

per \$ 5.15