

12354

No. _____

Supreme Court of Illinois

Hambrecht, et al

vs.

^s
Robentein , et al

71641  7

131
Michael Humbrecht
Frederick Rabenstein

131

12354

1857

State of Illinois }
Cook County } ss.

Pleas before the
Honorable Buckner S. Morris, Judge of the
7th Judicial Circuit Court of the State of
Illinois, and presiding Judge of the Circuit
Court of Cook County in the State of Illinois
at a vacation term thereof begun and held
at Chicago in said County of Cook on the
fourth Monday, (being the sixth twenty sixth
day) of March in the year of Our Lord One
Thousand Eight hundred and fifty five, and
of the Independence of the United States
the Seventy ninth—

Present The Honorable Buckner S. Morris,
Judge of the Said Court.

James Andrews
Sheriff of Cook County—

Attest

Louis D. Board
Clerk of Circuit Court of Cook County.

Be it remembered that on the second
day of March, in the year of our Lord, one
Thousand, eight hundred and fifty five,

Morris Bryan, Crocker & Monaff Attorneys,
for said plaintiffs, filed in the office of
the said Clerk of the Circuit Court aforesaid

26
said, their certain precepe, which is in the
words and figures following, to wit-

In the Cook Circuit Court.

Of the March Term A.D. 1855.

Frederick Kalenstein &

John Schmidt

vs
Michael Hambrecht }

The Clerk will issue
summons in the above entitled cause
returnable to the March Term, in an ac-
tion of Covenant-

Damages 1000.00

Bryan, Crocker & Monro

Plaintiffs Attorneys-

And thereupon there issued from the
office of the Clerk aforesaid, the People's
writ of summons clothed in the words
and figures following, to wit-

State of Illinois,

Cook County } ss.

The People of the State of
Illinois, to the Sheriff of said County - Greeting
We command you that you summon
Michael Hambrecht, if he shall be found

in your county, ^{personally} to be and appear before the
Circuit Court of said county, on the first
day of the next Term thereof, to be holden at
the Court House in Chicago in said county,
on the fourth Monday of March next, to
answer unto Frederick Rabenstein and
John Schmidt, in a plea of Breach of
Covenant, to the damage of the said plain-
tiffs as they say in the sum of One
thousand Dollars—

And have you then and there
this writ, with an endorsement thereon,
in what manner you shall have executed
the same—

Witness Louis D. Hoard, Clerk
of our said Court, and the
seal thereof at Chicago aforesaid,
this second day of March, A. D.
1853.



L. D. Hoard—Clerk—

On the back of said summons
appears the following endorsement, to wit,

Served by reading to the within
named Defendant, this 16th day of March
1853.

Filed for Service — 50

2 Miles — 10
1 Return 10

\$, 70

James Andrews Sheriff
By R. S. Buckley Deputy

Said plaintiffs by their said Attorneys
~~afterwards~~
~~inferred~~ - to wit - on the 16th day of March,
in the year last aforesaid, filed their
certain declaration in this Cause, which
is in the words and figures - to wit -

In the Cook Circuit Court
Of the March Term A D 1855.

State of Illinois }
County of Cook { p.

Frederick Kalenstein and
John Schmidt - plaintiffs in this suit of
by their Attorneys Byars, Crocker and Mor-
raz, complain of Michael Humbrecht. Defen-
dant in this suit of a plea of breach of
Covenant - For that whereas, heretofore to wit,
on the fourth day of ~~March~~ October, in the
year of Our Lord, one thousand, eight
hundred and fifty four - to wit, at Chi-
cago, in the county and state aforesaid,
by a certain indenture then and there made
between the said Defendant, of the one

part, and the said plaintiffs of the other
part; which said indenture sealed with
the seal of the said Michael Humbrecht,
and subscribed with his signature, the
said plaintiffs now being here into Court,
the date whereof is a certain day and year
therein mentioned, to wit the day and
year aforesaid, the said defendant for the
considerations in the said indenture men-
tioned - and for the further consideration of
three hundred and seventy five dollars -
by the said Plaintiffs to the said Defen-
dant then and there paid, did demise
and lease unto the said plaintiffs, a cer-
tain lot, tract or parcel of land, and
premises with the appurtenances, thereunto
belonging, therein more particularly described
and mentioned, situate lying and being
in the City of Chicago, in the County of
Cook, and State of Illinois, to wit, The West
fifty feet of the South Half of Lot Twenty-
three, Block one hundred and fifteen -
School Section addition to Chicago, to
have and to hold the said premises with
the appurtenances unto the said plaintiffs
their executors, administrators, and assigns
from the fourth day of October in the
year of our Lord, one thousand, eight

hundred, and fifty four - for and during
and until the sixth day of July A. D. 1867.
Gilding and paying therefor, monthly
and every month, to the said defendant,
as rent for said demised premises, the
sum of thirty dollars per month, payable
monthly in advance, on the first day of
each and every month, commencing with
the said fourth day of October, as by the
said indenture, reference being thereunto
had, will, amongst other things, more
fully appear - And the said defendant
by the said Indenture, did covenant
promise and agree to and with the said
plaintiffs, that they, the said plaintiffs,
paying the said sums of money, as afore-
said, and observing all and singular
the Covenants and agreements therein
contained, which on their parts were or
ought to be paid, done, observed and perform-
ed, and according to the true intent and
meaning of the said indentures, should
and might peaceably and quietly, have,
hold, occupy, possess and enjoy the said
premises, with the appurtenances thereunto
belonging, during the said term, without
let, suit, denial, hindrance, molestation,
or interruption by him, the said Defen-

dant, or any other person or persons, lawfully
claiming or to claim any right, title or
interest in or to the said demised prem-
ises. As by the said indenture, reference
being thereunto had, will more fully
appear. By virtue of which said in-
denture, the said plaintiffs afterwards,
to wit, on the fourth day of October, in the
year of Our Lord, One thousand, eight
hundred and fifty four—at the County
aforesaid, entered into the said demised
premises, with the appurtenances, and
became and were possessed thereof, for the
said term, so to them demised as aforesaid.

And although the said plaintiffs have
always from the time of the making of
the said indenture, and until their
eviction from the said premises as here-
inafter mentioned, observed, fulfilled
performed, kept and paid all and
singular the said covenants and agree-
ments in the said indenture contained,
which on their part, were, or ought to be
paid, observed, done and performed, and
have paid the said several sums of money,
on the days when the same should have
been paid as aforesaid, according to the
true intent and meaning of the said

indenture, to wit, at the County aforesaid. Yet protesting that the said defendant has not performed, fulfilled, or kept anything in the said indenture contained, on his part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said indenture, the said plaintiffs in fact say that they have not been permitted so to possess and enjoy the said premises, according to the tenor and effect of the said covenant of the said defendant in that behalf, in the said indenture made as aforesaid.

But on the contrary thereof the said plaintiffs in fact say and aver that after the making of the said indenture, and during the continuance of the said demise or lease, and whilst they, the said plaintiffs were possessed of the said demised premises, to wit, on the eighteenth day of January, in the year of our Lord, one thousand, eight hundred and fifty-five - to wit - at the County aforesaid, certain persons to wit, John P. Horton, and Schuyler S. Gates - who at the time of the making said indenture, and ever since, until the molestation and eviction of

the said plaintiffs as herein after men-
 tioned continued to have lawful right
 and title to said premises, did enter
 into said premises, and did by due pro-
 cess of Law thence expel, evict and re-
 move the said plaintiffs out of the
 possession of the said premises - By means
 of which said premises, the said plain-
 tiffs were not only put to and suffered
 great trouble and inconvenience, but were
 forced and obliged to expend and pay
 divers divers large sums of money amounting
 in all to a large sum to wit - The sum of
 seventy dollars, in defending against the
 suit of the said John T. Horton, and
 Schuyler S. Gates, and against their claim
 to the said demised premises, and also
 by means of the premises, they, the said
 plaintiffs also lost divers other sums of
 money, which they had laid out and expend-
 ed in the repairing and fitting up the house
 on said premises, on account of, and, induced
 by the said agreement and covenant of
 the said defendant, amounting in all to
 a large sum of money, to wit, to the sum of
 seventy five dollars, and also lost divers other
 and further sums of money, and divers
 other articles on account of being evicted

as aforesaid, but hath broken the same, and
to keep the same with the said plaintiffs hath
hitherto wholly neglected and refused, and
still doth neglect and refuse, to the dam-
age of the said plaintiffs of one thousand
dollars and therefore they bring their suit
&c-

Bryan, Crocker & Monars
Plaintiffs Attorneys-

And the said Defendant, by C. B. W. Lull,
his Attorney, afterwards to wit on the 30th day
of March, in the year last aforesaid, filed
in this cause his certain Plea and an
affidavit of Merits, which Plea and affidavit
are in the words and figures, to wit-

(Plea)
Cook County Circuit Court of March Term-
A.D. 1855.

Michael Lumbeckt }
ads } And the said
Frederick Rabenstein } Defendant comes, and
& John Schmidt } Defends the wrong and
injuring when &c. and says that the said Plain-
tiffs ought not to have or maintain their
aforesaid action against this Defendant
because he says that after the ^{sealing} ~~recording~~ and
making of the indenture aforesaid, in the

declaration aforesaid above specified and until &c. he the said Defendant performed all and singular the covenants on the part of him the said Defendant to be performed according to the form and effect of the said indenture - and of this he puts himself upon the country -

C. E. W. Lull -

Deft's Attorney -

(affidavit)

State of Illinois } Michael Humbrecht of
Cook County & } Chicago in said County, being
duly sworn, saith that he is Defendant in
above entitled suit, and that he believes
he has a good defense to the said suit
on the merits -

Sworn before me this 28th }
Day of March A.D. 1835 } M. Humbrecht -
C. E. W. Lull

Notary Public

And thereupon the said plaintiffs,
by their said attorneys, filed in their
Cause their certain replication to said De-
fendant's plea, which is in the words and
figures following to wit -

Cook Circuit Court.

as aforesaid, but hath broken the same, and
to keep the same with the said plaintiffs hath
hitherto wholly neglected and refused, and
still doth neglect and refuse, to the dam-
age of the said plaintiffs of one thousand
dollars and therefore they bring their suit
&c-

Bryan, Crocker & Monars-
Plaintiffs Attorneys-

And the said Defendant, by C. B. W. Lull,
his Attorney, afterwards to wit on the 30th day
of March, in the year last aforesaid, filed
in this cause his certain Plea and an
affidavit of Merits, which Plea and affidavit
are in the words and figures, to wit-

(Plea)
Cook County Circuit Court of March Term-
A.D. 1855.

Michael Humbrecht }
ads } And the said
Frederick Rabenstein } Defendant comes, and
& John Schmidt } Defends the wrong and
injury when &c. and says that the said Plain-
tiffs ought not to have or maintain their
aforesaid action against this Defendant
because he says that after the ^{sealing} ~~executing~~ and
making of the indenture aforesaid, in the

declaration aforesaid above specified and until &c. he the said Defendant performed all and singular the covenants on the part of him the said Defendant to be performed according to the form and effect of the said indenture - and of this he puts himself upon the country -

C. B. W. Bull -

Defts Attorney -

(Affidavit)

State of Illinois } Michael Humbrecht of
Cook County & } Chicago in said County, being
duly sworn, saith that he is Defendant in
above entitled suit, and that he believes
he has a good defense to the said suit
on the merits -

Sworn before me this 28th }

Day of March A.D. 1833

C. B. W. Bull

} M. Humbrecht -

Notary Public

And thereupon the said plaintiffs,
by their said attorneys, filed in their
Cause their certain replication to said De-
fendants' plea, which is in the words and
figures following to wit -

Cook Circuit Court.

Of March Term 1855.

Frederick Rabenstein &
John Schmidt }

vs.

Michael Hurnbrecht } And the said Plain-
tiffs as to the said plea of the said De-
fendant, and whereof he hath put
himself upon the Country, doth the
like -

Bryan Crocker and Monras
Plffs Attorneys -

And afterwards to wit, on the eleventh
day of April, in the year last aforesaid,
the following, among other proceedings
in said Circuit Court, were had and
entered of record in this cause, to wit

Frederick Rabenstein & al }

vs.

Michael Hurnbrecht }

Covenant -

The issue being joined in this cause,
It is Ordered that it be placed on
the trial Docket for the Ensuing May
Term -

And afterwards, to wit, on the 20th

day of December A D. 1835. it being of one of the days of the November Term of said Court for said year, the following among other proceedings were had and Entered of Record in this Cause, to wit

Frederick Rabenstein and	}	Covenant
John Schmidt		
as		
Michael Humbrecht	}	

This day
 Come the said Plaintiffs by Bryan and Crocker, their Attorneys, and the said defendant by C. E. W. Hull, his Attorney, also Comes, and issue being joined, herein it is Ordered that a Jury Come and thereupon Come the Jurors of a Jury of good and lawful men, to wit S. G. Grannis, C. C. Newton, James Guener, H. L. Smith, Benjamin Marshal, William Coleman, William Sawyer, James Campbell, Asa Fitch, G. W. Irwin, Daniel Mallius, and William B. Nightmare, who being duly Elected, tried and Sworn, well and truly to try the issue joined between the parties according to law and the Evidence, and they hearing the testimony of Witness, arguments of Counsel and

instructions of the Court, retire under
Charge of an officer of the Court, to
Consider of their verdict, and by agree-
ment of parties it is Ordered that
when the Jury shall have agreed upon
a verdict they may seal the same, and
~~separate~~ to meet the Court on tomorrow
morning-

And afterwards to wit, on the 21st day
of December A.D. 1833. it being as yet
one of the days of said November Term
of said Court, the following, among other
proceedings, was had and Entered of
Record in this Cause to wit-

Frederick Kalenstein }

& John Schmidt }

vs

Michael Humbrecht }

Covenant-

This day again come the said
parties, by their Attornies and the
Jurors of the Jury also come, and ren-
der their verdict, and say, we of the
Jury, find the issue for the plaintiff
and assess their damages at the sum
of four hundred and five dollars

and Eleven Cents- Whereupon the said defendant by his Attorney, moves the Court for a new trial of this Cause

And afterwards to wit on the ninth day of January A.D. 1837. it being as yet of the November term of said court aforesaid, the following further proceedings were had in said Court in this Cause to wit-

Frederick Rabenstein
& John Schmidt

vs
Michael Thunbrecht

This day again come the said parties by their attorneys, and the Court being fully advised on the motion of the said defendant heretofore made for a new trial of this Cause overrules the same

Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of four hundred and eight dollars and fifty four cents, together with the costs and charges by them in this behalf expended, and have execution therefore-

And now comes the

said defendant by O. B. W. Bull, his Attorney,
and prays an appeal of this Cause to the
Supreme Court of the State of Illinois, which
is granted upon his filing a bond in the
penal sum of Eight Hundred dollars, with
Henry Stupp and Phillip Zeigler as sure-
ties, together with his bill of exceptions, in
twenty days, and bound to be conditioned
as the law directs -

And afterwards to wit on the 18th day
of January, in the year last aforesaid,
the said defendant, by his Attorney, filed
in this Cause, his certain bill of exceptions,
which is in the words and figures follow-
ing, to wit -

Cook County Circuit Court.

Action on the implied
covenants in a lease for quiet enjoyment -

Rabenstein &

Smith

vs

Michael Humbrecht

Be it remembered that
at the November Term 1856 of said Court,
the above entitled cause came on to be tried,
and that on the trial of said cause, the

following evidence was given - which was all the evidence that was given on the trial of said cause - plaintiff offered in evidence, the following lease from Hurnbucht to Rabenstein & Smith

This Indenture Made this Fourth day of October in the year of our Lord One Thousand Eight Hundred and Eighty Four, Between Michael Hurnbucht, ^{of the first part, and} Frederick Rabenstein & John Schmidt of the second part, Witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, their executors administrators and assigns, hath demised and leased to the said party of the second part, all those premises situate, lying and being in the city of Chicago, in the County of Cook, and the State of Illinois, known and described as follows, to wit,

The West fifty feet of the South Half of Lot 23. Block 115. School Section Addition to Chicago -

To have and to hold, the said above described premises, with the appurtenances, unto the said party of the second part,

executors, administrators and assigns, from the Fourth day of October, in the year of Our Lord One Thousand, Eight Hundred and fifty four, for and during, and until the sixth day of July A. D. 1857.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part, to the said party of the second part, doth covenant and agree, with the said party of the first part, his heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of Thirty Dollars per month, payable monthly in advance, on the first day of each and every month, commencing with the said Fourth day of October -

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, they will build up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire, or inevitable accident, or ordinary wear excepted -

It is further agreed, by the said party of the second part, that neither they nor

their legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto—

It is expressly understood and agreed, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, their executors, administrators and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators ~~and assigns~~, ^{or} agent, attorney ~~and~~ assigns, at their election to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter— and the said party of the second part, or any other person or persons occupying in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his first and former estate, and to distrain for any rent, that may be due thereon.

upon any property belonging to the said party
of the second part, whether the same be
exempt from execution and distress by law
or not, and the said party of the second
part, in that case, ^{hereby} agrees to waive all legal
rights which he may have to hold or retain
any such property under any exemption laws
now in force in this State, or in any other
way— Meaning and intending hereby to
give the said party of the first part, his
heirs, executors, administrators or assigns, a
valid and first lien upon any and all
the goods, chattels or other property belonging
to the said party of the second part, as
security for the payment of said rent in
manner aforesaid anything heretofore
contained to the contrary notwithstanding—
And if at any time said term shall be ended,
at such election of said party of the first part,
his heirs, executors, administrators or assigns, as
aforesaid, or in any other way, the said party of
the second part, their executors, administrators
and assigns, do hereby covenant and agree, to
surrender and deliver up said above described
premises and property peaceably, to said party of
the first part, his heirs, executors, administrators
and assigns, immediately upon the termina-
tion of said term as aforesaid, and if they

shall remain in possession of the same three days after notice of such default, or after the termination of this lease, in any of the ways above named, they shall be deemed guilty of a forcible detainer of said premises, under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

In testimony whereof, the said parties have hereunto set their hands and seals, the day and year first above written—

M. Hurnbicht 

Frederick Rabenstein 

John Schmidt 

J. C. Beattie, a witness called on the part of Plaintiff, testified as follows— On the 22nd day of October, A.D. 1854. I was acting Justice of the Peace at Chicago, and issued a summons in Forcible entry and detainer at the suit of Norton and Gage, against ^{the said} Rabenstein & Smith. Suit was tried Oct 23. and judgment was rendered for the Plaintiffs— I do not know aside from the papers, what premises were the subject of the suit— I have no description of the same in my docket— An appeal was taken by the Defendants, and a writ of

restitution was afterwards issued by me — It
(the writ) was sent to me by mail, and I
signed it in New York, and returned it to
the Attorneys for Horton & Gates — I can't tell
what afterwards became of it — I never saw
it afterwards: a written complaint was
here ^{shown to witness} (being the same found in the papers
in the appeal suit, on file in this Court)
~~shown to witness~~ I do not recognize this
complaint by any marks upon it, but I
suppose it to be the one filed with me in
said cause — It appears to have been sworn
to before me on the same day the summons
was issued, and was found among the
papers in the cause —

The writ of restitution was not I believe
returned by Constable Beach into my office —
I have been unable to find it — among the
papers in my office, though I have searched
diligently for it — Constable Beach collected
the costs in the suit, and paid the same
to me — This is my Docket — Docket given in
evidence, showing the suit and judgment
and appeal —

John T. Horton
& Schuyler S. Gates

vs.

George Smith

} Per Ent & det.

Frederick Runneston }

On oath and complaint of Plaintiff Horton made in pursuance of the provisions of the Statute, Same, issued against Defendants Oct. 12th 1854 returned 18th do, at 9 o'clock A. M. to Constable Beach. Same time venue issued - 18th October Cause continued to 23rd October, 1854. at Defendants costs - 23rd October venue and sub issued, 23rd October Cause tried by Jury, duly empaneled and sworn, who after hearing all the testimony, rendered a verdict of guilty in manner and form as charged in Plaintiff's complaint - Judgment of Court on said verdict, that Plaintiff have restitution of the possession of his said premises, and have execution for costs of suit - 27th October 1854 Defendants take appeal to Circuit Court -

State of Illinois)
County of Cook { I, D. C. Beattie J. C. do hereby certify that the foregoing is a true and faithful transcript from my docket, of the proceedings had in the above entitled Cause, and that the enclosed are all the papers relating to said suit -

Given under my hand, this
27th Oct. 1854. D. C. Beattie J. C.

Frederick Shibley - a witness for the Plaintiff, was sworn and testified as follows - I am acquainted with the parties to this suit - I was present when Rabenstein and Schmidt made a bargain with Durnbrecht - it was about the 1st of October 1854. They paid him \$200. cash, and made a note for \$150 at 6 months, Rabenstein said \$350 was too much for the few things there were there, Durnbrecht replied, oh the lease is worth that, They bought the lease, and the furniture in the House - They spoke about the lease and other things, they thought there was more in the house than there was - There were a few things in the house - Two or three old Bedsteads, two or three chairs, some decanters and Bottles - I know one Beach - He was a Constable - I was there when he came, another person came with him, He wanted to put the things out of the house - Rabenstein told him to wait awhile, then Beach left and soon came again, and put the things out on the side-walk - Beach had a paper - didn't read it - I don't know what it was - Rabenstein and Schmidt paid him \$22 costs - I was at the trial before Esq. Beattie - I know Durnbrecht, he was there, He took the part of the present Plaintiffs

then defendants in that suit - He went after a lawyer - I don't know whether he got one or not - I didn't stay to see - He went away before the suit was tried, and I went away also -

The Counsel for Plaintiffs then asked the following question - "Do you know of any expenses incurred by Plaintiffs in removing their goods on being turned out by the officer -"

In the asking of which question, the counsel for the Defendant then and there objected, and the objection being overruled the court the witness answered

As far as I know they paid me for moving them out, and moving back - there were three or four more who helped - they paid ^{me} \$1.00 for moving them - they paid the others the same -

The record of the Circuit Court was here introduced, shewing the dismissal of an appeal taken by Rabenstein and Schmidt from the judgment in Horible Entry and detainer - at the same time all the papers in that cause including the original complaint, or a paper purporting to be such, and the appeal bond were also produced - all of which were received in evidence

Afterwards excluded on my motion

The record of Dismissal is in the words and figures following to wit—

John F. Norton & Schuyler S. Gates

George Smith & Frederick Hummer

{ Appeal

This day came the said plaintiffs by their Attorneys and the said defendants being solemnly called come not but herein failed to prosecute their said appeal, wherefore it is ordered that the appeal be dismissed and that a procedendo issue to the Justices.

Wherefore it is considered that the said plaintiffs do have and recover of the said defendants their costs and charges by them about their suit herein expended and have execution therefor:—

Schuyler S. Gates— a witness for Plaintiff testified as follows. I know something of the suit against Hambrecht. He and a person by the name of John, had a lease of the premises— Lease seemed to be from one Steinbecker to them— they had no right to relet or assign Lease— We got possession of the premises, under the proceedings in the forcible detainer suit against the Plaintiffs, and then released them to the Plaintiffs—

The Plaintiffs counsel then asked the following question—

"What was the value of the premises at the time of the eviction of the Plaintiffs—"

To which question, the Defendant by his counsel objected, on the ground that the price paid for the lease, and not the value of the premises constituted the proper

afterwards excluded

measure of damages — and the objection being overruled by the Court, upon suggestion of Plaintiff's Attorney, that he could show fraud or bad faith on part of defendant — Exception was then and there taken, and the witness answered —

We were offered \$30. per month, for the premises, in case we should get Rabenstein and Schmidt out of them, and get possession. The Plaintiffs Rabenstein & Schmidt were evicted January 18. 1853. The Lease from Humbrecht to the Plaintiffs was in the preceding October —

The original Lease was made by the owners of the premises to one Steinbrecker, then Steinbrecker leased to Humbrecht and one John together — and then Steinbrecker afterwards assigned his interest in the premises to me and my partner — We bought Steinbrecker's interest in the premises and lease, about two years ago in September or October 1854. Previous to assignment to us, Steinbrecker had sublet to Humbrecht and John, with covenant against assignment. We received rents of Humbrecht and John, till John's interest was sold on execution to Humbrecht, when we refused to receive it, and brought suit to recover possession for breach of Covenant — I don't know of any rents being paid by Humbrecht and John, after the time.

we leased it to Plaintiffs-

I am not able to find the copy of the lease we got from Steinbrecher. My partner has it in his possession, I suppose-

The Plaintiff, by his counsel, ~~there~~^{here}, asked the witness what were the value of said premises, at the time they were leased by Hurnbrecht. To which Defendant by his counsel, objected, which objection was overruled by the Court, and the Defendant by his counsel, then and there excepted, and the witness answered, they were worth at that time fifty Dollars per month-

Friedrich Rabenstein. I am brother of one of Plaintiffs - when Plaintiffs paid Hurnbrecht, they said there is not much here - Rabenstein said the things are too dear - Hurnbrecht answered if the things are dear, the lease is worth \$375. Plaintiffs were to pay \$175 in 6 months, and gave their note - they also paid \$200 cash - Rabenstein said the things were not worth much - and Hurnbrecht answered that makes no difference, the lease is worth the money - The note of \$175 was afterwards paid by the Plaintiffs - I was there when my brother and his partner were turned out of the house - It was on the 18th of January 1853. They paid \$21 costs to Beach -

The only things in the house were a few old Bedsteads, a few chairs, and a few glasses and decanters - They were worth very little - I do not know how much -

The Plaintiffs then offered through their counsel, to introduce a complaint, which appeared to have been sworn to before D. C. Beattie, J. P. on the 12. October, and which was found among the original papers in the cause - for the purpose of showing a description of the premises, which the forcible detainer suit was brought against plaintiff, to recover possession of - to which Defendant, by his counsel, objected on the ground that the complaint bore no mark of filing, and had not been identified, as connected with the case - or as being the complaint filed in the case before the Justice, which objection was answered, and the Defendant then and there excepted - which said Complaint is in the words and figures following, to wit -

State of Illinois }
Cook County. }

Forcible entry and detainer -

John H. Horton, of the city, of the city of Chicago, being duly sworn, complains that on the Seventh day of October, A. D. Eighteen hundred and fifty four, the Deponent and Schugler S.

Gates were jointly, lawfully entitled to the peaceable and exclusive possession of the premises situate in the city of Chicago, in the State and County aforesaid, known and described as the "West fifty feet of the South half of Lot Twenty three, in Block One hundred and fifteen in the School Section Addition to Chicago", and that while the said John F. Horton and Schuyler S. Gates were entitled to such possession, George Smith and Frederick Runnston, unlawfully and without any right of possession entered thereon and took possession of said premises, and still unlawfully detain possession of said premises, although the said Horton and Gates have demanded possession thereof in writing, and that the said George Smith and Frederick Runnston are guilty of a Horrible Entry and Detainer under the Statute.

This 12th October

J. F. Horton

1854. before me

D. C. Beattie

J. P.

The Plaintiffs by their Counsel then offered to introduce the appeal Bond signed by the Defendant together with the Plaintiffs on appealing from the judgment in forcible entry and de-

tainers before the Justice, wherein Horton and Gage were Plaintiffs, and Rabenstein and Schmidt Defendants for the purpose of proving due notice to the Defendant, Humbrecht of the pendency of such suit, and for purpose of showing that he had notice of said suit, and for every other legitimate purpose — For the introduction of which, Defendant by his counsel did object, and the said objection being overruled, the Bond was given in evidence, after the signature of said Humbrecht to the same had been proved, and the Defendant did then and there object to the ruling of the Court — Said appeal bond is in the words and figures following, to wit —

Know all men by these Presents —

That we, George Smith, and Frederick Runnison, composing the firm of Smith and Runnison, and Michael Humbrecht, all of the County of Cook, and State of Illinois, are held and firmly bound unto John F. Horton and Schuyler S. Gates, composing the firm of Horton and Gates, in the penal sum of Two 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

27th Day of October A.D. 1854.

The condition of the above obligation is such, that whereas the said Horton and Gates did on the twenty-fifth Day of October A.D. 1854. before D. C. Beattie, a Justice of the Peace, for the county of Cook, against the above Founden Smith and Runnison, in an action of forcible entry and detainer on complaint made by said Plaintiffs of the forcible detainer by said Defendants of the West Fifty feet of the South Half of Lot 23. in Block 113, in the School Section Addition to Chicago - and from which said judgment, the said Smith and Runnison have taken an appeal to the next term of the Circuit Court of the County of Cook -

Now if the said Smith and Runnison shall prosecute their appeal with effect, and shall pay whatever judgment may be rendered by the Court, and shall also pay all rents that have become due ^{or may become due} from the commencement of said suit, until the final determination of the same, upon the trial or dismissal of said appeal, then the above obligation to be void, otherwise to remain in full force and effect -

Approved 28th October
1854.

D. C. Beattie J. P.

Frederick Rabenstein 

George Schmitt 

M. Durnbrecht 

Both the Complaint and appeal bond were found in the custody of the clerk of this Court, (Cook Circuit Court) among the original papers in said appeal suit, and were brought into Court by said clerk to be used in evidence in this cause without objection. On motion of Plaintiffs counsel, the evidence of S. Gates showing the value of the premises, at the time of the eviction, was excluded, and also the evidence of Frederick Scheibly, as to money paid by plaintiffs, to men assisting them in moving, was excluded. This evidence the jury was told by the Court to disregard entirely—

The Plaintiffs then called
 C. R. W. Sull, who testified as follows—
 I received rent from Rabenstein and Smith—
 they paid it to me for Hurnbrecht—and I receipted
 it in Hurnbrecht's name— The rent was not
 taken by Hurnbrecht, but was left with me
 until the suit was disposed of, when Horton and
 Chace demanded it— I paid it over to them, or
 to one of them, and took receipt for same—
 Twelve dollars rent was paid me for time sub-
 sequent to the eviction, by the Plaintiffs in
 this suit—

The Defendant by his counsel here ad-
 mitted that the note above testified to, by

Loheily and Rabenstein for \$175. was paid at Maturity on the 7th of March A.D. 1855. with interest amounting to \$18.2. $\frac{50}{100}$

The Defendant then introduced the following witness, who testified as follows, viz—
Michael Regan — I was deputy sheriff in 1854. on the 20th of September 1854. I received this execution for service out of the Cook County Court of Common Pleas, in favor of Karl Klein, and ^{against} Dumbrecht, and John, and levied on the interest of the Defendants in a lease of the West 80 feet of the South Half of Lot 23. Block 113. School Section, the lease was sold and bid off by the Defendant Dumbrecht and I made this certificate of sale to him, I also levied on personal property, and sold some amounting to \$97. $\frac{97}{100}$

Henry Stupp was then called as a witness, for Defendant, and testified as follows — I bought the personal property sold on the execution against Dumbrecht and John, and afterwards resold it to Dumbrecht, and he retained it in the house.

The things in the house were worth \$300. or \$400. when Dumbrecht ^{sold} ~~said~~ to Plaintiff — One of the Plaintiffs was in my house before they bought, and said they were going to buy things, and that Dumbrecht asked them \$800. for \$

400. for the furniture, or furniture and lease I cannot tell exactly—

1 Whereupon the Plaintiff asked the Court to instruct the jury as follows viz—

If the jury believe from the evidence that the Plaintiff were evicted from the premises under legal process, and a paramount title, and that the Defendant had notice of that suit under which the Plaintiffs were evicted, and a reasonable opportunity furnished to him to defend the suit, and was present for that purpose at the trial, and that it resulted adversely ~~for~~ to Plaintiff, and they were evicted thereunder, that then they must find for the Plaintiffs—

2nd If the jury find for the Plaintiff then the measure of damages will be, the consideration money paid with interest together with all costs, which said Plaintiffs incurred and paid in the suit by which they were evicted— And also the amount of rent which had been paid in advance to Dumbrecht (if any was so paid) for ^{the same} ~~the same~~ subsequent to their eviction—

3rd If the jury find from the evidence that the Plaintiffs were evicted from the premises demised to them by Defendant by due process of law, under valid judgment— and that the

Defendant had received due notice to defend the suit in which said judgment was obtained, and under which they were evicted, and that the Defendant did appear and defend said suit, that such judgment and eviction are sufficient proof of paramount title in the party by whom the Plaintiffs were evicted—

And to the giving of said instructions the said Defendant by his said Counsel, did then and there except—

And the said Defendant then asked the Court, to instruct the Jury as follows—

If the Jury shall find that the lease declared on does not contain an express covenant of quiet enjoyment, they will find for the Defendant as the law does not imply one

Which said instruction was refused—

And then said Defendant then asked the Court to instruct the Jury as follows— viz—

The Jury are instructed that the assignment of a lease by operation of law is not such an assignment as amounts to a breach of the covenant against assigning—

3rd If the Jury shall believe from the evidence that the money paid by the Plaintiffs to Defendant was paid for the furniture in

the house, or good will of same, or both, and not for the purchase of the lease—then although they may believe that the Defendant executed a lease, and that the covenants of the same were broken—they will find for the Plaintiff only nominal damages—

To which was added by the Court—
Unless the jury shall find that a part of the sum claimed was paid by Plaintiff on account of costs in defending the suit in which case they will find for the Plaintiff for the sum repaid if ^{they} shall also find that he was evicted from the premises by title paramount and that defendant had due notice to defend against the same—

And to the refusal of the Court to give the said instruction as asked—and the giving of the same as modified by the Court, the Defendant did then & there except—

4 It was the duty of the Plaintiffs when sued by Hinton and Gage, to notify the Defendant Dumbrecht of such suit in time to enable him to appear and prepare his defense, and also to require him to appear and defend it—In default of such notice the jury will find for the defendant unless the Plaintiffs have proved in the present suit that the title under which they were

evicted was a title paramount to and prior to that under which they held under the Defendant Dunsbrecht—

3⁴₁₁

If the Jury shall believe from the evidence that the part payment of the sum claimed to have been paid was the purchase of furniture or other things, as well as of the lease, they will deduct the value of the furniture or thing from the said sum, and give a verdict, if at all against Defendant, only for the balance—

Which two last instructions were given—
When the Jury retired, and brought in a verdict of \$408. 34. in favor of Plaintiff—

And the Defendant thereupon moved for a new trial, which was refused by the said Court, and he thereupon prayed an appeal, and that this, his bill of Exceptions might be signed by the Court, which is done—

Given under my hand and seal at Chicago, this 10th day of January A.D. 1857

George. Manierre

Judge of 8th Judicial
Circuit. Ills—

Afterwards, to wit, on the 18th day of

January 1857. the ^{said} ~~same~~ defendant filed in this cause his certain appeal bond, which is in the words and figures following—viz—

Know all men by these Presents.
That We, Michael Durnbrecht, and Henry Stupp and Phillip Ziegler—
are held and firmly bound unto Frederick Rakenstein and John Schmidt, in the penal sum of Eight Hundred Dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our Heirs, and Administrators, jointly, and severally, and firmly by these Presents, witness our Hands and Seals, this 20th Day of January, A D. 1857—

The condition of the above obligation is such that whereas the said Frederick Rakenstein and John Schmidt did at the November Term 1856 of the Circuit Court of Cook County, in the State of Illinois, recover a judgment against the above bounden Michael Durnbrecht for the sum of Four Hundred and five Dollars, and fifty-four cents, together with the costs of Court, and from which said judgment the said Michael Durnbrecht has taken an appeal to the Supreme Court of the State of Illinois—

Now if the said Michael Durnbecht shall
prosecute his appeal with effect, and shall
pay whatever judgment may be rendered by
the said court, and all interests and costs
upon the trial or dismissal of said appeal—
then the above obligation to be void— otherwise
in force—

M. Durnbecht



Henry Stupp



Phillip Ziegler



State of Illinois
County of Cook p:

I William L. Church Clerk of
the Circuit Court of said County in the State aforesaid,
do hereby certify, that the above and
foregoing is a true and perfect transcript of all
the papers filed and matters and things had and
entered of record in said Circuit Court in a certain
cause lately pending therein wherein Frederick
Rabinstein and John Schmidt were plaintiffs
and Michael Durnbecht was defendant
so far as the same appears from the files & records of said
Court—

Witness William L. Church Clerk
of our said Circuit Court and the seal
thereof at Chicago this 17th day of
April A.D. 1837

W. L. Church

Clerk Cir. Ct. Cook Co

Dec 8, 35

In the Supreme court of
the State of Illinois -

of April Term 1857

Michael Hambricht
Defendant & Appellant

vs

Fredrick Pabensstein &
John Schnidts Opps below
Appellants

Appeal from
Cook Circuit Court

And now comes the
said Appellant by Farnsworth & Oranges
his attorneys and says that in the
record proceedings & judgment of the
court below there is manifest and
material error appearing of record
therein in this -

1st That the court allowed improper
evidence to go to the jury -

2nd That the court erred in giving
the 1st 2^d & 3^d instructions for the Opps below
and in refusing the first, and qualifying
the 2^d of the Defs instructions asked for by the
Defendant below.

3rd That the court was held on a day
when it could not by law be held.

3rd That the court overruled the
motion for a new trial -

4 That the verdict of the jury is for
four hundred and six dollars & eleven cents
while the judgment is for four hundred
and eight dollars & fifty four cents -

That the November Term of the said
court was held at a time when the law

circuit court should have been held - The
Term of the Cook circuit court began in Novem-
ber ¹⁸⁵⁶ being continued from day to day until
the 10th day of January A.D. 1857 - while the Term
of the Lake circuit court should have been held
on the first Monday of January A.D. 1857 -

That the judgment of the court
was for the Plaintiffs blood which is
~~fact~~ it should have been for the defendant
blood -

Wherefore and for divers other
errors appearing of record in said cause
and in the record proceedings & judgment
therein the same ought to be set aside
for nought returned - Wherefore said
appellant prays for judgment & a
for institution &c.

Fairbank & Bunge
for App^t

131.

Rabenstein & Schmitt

vs.

W. H. Humboldt

Complete Record

Filed April 11, 1887

L. Selous
Clerk

Jan 18, 1888

MICHAEL HAMBRECHT,
 DEFENDANT BELOW AND APPELLANT,
vs.
 FREDERIC ROBENSTEIN,
 and JOHN SCHMIDT,
 PLAINTIFFS BELOW AND APPELLEES.

Appeal from Cook Circuit Court.

- Folio 3. Appellees and Appellant in an action of covenant; process issued March 2, 1855.
 4. Declaration filed March 16, '55, sets forth the making of a Lease dated October 4, 1854, by which
 5. Hambrecht leased to the plaintiffs w. 50 ft. s. $\frac{1}{2}$ lot 23, B. 115, S. S. Add. to Chicago, for the consid-
 6. eration in the said indenture mentioned, and for the further consideration of \$375 by the plaintiffs to
 7. the defendant, then and there paid—from 4th October, 1854, to 6th July, 1857, at a monthly rent of \$30.
 8. That the defendant by said indenture did covenant for the quiet enjoyment of the premises by the
 9. plaintiffs—they performing covenants on their part. That on the 4th Oct., 1854, plaintiffs entered into
 10. possession; and although plaintiffs have kept their covenants according to true intent, etc., yet they had
 not been permitted to enjoy said premises; but on the contrary, on the 18th of January, 1855, John F.
 Horton and Schuyler F. Gates, who, at the time of making said indenture, and ever since, until the mo-
 lestation and eviction of the plaintiff as hereinafter mentioned, continued to have lawful right and title
 to said premises, did enter into said premises; and did by due process of law, thence expel, evict and
 remove the plaintiff out of the possession of said premises. By means whereof, the plaintiff was put to
 great trouble and inconvenience, and paid in defending suit *vs.* Horton & Gates, \$70; money in repair-
 ing and fitting, \$75; in removing furniture, \$200; and paid to Horton & Gates and their assignee
 "as rent for the said premises, and as the mesne profits of the same," \$100. damaged in having lost
 the considerations which they paid as aforesaid for the said term, \$500; and injured in the occupation
 of said premises so leased them, contrary to the effect of said indenture—to their damage \$1000.
 Plea filed March 30.
 11. *Non in fregit conventionem*—concluding to the country.
 13. Similiter by plaintiff.
 December 20, 1856—during November Term, 1856. Cause tried by Jury, before Manierre, Judge.
 16. Verdict for plaintiff for \$450.11, and motion for a new trial. On the 9th January, 1857, denied
 and Judgment for \$408.54, and appeal prayed.
 These proceedings are all given as of the November Term, A. D. 1856.

BILL OF EXCEPTIONS.

17. At the trial of this cause, at the November Term, 1856, the following evidence was given, which
 was all the evidence given in the case:
 18. Plaintiff offered a lease from Hambrecht to Robenstein and Smith, date Oct. 4, 1854, by which he,
 in consideration of covenants and agreements to be kept and performed by plaintiffs, "demised and
 19. leased" to them the same premises as set out in Narr. from 4th October, 1854, to July 6, 1857. And in
 consideration thereof, plaintiffs agreed to pay defendant for rent, \$30 per month during term.
 The rest of the lease is the ordinary printed form, and contains no express covenant on part of
 defendants.
 22. D. C. Beattie testifies on 22d October, 1854, an acting J. P. at Chicago, issued a summons
 For. Ent. and Det. at suit of Horton & Gage *vs.* Robenstein & Smith. Suit tried Oct. 23, and judgment
 for plaintiffs, from which an appeal was taken. A writ of restitution afterwards issued by him, while
 23. he was in the State of New York, does not know what became of it; never returned to his office; shown
 a complaint; says it appears to have been sworn to before him on the same day summons was issued;
 Beach collected costs and paid them to him; but did not return writ—as he cannot find it in his office;
 24. Witness Docket produced and shown him; identifies it; it shows proceedings up to appeal to Circuit
 Court, but no further. Title of cause same as in Circuit Court.
 "October 23.—Cause tried by Jury duly empaneled and sworn, who after hearing all the testimony,
 rendered a verdict of guilty, in manner and form as charged in plaintiff's complaint. Judgment of
 Court on said verdict, that plaintiff have restitution of the possession of his said premises," and costs, etc.
 Frederick Shibley testifies:
 Knows parties was present when they made a bargain; about 1st of October, 1854, the plaintiff paid
 defendant \$200 cash, and gave a note for \$150 at 6 months; Robenstein said \$350 was too much for
 the few things there were there. Hambrecht replied, O! the lease is worth that. They bought the
 lease and the furniture in the house. They spoke about the lease and other things; they thought there
 was more in the house than there was. There was a few things in the house; two or three old bed-
 steads, two or three chairs, some decanters and bottles. I know one Beach; he was a constable; I was
 there when he came; another person came with him; he wanted to put the things out of the house;
 Robenstein told him to wait awhile; then Beach left and soon came again, and put the things out on
 the side-walk; Beach had a paper; didn't read it; don't know what it was; Robenstein & Schmidt
 26. paid him \$22 costs. I was at the trial before Esq. Beattie; I know Hambrecht; he was there; he took
 the part of the present plaintiffs—then defendants in that suit. He went after a lawyer; I don't know
 whether he got one or not; I didn't stay to see; he went away before the suit was tried, and I went
 away also.

Plaintiffs then asked, "Do you know of any expenses incurred by plaintiffs in removing their goods
 on being turned out by the officer?" which was objected, and overruled; exception taken and question
 answered as follows: "As far as I know, they paid me for moving them out and moving back;" they
 paid me and three or four others who helped, \$1 each. This answer afterwards excluded by the Court.

Plaintiffs here introduced the records of Circuit Court showing dismissal of the appeal. Case
 entitled,

27. JOHN F. HORTON and SCHUYLER S. GATES, }
vs.
 GEORGE SMITH and FREDERIC RUNNISON, } *Appeal.*

Order defendants not prosecuting appeal, that it be dismissed and *procedendo* awarded and judg-
 ment for costs.

Schuyler A. Gates testifies—I know something of the suit against Hambrecht. He and a person
 by the name of John, had a lease of the premises; lease seemed to be from one Steinbrecher to them;
 they had no right to re-let or assign lease; we got possession of the premises under the proceedings in
 the forcible entry and detainer suit against the plaintiffs and then re-leased them to the plaintiffs.

Plaintiffs then asked the witness—"What was the value of the premises at the time of the evic-
 tion of the plaintiffs?" objected to by defendant, and allowed to be answered by the Court, and excep-

28. tion taken. We were offered \$50 per month for the premises in case we should get Robenstein & Smith out of them, and get possession. (This answer afterwards excluded by the Court.) Plaintiffs were evicted January 15, 1855; the lease from Hambrecht was in the preceding October.

The original lease was made by the owners of the premises to one Steinbrecher, then Steinbrecher leased to Hambrecht and one John, together; and then Steinbrecher afterwards assigned his interest in the premises to me and my partner; we bought Steinbrecher's interest in the premises, and lease, about two years ago, in September or October, 1854. Previous to assignment to us, Steinbrecher had re-let to Hambrecht and John, with covenant against assignment; he received rents of Hambrecht and John till John's interest was sold on execution to Hambrecht, where we refused to receive it, and brought suit to recover possession for breach of covenant. I don't know of any rents being paid by Hambrecht and John after the time we leased it to plaintiffs. I am not able to find the copy of the lease we got from Steinbrecher; my partner has it in his possession I suppose.

29. Plaintiffs asked, "What was the value of said premises at the time they were leased by said Hambrecht?" which was objected to by defendant, allowed by Court, and exceptions taken. Answer—"They were worth at that time, \$50 per month."

Frederic Robenstein—I am brother of one of the plaintiffs; when plaintiffs paid Hambrecht they said there is not much here; R. said the things are too dear. He answered, if the things are dear the lease is worth \$375; plaintiffs were to pay \$175 in 6 months, and gave their note; they also paid \$200 cash; R. said, things not worth much. H. answered that makes no difference; the lease is worth the money; note of \$175 afterwards paid. I was there when my brother and his partner were turned out of the house; it was on the 16th January, 1855; they paid \$21 costs to Beach. The only things in the house were a few old bedsteads, a few chairs, and a few glasses and decanters. They were worth very little; I do not know how much.

30. Plaintiffs offered complaint; defendants objected. Overruled. Exceptions taken and read in evidence as follows:

STATE OF ILLINOIS, }
Cook County, } ss. *Forcible entry and Detainer.*

- John F. Horton, of the City of Chicago, being duly sworn, complains that on the seventh day of October, A. D. eighteen hundred and fifty-four, the deponent and Schuyler S. Gates were jointly, lawfully entitled to the peaceable and exclusive possession of the premises situate in the City of Chicago, in the State and County aforesaid; known and described as the "west fifty feet of the south half of lot twenty-three, in block one hundred and fifteen in the School Section addition to Chicago; and that while the said John F. Horton and Schuyler S. Gates were entitled to such possession, George Smith and Frederic Runneston, unlawfully, and without any right of possession, entered thereon and took possession of said premises—although the said Horton & Gates have demanded possession thereof in writing, and that the said George Smith and Frederic Runneston are guilty of a forcible entry and detainer under the Statute.

J. F. HORTON.

Subscribed and sworn, this 12th day of October, 1854, before me,

D. C. BEATTIE, J. P.

32. Appeal bond offered; signature by Hambrecht proved; objected to; overruled; exception taken and read.

It is in the penalty of \$200; conditioned as required by law. Parties are in the body styled

34. "George Smith and Frederic Runneston; but sign it "Frederic Robenstein, George Schmidt."

These papers, complaint and bond are found among the original papers in the appeal suit, and are brought into court by the Clerk.

O. R. W. Lull testifies—I received rent from Robenstein and Smith; they paid it to me for Hambrecht, and I receipted it in Hambrecht's name; the rent was not taken by Hambrecht but was left with me till suit disposed of, which I paid to Horton & Gage upon their demand.

35. Payment of \$175 note admitted by defendant.

This is all the testimony of the plaintiff.

DEFENDANT'S EVIDENCE.

Michael Ryan—I was Deputy Sheriff in 1844. On the 20th September, 1854, I received this execution for service out of the Cook County Court Common Pleas, in favor of Karl Klein, and against Hambrecht and John, and I levied on the interest of the defendants, on a lease of the w. 50 ft. of s. $\frac{1}{2}$ lot 23, B. 113, S. S; the lease was sold and bid off by the defendant, Hambrecht, and I made this certificate of sale to him. I also levied on personal property and sold same to \$97.

Henry Stupp testifies—I bought the personal property sold on execution against Hambrecht and John, and afterwards re-sold it to Hambrecht, and he retained it in the house. The things in the house were worth \$300 or \$400, when Hambrecht sold to plaintiffs. One of the plaintiffs was in my house before they bought, and said they were going to buy things; and that Hambrecht asked them \$300 or \$400 for the furniture or furniture and lease; I can't tell exactly.

36. Plaintiffs asked, "What was the value of said premises at the time they were leased by said Hambrecht?" which was objected to by defendant, allowed by Court, and exceptions taken. Answer—"They were worth at that time, \$50 per month."

PLAINTIFF'S INSTRUCTIONS.

If the Jury believe from the evidence that the plaintiffs were evicted from the premises under legal process, and a paramount title, and that the defendant had notice of that suit under which the plaintiffs were evicted, and a reasonable opportunity furnished to him to defend the suit, and was present for that purpose at the trial, and that it resulted adversely to plaintiff, and that they were evicted thereof under that, then they must find for the plaintiffs.

2d. If the Jury find for the plaintiffs, then the measure of damages will be the consideration money paid with interest, together with all costs which said plaintiffs incurred and paid in the suit by which they were evicted; and also the amount of rent which had been paid in advance to Hambrecht (if any was so paid) for time subsequent to their eviction.

37. 3d. If the Jury find from the evidence that the plaintiffs were evicted from the premises demised to them by defendant, by due process of law under valid judgment, and that the defendant had received due notice to defend the suit in which said judgment was obtained, and under which they were evicted, and that the defendant did appear and defend said suit, that such judgment and eviction are sufficient proof of paramount title in the party by whom the plaintiffs were evicted.

To the giving of which the defendant then and there excepted.

DEFENDANT'S INSTRUCTIONS.—1st. If the Jury shall find that the lease declared on does not contain an express covenant of quiet enjoyment, they will find for the defendant, as the law does not imply one which was refused.

"2d. The Jury are instructed that the assignment of a lease by operation of law is not such an assignment as amounts to a breach of the covenant against assigning.

38. "3d. If the Jury shall believe from the evidence, that the money paid by the plaintiff to the defendant, was paid for the furniture in the house, or good will of same or both, and not for the purchase of the lease, then, although they may believe that the defendant executed a lease, and that the covenants of the same were broken, they will find for the plaintiff only nominal damages."

To which was added by the Court—"Unless the jury shall find that a part of the sum claimed was paid by plaintiff on account of costs in defending the suit—in which case they will find for the plaintiff, for the sum re-paid, if they shall also find that he was evicted from the premises by title paramount, and that defendant had due notice to defend against the same."

To the giving of which as amended, and refusing it as proposed, the defendant excepted.

"4th. It was the duty of the plaintiffs when sued by Horton and Gage, to notify the defendant Hambrecht, of such suit in time to enable him to appear and prepare his defense, and also to require him to appear and defend it. In default of such notice, the Jury will find for the defendant unless the plaintiffs have proved in the present suit that the title under which they were evicted, was a title paramount to and prior to that under which they held under the defendant.

39. "5th. If the jury shall believe from the evidence, that the part payment of the sum claimed to have been paid was the purchase of the furniture or other things, as well as of the lease, they will deduct the value of the furniture or things from the said sum, and give a verdict, if at all, against defendant only for the balance.

Which two last instructions were given.

When the jury retired and found for plaintiffs \$408. The defendant thereupon moved for a new trial, which was argued, overruled and exceptions taken.

\$408.54

* verdict was in the face of this instruction.

Supreme Court

Richard Hambrick

Andrie Robinson
Etals

Abstract

Filed May 2, 1847

J. L. David
Clerk