No. 14535 1/2

Supreme Court of Illinois

Shoudy

---

vs.

Directors of Schools, Dist. #1, T. #38, R. #2E, Lee County

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No.

Hendry
vs
School Dist

1863

14535 1/2

14535 1/2

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ISRAEL SHOUDY
vs.
Directors of Schools of District No. 1, Township No. 38, Range No. 2, east, Lee County, State of Illinois. } *Error to Lee County.*

ABSTRACT OF RECORD.

The complaint before Owen Cornell, Justice of the Peace, is as follows, to wit, which is set out at large in the bill of exceptions hereafter, p. 23 ;

3 Notice to Shoudy to quit possession, dated Feb. 11th, 1859.

4 Summons issued Feb. 21st, 1859.

5 Summons served Feb. 22d, 1859.

6 Tried before justice and jury, March 3d, 1859, and verdict of guilty,
6–8 and order for restitution of premises.

9 Motion by defendant below, before the justice, to dismiss the complaint, overruled by the justice.

10 Motion by defendant below before the justice, on account of improper parties plaintiff, overruled by the justice.

11 Appeal bond by defendant below filed in the Circuit Court of Lee County, March 30th, 1859.

14 Motion in the Circuit Court by the defendant to dismiss the suit for want of improper parties plaintiff, overruled by the Court, and leave given by the Court to the plaintiffs below to amend the title to the suit by substituting the corporate name of the plaintiff; and to the decision of the Court in overruling the defendant's said motion to dismiss the suit, and to the decision of the Court in granting leave to the plaintiffs to amend the title of said suit, the defendant then and there excepted. May Term (14th) 1859.

16 Feb. Term, A. D. 1860. Cause tried in the Circuit Court before Judge Eustace and a jury, and verdict of guilty.

17 Instructions appear in full in the bill of exceptions.

19 Motion for a new trial overruled by the Court, and exceptions taken by the defendants below to the overruling aforesaid.

Bill of Exceptions.

STATE OF ILLINOIS, } ss. *In the Lee County Circuit Court, of the Feb. Term, A. D. 1860.*
Lee County. }

School Directors of School District No. 1, In Township No. 38, Range No. 2, East, in Lee County,
vs.
ISRAEL SHOUDY, Appellant. } *Appeal, forcible entry and detainer.*

Be it remembered, that on the 22nd day of February, A. D. 1859, Israel Shoudy, the above named defendant, was summoned to appear before one Owen Cornell, Esq., a Justice of the Peace in and for the said Lee County on the 3d day of March then next ensuing to answer the complaint of Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors of School District No. one (1) County and State aforesaid, for a forcible entry and detainer of certain premises and tenements in said summons described, and which said premises were in said summons described as the tenements and possession of the said Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors aforesaid, and in obedience to said summons the said Israel Shoudy did, on the 3d day of March aforesaid, appear before the justice as he was commanded, to answer the said complaint, and the cause being ready for hearing, a jury was empannelled to try said cause, and thereupon the following complaint being produced as the foundation of said cause, to wit:

22 STATE OF ILLINOIS, } ss.
Lee County. }

The complaint of Christopher Vandeventer, Robert Smith and George Hollenbeck, Directors of School District No. 1, in Town 38, range 2 east, in said County, upon the oath of George Hollenbeck, one of the said directors. Owen Cornell, one of the Justices of the Peace of said County, is informed and given to understand that Israel Shoudy, on the 17th day of January, A. D. 1859, at said District No. one (1) in said County, did unlawfully make a forcible entry into the tenements and possession of the above named School Directors, to wit: The School house in said School District No. one (1) situated on the northwest quarter of Section thirty-six (36) Town 28, range 2 east, said tenements being known as the Allen's Grove School House, and then and there, with strong hand and multitudes of people, unlawfully eject and expell the said directors from the said tenements and possession wherein the said directors had at the time aforesaid an estate and were in possession of said tenements, and the said directors and their successors in office had been in the quiet and peaceable possession of said tenements for seven or eight years, last past, and that the said Israel Shoudy, still doth hold and detain the said tenements and possessions from the said Christopher Vandeventer, Robert Smith and George Hollenbeck, directors aforesaid, unlawfully, forcibly and with strong hands, against the form of the statute in such case made and provided.

Therefore, They pray that the said Israel Shoudy may be summoned to answer the said complaint. GEORGE HOLLENBECK.

Subscribed and sworn to before me the 2d day of February, A. D. 1859.
OWEN CORNELL,
Justice of the Peace.

23 The said defendants filed the following motion to dismiss said suit, to wit:

Said complaint was not made as the foundation of said cause and proceedings, but was made as the foundation of the proceedings in a former cause between the same parties, in which former cause the plaintiffs, or complainants, were non-suited. Which said motion was, by the said justice, overruled and filed with the papers in said cause.

The said defendant then moved the Court to dismiss said cause for the following reasons, viz:

1st. Because said action should have been commenced in the name of the Township Trustees.

2d. Because said plaintiffs were not and are not, by law, authorized to bring such suit.

3d. Said plaintiffs are not directors as set forth in said complaint. The Court again overruled the motion to dismiss and filed the reasons above set forth among the papers in said cause. Thereupon the trial of this cause was had before said justice aforesaid; and after hearing the evidence the said jury returned a verdict finding the defendant guilty, and judgment was by said justice rendered against the said defendants, but from which judgment the said defendant took an appeal to the Lee County Circuit Court according to the form of the statute in such case made and provided.

24 And afterwards, to wit: At the May Term of the said Lee County Circuit Court, A. D. 1859, the said appeal being upon the docket of said Court, and the said parties appearing by their respective counsel, and the said cause coming on to be heard, the said defendant, by his counsel, entered his motion to dismiss said cause for reasons already assigned before, and filed with said justice Cornell, at the time of the trial in the Court below, and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the proceeding in a former cause between said plaintiffs in which cause the same plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit, and also because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was thereupon by the Court awarded and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and afterwards, to wit: on another regular day of the May Term aforesaid of the said Lee County Circuit Court, on the motion of the plaintiff in said cause the Clerk of said Court was directed by the Court to amend the title of said cause upon the docket of said Court by substituting the corporate names of the said plaintiffs herein, to which order of the Court the said defendant, by his counsel, then and there objected, but the said objection was by the Court overruled, and to which ruling the said defendant, by his counsel, then and there excepted.

25 And afterwards, at the February Term of said Court, A. D. 1860, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and so the cause was tried at said term of said Court, before said Court and a jury, and at the trial of said cause two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnesses for and in behalf of the plaintiffs, to which the said defendant objected on the ground that inasmuch as the said persons were plaintiffs herein, they were personally liable for the costs herein;

but the Court overruled the objection, and to which ruling the said defendant, by his counsel, then and there excepted; and so the said Vandeventer and the said Smith were sworn and gave their evidence in this cause before said jury so empannelled in said cause.

26 The defendant then asked the Court to give the following instructions to the jury, to wit: The fact if proven that the owner of the house in question, may have allowed the School directors to occupy the same without objection, does not give the plaintiffs a right to retain the possession against the owner longer than he shall consent.

That this action only lies to recover the possession of real estate wrongfully taken and withheld from the plaintiff.

27 That if the defendant was, at the time of entry complained of, the owner of the land on which the house in controversy situate, and was then entitled to the immediate legal possession of the same, that he would have, and did have, the same legal right to the possession of the building.

The Court refused to give the above instruction, to which refusal the said defendant, by his counsel, then and there excepted.

The said defendant also asked the Court to give the following instruction, to wit:

That where possession only is relied upon, and without a claim of legal right on the part of the plaintiffs, the plaintiffs must prove an actual manual possession of the premises either by the plaintiffs or their agents, and that they were forcibly expelled by the defendant, if it is admitted that the defendant was the owner of the property at the time of the act complained of; which instruction the Court gave, but with the following modification and addition, to wit: But if during the month of January, 1859, the house was occupied as a school house, by a teacher in the employ of the plaintiffs, such occupation is, for the purposes of this trial, a sufficient actual and manual possession by the plaintiffs, and if the defendant, during said month, removed the lock from the door of said building and put personal property into said building, and locked the same up, with a lock by him then put on the door, such entry by him is a "forcible entry within the meaning of the law." To the giving of which instruction, with the addition thereto by the Court, the defendant, by his counsel, then and there excepted.

On behalf of the plaintiffs in said cause the Court was asked to give, and did give, the following instructions, to wit:

The plaintiff asked the Court to charge the jury, that if they find from the testimony that the School Directors of said district had in the

month of January, A. D. 1859, possessed of the school house in question by having a district school taught therein, and that while said school house was so occupied, the defendant unlawfully took possession of said school house and locked it up, then the jury ought to find the defendant guilty.

29 That if the jury find from the evidence that the school house in question was, in the month of January, A. D. 1859, occupied by a district school under the authority and direction of the School Directors of district No. 1 aforesaid, and while said school was being taught in said school house, the defendant unlawfully, and without permission from the directors, entered said school house, put his property therein and locked it up, then the jury to find the defendant guilty. To all of which instructions of said plaintiff, by the Court so given, and to the giving of the same, the said defendant, by his counsel, then and there excepted.

And the said jury, after hearing the evidence and the argument of counsel, and the instructions of the Court in this behalf, returned a verdict that the defendant was guilty of a forcible entry and detainer.—The said defendant then entered his motion for a new trial, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted; and so judgment was rendered in favor of the plaintiffs in said cause for possession of the premises in controversy, and for costs.

30 Wherefore the said defendant prays that this, his bill of exceptions, may be signed and sealed and made a part of this record in the proceedings in said suit or action, which is accordingly done.

JOHN V. EUSTACE, [L. S.]
Judge 22d Judicial Circuit.

Endorsed. Filed as of March 25th, 1860.

J. J. BOARDMAN, *Clerk.*

ASSIGNMENT OF ERRORS.

36 The plaintiff in error assigned the following as errors on, or contained in, the foregoing record of the proceedings in said cause or action:

1st. The complaint (or which purported to be such on the record) is insufficient.

2d. The complaint was made and sworn to, nine days or more before demand made in writing for the possession of said house by the plaintiffs.

3d. It was over twelve days from the time of issuing the summons to the day of trial.

4th. The summons issued one day before the plaintiff Hollenbeck made his said complaint.

5th. The summons was served twelve days before the trial.

6th. The justice of the peace issued precept for the jury two days after the trial.

7th. Said jury appeared before said justice to hear and try said cause two days before they were served with a precept to do so.

8th. Said justice entered judgment against defendant (plaintiff in error) one day before he had issued his precept for the jury, and said jury brought in their verdict one day before the said justice entered up his said judgment.

36 9th. The said justice did not issue a precept to the sheriff, coroner, or any constable at the time of issuing said summons commanding him to summon twelve good and lawful men of the county to appear before him at the return of such summons to hear and try said complaint.

10th. There is a material variance between the complaint and the summons.

Errrors in the Circuit Court. 11th. At the May Term, A. D. 1859, of the Circuit Court of Lee County, the said defendant (said cause being then pending in said Court) by his counsel, entered his motion to dismiss said cause for reason assigned and filed with Justice Cornell at the time of the trial in the Court below and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the proceedings in a former cause between said parties, in which former cause the said plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit; and, also, because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was, therefore, overruled by the Court.

12th. And afterwards, to wit: at said May term of said Court, on the motion of said plaintiff in said cause, the Clerk of said Court was directed to amend the title of said cause on the docket of said Court by substituting the corporate name of said plaintiff herein, to which order of the Court the said defendant then and there objected, but the said objection was overruled by the Court.

13th. And afterwards, to wit: at the February Term, A. D. 1860, of said Court, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which motion was overruled by the Court.

14th. And at the trial of said cause, to wit: at said February Term of said Court, two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnessess for, and in behalf of the plaintiffs, to which defendant objected on the ground that inasmuch as said persons were plaintiffs herein they were personally liable for the costs herein; but the Court overruled the objection and so the said Vandeventer and Smith were sworn and gave their evidence in this cause before the jury then and there empannelled in this cause.

15th. The Court refused to give the instructions to the jury asked for by the defendant.

16th. The Court modified the last instruction asked for by the defendant before giving the same, to which giving the same to the jury with the addition thereto made by the Court, the defendant, by his counsel, objected, but the Court overruled the objection.

17th. The Court gave the instructions asked for by the plaintiff to the jury.

18th. The Court overruled the motion for a new trial.

The errors above assigned as having been commited by said Circuit Court are preserved in a bill of exceptions which is a part and parcel of said record.

GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiffs in Error.

24 73

Israel Shrady

vs

School Directors of Dist
No 1. S. 38. 2

Abstract of record

Filed May 5. 1863
L. Leland Clk

Gray Avery & Bushnell
Pltffs attys

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1863.

ISRAEL SHOUDY, PLAINTIFF IN ERROR.
vs.
SCHOOL DIRECTORS OF DISTRICT No. 1, TOWNSHIP 38, RANGE 2, IN LEE COUNTY, DEFENDANT IN ERROR.

Brief for Defendant in Error.

I.

THE defendant in error (plaintiff below) was described in the commencement of the complaint thus: "Christopher Vandeventer, Robert Smith and George Hollenbeck, Directors of School District No. 1, in Town 38, R. 2, E. in said [Lee] County," and in subsequent portions of the complaint as "the said Directors," and as "Directors as aforesaid;" and in the summons issued by the Justice as "School Directors of District No, 1," &c.; and the same upon the Justice's docket, and in the appeal bond filed by the plaintiff in error.

It is apparent from the entire record that the suit was brought by the corporation as plaintiff, and not by the directors in their individual capacity.

The individual names of the directors were surplusage, and the court below properly directed that the cause should be docketed in the corporate name of the plaintiff without regard to the individual names of the directors.

In the case of *Patrick vs. Rucker, County Judge* &c., 19 Ill., 439, the plaintiff was described in the declartion as follows: "Henry L. Rucker, County Judge of Cook County," and it was held that the individual name of the County Judge was surplusage, and the declaration was regarded the same as if the personal name of the judge had not been there, and only the official designation of the office had been used as plaintiff.

Patrick vs. Rucker, 19 *Ill.*, 440.

In the case of *Frazier vs. Laughlim et al. County Commissioners of Adams County*, 1 *Gilm*, 347., it is held that the prefixing the proper names of the Commissioners was entirely surplusage, and as such their names might have been stricken out at any time.

Frazier et al. vs. Laughlin et al., 1 *Gilm.*, 361.

It is admitted that the court cannot under the color of an amendment, change the parties to the suit *where there is nothing in the record to amend by. Henckler vs. Monroe Co.*, 27 *Ill.*, 40, *Lake vs, Moss*, 11 *Ill.*, 589.

But in this case the corporate name of the plaintiff below was substantially given in the complaint; and all the amendment that was required was to strike out of the the title of the cause the individual names of the directors, which, under the authorities above cited, was clearly allowable.

II.

1. The bill of exceptions does not contain *any* of the evidence produced on the trial; but shows that two of the individuals named as directors, were sworn and examined as witnesses.

Admitting, for the purpose of the argument, that these persons were incompetent as witnesses; yet from anything that is stated in the bill of exceptions this court cannot see that the plaintiff in error was prejudiced on account of these persons being examined as witnesses. It may be that their testimony was favorable to the defendant below. This point is fully sustained by the opinion of this court in the case of *Parsons vs. Dunaway*, 4 *Scam.*, 194, wherein the following language is held:

"It appears from a bill of exceptions tendered by Parsons, that on the trial in the circuit court, Dunaway was offered as a witness to prove usury between the original parties to the note; and that the court admitted him as a witness, notwithstanding the objection of Parsons. The testimony given by him is not inserted in the bill of exceptions. This should have been done, to enable this court to determine whether improper testimony was received. His testimony may not have shown the usury, but on the contrary negatived it. Unless it was improper, Parsons was not prejudiced by the introduction of Dunaway as a witness."

Parsons vs. Dunaway, 4 *Scam.*, 194.
Miller vs, Houck, 1 *Scam.*, 501.
Russell vs. Martin, 2 *Scam.*, 494.
Hays vs. Smith, 3 *Scam.*, 428.

2. The directors as individuals were not interested in the result of the suit; the corporation was the party to the record, and not the directors individually. The directors in their personal capacity had no more pecuniary interest in the result of the suit than any resident tax-payer of the district. Indeed, it does not appear that the directors who were sworn as witnesses were subject to taxation in the district. No execution ever issues upon a judgment recovered against School Directors. The collection of such a judgment is enforced by mandamus, or a writ, in the nature thereof.

Scates Comp. of Stat., p. 448, § 49.

The directors in their personal capacity are no more interested than any other resident of the district. A corporator in a public corporation, as a state, county, town or school district, is a competent witness in behalf of his corporation.

1 *Phil. Ev. Cow. & Hills Notes page* 42, 43, *Note* 21.
Wilcock on Mun Cor. p. 146, § 350.
Canning vs. Pinkham, 1 *N. H. Rep.*, 353.
Smith vs. Barber, 1 *Root* 207, 208.
Watertown vs. Cowen 4 *Paige*, 510, 513.
Con. Society vs Perry 6 *N. H.*, 164.

The rule is laid down by the Supreme Court of Ohio in the case of *M. E Church vs. Wood*, 5 *Ham.*, as follows : In cases where corporations of a *public nature*, comprehending the divisions of the state, or institutions for charitable or pious purposes, such as counties, towns, *school districts*, religious or charitable societies, are parties to the record, or intrested, the members of the corporation, having no individual interest, are competent witnesses."

And to the same effect are the cases of

Cox vs. Way, 3 *Blackf.*, 143, 145.
Mayor &c. vs. Wright, 2 *Porter*, 235.

III.

There is no error in the giving or refusal of Instructions.

1. The question of title is immaterial in a proceeding for forcible entry and detainer, except to show the extent of possession.

Brooks vs. Bruyn, 18 *Ill.*, 539.
Cross vs. Ballinger, 18 *Ill.*, 200.

2. If the plantiffs below, had the school house in question occupied by a school being kept and taught therein under their direction, at the time of the alleged forcible entry, this would clearly amount to an actual possession on the part of the school directors, within the meaning of the law.

Brooks vs. Bruyn; 24 *Ills.*, 380.

3. Inasmuch as the bill of exceptions fails to set forth any of the evidence upon the trial in the circuit court, this court cannot decide that the circuit court erred in refusing instructions asked by plaintiff in error, even if such instructions were correct law in the abstract.

Cunmings vs. McKinney 4 *Scam.*, 60.
Hall vs. Rogers 3 *Scam*, 6.
Heaton vs. Hemper 2 *Scam.*, 368.

The presumption is "that the party complaining has incorporated everything into his bill of exceptions, which is necessary to present the full merits of his case upon the point about which he complains."

Hall vs. Rogers, 3 *Scam.*, 6.
Cummings vs. McKinney 4 *Scom.*, 60.

4. It may be that there were admissions of facts made by the plaintiff in error upon the trial in open court, which altogether dispensed with proof upon such points; and which would warrant the court in assuming such facts to be beyond controversy, and in instructing the jury accordingly.

Every intendment upon questions of fact, will be taken against the party complaining where he fails to incorporate the evidence, or the facts agreed upon, in his bill of exceptions.

Hall vs. Rogers 3 *Scam.*, 6.
Cummins vs. McKinny 4 *Scam.*, 60.

Many of the errors assigned are altogether frivolous—for example, those which relate to the alleged irregularities upon the trial before the Justice.

We presume it is unnecessary to cite authority to show that this court will not examine into alleged errors intervening before the cause became pending in the circuit court.

The complaint is good technially, as well as in substance.—It shows the corporation, the School Directors, to be the plaintiff; and the corporation—not the school directors personally—is treated as the party plaintiff throughout the whole proceeding. The court will not require that technical accuracy in proceedings commenced before Justices of the Peace, as is required in the practice of Superior Courts.

We have been obliged to submit this brief without having seen the brief on the part of the plaintiff in error. It may be that we have failed to anticipate the points that will be made on the opposite side; but we submit to the Court that the record shows no reason why the judgment of the court below should be reversed.

JAS. K. EDSALL,
Att'y for Deft. in Error.

21

73

Israel Shoudy
Plff in Error
vs
School Directors
Dist. 1. Town. 38 R e

Defts Brief

Filed May 20. 1863
L Leland Clk

Jas H. Edsall
for Defts-in Error

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ISRAEL SHOUDY
vs.
DIRECTORS OF SCHOOLS of District No. 1, Township No. 38, Range No. 2, East, Lee County, State of Illinois.

Error to Lee County.

POINTS FOR PLAINTIFF IN ERROR.

Amongst the many errors assigned, we desire to call the attention of this Court particularly to the following, viz.:

I.

We think the Court below erred in overruling the motion made by the plaintiff in error in the Court below, to dismiss the suit, for the want of proper parties plaintiff, and in directing the clerk to amend the title of the cause by substituting the corporate name of the plaintiffs. (See Abstract, p. 24.)

II.

These School Directors are by statute a corporation, and by the common law the constituent members of a corporation are not competent witnesses for the corporation.

Whenever they are rendered competent witnesses, they are made so by express statute, as is the case with many corporations, such as counties, townships, &c. But we make the point, that no statute has ever been passed making School Directors competent witnessess for their corporation, and they are consequently incompetent witnesses by common law.

The Court below, therefore, erred in allowing Vandeventer and Smith, two of the School Directors, who were parties to the suit, to be sworn as witnesses for the corporation of the School District. (See Abstract, p. 25.)

III.

The Court below erred in refusing to give the third instruction asked by the defendant below. It is clearly law. It is as follows, viz.:

"3d. That if the defendant was, at the time of the entry complained of, the owner of the land on which the school house in controversy was situate, and was then entitled to the immediate legal possession of the same, that he would have, and did have, the same legal right to the possession of the building." (See Abstract, p. 27.)

J. WOOD, AND
GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiff in Error.

73

Supreme Court

3^d Grand division

Israel Shondy

vs.

School Directors

&c.

Points & Argument

for Pltff in Error.

Filed May 15, 1863

L. Leland

Clk

Wood.

Gray, Avery & Bushnell

Attys pro pltff in error.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Lee County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Christopher Vandeventer, George Hollenbeck & Robert Smith — to wit: The School Directors of District number one in township number thirty eight North of range two east in the county of Lee, plaintiffs, and Israel Shrady defendant, it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complainant the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said School Directors of District number one (1) in township number thirty eight (38) North of range two east in the county of Lee

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said School Directors of said District number one-

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of June in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Dep'y

29 73

Israel Shoudy

No. vs.

School Directors

SCIRE FACIAS.

Filed Mch. 14. A. D. 1863.

L. Veland Clerk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ISRAEL SHOUDY
vs.
Directors of Schools of District No. 1, Township No. 38, Range No. 2, east, Lee County, State of Illinois. } *Error to Lee County.*

ABSTRACT OF RECORD.

The complaint before Owen Cornell, Justice of the Peace, is as follows, to wit, which is set out at large in the bill of exceptions hereafter, p. 23 ;

3 Notice to Shoudy to quit possession, dated Feb. 11th, 1859.

4 Summons issued Feb. 21st, 1859.

5 Summons served Feb. 22d, 1859.

6 Tried before justice and jury, March 3d, 1859, and verdict of guilty,
6–8 and order for restitution of premises.

9 Motion by defendant below, before the justice, to dismiss the complaint, overruled by the justice.

10 Motion by defendant below before the justice, on account of improper parties plaintiff, overruled by the justice.

11 Appeal bond by defendant below filed in the Circuit Court of Lee County, March 30th, 1859.

14 Motion in the Circuit Court by the defendant to dismiss the suit for want of improper parties plaintiff, overruled by the Court, and leave given by the Court to the plaintiffs below to amend the title to the suit by substituting the corporate name of the plaintiff; and to the decision of the Court in overruling the defendant's said motion to dismiss the suit, and to the decision of the Court in granting leave to the plaintiffs to amend the title of said suit, the defendant then and there excepted. May Term (14th) 1859.

16 Feb. Term, A. D. 1860. Cause tried in the Circuit Court before Judge Eustace and a jury, and verdict of guilty.

17 Instructions appear in full in the bill of exceptions.

19 Motion for a new trial overruled by the Court, and exceptions taken by the defendants below to the overruling aforesaid.

Bill of Exceptions.

STATE OF ILLINOIS, } ss. *In the Lee County Circuit Court, of the Feb. Term, A. D. 1860.*
Lee County. }

School Directors of School District No. 1, In Township No. 38, Range No. 2, East, in Lee County,
vs.
ISRAEL SHOUDY, Appellant.
} *Appeal, forcible entry and detainer.*

Be it remembered, that on the 22nd day of February, A. D. 1859, Israel Shoudy, the above named defendant, was summoned to appear before one Owen Cornell, Esq., a Justice of the Peace in and for the said Lee County on the 3d day of March then next ensuing to answer the complaint of Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors of School District No. one (1) County and State aforesaid, for a forcible entry and detainer of certain premises and tenements in said summons described, and which said premises were in said summons described as the tenements and possession of the said Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors aforesaid, and in obedience to said summons the said Israel Shoudy did, on the 3d day of March aforesaid, appear before the justice as he was commanded, to answer the said complaint, and the cause being ready for hearing, a jury was empannelled to try said cause, and thereupon the following complaint being produced as the foundation of said cause, to wit:

22 STATE OF ILLINOIS, } ss.
Lee County. }

The complaint of Christopher Vandeventer, Robert Smith and George Hollenbeck, Directors of School District No. 1, in Town 38, range 2 east, in said County, upon the oath of George Hollenbeck, one of the said directors. Owen Cornell, one of the Justices of the Peace of said County, is informed and given to understand that Israel Shoudy, on the 17th day of January, A. D. 1859, at said District No. one (1) in said County, did unlawfully make a forcible entry into the tenements and possession of the above named School Directors, to wit: The School house in said School District No. one (1) situated on the northwest quarter of Section thirty-six (36) Town 28, range 2 east, said tenements being known as the Allen's Grove School House, and then and there, with strong hand and multitudes of people, unlawfully eject and expell the said directors from the said tenements and possession wherein the said directors had at the time aforesaid an estate and were in possession of said tenements, and the said directors and their successors in office had been in the quiet and peaceable possession of said tenements for seven or eight years, last past, and that the said Israel Shoudy, still doth hold and detain the said tenements and possessions from the said Christopher Vandeventer, Robert Smith and George Hollenbeck, directors aforesaid, unlawfully, forcibly and with strong hands, against the form of the statute in such case made and provided.

Therefore, They pray that the said Israel Shoudy may be summoned to answer the said complaint. GEORGE HOLLENBECK.

Subscribed and sworn to before me the 2d day of February, A. D. 1859.
OWEN CORNELL,
Justice of the Peace.

23 The said defendants filed the following motion to dismiss said suit, to wit:

Said complaint was not made as the foundation of said cause and proceedings, but was made as the foundation of the proceedings in a former cause between the same parties, in which former cause the plaintiffs, or complainants, were non-suited. Which said motion was, by the said justice, overruled and filed with the papers in said cause.

The said defendant then moved the Court to dismiss said cause for the following reasons, viz:

1st. Because said action should have been commenced in the name of the Township Trustees.

2d. Because said plaintiffs were not and are not, by law, authorized to bring such suit.

3d. Said plaintiffs are not directors as set forth in said complaint. The Court again overruled the motion to dismiss and filed the reasons above set forth among the papers in said cause. Thereupon the trial of this cause was had before said justice aforesaid; and after hearing the evidence the said jury returned a verdict finding the defendant guilty, and judgment was by said justice rendered against the said defendants, but from which judgment the said defendant took an appeal to the Lee County Circuit Court according to the form of the statute in such case made and provided.

24 And afterwards, to wit: At the May Term of the said Lee County Circuit Court, A. D. 1859, the said appeal being upon the docket of said Court, and the said parties appearing by their respective counsel, and the said cause coming on to be heard, the said defendant, by his counsel, entered his motion to dismiss said cause for reasons already assigned before, and filed with said justice Cornell, at the time of the trial in the Court below, and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the proceeding in a former cause between said plaintiffs in which cause the same plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit, and also because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was thereupon by the Court awarded and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and afterwards, to wit: on another regular day of the May Term aforesaid of the said Lee County Circuit Court, on the motion of the plaintiff in said cause the Clerk of said Court was directed by the Court to amend the title of said cause upon the docket of said Court by substituting the corporate names of the said plaintiffs herein, to which order of the Court the said defendant, by his counsel, then and there objected, but the said objection was by the Court overruled, and to which ruling the said defendant, by his counsel, then and there excepted.

25 And afterwards, at the February Term of said Court, A. D. 1860, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and so the cause was tried at said term of said Court, before said Court and a jury, and at the trial of said cause two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnesses for and in behalf of the plaintiffs, to which the said defendant objected on the ground that inasmuch as the said persons were plaintiffs herein, they were personally liable for the costs herein;

but the Court overruled the objection, and to which ruling the said defendant, by his counsel, then and there excepted; and so the said Vandeventer and the said Smith were sworn and gave their evidence in this cause before said jury so empannelled in said cause.

26 The defendant then asked the Court to give the following instructions to the jury, to wit: The fact if proven that the owner of the house in question, may have allowed the School directors to occupy the same without objection, does not give the plaintiffs a right to retain the possession against the owner longer than he shall consent.

That this action only lies to recover the possession of real estate wrongfully taken and withheld from the plaintiff.

27 That if the defendant was, at the time of entry complained of, the owner of the land on which the house in controversy situate, and was then entitled to the immediate legal possession of the same, that he would have, and did have, the same legal right to the possession of the building.

The Court refused to give the above instruction, to which refusal the said defendant, by his counsel, then and there excepted.

The said defendant also asked the Court to give the following instruction, to wit:

That where possession only is relied upon, and without a claim of legal right on the part of the plaintiffs, the plaintiffs must prove an actual manual possession of the premises either by the plaintiffs or their agents, and that they were forcibly expelled by the defendant, if it is admitted that the defendant was the owner of the property at the time of the act complained of; which instruction the Court gave, but with the following modification and addition, to wit: But if during the month of January, 1859, the house was occupied as a school house, by a teacher in the employ of the plaintiffs, such occupation is, for the purposes of this trial, a sufficient actual and manual possession by the plaintiffs, and if the defendant, during said month, removed the lock from the door of said building and put personal property into said building, and locked the same up, with a lock by him then put on the door, such entry by him is a "forcible entry within the meaning of the law." To the giving of which instruction, with the addition thereto by the Court, the defendant, by his counsel, then and there excepted.

On behalf of the plaintiffs in said cause the Court was asked to give, and did give, the following instructions, to wit:

The plaintiff asked the Court to charge the jury, that if they find from the testimony that the School Directors of said district had in the

month of January, A. D. 1859, possessed of the school house in question by having a district school taught therein, and that while said school house was so occupied, the defendant unlawfully took possession of said school house and locked it up, then the jury ought to find the defendant guilty.

29 That if the jury find from the evidence that the school house in question was, in the month of January, A. D. 1859, occupied by a district school under the authority and direction of the School Directors of district No. 1 aforesaid, and while said school was being taught in said school house, the defendant unlawfully, and without permission from the directors, entered said school house, put his property therein and locked it up, then the jury to find the defendant guilty. To all of which instructions of said plaintiff by the Court so given, and to the giving of the same, the said defendant, by his counsel, then and there excepted.

And the said jury, after hearing the evidence and the argument of counsel, and the instructions of the Court in this behalf, returned a verdict that the defendant was guilty of a forcible entry and detainer.—The said defendant then entered his motion for a new trial, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted; and so judgment was rendered in favor of the plaintiffs in said cause for possession of the premises in controversy, and for costs.

30 Wherefore the said defendant prays that this, his bill of exceptions, may be signed and sealed and made a part of this record in the proceedings in said suit or action, which is accordingly done.

JOHN V. EUSTACE, [L. S.]
Judge 22d Judicial Circuit.

Endorsed. Filed as of March 25th, 1860.

J. J. BOARDMAN, *Clerk.*

ASSIGNMENT OF ERRORS.

36 The plaintiff in error assigned the following as errors on, or contained in, the foregoing record of the proceedings in said cause or action:

1st. The complaint (or which purported to be such on the record) is insufficient.

2d. The complaint was made and sworn to, nine days or more before demand made in writing for the possession of said house by the plaintiffs.

3d. It was over twelve days from the time of issuing the summons to the day of trial.

4th. The summons issued one day before the plaintiff Hollenbeck made his said complaint.

5th. The summons was served twelve days before the trial.

6th. The justice of the peace issued precept for the jury two days after the trial.

7th. Said jury appeared before said justice to hear and try said cause two days before they were served with a precept to do so.

8th. Said justice entered judgment against defendant (plaintiff in error) one day before he had issued his precept for the jury, and said jury brought in their verdict one day before the said justice entered up his said judgment.

36 9th. The said justice did not issue a precept to the sheriff, coroner, or any constable at the time of issuing said summons commanding him to summon twelve good and lawful men of the county to appear before him at the return of such summons to hear and try said complaint.

10th. There is a material variance between the complaint and the summons.

Errrors in the Circuit Court. 11th. At the May Term, A. D. 1859, of the Circuit Court of Lee County, the said defendant (said cause being then pending in said Court) by his counsel, entered his motion to dismiss said cause for reason assigned and filed with Justice Cornell at the time of the trial in the Court below and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the proceedings in a former cause between said parties, in which former cause the said plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit; and, also, because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was, therefore, overruled by the Court.

12th. And afterwards, to wit: at said May term of said Court, on the motion of said plaintiff in said cause, the Clerk of said Court was directed to amend the title of said cause on the docket of said Court by substituting the corporate name of said plaintiff herein, to which order of the Court the said defendant then and there objected, but the said objection was overruled by the Court.

13th. And afterwards, to wit: at the February Term, A. D. 1860, of said Court, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which motion was overruled by the Court.

14th. And at the trial of said cause, to wit: at said February Term of said Court, two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnessess for, and in behalf of the plaintiffs, to which defendant objected on the ground that inasmuch as said persons were plaintiffs herein they were personally liable for the costs herein; but the Court overruled the objection and so the said Vandeventer and Smith were sworn and gave their evidence in this cause before the jury then and there empannelled in this cause.

15th. The Court refused to give the instructions to the jury asked for by the defendant.

16th. The Court modified the last instruction asked for by the defendant before giving the same, to which giving the same to the jury with the addition thereto made by the Court, the defendant, by his counsel, objected, but the Court overruled the objection.

17th. The Court gave the instructions asked for by the plaintiff to the jury.

18th. The Court overruled the motion for a new trial.

The errors above assigned as having been commited by said Circuit Court are preserved in a bill of exceptions which is a part and parcel of said record.

GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiffs in Error.

29

73

Israel Brandy.

vs.

School Directors of Dis
trict No. 1. S. 38. R.

Abstract of record

Filed May 5. 1863.

Selected M

Gray Avery & Bushnell
Pltffs attys

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ISRAEL SHOUDY
vs.
DIRECTORS OF SCHOOLS of District No. 1, Township No. 38, Range No. 2, East, Lee County, State of Illinois. } *Error to Lee County.*

POINTS FOR PLAINTIFF IN ERROR.

Amongst the many errors assigned, we desire to call the attention of this Court particularly to the following, viz.:

I.

We think the Court below erred in overruling the motion made by the plaintiff in error in the Court below, to dismiss the suit, for the want of proper parties plaintiff, and in directing the clerk to amend the title of the cause by substituting the corporate name of the plaintiffs. (See Abstract, p. 24.)

II.

These School Directors are by statute a corporation, and by the common law the constituent members of a corporation are not competent witnesses for the corporation.

Whenever they are rendered competent witnesses, they are made so by express statute, as is the case with many corporations, such as counties, townships, &c. But we make the point, that no statute has ever been passed making School Directors competent witnessess for their corporation, and they are consequently incompetent witnesses by common law.

The Court below, therefore, erred in allowing Vandeventer and Smith, two of the School Directors, who were parties to the suit, to be sworn as witnesses for the corporation of the School District. (See Abstract, p. 25.)

III.

The Court below erred in refusing to give the third instruction asked by the defendant below. It is clearly law. It is as follows, viz.:

"3d. That if the defendant was, at the time of the entry complained of, the owner of the land on which the school house in controversy was situate, and was then entitled to the immediate legal possession of the same, that he would have, and did have, the same legal right to the possession of the building." (See Abstract, p. 27.)

J. WOOD, AND
GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiff in Error.

73

Supreme Court
3d Grand Division

Israel Shoudy
vs.
School Directors
&c.

Points & Argument
for Pltff. in Error.

Filed May 15. 1863
S Sleeper
Clk

Wood.
Gray, Avery & Bushnell
Attys for Pltff. in Error.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1868.

ISRAEL SHOUDY
vs.
DIRECTORS OF SCHOOLS of District No. 1, Township No. 38, Range No. 2, East, Lee County, State of Illinois. } *Error to Lee County.*

POINTS FOR PLAINTIFF IN ERROR.

Amongst the many errors assigned, we desire to call the attention of this Court particularly to the following, viz.:

I.

We think the Court below erred in overruling the motion made by the plaintiff in error in the Court below, to dismiss the suit, for the want of proper parties plaintiff, and in directing the clerk to amend the title of the cause by substituting the corporate name of the plaintiffs. (See Abstract, p. 24.)

II.

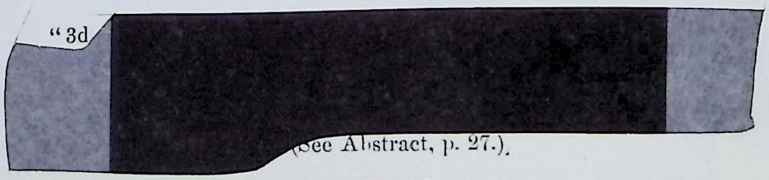
These School Directors are by statute a corporation, and by the common law the constituent members of a corporation are not competent witnesses for the corporation.

Whenever they are rendered competent witnesses, they are made so by express statute, as is the case with many corporations, such as counties, townships, &c. But we make the point, that no statute has ever been passed making School Directors competent witnessess for their corporation, and they are consequently incompetent witnesses by common law.

The Court below, therefore, erred in allowing Vandeventer and Smith, two of the School Directors, who were parties to the suit, to be sworn as witnesses for the corporation of the School District. (See Abstract, p. 25.)

III.

The Court below erred in refusing to give the third instruction asked by the defendant below. It is clearly law. It is as follows, viz.:



(See Abstract, p. 27.).

J. WOOD, AND
GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiff in Error.

29 73

Supreme Court
3d Grand Division

—

Israel Shoudy

vs.

School Directors
&c.

—

Points & Argument
for Plff. in error.

—

Filed May 15, 1863
S Lockwood
Clk

Mod.
Gray, Avery & Bushnell.
Atty. for Plff. in Error.

United States of America
State of Illinois } ss
Lee County

Pleas in the Lee County Circuit Court in the 22d judicial Circuit in the State of Illinois in the matter of School Directors of School District No. One Township No. 38. Range No. 2. East in Lee County Illinois

against

Israel Shoudy Appellant: in a cause brought into the said Lee County Circuit Court from before Owen Cornell Esqr a Justice of the Peace in and for said Lee County:

Be it remembered that on the 20th day of March A.D. 1859, Owen Cornell Esqr a Justice of the Peace in and for said Lee County filed in the office of the Clerk of the Circuit Court within and for said Lee County his Transcript of all the proceedings in said cause had before him as such justice, together with the papers in said cause, which said papers and Transcript are as follows, that is to say:

The Complaint in the said Justice Court is as follows-

"State of Illinois } ss
Lee County

Complaint [illegible]

The Complaint of Christopher Vandeventer, Robert Smith & George Hollenbach

Complaint before J. P. continued

Directors of School District No. 1. in Town 38. R. 2. E in said County - upon the oath of George Hollenbeck one of said Directors Owen Cornell one of the Justices of the Peace of said County is informed and given to understand that Israel Shandy on the 17th day of January A D 1859 at said District No one (1) in said County did unlawfully, make a forcible entry into the tenements, and possession of the above named School Directors to wit - the School House in said School District No One (1) situate on the North West Quarter of Section thirty six Town 38. R. 2. E. said tenements being known as the Allens Grove School House, and then and there with strong hands, and multitude of people, did unlawfully, forcibly and unlawfully eject and expel the said Directors from the said tenements and possessions wherein the said Directors had at the time aforesaid an Estate and were possessed of said tenement and the said Directors and their Successors in Office had been in quiet and peaceable possession of said tenement for seven or eight years last passed, and that the said Israel Shandy did not hold and detain the said tenement and possession from the said Christopher Vanderventer, Robert Smith & George Hollenbeck Directors as aforesaid, unlawfully forcibly and with strong hands, against the

form of the Statute in such case made and provided: Therefore they pray that the said Israel Shanely may be summoned to answer the said Com plaint—

Subscribed and sworn to before me the 2d day of February A D 1859 } George Hollenbeck

Owen Connell Justice of the Peace "

Notice to Defendant } And the Notice served in said cause is as follows—

"Israel Shanely

Sir. Take Notice that we Shanely demand that you quit, and immediately deliver up possession which you now hold of our situate in Lee County, and State of Illinois, and being the School House, situated on Town 38. Range 2 East in said County, known as the Allens Grove School House, situate on Section 36. Town 38 Range 2 East said House being the same now occupied by you Hiram Wood is hereby authorized to receive possession of said tenements for us

Dated Feb 11 A D 1859

Directors of Schools district No 1 Town 38 Range 2 East Lee County Illinois

Christopher Bonebrenker

George Hollenbeck "

Copy

And the Summons in said cause is as follows

"State of Illinois } ss
Lee County }

The People of the State of Illinois to the Sheriff or any Constable of the said County

Summons issued by Justice

Whereas Complaint has been made before Owen Bissell one of the Justices of the Peace of said County that Israel Showaby on the 14th day of January A.D. 1839 at Alens Grove in the County aforesaid did unlawfully enter into the tenement & possession of Christopher Vandeventer, Robert Smith & George Holenbeck the School Directors of School District No. One (1) County and State aforesaid known and described as follows to wit the School House situate in said District No One (1) Township No Thirty Eight Range No two (2) East of the third principal Meridian on the South West Quarter of Section No thirty six (36) in said Town thirty Eight County and State aforesaid known as the Alens Grove School House and there and then did unlawfully put out and eject the said Directors as aforesaid from the said Tenement and possession wherein they and their predecessors in office had been in quiet and peaceable possession for the term of seven or eight years preceding and that their interest therein still continues and that the said Israel Showaby still doth hold and detain the said tenements

and proceedings from the said School Directors unlawfully and without right We therefore Command you to Summons the said Israel Sherardy to appear before me at my office in Wyoming in said County on the third day of March at ten O Clock A. M. — to answer the said Complaint and have you then and there this precept Namely fail not at your peril

Given under my hand and seal this 21st day of February A D 1859

Owen Cornell {L S}
Justice of the Peace "

Return of Summons } Endorsed "Personally served the within by reading the within to the Defendant Feb 22d. 1859
"Service 50 mileage 50 return 10 = 80 Owen Ward Const — "

And the Transcript from the said Justice is as follows

Transcript from J.P. } "State of Illinois
Lee County
School Directors of School District
No 1 in Town of Willow Creek
vs
Israel Sherardy

Be it remembered that on the 3rd day of March 1859 at Wyoming in said County Leroy Hollenbeck Complains to me Owen Cornell Esqr — one of the Justices of the Peace in and for said County that Israel Sherardy on the

Transcript from Justice Continued

Trial Monday 12th 1859
Judgment $28.50
Justice Costs $11.75
Court Cost $11.05
H Wood Court
Witness for Complaint
Geo Wells 50
Geo Hollenbeck 50
Matthew Atkinson 50
W Hastings 50
John Allen 50
R Smith 50
D Smith 50
J Smith 50
H Wood 50
Witness for Defence—
Jos Moody 50
Jos Rogers 50
J Davis 50
H Hewlett 50
Jos Hewlett 50

27th day of January 1859 at Willow Creek township in the County of Lee did unlawfully enter into the lands and possessions of the said School Directors of District No One (1) in range two (2) east of the third P. M. there situate and known and designated as follows to wit: the School House in said School District No One situate on the North West Quarter of Section No (36) thirty six range two (2) east said tenement being known as the Allen Grove School House, and then and there with strong hands and multitudes of people did unlawfully and forcibly eject and expel the said Directors from the said tenement and possession wherein the said Directors had at the time aforesaid an Estate and were possessed of said tenement and the said Directors and their agents in office had been in quiet and peaceable possession of said tenement for seven or eight years last past, and that the said School Directs, still do hold and detain the said tenement and possession from the said Directors as aforesaid unlawfully, forcibly and with strong hands against the form of the Statute in such case made and provided, and upon the prayer of said School Directs may be summoned to answer the Complaint, whereupon the said Directs

Transcript from justice Continued

on the 2nd day of March 1859 prayed of me being a Justice &c aforesaid to issue a Summons in their behalf, and I having heard the said Complaint and prayer did thereupon issue a Summons in the name of the People of the State of Illinois, directed to Simon Ward Constable of said County requiring him to Summon the said Israel Shandy to appear before me, at my office in Wyoming on the 3rd day of March A.D. 1859 at ten O'Clock in the forenoon, which was duly returned with an endorsement thereon signed by said Constable as follows personally the 22nd day of February 1859 by reading to the within named Israel Shandy, and on the 28th day of February 1859 I issued a precept for a jury to said Constable Commanding him — A jury of twelve good and lawful men of the County to appear before me at the return of the Summons to hear and try the said Complaint — which was returned by the said Constable with a list of the names of said jurors on the back thereof, and certified by him, and on the 3rd day of March 1859 in pursuance of said Summons, personally appeared before me as well the said Israel Shandy as the said Constable, and the said Complaint having been read to the said Israel Shandy he pleads not guilty of the matters & things in said Complaint, and the names of the jury summoned as aforesaid having been called and sworn, did not

Summons for Trial Justice Continued

together before me, and hear the proofs and allegations of said parties which were delivered publickly in their presence and after hearing the proofs and allegations the jury were kept together in a convenient place by said Constable until they had agreed on their Verdict, and the said jury having agreed came into Court, and returned the same publickly and thereby found the said Defendant guilty in the manner and form as set forth in the Complaint it is therefore considered by me the said Justice that the said Directors receive and be restored to their possession of the land and possession for the purpose described and designated in said Complaint and that they have a Writ of restitution therefor and it is further considered that they recover against the said Daniel Shively for the sum of $28.30 for the costs and charges by them said suit and expended in and about the prosecution of this suit according to the form of the Statute in such case made and provided, and that they have execution therefor

In testimony whereof I the said Owen Conell one of the Justices of the Peace aforesaid, have hereunto set my hand and seal at Wyoming in said County of Iowa this 4th day of November A.D. 1857

Owen Conell [L.S.]

Justice of the Peace

State of Illinois Iowa County ss. I Owen Conell a Justice of the Peace in and for said County

do certify that the foregoing transcript is truly copied from the files and books of my office in witness thereof I have hereunto set my hand this 19th day of March A.D. 1859

Owen Connell J.P. — "

And amongst the papers sent up by said Justice to the said County Circuit Court is a memorandum in the words following to wit:—

Motion to Dismiss before Justice

"George Hollenbeck et al
vs
Samuel Mundy

Before Owen Connell Esqr
Constable sworn &c

After the jury were sworn the plaintiffs by their Counsel read to the jury the Complaint and the Complaint in this cause whereupon the Defendant moved the said Justice to dismiss said Complaint and cause from the consideration of the jury and the Complaint in said cause for the following reasons to wit: Said Complaint was not made and the foundation of said cause and proceedings but was made and the foundation of the proceedings in a former cause between the same parties in which former cause the pltfs or Complts were nonsuited, but said Justice overruled said motion

Mundy & Wood Attys for Defts"

Endorsed "Filed this 3rd day of March A.D. 1859 "

And amongst the papers sent up to said Court by said Justice was also the following memorandum to wit:-

Motion before Justice to dismiss &c

"Hollenback et al vs Shandy } Before Owen Cornell Esqr Forcible Entry &c

This defendant moves the Court to dismiss this suit-
1. Because said action should have been commenced in the name of the Township Trustees-
2. Because said plaintiffs were not and is not by law authorized to bring such suit.-
3. Said plaintiffs are not tenants as set forth in said Complaint.

Mackay & Wood
Attys for Defts "

Endorsed: "Filed this 3rd day of March 1859 Owen Cornell"

Appeal Bond before Justice

And the appeal Bond in said cause is as follows

"Know all Men by these presents that we Israel Shandy, David A Tosh are held and firmly bound unto the School Directors of School District No. One (1) in the Town of Willow Creek in the County of Lee and State of Illinois in the penal sum of One Hundred and Twenty five 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 5th day of March A D 1859

The condition of the above obligation is such that whereas the said School Directors did on the 3rd day of March A D 1859 before Owen Cornell a Justice of the Peace for the said County of Lee recover a judgment against the above bounden Israel Shoudy for the sum of $ 30.11 Costs from which judgment the said Israel Shoudy has taken an appeal to the Circuit Court of the County of Lee aforesaid and State of Illinois. Now if the said Israel Shoudy shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by this Court upon dismissal or trial of said appeal then the above obligation to void otherwise to remain in full force and effect.

Israel Shoudy { L S }
David A Town { L S }

Approved by me at my office this — "

And the foregoing transcript and other papers from the said Justice all attached together are endorsed as follows "Filed March 30th J. A. Boardman Clerk per Joseph Bell D. C. "

And upon the filing of the said Transcript and other papers from said Justices a Summons issued out of the Office of the Clerk of the Circuit Court of Lee County in the words following, that is to say

Summons in Circuit Court

State of Illinois, } ss
LEE COUNTY.

The People of the State of Illinois to the Sheriff of said County, GREETING:

We command you that you summon School Directors of School District No One Township No 38, Range No 2, East in Lee County if they shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court House in Dixon, in said County, on the first Monday of May A. D. 1859 to ~~answer unto~~ prosecute their suit against Israel Shrenky on an appeal brought into said Court from before Owen Connelly Esq a Justice of the Peace in and for said County ~~in a plea of~~

~~to the damage of said plaintiff, as he says in the sum of dollars.~~

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

Witness, ISAAC S. BOARDMAN, Clerk of our said Court, and the Seal thereof, at Dixon aforesaid, this Thirtieth day of March A. D. 1859.

Isaac S. Boardman CLERK.

per Joseph Ball D.C.

L S
Court

And the said Summons so issued as aforesaid was by the Sheriff of Lee County returned duly but inasmuch as the same is not now among the files in said Cause, the said Sheriffs return as by him made is not here given —

And afterwards

~~Defendant~~.

Record in Circuit Court

At a regular term of the Lee County Circuit Court, begun and holden at the court house in the city of Dixon, in said Lee county, on the first Monday (the same being the second day of May A. D. 1859,) then being present,

Honorable John V Eustace **Judge**
of the said 22 Judicial Circuit.

Robert G Burchell **State's Attorney**
for said 22 Judicial Circuit.

James S Boardman **Clerk**
of said Lee County Circuit Court.

and Lester Hamblin **Sheriff**
of said Lee County.

BE IT REMEMBERED, that on the fifth day of May A. D. 1859, (the same being one of the regular days of said May Term,) the following proceedings were had in said cause, as appears to us of record, that is to say:

"School Directors of District No One Willow Creek
v
Israel Shawley Appellant } Appeal

On this day comes the Defendant by Ward and Merkley his attorneys, and enters his motion to dismiss this appeal

And afterwards on the 6th day of May aforesaid (the same being one of the regular days of the said May Term) the following proceedings were had in said cause as appears to us of Record that is to say:

School Directors of School District No One Willow Creek
v
Israel Shawley Appellant } Appeal

Record in Circuit Court

On this day come the plaintiffs by Stevens their attorney and enter their cross motion to dismiss this appeal for insufficiency of Appeal Bond "

And afterwards on the fourteenth day of May aforesaid (the same being one of the Regular days of the said May Term) the following Record entry appears to us in said cause that is to say:-

" School Directors of School District
No One Willow Creek
"
Israel Shively appellant } Appeal

On this day come the said parties, by their said attorneys & the motion to dismiss is now overruled, and leave is given to the plaintiffs to amend the title of the suit, by substituting the corporate name of the Plaintiffs "

18 And afterwards on another

~~Defendant~~.

Record in Circuit Court

~~At a~~ regular term of the Lee County Circuit Court, begun and holden at the court house in the city of Dixon, in said Lee county, on the second Monday (the same being the thirteenth day of February A. D. 1860,) then being present,

Honorable John V Eustace **Judge**

of the said 22d Judicial Circuit.

Robert G Bracket **State's Attorney**

for said 22d Judicial Circuit.

Isaac S. Boardman **Clerk**

of said Lee County Circuit Court.

and Lester Hamburg **Sheriff**

of said Lee County.

BE IT REMEMBERED, that on the 21st day of February A. D. 1860, (the same being one of the regular days of said February Term,) the following proceedings were had in said cause, as appears to us of record, that is to say:

"Directors of Schools &c
vs
Israel Shandy appellant } Appeal

On this day comes the Defendant by Easton & Gardner his Attorneys and the said Defendant now enters his motion to dismiss this suit, which said motion is by the Court overruled."

And afterwards on the 23d day of February A.D. 1860, (the same being one of the regular days of the said February Term,) the following proceedings were had in said cause, that is to say:—

Record in Circuit Court Continued

"Directors of Schools of District No. One in Township No. Thirty Eight. North Range Two East in Lee County State of Illinois

vs

Isreal Shively Appellant

} Appeal

On this day come the Plaintiffs by Stevens and Turner their attorneys also comes the Defendant by Hutton and Goodwin his attorneys also come a jury of good and lawful men to wit:- R. C. Marsh. A Crawford, Samuel Fargo James Fitzpatrick, Andrew Benjamin, Joseph T Little William Hoyt, Adams Hoit, Henry Adams, Wallace A Judd & Robert Scott, and the regular panel of jurors being exhausted the Court directed the Sheriff to summon a Tales from the bystanders, and there upon Milo Starks was called, and he together with the eleven regular jurors were elected, tried and sworn, according to Law, to try the matters and things in controversy between the respective parties, and the jury having heard the evidence and the argument of Counsel, were retired to consider of their verdict: and afterwards on this day came the said jury, and return the following verdict to wit:- "We the jury find the Defendant Guilty in manner and form as charged in the complaint" and thereupon came the Defendant, and enters his motion for a new trial"

The exact words of the Verdict so brought by said Jury into Court in said Cause is as follows to wit;-

Verdict - " We the Jury find the Defendant Guilty in
" manner and form as charged in the Complaint -
" J Dutton; William Hoyt, Alfred Crawford
Robt Scott; A. B. Benjamin; Henry Adams
" James Stephens, W H Judd; Abram Platt
Milo Stewart, R C. Marsh, Sam Fargo "

The following are the Instructions asked in said Cause that is to say;

Instructions " The Plaintiff asks the Court to charge the Jury that if they find from the testimony, that the School Directors of said District, had in the month of January A D 1859 possession of the School House in question by having a District School taught therein, and that while said School House was so occupied the Defendant Samuel Shandy unlawfully took possession of said School House, and locked it up, then the Jury ought to find the Defendant guilty -"

Given " And if the Jury find from the evidence that the School House in question was in the month of January A D 1859 occupied by a District School under the authority and direction of the School Directors of District No 1

Instructions of aforesaid, and while said School was being taught in said School House the Defendant unlawfully and without permission from the Directors entered said School House, put his property therein and locked it up, then the jury to find the Defendant guilty" -

Refused "The fact if proven that the owner of the house in question, may have allowed the School District to occupy the same without objection, does not give the Plaintiffs a right to retain the possession against the owner longer than he shall consent"

Refused "That this action only lies to regain the possession of Real Estate wrongfully taken and withheld from the Plaintiff"

Refused "That if the Defendant was at the time of entry complained of the owner of the land on which the house in controversy was situate & was then entitled to the immediate legal possession of the same, that he would under & did have the same legal right to the possession of the building"

"That where possession only is relied upon & without or claim of legal right, on the part of the Plaintiff, the Plaintiffs must prove an actual and material possession of the premises by the Plaintiffs, or their agents & that they were forcibly expelled by the Defendant, if it is

admitted that the Defendant was the owner of the property at the time of the act complained of. But if during the month of January 1859 the house was occupied as a dwelling house by a teacher in the employ of the Plaintiffs, such occupation is for the purposes of this trial an sufficient actual and manual possession by the Plaintiffs, and if the Defendants during said month removed the lock from the door of said building and put personal property into said building and locked the door and took the key with him then put on the door, and left entry by him is a forcible entry within the meaning of the law"

Instructions Given

endorsed "Filed Feb. 23rd 1860 S. D. Bannister Clerk"

And afterwards to wit on the 25th day of February A D 1860 (the same being as yet one of the regular days of the said February Term) the following proceedings in said Court in said cause were had and appears to be of Record, to wit:-

Record Continued

"Directors of Schools of District No One Township No 38, Range No Two East in Lee County, State of Illinois

vs

Samuel Snively Defendant

} Appeal

On this day again come the Plaintiffs by Stevens & Turner their attorneys also comes the Defendant by Hunter & Goodwin his attorneys, and the Defendants

Record Continued

motion for a new trial, being now heard is by the Court overruled, to which ruling the said Defendant by his said Counsel then and there excepted—

It is considered and adjudged by the Court that the Plaintiffs have and recover of the Defendant their costs and charges by them in and about this suit expended as well in this Court as in the Court below, and that they have Execution therefor. And it is further ordered by the Court that the said Plaintiffs have a Writ of Restitution for the premises to wit:— The School House in School District No One situate on North West Quarter of Section Thirty six Township Thirty Eight Range No Two East said tenement being known as the Alleys Grove School House in the County of Lee and State of Illinois: And now the said Defendant by his Attorneys aforesaid asks and obtains leave to have this Bill of Exceptions signed in thirty days from the date hereof "—

And the Bill of Exceptions so signed by the Court in said cause is in the words following to wit:—

Bill of Exceptions

"State of Illinois } 2
Lee County } ss

School Directors of School District No One Township No 38. Range No 2. East in Lee County Illinois

Israel Shawdy Appellant

In the Lee County Circuit Court of the February Term A D 1860 —

Appeal Forcible entry & Detainer

Be it remembered that on the 22d day of February A D 1859 Israel Shawdy the above named Defendant was summoned to appear before one Owen Brown Esq a Justice of the Peace in and for said Lee County on the 3d day of March then next ensuing to answer the Complaint of "Christopher Vandeventer, Robert Smith & George Hollenbeck the School Directors of School District No One (1) County and State aforesaid" for an forcible entry and detainer of certain premises & tenements in said Summons described, and which said premises were in said Summons described, as the tenement & freehold of the said Christopher Vandeventer, Robert Smith & George Hollenbeck, the School Directors as aforesaid — And in obedience to said Summons the said Israel Shawdy did on the 3d day of March aforesaid appear before the Justice as he was commanded to answer the said Complaint, and the cause being ready for hearing a Jury was empannelled to try said cause & thereupon upon the following Complaint being produced as the foundation of said cause to wit, — "State of Illinois

Bill of Exceptions Continued

" Lee County Ss —

" The Complaint of Christopher Vandewater
" Robert Smith & George Hollenbeck, Directors of
" School District No 1 in Town 38. R. 2. E in said
" County — upon the oath of George Hollenbeck one of
" said Directors Owen Cornell, one of the Justices of
" the Peace of said County is informed and given to
" understand that Samuel Mowry on the 19th day of January
" A D 1859 at said District No One (1) in said County
" did unlawfully make an forcible entry into the
" tenement and possession of the above named
" School Directors to wit:- the School house in said
" School district No One (1), situate on the North
" West Quarter of Section Thirty six (36) Town
" 38. R. 2. E. said tenement being known as
" the Allens Grove School House, and then and
" there with strong hands and multitude of people
" did unlawfully eject and expell the said Directors
" from the said tenements and possessions wherein
" the said Directors had at the time aforesaid an
" Estate, and were possessed of said tenement and
" the said Directors and their successors in Office
" had been in the quiet and peaceable possession
" of said tenement for seven or eight years last past
" and that the said Samuel Mowry still doth
" hold and detain the said tenement and
" possession from the said Christopher Vandewater
" Robert Smith & George Hollenbeck Directors as

Bill of Exceptions Continued

aforesaid, unlawfully forcibly and with strong hands against the form of the Statute in such case made and provided: therefore they pray that the said Samuel Shockley may be summoned to answer the said Complaint—

Subscribed and sworn before me
the 2d day of February A.D. 1857
Owen Connell
Justice of the Peace

George Hostlerbeck

the said Defendant filed the following motion to dismiss said suit to wit:—

"Said Complaint, was not made as the foundation of said Cause of proceedings but was made as the foundation of the proceedings in a former Cause between the same parties, in which former Cause the Plts or Compts were non suited" upon said motion was by the said Justice overruled & filed with the papers in said Cause: the said Defendant then moved the Court to dismiss said Cause for the following reasons viz:—

"1st Because said action should have been Commenced in the name of the Sovereign People—

"2d Because said Plaintiffs were not and are not by law authorized to bring such suit—

"3d Said Plaintiffs assertions are not found in said Complaint" the Court again overruled the motion to dismiss & filed the reasons above set forth, among the papers in said Cause;

Bill of Exceptions Continued

thereupon the trial of this cause was had before said Justice & the jury aforesaid; and after hearing the evidence the said jury returned a verdict finding the Defendant guilty and judgment was by the said Justice rendered against the said Defendant: but from which judgment the said Defendant took an appeal to the Lee County Circuit Court, according to the form of the Statute in such case made and provided.

And afterwards, to wit: at the May Term of the said Lee County Circuit Court A.D. 1859, the said appeal being upon the Docket of said Court, and the said parties appearing by their respective Counsel and the said Cause coming on to be heard, the said Defendant by his Counsel entered his motion to dismiss said cause for reasons already assigned before, and filed with said Justice Court at the time of the trial in the Court below, and overruled by said Justice to wit:- That said Complaint was not made and the foundation of this cause & the proceedings herein, but was made on the foundation of the proceedings in a former cause, between said parties in which former cause the said affidavit was made.

Also, because said motion should have been

Bill of Exceptions Continued

commenced in the name of the Township Trustees
also, because said Plaintiffs were not such
one not by law authorized to bring such suit—
And also, because said Plaintiffs are not
debtors as set forth in said Complaint:
The said motion to dismiss was thereupon
by the Court overruled & to which ruling of the
Court the said Defendant by his Counsel then
and there excepted. And afterwards to wit:
on [illegible] regular day of the May Term
aforesaid of the said Lee County Circuit Court
on the motion of the Plaintiffs in said cause
the Clerk of said Court was directed by the
Court to amend the title of said cause upon
the Docket of said Court by substituting the
Corporate name of the said Plaintiffs therein
to which order of the Court the said Defendant
by his Counsel then and there objected, but the
said objection was by the Court overruled,
and to which ruling the said Defendant by
his Counsel then and there excepted—

And afterwards at the February Term of
said Court A.D. 1860 the said Defendant
in said cause moved the Court to dismiss
said cause, because that the said Plaintiffs
had not instituted said suit in their

Bill of Exceptions continued

Corporate names, which said motion was by the Court overruled & to which ruling of the Court the said Defendant by his Counsel then and there excepted: and so the cause was tried at said Term of said Court before said Court and a jury, and at the trial of said cause two of the plaintiffs in said cause to wit:- Christopher Vandeventer & Robert Smith were introduced as witnesses for and in behalf of the Plaintiffs to which the said Defendant objected, on the ground that inasmuch as the said persons were plaintiffs herein, they were personally liable for the costs herein, but the Court overruled the objection & to which ruling the said Defendant by his Counsel then and there excepted; and so the said Vandeventer, and the said Smith were sworn and gave their evidence in this cause before said jury as empannelled in said Cause-

The Defendant then asked the Court to give the following instructions to the jury to wit:- "The jury if you find that "the owner of the house in question, may have "allowed the School Directors to occupy the same "without objection, then can you give the plaintiffs "a right to obtain the possession against the "owner longer than he shall so consent-

Bill of Exceptions Continued

"That this action only lies to recover the possession
"of Real Estate wrongfully taken, and withheld
"from the Plaintiffs"

"That if the Defendant were at the
"time of entry Complained of the owner of the
"land on which the house in controversy was
"situate, and were often entitled to the imme-
"diate legal possession of the same, that
"he would have & did have the same legal
"right to the possession of the building — "

The Court refused to give the above instructions
to which ruling and the said Defendant by his
Counsel then and there excepted —

The said Defendant also asked the Court
to give the following instructions to wit: —

"That where possession only is relied
"upon & without an claim of legal right on the
"part of the Plaintiffs, the Plaintiffs must prove
"any actual and manual possession of the
"premises, either by the Plaintiffs or their agents
"& that they were forcibly expelled by the
"Defendant, if it be admitted that the Defendant
"was the owner of the property at the time
"of the act Complained of" — which instruction
the Court gave, but with the following modi-
fication and addition to wit: —

Bill of Exceptions Continued

"But if during the month of January 1859 the "house was occupied as a School House by a "teacher in the employ of the Plaintiffs such "occupation is for the purposes of this trial a "sufficient actual and manual possession "by the Plaintiffs, and if the Defendant during "said month, removed the lock from the door "of said building and put personal property "into said building, and locked the same up "with a lock by him then put on the door, such "entry by him is a forcible entry within the "meaning of the law." To the giving of which Instruction with the addition thereto by the Court the said Defendant by his Counsel then and there excepted—

On behalf of the Pffs in said cause the Court was asked to give and did give the following instructions, viz:—

"The Plaintiffs asks the Court to charge the "jury that if they find from the testimony that "the School Directors of said District had in the "month of January A.D. 1859 possession of the "School House in question, by having a district "School taught therein and that while said "school house was so occupied the Defendant "forcibly and unlawfully took possession of the "said School House and locked it up, then the "jury ought to find the Defendant guilty"

Bill of Exceptions Continued

"That if the Jury found from the evidence that the School House in question was in the month of January A.D. 1859 occupied by a district School under the authority and direction of the School Directors of District No 1 aforesaid, and while said School was being taught in said School House the Defendant unlawfully, and without permission from the Directors entered said School House, put his property therein, and locked it up then the Jury to find the Defendant guilty"

To all of which Instructions of the said Plaintiff by the Court to given, and to the giving of the same the said Defendant by his Counsel then and there excepted.

And the said Jury after hearing the evidence and the argument of Counsel and the instructions of the Court in this behalf returned a Verdict that the Defendant was guilty of forcible entry & detainer; the said Defendant then entered his motion for a new trial, which said motion was by the Court overruled, and to which ruling of the Court the said Defendant by his Counsel then and there excepted; and on judgment was rendered in favor of the Plaintiff in said cause for possession of the premises in

Bill of Exceptions Concluded

controversy & for Costs. Wherefore the said Defendant prays that this Bill of exceptions may be signed, sealed and made a part of the Record in the proceedings in said suit or action which is accordingly done —

John V. Eustace (Seal)
Judge 22nd Jud Cir— "

endorsed "Filed as of Nov. 23 1855 A S. Boardman Clerk"

Writ of Restitution

And the following is the Writ of Restitution issued in said cause that is to say in the words and figures as follows to wit:—

"State of Illinois
Lee County set } The People of the State of Illinois to the Sheriff of said County Greeting:—

Whereas Directors of Schools of District No 1 Township No 38, Range No 2 East in Lee County State of Illinois lately in the Circuit Court held in and for the County of Lee and State of Illinois, in a certain action of forcible entry and detainer, recovered a Judgment against [illegible] Shaw, for restitution of the premises messuage and tenement following to wit:— The School House situated in District number One (1), Township number Thirty Eight (38)

Range number Two (2) East of the third (3d) Principal meridian, and on the South West Quarter of Section number thirty six (36,) in said Township & Range aforesaid lying & being in the County of Lee & State of Illinois aforesaid and known as the School House School House as well also for their Costs and Charges by them in ~~so~~ about that behalf expended wherein said tenement and premises were forcibly entered and have been and still are unjustly detained and withheld from the said School Directors Plaintiffs above named, by the said Israel Sheasley, whereof he is convicted as appears to us of Record, and forasmuch as it is adjudged by the Court that the said Directors Plaintiffs as aforesaid have Execution upon the said Judgment against the said Israel Sheasley, according to the form force and effect of their said recovery; these are therefore to command you in the name and by the authority of the People of the State of Illinois that without delay you do cause the said Israel Sheasley and tenants and detainers to the said Plaintiffs the possession of the said School House and premises so recovered with the appurtenances

And you are hereby also commanded that of the goods and chattels (moneys & rents) of the said

Writ of Restitution

Writ of Restitution Concluded

Defendant Samuel Shawsby in your County your make the sum of One Hundred & Forty four Dollars and twenty five cents, being the amount of Costs in said late County Circuit Court and in the Court below and that you certify to our said Court at Dixon Whiteside county days from this date in what manner you shall have executed this Writ—

Witness Isaac S. Bowerman Clerk of said Court and the Seal thereof at Dixon this 13th day of April A D 1860

{ L S Seal }

Isaac S. Bowerman Clerk
by Jas M Bell D. C. "

Return on Writ of Restitution

The Sheriffs return on the Writ of Restitution endorsed on said Writ is as follows to wit. "Executed this Writ by reading the same to the within named Samuel Shawsby, and by delivering "possession of said School House to Matthias Allison "and Christopher Vandevanter April 14th A D 1860

Lester Hemenway Sheriff "

" Fees mileage 1.50 service 50 delivering possession 1.00 = $3.00 totl "

And with the Writ of Restitution there was also issued a Bill of Costs as well for the Defendants Costs as on behalf of the said Plaintiffs; which bill was as follows to wit:—

33

State of Illinois Lee County Circuit Court February Term AD 1860

Fee Bill } In the matter of Directors of Schools of District No One Township No Thirty Eight Range No Two East Lee County State of Illinois vs Israel Shoudy appellant } Fee Bill Plaintiffs Costs

	$ c
Doc cause 3 terms 30 – 2 Contes 40 – appeals 25. Sums & filg 40	= 1.35
6 Spas & filg 2.40 – filg 7 papers 35 – Ent mo to dis appeal 20. Order	= 2.95
to amend 20 – 2 orders over mo to dismiss 20 Order call jury 20	= 80
Order for tales 20 – Call sewg jury 15 Verdict 10 6 oaths 30 Judgt 25	= 1.00
11 affts for Witnesses 1.10 – Ord over mo for new trial 20	= 1.30
Ord Writ of Possession 20 Ord for Cost 20 Ord for Ex 20	= 60
Writ of possession 60. Bill of Cost 30 Copy 10 Cert Clerk 35 fil docs 15 etc	= 1.70
Sheriffs Fees (Harding) Sums 6.10 (Hunt) Spas 5.25 Spa 6.00	= 17.35
" " H Wells Spa 8.85 – Spa 7.00. Spa 7.95	= 23.80
Witness David Smith Nov 5. 1859 5 Days + 32 miles	= 6.60
" Matthew Atkinson Feb 1860 7 " " 30 "	= 8.50
" Queen Cornell Nov 1859. 7 Days 30 miles Feb 1860. 7 Days 30 miles	= 19.00
" N C Allen " " 5 " 32 " " " 4 " 32 "	= 12.20
" Jno D Fish " " 4 " 30 " Do " 8 " 30 "	= 15.00
Jury Fee $3.00	3.00

Cost in Justice Court: Cornell J.P. $10.75. H Wood Constable $11.05 – Witnesses Wells, Hollenbeck, Atkinson, Hastings, Allen, D Smith, A. Smith, J Smith, Wood, Rogers, Shoudy, Davis, Howlett & H G. Howlett – each 50¢ – $7.00 } $28.80

I. S. A. Boardman Clerk of the Lee County Circuit Court do hereby certify that the above and foregoing is a true copy from my fee book of Plaintiffs Costs in said cause } $144.25

{ L.S. Blank } Witness my hand and seal of said Court. I. S. A. Boardman Clerk

34

Copy of Defendants Cost—

		$. ¢
Fee Bill Continued	apps atty 25. fil 4 pprs 20 - 3 Sprs & fil. 1.20. 3 Writs 15 - 2 affts 20 =	2.00
	Ent, appearance 50 - 2 mo & to Dismiss 40 and over mo to dismiss appearance =	1.10
	Ent mo for new trial 20 Ent exception 20, Order as to Bill of Exceptions 20 =	60
	Bill of Cost 20 Copy of Cost 20 Satisfaction 15 - =	65
	Sheriffs Fees (Mr. Kenney) 1 pro 1.95 + 1 pro 1.95 =	3.90
	Witness H G. Hewlett 5 Days 20 miles	6.50
	" David Smith 5 Days 20 miles	6.50
	Docket Fee 250	2.50
		$23.75

{ L S of Court } I, Isaac S. Boardman Clerk of the Circuit Court of Lee County do certify that the within is a true Copy from my Fee Book of Defendants Cost

Given under my hand and seal of Court

I. S. Boardman Clerk

STATE OF ILLINOIS, Lee COUNTY. } ss.

The People of the State of Illinois, to the Sheriff of said Lee *County—GREETING:*

WE COMMAND YOU, That if the above or within Fee Bill, amounting to Twenty three Dollars and seventy five Cents, shall not be paid within thirty days after being by you demanded, you cause the same to be levied of the goods and chattels, lands and tenements of Samuel Shaneky

in your County, according to the statute in such case made and provided. And make return of this writ, within ninety days, as the law directs, with an endorsement hereon, in what manner you shall have executed the same.

{ L. S. of Court } WITNESS I. S. Boardman Clerk of said Court, and the seal thereof, at Dixon in said County, this 13th day of April A. D. 1860

Isaac S. Boardman Clerk.

Fee Book E Page 554. Fi. Fa. No 483

Costs Plaintiff $144.25 } $168.00
Defendant 23.75 }

And the foregoing Fee Bill are endorsed by Sheriff of Lee County as follows—

"Received this Execution this 14th day of April A.D. 1860 at 8 Clock and — minutes A.M. Lester Hamling Sheriff"

"Received this Execution this [illegible]

55

And the said Fee Bill for Costs was further endorsed as follows to wit:—

Return on Fee Bill. — Levy —

"By virtue of this Writ I have "levied on the North East Quarter of the South East "Quarter of Section Number thirty six (36) in Township "No thirty eight, Range No two East of the third Prin "cipal Meenisbion in the County of Lee, and "State of Illinois, said property was turned out "by Israel Shenely Defendant

June 11th A.D. 1860 Lester Hemeling Sheriff

Return on Fee Bill. — Sale —

"July 11th A.D. 1860, made the sum of One Hundred "Eighty nine 89/100 Dollars by sale of Real Estate herein "described, and levied on by virtue of this Execution "the same having been duly advertised according to "Law, and Joseph Ball having bid the largest "amount of money said Real Estate was "struck off to him he being the highest bidder at "Sale, Certificate of Sale is duly recorded in "Recorders Office in the County of Lee and State "of Illinois Lester Hemeling Sheriff

"Sheriffs Fees $15.89 — "

And the said Fee Bill for Costs and the Writ of Restitution were returned to the Clerks Office of the Lee County Circuit Court and by said Clerk filed in the words following to wit:— "Filed in the Circuit Court and Entered by "me this 16th day of July A.D. 1860

" L. C. Boardman Clerk

State of Illinois } ss
Coles County }

Certificate

I, Benjamin F. Shaw Clerk of the Circuit Court within and for said County of Coles in the State of Illinois do hereby certify that the foregoing is a full, true, and complete exemplification, of all the proceedings of Record in said Cause, as appears from the Records and files in said Cause now remaining in my office.

In testimony whereof I have hereunto set my hand, and the Seal of said Circuit Court at Dixon this eighth day of June A.D. 1862

Benjamin F. Shaw Clerk
Joseph Ball D. C.

Assignment of errors.

The plaintiff in error assigns the following as errors on which or contained in the foregoing record of the proceedings in said cause or action.

1. The complaint (or what purports to be such on the record) is insufficient.

2. The complaint was made and sworn to nine days or more before demand made in writing for the possession of said school-house, by the plaintiffs.

3. It was over twelve days from the time of issuing the summons to the day of trial.

4. The summons issued one day before Plt. Hollenbeck made his said complaint.

5. The summons was served twelve days before the trial.

6. The justice of the peace issued the precept for the jury two days after the trial.

7. said jury appeared before said justice to hear and try said cause two days before they were (served with a precept to do so) ~~had issued his precept for said jury~~

8. Said justice entered up judgment against deft. (plts in error) one day before he had issued his precept for the jury and said jury brought in their verdict one day before the

said justice entered up his said judgment.

9. The said Justice did not issue a precept to the (at the time of issuing said summons) Sheriff, Coroner or any Constable commanding him to summon two lawful and lawful men of the county to appear before him at the (return of such summons to hear and try said complaint.)

10. There is a material variance between the complaint and summons.

Errors in the Circ. Court.

11. At the May term A.D. 1859, of the Circuit court of Lee County, the said defts, (said cause being then pending in said court) by his Counsel entered his motion to dismiss said cause for reasons assigned and filed with justice Cornell at the time of the trial in the court below and overruled by said justice, to wit; "That said complaint was not made as the foundation of this cause and the proceedings herein; but was made as the foundation of the proceedings in a former cause between said parties, in which former cause the said Plts were nonsuited: Also, because said action should have been commenced in the name of the township Trustees: Also, because said Plts were not, and are not, by law authorized to bring such suits: And, also, because said plaintiffs are not directors as set forth in said complaint" the said motion to dismiss was thereupon overruled by the court.

12. And afterwards, to wit; at said May term of said court on the motion of said Plts. in said cause the clerk of said court was directed to amend the title of said cause on the docket of said court by substituting the corporate name of said plaintiffs herein to which order of the court the said defendant then and there objected, but the said objections were overruled by the court.

13. And afterwards, to wit, at the February term, A.D. 1860 of said court, the said defendant in said cause moved the court to dismiss said cause, because that the said Plts had not instituted said suit in their corporate name which motion was overruled by the Court.

14. And at the trial of said cause, to wit, at said February Term of said court, two of the Plts in said cause, to wit; Christopher Vandeventer and Robert Wmith were introduced as witnesses for and in behalf of the Plts to which deft objected on the ground that inasmuch as said persons were Plts herein, they were personally liable to the [illegible] Vandeventer and [illegible] overruled the objection and so the said Vandeventer and [illegible] (were) sworn and gave their evidence in this cause, before the [illegible] (were) sworn and gave their evidence in this cause, before the [illegible] unparalleled in this cause as set forth by the Plts [illegible] to the jury as set forth by the deft

the court overruled the objection. And to the said Pendleton and Smith sworn and gave their evidence in this cause, before the jury then and there empannelled in this cause.

15. The court refused to give the instructions to the jury asked for by Defts.

16. The court modified the last instruction asked for by the Defts. before giving the same, to which giving the same to the jury with the addition thereto made by the court, the Defts by his counsel objected but the court overruled the objection.

17. The Court gave the instructions asked for by Plts. to the jury.

18. The Court overruled the motion for a new trial.

The errors above assigned as having been committed by said Circuit Court are preserved in a bill of exceptions which is a part and parcel of said record.

L. Wood
Atty for Plt. in Error.

And now come the defendants in Error by Jas R. Edmunds their attorney and say that there is no error in the Records & proceedings aforesaid &c &c

Jas R. Edmunds
Atty for Defts in Error

29

No. 73 –

Israel Moundy
Plaintiff in error

vs

School Directors &c
Defendants in error

Record [illegible]

Filed June 18. 1862
L. Leland
Clerk

Cost of this transcript
[illegible] Costs within $9.25

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1863.

ISRAEL SHOUDY, PLAINTIFF IN ERROR.
vs.
SCHOOL DIRECTORS OF DISTRICT No. 1, TOWNSHIP 38, RANGE 2, IN LEE COUNTY, DEFENDANT IN ERROR.

Brief for Defendant in Error.

I.

THE defendant in error (plaintiff below) was described in the commencement of the complaint thus: "Christopher Vandeventer, Robert Smith and George Hollenbeck, Directors of School District No. 1, in Town 38, R. 2, E. in said [Lee] County," and in subsequent portions of the complaint as "the said Directors," and as "Directors as aforesaid;" and in the summons issued by the Justice as "School Directors of District No, 1," &c.; and the same upon the Justice's docket, and in the appeal bond filed by the plaintiff in error.

It is apparent from the entire record that the suit was brought by the corporation as plaintiff, and not by the directors in their individual capacity.

[redacted]

In the case of Patrick vs. Rucker, County Judge Cook, 19 Ill., 439, the plaintiff was described in the declartion as follows: "Henry L. Rucker, County Judge of Cook County," and it was held that the individual name of the County Judge was surplusage, and the declaration was regarded the same as if the personal name of the judge had not been there, and only the official designation of the office had been used as plaintiff.

Patrick vs. Rucker, 19 *Ill.*, 440.

In the case of *Frazier vs. Laughlim et al. County Commissioners of Adams County*, 1 *Gilm*, 347., it is held that the prefixing the proper names of the Commissioners was entirely surplusage, and as such their names might have been stricken out at any time.

Frazier et al. vs. Laughlin et al., 1 *Gilm.*, 361.

It is admitted that the court cannot under the color of an amendment, change the parties to the suit *where there is nothing in the record to amend by.* *Henckler vs. Monroe Co.*, 27 *Ill.*, 40, *Lake vs, Moss*, 11 *Ill.*, 589.

But in this case the corporate name of the plaintiff below was substantially given in the complaint; and all the amendment that was required was to strike out of the the title of the cause the individual names of the directors, which, under the authorities above cited, was clearly allowable.

II.

1. The bill of exceptions does not contain *any* of the evidence produced on the trial; but shows that two of the individuals named as directors, were sworn and examined as witnesses.

Admitting, for the purpose of the argument, that these persons were incompetent as witnesses; yet from anything that is stated in the bill of exceptions this court cannot see that the plaintiff in error was prejudiced on account of these persons being examined as witnesses. It may be that their testimony was favorable to the defendant below. This point is fully sustained by the opinion of this court in the case of *Parsons vs. Dunaway*, 4 *Scam.*, 194, wherein the following language is held:

"It appears from a bill of exceptions tendered by Parsons, that on the trial in the circuit court, Dunaway was offered as a witness to prove usury between the original parties to the note; and that the court admitted him as a witness, notwithstanding the objection of Parsons. The testimony given by him is not inserted in the bill of exceptions. This should have been done, to enable this court to determine whether improper testimony was received. His testimony may not have shown the usury, but on the contrary negatived it. Unless it was improper, Parsons was not prejudiced by the introduction of Dunaway as a witness."

Parsons vs. Dunaway, 4 *Scam.*, 194.
Miller vs, Houck, 1 *Scam.*, 501.
Russell vs. Martin, 2 *Scam.*, 494.
Hays vs. Smith, 3 *Scam.*, 428.

2. The directors as individuals were not interested in the result of the suit; the corporation was the party to the record, and not the directors individually. The directors in their personal capacity had no more pecuniary interest in the result of the suit than any resident tax-payer of the district. Indeed, it does not appear that the directors who were sworn as witnesses were subject to taxation in the district. No execution ever issues upon a judgment recovered against School Directors. The collection of such a judgment is enforced by mandamus, or a writ, in the nature thereof.

Scates Comp. of Stat., p. 448, § 49.

The directors in their personal capacity are no more interested than any other resident of the district. A corporator in a public corporation, as a state, county, town or school district, is a competent witness in behalf of his corporation.

III.

There is no error in the giving or refusal of Instructions.

1. The question of title is immaterial in a proceeding for forcible entry and detainer, except to show the extent of possession.

Brooks vs. Bruyn, 18 *Ill.*, 539.
Cross vs. Ballinger, 18 *Ill.*, 200.

2. If the plantiffs below, had the school house in question occupied by a school being kept and taught therein under their direction, at the time of the alleged forcible entry, this would clearly amount to an actual possession on the part of the school directors, within the meaning of the law.

Brooks vs. Bruyn; 24 *Ills.*, 380.

3. Inasmuch as the bill of exceptions fails to set forth any of the evidence upon the trial in the circuit court, this court cannot decide that the circuit court erred in refusing instructions asked by plaintiff in error, even if such instructions were correct law in the abstract.

Cunmings vs. McKinney 4 *Scam.*, 60.
Hall vs. Rogers 3 *Scam*, 6.
Heaton vs. Hemper 2 *Scam.*, 368.

The presumption is "that the party complaining has incorporated everything into his bill of exceptions, which is necessary to present the full merits of his case upon the point about which he complains."

Hall vs. Rogers, 3 *Scam.*, 6.
Cummings vs. McKinney 4 *Scom.*, 60.

4. It may be that there were admissions of facts made by the plaintiff in error upon the trial in open court, which altogether dispensed with proof upon such points; and which would warrant the court in assuming such facts to be beyond controversy, and in instructing the jury accordingly.

Every intendment upon questions of fact, will be taken against the party complaining where he fails to incorporate the evidence, or the facts agreed upon, in his bill of exceptions.

Hall vs. Rogers 3 *Scam.*, 6.
Cummins vs. McKinny 4 *Scam.*, 60.

Many of the errors assigned are altogether frivolous—for example, those which relate to the alleged irregularities upon the trial before the Justice.

We presume it is unnecessary to cite authority to show that this court will not examine into alleged errors intervening before the cause became pending in the circuit court.

The complaint is good technially, as well as in substance.—It shows the corporation, the School Directors, to be the plaintiff; and the corporation—not the school directors personally—is treated as the party plaintiff throughout the whole proceeding. The court will not require that technical accuracy in proceedings commenced before Justices of the Peace, as is required in the practice of Superior Courts.

We have been obliged to submit this brief without having seen the brief on the part of the plaintiff in error. It may be that we have failed to anticipate the points that will be made on the opposite side; but we submit to the Court that the record shows no reason why the judgment of the court below should be reversed.

JAS. K. EDSALL,
Att'y for Deft. in Error.

73

Isaac Shoudy
Plff in Error
vs
School Directors
Dist 1. Town 38 &c

Deft to Brief

Filed May 20. 1863
J. Selman Clk

Jas K. Edsall
for Deft in Error

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ISRAEL SHOUDY
vs.
Directors of Schools of District No. 1, Township No. 38, Range No. 2, east, Lee County, State of Illinois. } *Error to Lee County.*

ABSTRACT OF RECORD.

The complaint before Owen Cornell, Justice of the Peace, is as follows, to wit, which is set out at large in the bill of exceptions hereafter, p. 23 ;

3 Notice to Shoudy to quit possession, dated Feb. 11th, 1859.

4 Summons issued Feb. 21st, 1859.

5 Summons served Feb. 22d, 1859.

6 6–8 Tried before justice and jury, March 3d, 1859, and verdict of guilty, and order for restitution of premises.

9 Motion by defendant below, before the justice, to dismiss the complaint, overruled by the justice.

10 Motion by defendant below before the justice, on account of improper parties plaintiff, overruled by the justice.

11 Appeal bond by defendant below filed in the Circuit Court of Lee County, March 30th, 1859.

14 Motion in the Circuit Court by the defendant to dismiss the suit for want of improper parties plaintiff, overruled by the Court, and leave given by the Court to the plaintiffs below to amend the title to the suit by substituting the corporate name of the plaintiff; and to the decision of the Court in overruling the defendant's said motion to dismiss the suit, and to the decision of the Court in granting leave to the plaintiffs to amend the title of said suit, the defendant then and there excepted. May Term (14th) 1859.

16 Feb. Term, A. D. 1860. Cause tried in the Circuit Court before Judge Eustace and a jury, and verdict of guilty.

17 Instructions appear in full in the bill of exceptions.

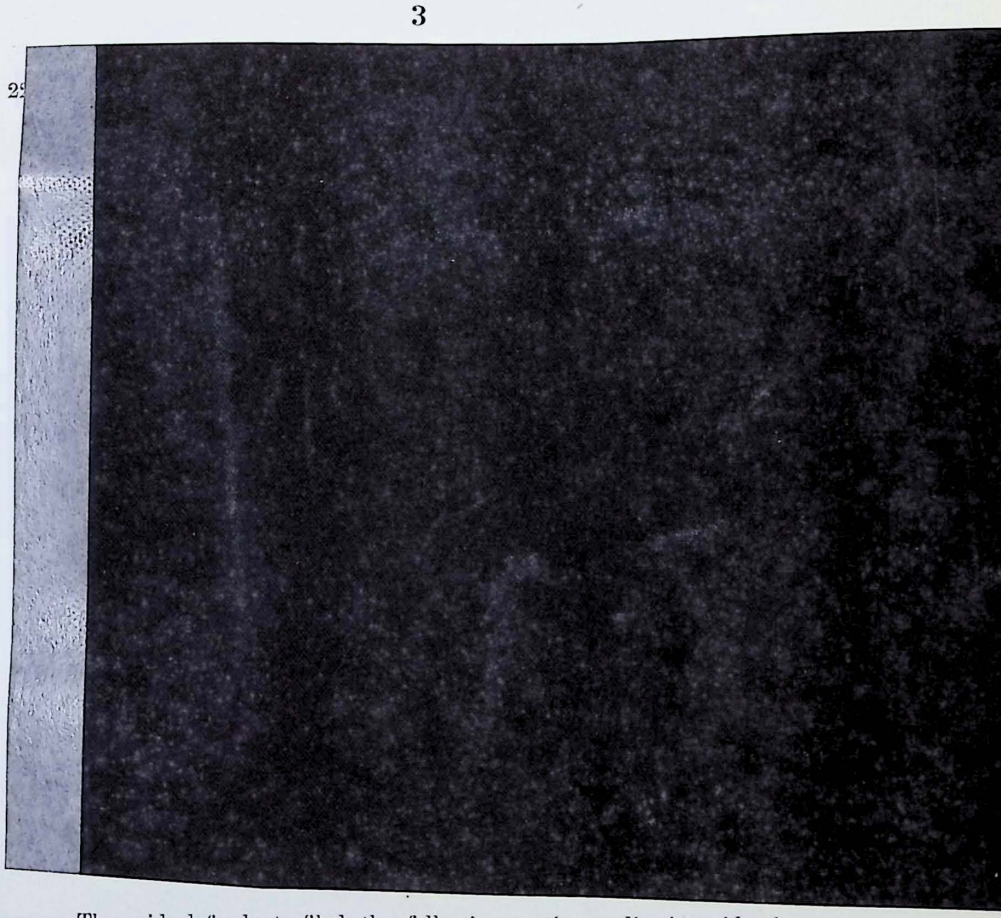
19 Motion for a new trial overruled by the Court, and exceptions taken by the defendants below to the overruling aforesaid.

Bill of Exceptions.

STATE OF ILLINOIS, } ss. *In the Lee County Circuit Court, of the Feb. Term, A. D. 1860.*
Lee County. }

School Directors of School District No. 1, In Township No. 38, Range No. 2, East, in Lee County,
vs.
ISRAEL SHOUDY, Appellant.
} *Appeal, forcible entry and detainer.*

Be it remembered, that on the 22nd day of February, A. D. 1859, Israel Shoudy, the above named defendant, was summoned to appear before one Owen Cornell, Esq., a Justice of the Peace in and for the said Lee County on the 3d day of March then next ensuing to answer the complaint of Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors of School District No. one (1) County and State aforesaid, for a forcible entry and detainer of certain premises and tenements in said summons described, and which said premises were in said summons described as the tenements and possession of the said Christopher Vandeventer, Robert Smith and George Hollenbeck, the School Directors aforesaid, and in obedience to said summons the said Israel Shoudy did, on the 3d day of March aforesaid, appear before the justice as he was commanded, to answer the said complaint, and the cause being ready for hearing, a jury was empannelled to try said cause, and thereupon the following complaint being produced as the foundation of said cause, to wit:



23 The said defendants filed the following motion to dismiss said suit, to wit:

Said complaint was not made as the foundation of said cause and proceedings, but was made as the foundation of the proceedings in a former cause between the same parties, in which former cause the plaintiffs, or complainants, were non-suited. Which said motion was, by the said justice, overruled and filed with the papers in said cause.

The said defendant then moved the Court to dismiss said cause for the following reasons, viz:

1st. Because said action should have been commenced in the name of the Township Trustees.

2d. Because said plaintiffs were not and are not, by law, authorized to bring such suit.

3d. Said plaintiffs are not directors as set forth in said complaint. The Court again overruled the motion to dismiss and filed the reasons above set forth among the papers in said cause. Thereupon the trial of this cause was had before said justice aforesaid; and after hearing the evidence the said jury returned a verdict finding the defendant guilty, and judgment was by said justice rendered against the said defendants, but from which judgment the said defendant took an appeal to the Lee County Circuit Court according to the form of the statute in such case made and provided.

24 And afterwards, to wit: At the May Term of the said Lee County Circuit Court, A. D. 1859, the said appeal being upon the docket of said Court, and the said parties appearing by their respective counsel, and the said cause coming on to be heard, the said defendant, by his counsel, entered his motion to dismiss said cause for reasons already assigned before, and filed with said justice Cornell, at the time of the trial in the Court below, and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the proceeding in a former cause between said plaintiffs in which cause the same plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit, and also because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was thereupon by the Court awarded and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and afterwards, to wit: on another regular day of the May Term aforesaid of the said Lee County Circuit Court, on the motion of the plaintiff in said cause the Clerk of said Court was directed by the Court to amend the title of said cause upon the docket of said Court by substituting the corporate names of the said plaintiffs herein, to which order of the Court the said defendant, by his counsel, then and there objected, but the said objection was by the Court overruled, and to which ruling the said defendant, by his counsel, then and there excepted.

25 And afterwards, at the February Term of said Court, A. D. 1860, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted, and so the cause was tried at said term of said Court, before said Court and a jury, and at the trial of said cause two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnesses for and in behalf of the plaintiffs, to which the said defendant objected on the ground that inasmuch as the said persons were plaintiffs herein, they were personally liable for the costs herein;

but the Court overruled the objection, and to which ruling the said defendant, by his counsel, then and there excepted; and so the said Vandeventer and the said Smith were sworn and gave their evidence in this cause before said jury so empannelled in said cause.

26 The defendant then asked the Court to give the following instructions to the jury, to wit: The fact if proven that the owner of the house in question, may have allowed the School directors to occupy the same without objection, does not give the plaintiffs a right to retain the possession against the owner longer than he shall consent.

That this action only lies to recover the possession of real estate wrongfully taken and withheld from the plaintiff.

27 

The Court refused to give the above instruction, to which refusal the said defendant, by his counsel, then and there excepted.

The said defendant also asked the Court to give the following instruction, to wit:

That where possession only is relied upon, and without a claim of legal right on the part of the plaintiffs, the plaintiffs must prove an actual manual possession of the premises either by the plaintiffs or their agents, and that they were forcibly expelled by the defendant, if it is admitted that the defendant was the owner of the property at the time of the act complained of; which instruction the Court gave, but with the following modification and addition, to wit: But if during the mouth of January, 1859, the house was occupied as a school house, by a teacher in the employ of the plaintiffs, such occupation is, for the purposes of this trial, a sufficient actual and manual possession by the plaintiffs, and if the defendant, during said month, removed the lock from the door of said building and put personal property into said building, and locked the same up, with a lock by him then put on the door, such entry by him is a "forcible entry within the meaning of the law." To the giving of which instruction, with the addition thereto by the Court, the defendant, by his counsel, then and there excepted.

On behalf of the plaintiffs in said cause the Court was asked to give, and did give, the following instructions, to wit:

The plaintiff asked the Court to charge the jury, that if they find from the testimony that the School Directors of said district had in the

month of January, A. D. 1859, possessed of the school house in question by having a district school taught therein, and that while said school house was so occupied, the defendant unlawfully took possession of said school house and locked it up, then the jury ought to find the defendant guilty.

29 That if the jury find from the evidence that the school house in question was, in the month of January, A. D. 1859, occupied by a district school under the authority and direction of the School Directors of district No. 1 aforesaid, and while said school was being taught in said school house, the defendant unlawfully, and without permission from the directors, entered said school house, put his property therein and locked it up, then the jury to find the defendant guilty. To all of which instructions of said plaintiff, by the Court so given, and to the giving of the same, the said defendant, by his counsel, then and there excepted.

And the said jury, after hearing the evidence and the argument of counsel, and the instructions of the Court in this behalf, returned a verdict that the defendant was guilty of a forcible entry and detainer.—The said defendant then entered his motion for a new trial, which said motion was by the Court overruled, and to which ruling of the Court the said defendant, by his counsel, then and there excepted; and so judgment was rendered in favor of the plaintiffs in said cause for possession of the premises in controversy, and for costs.

30 Wherefore the said defendant prays that this, his bill of exceptions, may be signed and sealed and made a part of this record in the proceedings in said suit or action, which is accordingly done.

JOHN V. EUSTACE, [L. S.]
Judge 22d Judicial Circuit.

Endorsed. Filed as of March 25th, 1860.

J. J. BOARDMAN, *Clerk.*

ASSIGNMENT OF ERRORS.

36 The plaintiff in error assigned the following as errors on, or contained in, the foregoing record of the proceedings in said cause or action:

1st. The complaint (or which purported to be such on the record) is insufficient.

2d. The complaint was made and sworn to, nine days or more before demand made in writing for the possession of said house by the plaintiffs.

3d. It was over twelve days from the time of issuing the summons to the day of trial.

4th. The summons issued one day before the plaintiff Hollenbeck made his said complaint.

5th. The summons was served twelve days before the trial.

6th. The justice of the peace issued precept for the jury two days after the trial.

7th. Said jury appeared before said justice to hear and try said cause two days before they were served with a precept to do so.

8th. Said justice entered judgment against defendant (plaintiff in error) one day before he had issued his precept for the jury, and said jury brought in their verdict one day before the said justice entered up his said judgment.

9th. The said justice did not issue a precept to the sheriff, coroner, or
36 any constable at the time of issuing said summons commanding him to summon twelve good and lawful men of the county to appear before him at the return of such summons to hear and try said complaint.

10th. There is a material variance between the complaint and the summons.

Errrors in the Circuit Court.

11th. At the May Term, A. D. 1859, of the Circuit Court of Lee County, the said defendant (said cause being then pending in said Court) by his counsel, entered his motion to dismiss said cause for reason assigned and filed with Justice Cornell at the time of the trial in the Court below and overruled by said justice, to wit: That said complaint was not made as the foundation of this cause and the proceedings herein, but was made as the foundation of the procedings in a former cause between said parties, in which former cause the said plaintiffs were non-suited; also because said action should have been commenced in the name of the Township Trustees; also because said plaintiffs were not, and are not, by law, authorized to bring such suit; and, also, because said plaintiffs are not directors as set forth in said complaint. The said motion to dismiss was, therefore, overruled by the Court.

12th. And afterwards, to wit: at said May term of said Court, on the motion of said plaintiff in said cause, the Clerk of said Court was directed to amend the title of said cause on the docket of said Court by substituting the corporate name of said plaintiff herein, to which order of the Court the said defendant then and there objected, but the said objection was overruled by the Court.

13th. And afterwards, to wit: at the February Term, A. D. 1860, of said Court, the said defendant in said cause moved the Court to dismiss said cause because that the said plaintiffs had not instituted said suit in their corporate names, which motion was overruled by the Court.

14th. And at the trial of said cause, to wit: at said February Term of said Court, two of the plaintiffs in said cause, to wit: Christopher Vandeventer and Robert Smith were introduced as witnessess for, and in behalf of the plaintiffs, to which defendant objected on the ground that inasmuch as said persons were plaintiffs herein they were personally liable for the costs herein; but the Court overruled the objection and so the said Vandeventer and Smith were sworn and gave their evidence in this cause before the jury then and there empannelled in this cause.

15th. The Court refused to give the instructions to the jury asked for by the defendant.

16th. The Court modified the last instruction asked for by the defendant before giving the same, to which giving the same to the jury with the addition thereto made by the Court, the defendant, by his counsel, objected, but the Court overruled the objection.

17th. The Court gave the instructions asked for by the plaintiff to the jury.

18th. The Court overruled the motion for a new trial.

The errors above assigned as having been commited by said Circuit Court are preserved in a bill of exceptions which is a part and parcel of said record.

GRAY, AVERY & BUSHNELL,
Attorneys for Plaintiffs in Error.

29 73

Israel Avery.

vs

School Directors Dis.
No. 1. S. 38. R.

Abstract of record.

Filed May 8. 1863
S. Leland Clk

Gray Avery & Buckmaster
Pltffs attys