

No. 14208

Supreme Court of Illinois

McNair

vs.

Schwartz

71641  7

David M^e Fair
Plaintiff in error

vs.
Jacob Schwab
Defendant in error

Action of Assumpsit
for use and occupation

An action of assumpsit for use and occupation of land cannot be sustained - unless there is a contract between the parties either express or implied. Vide Clitty on Contracts 370 - The relation of landlord & tenant must exist. *Keittland vs. Parsonett* - 2 Saund 145. *Whitney vs. Sullivan* 7 Mass. Rep. 107 - *Smith vs. Stewart* 6 Johnson 46 - also 13 Johns 349

2nd A parole contract for the lease of land, either express or implied - for a longer term than one year - is within the statute of frauds and therefore void. Vide Clitty on Contracts - 323; Revised Statutes of 1845 Chapter 44. Sec. 1st

3rd A party cannot recover in an action of assumpsit for use and occupation upon an implied contract, without showing legal title in the premises. Vide Clitty on Contracts 332-3

4th If M^e Fair entered under a contract for the purchase of the land, although he may have afterwards abandoned it without performing his contract - the Plaintiff cannot recover, certainly not if the contract was still in force. Vide *Vanderbeek vs. Stoss* 3 Conn. 203 - *Keight vs. Biing* 11 Vermont 140 *Smith vs. Stewart* 6 Johnson 46 - *Bancroft vs. Wadswell* 13 Johnson's Reports 490 - *Jackson vs. Walker and Jackson vs. Glendon* 7 Conn. Rep 637, 747 and cases there cited, *Jackson vs. Manring* 5th Wendell Rep 26, also 1 Wendell 135, 1 Conn 610 *Abel vs. Badeloff* 15 Johnson Rep 505 1 Clitty's Pleading 342 *Beach vs. Mills* 5 Connecticut Reports 495 - *Shepard vs. Palmer* 6 Conn. Rep. 100 - *Quilting vs. Hill* decided by this court at last November Term. *Nease vs. Tontin* - Beach 192 *Ranger*

5th

When a special contract has been entered into and still subsist^{ed} between parties, it cannot be disengaged by either and an action maintained on the Common Money Counts, but on the contrary, the remedy must be predicated on a breach of that contract. Vide Russell vs. South British Society, 9. Comm. Rep. 508. Weston vs. Garrow & Co. Rep. 23, 4. Whiting vs. Sullivan & West, Rep. 107. Leach vs. Munstone, 1. Dec. Rep. 351. Hunt vs. Silk 5th East, Rep. 285. Pagnon vs. Whole - 7 East Rep. 131. Debbins vs. Delaware and Hudson Canal Co. 4 Wend. 295 - 12 Wend. 334 - 15 Wend. 87.

6th

An action of assumpsit will not lie when the title to the premises is in dispute, for counts will not try title ~~by~~ such an action. Vide Wood v. L. & S. 356 - Kenyon

Allen & Simons

Attornies for Plaintiff in error

7th

When a written contract has been made and still exists between parties, it is erroneous to admit parole testimony to prove another and additional parole contract about the same subject matter.

8th

In this case it was improper for Selwof to recover rent for the improvement at all - but certainly for that portion of it made by Leintels, and also for the whole during the year 1851 the title to the land having become vested in the State in 1851
September 20th

Allen & Simons

Attornies for Plaintiff in error

Respectfully Term of the
Supreme Court, N.C., 1854

David M^r Nair
Plaintiff in error

^{vs}
Jacob Schwetty,
Defendant in error

=====
Brief.

Allen & Seiners
Plffs Attorneys

Jacob Schwartz

vs

Davin McNeill

The following is the instructions asked for by the defendant in the above case and is as follows to wit

No 1. The defendant asks the Court to instruct the jury that if he got possession of the land by virtue of a contract of sale which contract is still subsisting and valid in Law the relation of Landlord and tenant does not exist nor can plaintiff recover in this form of action
Given

No 2. That unless the jury believe from the evidence that there was an express contract for the rent of the Congreg land plaintiff cannot recover with this for refusal

No 3. That if the jury believe from the evidence that if despite got possession of the land by virtue of a contract of sale valid in Law under which he held up to the time of Commencement of suit the Relation of Landlord and tenant does not exist nor can plaintiff recover in this form of action
Given

No 4. The defendant asks the Court to instruct the jury that if they allow the plaintiff and for the land they have no right to give the plaintiff interest in the notes held by him for the purchase money as submitting his defendants by must
Refused

State of Missouri vs
Jacob B. Clinton

John B. Clinton Clerk of
The Circuit Court within and for Jackson County State of Missouri do hereby certify that the above are instructions as given by the defendant in the above entitled case which are on file in my office which differ some from those in the Bill of exceptions on file
Antestimony whereof I have hereto subscribed

My name and office as
Clerk of office at Mississippi
this January 26th A D 1854
John B. Clinton Clerk
of Jackson Co. Court

Murphytown January 30th 1854

C G Simons Esq Dear Sir above is the
instructions asked for by the defendant which is our
file which differ some I believe from those set
forth in the Bill of exceptions & I did not like
to change the Record therefore I send this
supplement in the seal of the Circuit Court
if there is any thing wrong please inform me and
I will correct it yours truly

John B Clinton

A B this has been a devilish

tiresome job

matches + Cakes &c

cy

In the Supreme Court
November Term A.D. 1884

David M^c Nair
Plff in error

vs.

Jacob Schwatz
Def. in error

No. 25

David McNeil

vs

Jacob Schmutz

Error to Jackson.

Opinion by

Just. C. D.

"Judgment reversed
and Case remanded."

Opinion of final order
Copied & sent off

This was an action of assumpsit, brought by Schwantz against McHain. The declaration was for the use and occupation of a farm. It appeared in evidence, that in June, 1845, McHain purchased the farm of Schwantz, and gave his promissory notes for the price, the last falling due in November, 1848; and received from Schwantz a bond for the conveyance of the farm on the payment of the notes. McHain went into possession under the contract, and continued in possession, cultivating and improving the farm, until February, 1852. He also made some payments on the notes. The jury returned a verdict in favor of Schwantz, and the court refused to grant a new trial.

The action of assumpsit for use and occupation is founded upon a contract creating a tenancy. It will only lie where the relation of landlord and tenant exists between the parties. This is an established rule of law. See *Dudding v Hill*, 15, Illinois, 61; and the cases there cited. If a party acquires the possession of land under a contract of sale, and afterwards refuses to perform the contract, the vendor cannot maintain assumpsit against him for use and occupation, but must resort to an action of ejectment to recover mesne profits. The relation between the parties is that of vendor and vendee, and not that of landlord and tenant. The holding is under a purchase, and not under a demise. *Smith v Stewart*, 6 Johnson, 46; *Bancroft v Wardwell*, 13 *ibid.*, 489; *Wardwell v Storrs*, 3 Connecticut, 203; *Hough v Buge* 11 Vermont, 190. The latter clause of sec 1, ch 60, R. S. does not change the common law in this respect. It only applies to the case of a demise, where there is no especial agreement as to rent.

In this case, it is perfectly clear that the action cannot be maintained. The facts furnish no evidence of a tenancy. Mr. Han acquired and retained possession of the farms as a purchaser, and not as a tenant. There was no demise, express or implied. It was the naked case of a sale, and a taking of possession by the vendee. The remedy of Schwanitz is by law action of ejectment, to recover the possession and mesne profits; or by a suit upon the notes, to recover the purchase money and interest. The court erred in not awarding a new trial.

The judgment is reversed, and the cause remanded.

Mr. Van v. Schwantz

Opinion

Feat

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Jackson* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Jackson* County, before the judge thereof, between *Jacob Swartz* Plaintiff and *David McEain* defendant,

it is said that manifest error hath intervened to the injury of said *David McEain*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, 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 *Jacob Swartz*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jacob Swartz* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *7th* day *February* in the year of our Lord, one thousand eight hundred and fifty-*four*

J D Porter Clerk of Supreme Court.

by D B Laugh copy

Execute By
Reading to
Jacob Schwartz
on the 10 of May 1854

Shff Fees
servis 50
12 Mills Dravail 60
Ret ——— 10

120

Wm C. Sheriff of
Jackson county Ill

State of Illinois Jackson County 33

Plas of the Jackson Circuit Court at the several Terms thereof hereinafter mentioned At a Regular Term of the Circuit Court of Jackson County in the State of Illinois began and held at the Court House in Murphysboro on Monday the 10th day of May A D 1852 present The Honorable William A. Manning Presiding Judge of said Court Saturday May the 15th A D 1852

Jacob Schwartz } the following is the principal sum
vs } Assumpsit
David Mcneir } for use & occupation
Damage \$300.

The Clerk of the said Court will please give a summons against the defendant in the above entitled suit returnable &c

Jacob Schwartz }
for plaintiff

Witness

Mathias Hoagler } on the back is the following Jacob Schwartz }
N. E. Robinson } filed and procured to be filed } David Mcneir }
10th of Dec 1852

John Brewster & Fuldin Jones

the summons is in the following words and figures viz

State of Illinois } ss

Jackson County } The People of the State of Illinois to the Sheriff of said County greeting We command you to summon David Mcneir if he ~~may~~ can be found in your County to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at Murphysboro in the County aforesaid

on the second Monday of May next to answer to
Jacob Schwartz of a plea of assumpsit for use &
occupation Damages three hundred Dollars as he
says And of this writ make legal service and due
return at the time and place aforesaid

33rd of
the court
court

Witness D W Brush clerk of our
said Court at Memphis Tenn this 23rd
day of April 1852 the seal of
said Court here to appear

D W Brush clerk
on the back is the following: Jacob Schwartz vs David
Mcner (Sum^s) May Term 1852) and of standing
to David Mcner on the 27th of April 1852 shffs fees
#135 John B Clinton shff) filed May 3^o 1852 D W Brush clk

(Declaration)

State of Illinois

Jackson County }⁵⁵ In the Jackson County Circuit
Court May Term A D 1852.

Jacob Schwartz }

vs }

David Mcner } Assumpsit. for use and
occupation Damage \$300

Jacob Schwartz complains of
David Mcner being in ~~custody~~ custody &c of a
plea of Trespass on the case on promise for that whereas
the said defendant was on the first (1st) day of April
in the year of our Lord one thousand Eight hundred
and fifty two at the County of Jackson State of Illinois
incited to the said plaintiff in the sum of three hun-
= dred dollars lawful money of the United States for the
use and occupation of a certain meadow building
farm and land with the appurtenances of the said
plaintiff by the said defendant and at his spe-
= cial instance and request and by the sufferance
and permission of the said plaintiff for a long time
before then elapsed. had held use occupied
posseped and enjoyed and being so incited he

The said defendant in consideration thereof afterwards
to wit on the day and year aforesaid at the County and state
aforesaid undertook and then and there faithfully promised
the said plaintiff ^{the} aforesaid sum of Money when he the said
defendant should be thereunto afterwards requested and
whenever also afterwards to wit on the day and year last
aforesaid at the County and State aforesaid in consideration
that the said plaintiff at the like special instance and
request of the said defendant had permitted him the said
defendant to use occupy and enjoy a certain Messuage build-
ings farm and Land with the appurtenances of the said
plaintiff and which he had by the sufferance and permis-
sion of the said plaintiff for a long time before then elapsed
had held and occupied possessed and enjoyed; he the said
defendant undertook and then and there faithfully pro-
mised the said plaintiff to pay him so much Money as he
thereon reasonably deserved to have of the said defendant
when he the said defendant should be thereunto afterwards
requested and the said plaintiff avers that he thereon aver-
ably deserved to have of the said defendant the further
Sum of three hundred dollars of like lawful Money to
wit at the County and State aforesaid, whereof the said de-
fendant afterwards to wit, on the day and year last aforesaid
then had notice. Nevertheless the said defendant not
regarding his said several promises, and undertakings but
contriving and fraudulently intending craftily and
suttly to deceive and defraud the said plaintiff in this
behalf, hath not as yet paid the said several Sums of
Money or any or either of them or any part thereof to the said
plaintiff although often requested so to do but the said de-
fendant to pay him the same hath hitherto wholly neg-
lected and refused and still doth neglect and refuse
to the damage of the said plaintiff of three hundred
dollars and therefore he brings his suit &c

John H. Logan atty.
for Plaintiff

Copy of account

David Merrin - to Jacob Schwartz Esq
for the use and occupation of a certain messuage
buildings upon & land with the appurtenances belonging
to said Schwartz for seven years at \$45 per year from the
1st A D 1852 .. on the back is as follows Jackson
Co. Cert. Court. Jacob Schwartz vs David Merrin
declaration Damage \$300, Filed Apr 28 1852

Wm B. Brush clk

pleas filed by the defendant are as follows
David Merrin

at
Jacob Schwartz) Assumpsit
and the said
defendant by Allen and Simons
his attorneys comes and defends the injury wrong
and injury whereof and says that he did not under-
take and promise in manner and form as the said plea
intend in his first and second counts both above there-
of complained against him and thereof he puts
himself upon the County &c) and pleads doth the
like Logan Jenkins & Daugherty for Plaintiff

And for further plea in this behalf and by leave
of the Court he first had and obtained according
to the form of the Statute in such case made and
provided the said defendant says that the plaintiff
ought not to have or maintain his aforesaid action
thereof against him because he says that after the
making of the said several promises and assump-
tions in the aforesaid declaration aforesaid set forth
and before the commencement of this suit to wit
on the eighth day of August A D 1850 and within
the jurisdiction of this Court, he the said defend-
ant fully paid and satisfied the said plaintiff all
and singular the said several sums of Money in

the said declaration specified and set forth and this he is ready to verify

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And for a further plea in this behalf and by leave of the Court been first had and obtained according to the Statute in such case made and provided the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that before and at the time of the Commencement of this suit to wit on the Eighth day of August in the year of our Lord one thousand Eight hundred and fifty to wit at the said County of Jackson and within the Jurisdiction aforesaid was and still is indebted to the said defendant in a large sum of money to wit the sum two hundred and Eighty four dollars and fifty Cents for the work and labor done and diligence money laid out and expended money had and received of the said defendant by the said plaintiff which said sum or sums of money so due and owing from the said plaintiff to the said defendant exceeds the damages sustained by the said plaintiff by reason of the non-performance by him the said defendant of the said and said promised promises and undertakings or assumptions in the said declaration mentioned and out of which said sum or sums of money so due and owing to the said defendant he the said defendant is ready and willing and truly offers to set off and allow to him the said plaintiff the full amount of the damages sustained by him by reason of the non-performance of the promises undertakings and assumptions aforesaid according to the form of the Statute in such case made and this he is ready to verify wherefore he prays judgement if the said plaintiff ought to have or maintain his action aforesaid thereof against him and he also prays judgement for the balance due from

the said plaintiff to him the said defendant &
Allen G Simons

attys for defendant

Travis & ipse

Logan Jenkins & Daugherty for
plff

on the back is the following) on the Jackson
Circuit Court May Term A D 1852 Jacob Schwartz
vs David Menier plffs Allen G Simons attys
for deft filed May 11th 1852. D 26 Brush clk

the following is the name on record &
Saturday May the 15th 1852

Jacob Schwartz }

vs }

David Menier }

} Assumpsit

} Now at this day on motion
of the plff & his attys the second & 3rd plea herein
is struck from the files

the following is the defendants acct on file

Jacob Schwartz

To David Menier Dr

1845	March 15 th	to clearing of 3 acres of ground	5.00
1846	April 10 th	" " " " " "	10.50
1849	Oct 20 th	" Building one Rock chimney	15.00
"	" "	" planting & taking care of orchard	30.00
"	" "	" Clearing out old pasture poles & such	20.00
"	" "	" making and putting up 2000 acorns	10.00
"	" "	" cash paid	69.50
The amt of notes executed by Menier held by Schwartz			294.50
Total			524.50
Paid by Menier			225.00

on the back is the following) on the Jackson Circuit
Court May Term A D 1852 Jacob Schwartz vs David
Menier account & G Simons attys for plff
filed May 11th 1852 D 26 Brush clk

the following is a notice given by plff to defd to produce
certain deed as follows

Jacob Schuartz } In the Jackson Circuit Court September
David Mcneir } Term 1852 } Assumpsit

To Mr David Mcneir

you will
please take notice that I shall require you to produce
on the trial of the above entitled Cause a certain ^{W 578}
which you have in your possession from James Herald to Mr
Brewster for ^{part} of the SW ^{qr} of Sec 34 Town 10 S Range 2,
West containing $25 \frac{119}{160}$ acres more or less
Sept 13th 1852

Jacob Schuartz by
Jenkins Logans & Daugherty his attys.
on the Back of which is the following to wit Jacob Schuartz
vs David Mcneir, notice to defendant to produce
Deed &c, executed by delivering a copy of the within
notice to David Mcneir on the 13th of Sept 1852
sumy in 1- 50^c (Pct 10) making 60^c John Blanton Stff

the following is a notice to plaintiff to produce notes
to wit Jacob Schuartz } plff in the Jackson Circuit
David Mcneir } Assumpsit Court May Term 1852
1852 To you Mr Jacob Schuartz you will please
take notice that I shall require you to produce on
the trial of the above entitled Cause certain promissory
notes or writings obligatory executed by me to you for
the payment of the purchase money of the premises
bought of you by me being the same premises mentioned
in your Bond for a deed to me which I now hold May
10th 1852

David Mcneir by
G Simons his atty
on the Back is the following to wit Jac Schuartz
vs David Mcneir notice to Plff filed May 11th 1852
H H Brush atty served by reading and delivering a copy
of the within to Jacob Schuartz on the 11th of May 1852
sumy 50 Pct 10 - John Blanton Stff

Jacob Schwartz }
vs }
David Menier } Assumpsit

By order of the Court this case stands continued to the next Term of this Court

At Wednesday September 15th 1852

Jacob Schwartz }
vs }
David Menier } Assumpsit

and now this day the plaintiff came in person and by Daugherty & Jenkins his attys & the deft in person & by Simons & Allen his attys and after being joined there came by order of the Court a jury to wit William Gentry John Redfield James Olden Daniel David Roberts Joseph Holder George W. Baker H. S. Estlin Ed M. Hanson Achilles Brooks Centrel Elliot Easterly John A. McClure & John Bowman twelve good and lawful men who being duly empanelled & sworn well and truly to try the issue joined after hearing the evidence & arguments of counsel do on their oaths say that the Jury find for the plaintiff and assess his damages at Ninety dollars and Forty cents thereupon the said Deft by his attys enter a motion for a new trial in this case

The proceeding is the receipt of the affida by the deft
Jacob Schwartz }
vs } Sept 1852
David Menier } Assumpsit

Thursday September 16th 1852

Jacob Schwartz }
vs }
David Menier } Assumpsit

and now again came the parties & their attys and the Court being sufficiently

advised of the motion entered herein for a new trial.
Considers that the same be sustained and that a
new trial in this case be granted

Thursday May 12th A D 1853

Jacob Schwartz }
as } assumpsit

David Mcneil } on this day came the parties by
their attorneys and filed a written agreement
by which this cause is continued by consent of
parties until the next Term of the Court

which written agreement is as follows
It is hereby agreed that this cause be continued
until the next Term of Jackson Circuit Court
C of Lincoln city for Jt
Sunkins & Logan attys for plff
and has the following on the back filed May 13th 1853
John Robinson atty

Saturday September 17th 1853

Jacob Schwartz }
as } assumpsit

David Mcneil } and now ~~comes~~ came the
plaintiff by Sunkins & Logan his attorneys and the
defendant by Linsons his attorney and W E Robinson
one of the plaintiffs witnesses who made default
whereupon attachment was issued by order of the
Court returned instantly. Zimmerman one of
the Jurors was ~~excused~~ excused by consent and
there being joined by order of the Court there came
a Jury to wit W H Spiller Michel Odaniel
(Samuel Zimmerman who was excused as afore-
said) Harnace Baxter B B Whitson James
Down Joshua Tyler Walter G of Samuel

Nelson. Wm Rogers Samuel Wilkes & Isaac
 Roe Twelve good and Lawful men who being
 duly sworn impaneled and sworn well and truly
 to try the issue joined after hearing the evidence
 arguments of counsel and instructions of the Court
 do on their oaths say We the Jury do find a Ver-
 dict for the plaintiff and assess his damages a twenty
 Eight Dollars and fifty Cents whereupon it is con-
 sidered by the Court that said Plaintiff do be com-
 of the said defendant the said sum of twenty
 Eight dollars and fifty Cents together with his
 costs and Charges to be herein Saved &c whereupon
 the defendant made a motion for a new trial
 which was by the Court overruled and ordered
 that the Bill of exceptions in this case be signed
 in vacation

The following is the exceptions offered by the deft as
 grounds for a new trial which is as follows

Jacob Schumartz }
 as } Assumpsit
 David Meneer } Supt Term Jackson Circuit Court
 A D 1853

The defendant by his counsel in the above
 styled Cause moves the Court for a new trial for
 the following causes to wit

- 1st Because the verdict is against the Law
- 2nd Because the verdict is against the Evidence
- 3rd Because the verdict is against the law and the Evidence
- 4th Because the Court erred in admitting the evidence
 introduced by the plaintiff and objected to by
 defendant. the cross evidence about the long-
 -up land &c
- 5th Because the Court erred in refusing instructions
 No 2 and 4th asked by defendant

6th And because the Court Erred in excluding evidence offered by him on the trial

Allen and Simons

attys for Defendant
and has the following on the Book Jackson Cir
Court September Term of Schwartz vs D Mcnair
Exceptions Filed September 17th 1853 Washington edg

The following is a notice given by the deft to plff
to produce certain notes values as follows

State of Illinois ss

Jackson County } In the Jackson County Circuit
Court September Term A D 1853

Jacob Schwartz

vs

David McNair } Assumpsit
for use and occupation

Damage \$ 300

Mr Jacob Schwartz Sir you are hereby notified
to produce before the said Court man in vision all
the notes given by the defendant in the above enter-
tled Cause to you for the purchase of the premises in
controversy in the above Entitled Cause

Lyrics G Simons

Atty for Deft

Bill of exceptions

Jacob Schwartz Plff

vs

David McNair Deft

Pleas of the September
Term of the Jackson
Circuit Court in the
year of our Lord one thousand eight
hundred and fifty three

Be it Remembered that the September Term of
the Jackson Circuit Court in the year of our Lord
one thousand eight hundred and fifty three a

certain cause come on to be tried being association
of assumption for use and occupation of certain pre-
= miss in said County wherein the above named
Jacob Schwartz was the plaintiff and said David
Menair was the defendant before the court aforesaid
and a Jury upon said trial the plaintiff introduced
the following testimony both oral and documentary to
support the issue for me therein

First

The Plaintiff introduced W E Robinson who being
duly sworn testified as follows to wit Mr Herald
had possession of the land some thing like 30 years
This testimony was objected to by defendant's counsel on
the ground that no foundation had been laid for
the evidence and the objection was sustained
The Plaintiff then offered in evidence a patent from
the Commissioner of the General Land office of the
United States to Edmiston Herald which is in
the words and figures following to wit "John Quincy
"Adams President of the United States of America
"To all to whom these presents shall come greeting
"Know ye that Edmiston Herald a signer of
"Abraham Lincoln having deposited in the
"General Land office a certificate of the register
"of the Land office at Newkaskia whereby it appears
"that full payment has been made for the South
"West quarter of Section thirty four in Township ten
"South of Range two West containing one hundred
"and sixty acres of the Lands directed to be sold at
"Newkaskia by the act of Congress relative to the dis-
"posal of the Public Lands in Illinois there is
"granted by the United States in pursuance of the acts
"of Congress in that case provided unto the said
"Edmiston Herald and to his heirs the quarter Sec-
"tion or lot of Land above described to have
"and to hold the said quarter Section of Land

"with the appurtenances unto the said Edmiston Herrell
"and to his heirs and assigns forever. In testimony
"whereof I have caused these letters to be made patent
"and the Seal of the General Land office to be hereunto
"affixed" Given under my hand at the City of Wash-
"ington the twenty sixth day of January in the year
"of our Lord one thousand eight hundred and twenty
"six and of the Independence of the United States of
"America the Fiftieth" "J. Adams

By the President

Recorded in Volume 1 page 428

J. N. Graham Commissioner of the
General Land office

The said Plaintiff then offered in evidence a power
of Attorney from Edmiston Herrell to James Herrell
in the words and figures following to wit
"Know all men by these presents that I Edmiston
"Herrell of the County of Warren & State Kentucky
"for and in consideration of moneys comes to me appe-
"aring do hereby nominate constitute and appoint
"my Brother James Herrell of the State of Illinois my
"attorney in fact for me and in my name to sell
"and convey by deed all my interest in a tract of land
"lying in Jackson County in said State on which he now
"lives in as full and complete a manner as I could
"do was I personally present myself satisfying &
"confirming all his said acts in said premises as if
"done by myself In testimony whereof I have here-
"unto set my hand and seal this 9th day of February

Whelp 1834

(Signed) Edmiston Herrell

Pro B Morrison

State of Kentucky " February County Court 1834"

Butler County " The foregoing power of attorney from
Edmiston Herrell to James Herrell was exhibited

in Court and acknowledged by sd Harrell to be his
act & deed which is ordered to be certified

"In testimony whereof I Robert Morrison Clerk of said
County Court hath therunto set my hand and affixed
the seal of my said office this 10th day of February 1834
in the 42^d year of the Commonwealth

R O Morrison clerk of
Butte County Court

on the back there is the following

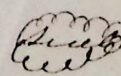
Jackson County Ill" I Joel Manning Recorder of the said County
do certify that this deed has been duly recorded in my office
Book C page 170 July 1st 1835

I Manning Recorder

The defendant by his counsel objected to the introduction
of the apostolic power of Attorney in evidence for causes
stated at the time but the objection was overruled by
the Court to which overruling the defendant by his
counsel then and there accepted and the instrument
was then read in evidence to the jury The said plaintiff
then offered in evidence a deed of conveyance executed
by James Harrell attorney in fact for Edmiston Harrell
to John Brewster which said deed is in the words and fig-
ures following to wit

This indenture made and entered into this nineteenth
day of the month of November in the year of our Lord
One thousand Eight hundred and thirty five between
Edmiston Harrell of the State of Kentucky Warren
County by James Harrell of Jackson County Illinois
his attorney in fact of the first part and John Brewster
of Jackson County Illinois of the second part
Witnesseth that the party of the first part by his
said attorney, for and in consideration of the sum
of hundred and twenty five dollars to him
in hand paid by the party of the second part the
receipt whereof is hereby acknowledged and the

party of the second part thereof acquired and and such
 charged has granted bargained sold aliened released & con-
 =veyed & by these presents do grant bargain sell alienation
 & convey to the party of the second part a certain tract or
 parcel of Land lying & being in the County of Jackson &
 State of Illinois known and designated as a part of the
 " South West quarter of section thirty four in Township ten
 " South of Range two West containing twenty five acres
 and one hundred & nineteen Rods bounded as follows
 " to-wit Beginning at the North East corner of said
 " Section thence West eighty poles to a stake thence South fifty
 " eight poles to a stake thence East twenty two poles to a
 " black oak thence North thirty four East ten poles to a
 " stake thence North eighty six East five poles to a stake
 " thence North fifty East twenty poles thence North eighty three
 " East twenty poles thence North seventy four East ten poles
 " to a stake thence north forty poles to the beginning together
 " with all and singular the appurtenances heretofore
 " rights & privileges thereto belonging or in any wise appertai-
 " ning to have & to hold the said described premises to the
 " only proper use benefit and behoof of him the said John
 " Brewster & to his heirs and assigns forever & the party of the
 " first part by his said attorney Covenant & agree with
 " the party of the second part forever to warrant & defend
 " his title in and to the said described premises against
 " the claim or claims of any and all persons whomsoever
 " In testimony whereof the party of the first part by his
 " said attorney has herunto set his hand and seal this
 " the day and year last above written.
 " the words "to have and to hold hold the said described
 " premises entailed

(Signed) James Harrold 

" Signed sealed and
 " delivered in presence of
 " John D Gregory }
 " Jeph N Gregory }

"State of Illinois" "This day personally appeared before the under-
"Jackson County)" "Signed acting Justice of the peace in & for said
County & State and acknowledged the above foregoing to
"be his voluntary act and deed & for the purposes therein
"contained and set forth hereunder my hand this
"ninteenth day of November A D 1835

on the back is the following "Jackson Co Ills" J. Joel Manning
"Recorder of the said County do certify that this deed has
"been duly recorded in my office in Book 6 page 239 Aug 3^d
"1836" (Signed) "J. Manning Recorder & 26 Bush St
"Filed for Recording Sept 20th 1832 and Recorded in Book
"G- on pages 241 & 242 Sept 29th 1832
(Signed) "Daniel H. Brush clk
"by R. R. Brush Deputy"

36, leaf 3

To the introduction of said deed in evidence by the plaintiff.
the said defendant by his counsel then and there objected
for Causes stated at the time but the objection was overruled
by the Court to which overruling the defendant by his coun-
sel then & there excepted, and the said deed was then read
in evidence to the Jury, The Plaintiff then offered
in evidence a deed of conveyance from John Brewster
to John S. Gregory in the words and figures following
to wit

"This Indenture made and entered into tenth day of the month
"of April in the year of our Lord One thousand Eight hundred
"and forty three between John Brewster and Mary his wife of
"the County of Jackson and State of Illinois of the first part and
"J. Gregory of the County and State aforesaid of the second part
"Witnesseth that the said party of the first part for and in
"consideration of the sum of Fifty dollars to them in hand
"paid by the party of the second part the receipt whereof is hereby
"acknowledged and the party of the second part thereof acquit-
"ted and discharged has granted bargained and sold and
"released conveyed and by these presents do grant —

" bargain sell alien release and convey to the party of the second
 " part a certain tract or parcel of Land lying and being in the
 " County of Jackson and State of Illinois known and designated
 " as a part of the South West quarter of Section thirty four in
 " Township ten South of Range two West containing twenty five
 " acres and one hundred and nineteen rods bounded as follows
 " to wit, beginning at the North East Corner of said Section thence
 " West Eighty poles to a Stake thence South fifty Eight poles to a
 " Stake thence East twenty two poles to a Black oak thence South
 " thirty four East ten poles to a Stake thence North Eighty six East five
 " poles to a Stake thence north fifty East twenty poles thence north
 " seventy four East ten poles to a Stake thence north forty poles to
 " the beginning together with all and singular the appurtenances,
 " and hereditaments rights and privileges thereunto belonging
 " or in any wise appertaining to have & to hold the said dis-
 " creet premises to the only proper use benefit and behoof of
 " him the said John S Gregory and to his heirs and ap-
 " pears forever of the party of the first part covenants & agrees
 " with the party of the second part forever to warrant
 " and defend his title in and to the said described premises
 " against the claim or claims of any & all persons whomsoever
 " In testimony whereof the parties of the first part has here-
 " unto set their hands & seals the day and year last above
 " written

" Signed sealed and } (Signed) John ^{his} Bruster (Seal)
 " obtained in presence of } ^{mark} Mary ^{his} Bruster
 " W. C. Robinson } ^{mark}

" of W. Robinson } State of Illinois Jackson County
 " Be it known that before me the undersigned subscriber
 " a Justice of the peace of said County personally appeared
 " John Bruster and Mary his wife above named to me
 " personally known to be the identical persons named
 " in said deed and acknowledged that they had executed
 " the said conveyance for the uses and purposes therein
 " mentioned and Mary wife of the said Bruster being by
 " me made acquainted with the contents of the said

"conveyance and examined separate and apart from her said
"husband acknowledged that she had executed the said
"conveyance and relinquished her dower to the premises
"therein conveyed without compulsion of her said husband
"Given under my hand and seal this 10th day of April
"A D 1843 W P Robinson"

"on the back is as follows. Filed for Record Sept
"20th 1852 and Recorded in Book 9 on pages 242
"J 343 Sept 29th 1853 Samuel H Brush clerk
"G R R Brush dpy

7985 4405

To the introduction of which said deed in evidence
by the plaintiff was objected to by the counsel of the
defendant for causes stated at the time which objection
was overruled by the court to which overruling the
defendant by his counsel then and there excepted and
the said deed was then read in evidence to the Jury
The Plaintiff then offered in evidence a deed of con-
veyance purporting to have been made by John S
Gregory and wife to Jacob Schwartz the said plaintiff
in the words and figures following to wit

"This indenture made and entered into this twenty eighth day
"of the Month of June in the year of our Lord one thousand
"eight hundred and forty five between John S Gregory
"and Christiany his wife of the County of Jackson and State of
"Illinois of the first part and Jacob Schwartz of the County
"and State aforesaid of the second part Witnesseth that the
"party of the first part for and in consideration of the sum of one
"hundred and twenty dollars to them in hand paid by the party
"of the second part the receipt whereof is hereby acknowl-
"edged and the party of the second part thereof acquitted and
"discharged has granted bargained and sold aliened
"released conveyed and by these presents do grant bargain
"sell alien and convey to the party of the second part a certain
"tract or parcel of Land lying and being in the County of Jackson
"and State of Illinois known and designated as a part of the

" South West quarter of Section thirty four in Township ten South
" of Range two West containing twenty five acres and one hund=
"red and nineteen rods Bounded as follows to wit beginning at
" the North East Corner of said Section thence West eighty poles to a
" Stake thence South fifty eight poles to a stake thence East twenty
" two poles to a Black oak thence North thirty four East ten poles
" to a stake thence North eighty six East five poles to a stake
" thence North fifty East twenty poles thence North eighty
" three East twenty poles thence North seventy four East ten
" poles to a stake thence North forty poles to the beginning
" together with all and singular the appertinances and
" hereditaments rights and privileges thereunto belonging
" or in any wise appertaining To have and to hold the said
" described premises to the only proper use and benefit
" and behoof of him the said Jacob Schwartz and to his
" heirs and assigns" & agrees with the party of the second part
" former to warrant and defend his title in and the said
" described premises against the Claim or Claims of any and
" all persons whomsoever In testimony whereof the party
" of the first part has hereunto set their hands and seals the
" day and year last above written

" Signed sealed and delivered (John S Gregory Seal)
" in presence of (Christina Gregory Seal)
N B Robinson J W Robinson

State of Illinois (Jackson County)

" Be it known that before me the subscriber a justice of the
" peace of said County personally appeared John S Gregory
" and Christina his wife whose names to me personally known
" to be the persons named in the said Deed and acknowledged that
" they executed the said conveyance for the uses and purposes
" therein mentioned And Christina wife of said Gregory being
" by me made acquainted with the contents of the said convey=
"ance and examined separate and apart from her said husband ac=
"knowledged that she had executed the said conveyance and
" relinquished her dower to the premises therein conveyed without
" any promise of her said husband Given under my hand and seal

"This 28th day of June A.D. 1845"

(Signed) W. C. Robinson Justice of
the peace

"on the back is as follows) Filed for Record A.D. 26 1832 and
"Recorded on 28th in Book 5. on pages 107 & 108

D. B. Bush clk of
Jackson Circuit Court

In the introduction of which said deed in evidence
on the part and behalf of the said plaintiff the defendant
by his counsel objected for causes stated by them at the
time but the objection was overruled by the court to which
overruling the defendant by his counsel then and there
excepted - and the said deed was then Read in evi-
-dence to the jury The plaintiff then recalled Mr. W. C.
Robinson who took the stand and testified as follows to wit:
"I have known the parties to this suit for a number of years
"knowing Mr. James Harrell for many years he lived on the
"land mentioned in the patent (the same patent before
"mentioned) for a great number of years I can't say the
"exact number it was something like twenty two years
"and probably twenty six I have known him and the land
"described in the patent is the land in question ever since
"I can remember any thing I have known the land
"in question to be the same land described in the patent
"about six or seven years for about that time ago I saw
"out the land myself - I have been well acquainted with
"the land for twenty four or twenty five years Mr. Harrell
"lived there to my knowledge in 1834 and he lived there
"until he died I am well acquainted with the land
"David Mcnair lived on for a number of years prior to
"the Spring of 1832 it was a part of the same quarter here
"then described in the patent Mr. John S. Gregory owned
"the right to Schwartz" here the the plaintiff by his
"counsel asked the witness if David Mcnair took
"possession of the land he lived on with Lucile

Schwarz's consent this question was objected to by the
counsel of the defendant for causes stated at the time
but the objection was overruled by the Court, to which
overruling the said defendant by his Counsel then and
there accepted the said witness then testified as follows to wit
I can state if permitted that Mr. Fair got possession of the
Land in question from Schwarz & with his consent he
Mr. Fair had possession of it six or seven years. I do not
know how much cleared Land there was on the divided
Land accurately but I think about eight or ten acres. To
the introduction of all this testimony the defendant by his
Counsel objected but the objection was overruled by the Court
to which overruling the defendant then and there accepted
the witness continued "The House was on part of the divided
Land nor was any of the buildings. There was a few old
spruce trees on the divided Land the Land was old and
very badly worn I think the rent of the cleared Land
was worth about one dollar an acre I stated that it was
worth one dollar and a half an acre before but I
now think as Land's rent that estimate was too high and
that one dollar would be sufficient for it. I think
Mr. Fair had the Land six or seven years my impression
is that he went on to it in 1845 and left it in February
or March of 1852. There was but little timber worth
any thing on the Land" for the introduction of all this tes-
timony on the part of the plaintiff the defendant by his
Counsel objected but the objection was overruled by the
Court and the defendant then and there accepted to
the decision. Here the plaintiff yielded the witness
Upon his Cross Examination the said witness testified as
follows to wit "I know that the contents of the deed
as described in the deeds would not locate the land in
the quarter section described in the patent but com-
mencing at the points mentioned in the deeds and the
said section would locate the Land in another quar-
ter section. Mr. Fair entered upon the Land in

quarter by virtue of a contract of sale he purchased
the land from Schwartz the plaintiff & Schwartz
made and executed a Bond for deed to M^r. Nair for the
premises and M^r. Nair executed and delivered his note
for the purchase money it was by virtue of this contract
that defendant got possession of the land. Here the
defendant's counsel handed a written paper to the witness
at which he looked and after examining it resumed
that is the Bond executed by Schwartz to M^r. Nair by
virtue of which he got possession of the land. The notes
therein described were executed by M^r. Nair and given
to plaintiff. Debt paid plaintiff something on the notes
I think some fifty or sixty odd dollars don't recall it
the exact sum. Here the defendant handed over the
witness and thereupon moved to discharge his evidence from
the jury for causes then mentioned by his counsel but
the motion to discharge the evidence was overruled by the
Court to which overruling the defendant by his counsel
then and there excepted. The plaintiff then resumed
the direct examination and asked the witness "if the
Congress Land or the Clearing on Government Land
adjoining the divided land which was deeded did not
abruptly tract with the farm". This question was objected
to by the defendant's counsel for causes then urged to the court
as well as all testimony in relation to the value of the
improvement on Congress Land. Which said objection
was overruled by the Court and the defendant by his counsel
then and there excepted. In answer then to plaintiff's
introduction the said witness said that portion of the cleared
land belonging to the farm lying on Congress Land abrup-
tly and was tracted with the farm on deeded land
there was fifteen or more acres of cleared land on government
land belonging to the farm the dwelling house and all
the land crops were on the improvement not on the
deeded land the most of the orchard was on the improve-
ment it was much better and more productive than

"The old land on the tract which was decided the improvement
"is on an even section - there was some of the improvement
"is on an even section there was some of the improvement as
"old and as badly worn as the decided land but the new
"land that recently cleared was all on the improved
"I think the rents of the improvements were worth one dollar per
"year for all the clearing - some of the it was worth more and
"again some ^{not it} taking the whole farm together I think the
"land worth one dollar per year per acre" all the foregoing
testimony was objected to by defendant's counsel but the obje-
-ction overruled by the court and to uphold the defendant
by his counsel then & there excepted, The defendant then sum-
-med his crop examination when the witness testified
as follows to wit: "Mr. Fair did make some improvements
"there. He cleared off some new land fenced and cul-
"tivated it for three or more years can't say how many acres
"he also set out some fruit trees peaches and apples trees
"but do not know the number I know he built a smoke
"chimney to the house. I do not know a great deal about that
"for I do not very often go near it, there is nothing said about
"the improvement in the Bond. I mentioned held by McVair
"against Schwartz, nor any thing about it in the notes. The
"consideration of the deed on the face of the Bond was in full
"payment for both the decided land and the improve-
-ment that amount was all agreed to pay for both the
"agreement was by parole with signatures to the improvement
"and all the money to be paid was set off in the Bond."
The witness then testified:

The plaintiff then introduced Mr. Gregory as a witness
who being sworn testified as follows to wit: "I am well
"acquainted with the premises Mr. Fair lived on for some
"years prior to the Spring of 1852. The same Mr. Robinson
"spoke about I think there is about thirty acres of the
"cleared land in the farm perhaps some thing less
"I mean the whole farm there is a tobacco good peach
"orchard on it I think the land is worth one dollar

"per acre per year on his Crop Insurance by defendant
"he testified as follows "there is about Eight or ten acres of
"cleared ground on the deeded land the rest of it is
"very little account lying on the bluff the timber is
"but little value and hard to get at the balance
"of the farm is on Congress Land all the cleared
"land of the deeded part is old and much worn some
"of the improvement is worn as bad as the deeded
"land and some of it is fresh there is about 20 acres
"cleared on the Government land the buildings are
"all on the improvement. so is the orchard - I don't
"say how long McMain lived on the place exactly but
"it was five or six years. left last Spring was a year
"ago I don't know how he got possession. I don't know
"that McMain planted the orchard of my own knowledge
"or that he built a chimney. don't know how much
"land he cleared some was cleared while he lived then
"the plaintiff presented his case. The defendant
"by his counsel then offered in evidence the Bond
"mentioned by Mr Robinson Executed by the plaintiff
"to the defendant which is in the words and figures
"following to wit

"Know all men by these presents that Jacob Schwartz
"lawfully and firmly bound unto David McMain
"the special sum of Three hundred dollars Lawful
"Money of the United States to the payment of which
"~~will~~ I bind myself my heirs Executors administrators
"Jointly by these presents In Witness whereof I have
"hereunto set my hand and seal this twenty eighth
"day of June in the year of our Lord one thousand
"eight hundred and forty five. The condition of
"the above obligation is such that the said McMain
"has this day bought of the said Jacob Schwartz
"a certain Lot of Land described as follows to wit
"lying a part of the South West quarter of section
"thirty four in Township ten South of Range two

"West containing twenty five acres and one hundred
"and nineteen rods bounded as follows to M^cD beginning
"at the North East corner of said section thence West
"Eighty poles to a stake thence East twenty two poles
"to a stake Black oak, thence North thirty four East
"ten poles to a stake thence North eighty six East five
"poles five poles to a stake thence North fifty East twenty
"poles thence North eighty three East twenty poles thence
"North seventy four East ten poles to a stake thence North
"forty poles to the beginning. And the said M^c & Nair agrees
"to pay or cause to be paid to the said Jacob Schuertz the
"sum of one hundred & fifty dollars in consideration
"of the above described premises by payments as follows
"to wit one note due the first day of November 1845
"for \$37.50 which is to be paid with 50 bushels of oats and
"one hundred bushels of corn and one note due the
"1st day of Nov^r 1846 for \$37.50 which is to be paid in 50
"bushels of oats and one hundred bushels of corn and
"\$37.50 due the 1st day of Nov^r 1848 to be paid as the
"before mentioned notes and one for \$37.50 due on the
"1st day of November 1848 to be paid in oats and corn as
"before mentioned Now if the said M^c & Nair shall pay
"the above mentioned notes according to contract and the
"time set for payment the said Schuertz times himself his
"heirs & executors and administrators to make to the said M^c
"Nair his heirs & executors or administrators a good and lawful
"deed to the before mentioned premises and it is further
"agreed by & between the said parties that if in case the said
"M^c & Nair shall pay a part of the said payments and fail to pay
"the full amount the said Schuertz is to refund back to
"the said M^c & Nair the full amount of such payments
"after deducting legal interest of any should accrue on said
"notes that are so paid now in case the said parties shall
"comply with contracts and obligations set forth in this
"obligation then this obligation to be void otherwise to
"remain in full force in Law In witness whereof

"I have hereunto set my hand and seal this 28th day
of June A.D. 1845

"Signed sealed and delivered in presence of (signed) Jacob Schwartz Esq
of W & Robinson & pro Gregory


In the introduction of which said Bond in Evidence
the Plaintiff by his Counsel objected for Causes stated at
the time among them want of Mutuality which ob-
jection was overruled by the Court and the said Plaintiff
then and there accepted. The Bond was then read in Evi-
dence to the jury. The defendant then demanded
of the Plaintiff to produce certain notes in
his possession being the same notes mentioned in the above
Bonds made by the defendant and delivered to the Plaintiff
The notes aforesaid were produced by the Plaintiff upon pre-
vious Notice served upon him by the defendant. The de-
fendant then offered certain promissory notes in evi-
dence in the following words and figures to wit

1st Note On or before the first day of November 1845 I promise
to pay Jacob Schwartz the sum of thirty seven dollars
& 50 cents which is to be paid with 50 bushels of
oats and one hundred bushels of Corn for value received
of him as Witness my hand and seal this 28th of June 1845

(signed) David McKee Esq
of which note is the following as follows to wit
make up sign the within note to Lydia Herrald Account of
James Herrald deceased April 2nd 1846

(signed) Jacob Schwartz
for value received I sign the within Note to A Course
(signed) Lydia Herrald born
November 13th 1850 Interest till 1st April 1851 \$12.95 less
part of loan \$34.00 July 2 1846 due \$10.25

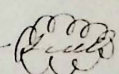
2nd note On or before the first day of November 1846 I promise
to pay Jacob Schwartz the sum of thirty seven dollars
& 50 cents which is to be paid with fifty bushels of oats & one
hundred bushels of Corn for value received of him as

Witness my hand and seal this 28th of June 1845 -
(Signed) "David McKeen" 


on the back.

"is the following" } "Interest till 10th April 1851 \$9 75 - per December
"1848 by oats \$9,672 per December 1848 \$2291 per March 15th
"1850 \$590 amount on Book same date \$1,000 full amount \$3573

This note " on or before the first day of November 1847 I promise to
" pay Jacob Schwartz the sum of thirty seven dollars and
" fifty cents which is to be paid with fifty bushels of oats and
" a one hundred bushels of corn for value recd. Witness my
" hand & seal this 28th day of June 1845 -

in the back of ³ (Signed) "David McKeen" 

which note is the
following } "Interest till 10th April 1851 \$7,50

1st note " on or before the first day of November 1848 I promise to pay
" Jacob Schwartz the sum of thirty seven dollars & 50 cents
" which is to be paid with fifty bushels of oats and one hundred
" bushels of corn for value received of him this 28th day of June
" 1845 (Signed) David McKeen 

on the back of this ³
note is the following } "I sign within note to Lydia Herrald Adm^r of James
" Herrald deceased April 2nd 1846 (Signed) Jacob Schwartz
" for value received I sign the within note to ab contain
" November the 3-1850 (Signed) "Lydia Herrald Adm^r
" Interest till April 1851 \$600

The defendant by his counsel then made a motion to
Exclude from the jury all the parole testimony previous-
ly offered by the plaintiff for causes stated at the times
among which was that the evidence showed that the
relation of land lord and tenant did not exist be-
tween plaintiff and defendant. The motion was over-
ruled by the court and to the overruling the defendant
then and there by his counsel accepted the defendant

then introduced Philip Huger as a witness who
having been duly sworn deposed as follows to wit
" that he was acquainted with the premises on which
" M^r Nair lived and had been ever since he could
" remember there was about ten acres of cleared land
" on the decided part and fifteen or twenty on the improvement
" did not know the exact number it was old and worn
" land the most of it some of the new land was fresh
" thinks that the rent was worth about one dollar per acre
" per year M^r Nair lived there prior to the Spring of 1852
" upon his Cross Examination he stated "that the land
" was always thin land and had been badly worn the
" fresh ground was tolerable good there was some fruit
" trees on the place

The said defendant then introduced James Himmerson
as a witness who being first duly sworn deposed as follows
to wit "I am well acquainted with the farm M^r
" Nair bought from Schenckly and where he lived prior
" to the Spring last was a year ago. part of the time I have
" lived between a quarter and a half a mile of it since
" there last summer. the old land is not worth more
" than fifty cents per acre per year and I would
" not give that. It is thin land and some of it plow
" worn out some of the new ground is good worth a dollar
" or a dollar and a half an acre but take the whole together
" then the rent it is not worth more than fifty cents
" per acre per year M^r Nair built a stone Chimney
" to the house where he lived on the place worth fifteen
" dollars he cleared off six acres and ninety rods of
" ground and fenced it. It was worth seven or
" eight dollars an acre to fence it and clear it he
" planted between forty & fifty apple trees and sixteen
" or seventeen peach trees about half the apple trees are
" large enough to bear. I think the bearing trees are
" worth one dollar each and the others are worth half a
" dollar each he cleared off the old pasture field

" on the decided land and repaired the fences. There was I
" ~~think~~ should think from a fine acres of the land or
" field and it would be worth from ten to three dollars
" per acre to clear it off. He cleared out the fence rows
" and laid up about one hundred rods of fence part
" were new rails and part old do not think that one
" half were new rails. There was about 4 or 500 hundred
" new rails and about ten hundred old ones it was
" worth a dollar a hundred to make and put up the new
" rails, and it was worth half a dollar to lay up the old
" ones, part of the old rails were near by and part were
" hauled some distance it is worth fifty cents per hundred
" to haul and part lay up old rails to make the new
" rails and put up the old ones was worth ten dollars he
" cleared out a new fence row and laid up the fence
" from the bottom. Now the defendant deposed
" the witness upon his cross examination he stated
" My knowledge of the value of the Rest of the land
" is derived from seeing in the neighborhood and know-
" ing how land sells there I have rented land
" in that neighborhood I rented a farm between a
" quarter and a half a mile from there last year I have
" seen the farm frequently, I know Mr. Nair cleared
" off the six acres and go rods because it was done while
" he lived there and I saw no one else at work there it
" was cleared and fenced about three or four years ago
" Mr. Nair tended the land after it was cleared includ-
" ing the new ground there was about thirty acres
" in the whole farm perhaps not quite so much I know
" there was over six acres of the new cleared land because
" I helped to measure it the pasture field was cleared
" off while he lived there the new fence was made while
" he lived there so was the Rock chimney. I saw no one
" but his family at work on the place while he lived
" there. I know the work was done by him because it
" was done while he lived there and had possession

"Mr. Nair kept the old ground ceded down nearly
"all the time to being it two or three years he did not
"tend it all. the Land was badly worn the year he did
"not tend that land he raised a crop at Mrs
"Harrells he rented ground of her" The plaintiff
"then released the witness the defendant then introduced
"as a witness Mr. Fielding A. Jones who being first duly
"sworn depned as follows to wit: "I am acquainted
"with the place in question. the place it was said should
"Mr. Nair lived on I lived on it and made a crop in
"1837 went there in the Spring of the year has been told
"where the lines run between the ceded land and the
"improvement there is about eight or ten acres of choice
"land on the entered part and fifteen or twenty of the im-
"provement. part of it is pretty good land and the balance
"is not worth tending. there is eight acres including
"new ground which is pretty good the balance is very
"poor. part of the old land has been turned out to the
"the old Land is not worth fifty cents per acre for
"the rent of a year taking all together it is not worth
"more than fifty cents per acre" here the defendant yielded
"the witness upon his crop examination on the part of
"the plaintiff he testified as follows to wit: "the
"new ground would be worth one dollar per acre
"for the year's rent but all together not more than
"half that amount the farm was in bad repair
"when I went there soon after Mr. Nair left it there
"was some good fence and some indifferant. this
"was some time after Mr. Nair left it the House was
"in terrible bad repair there had been an old log
"house used as a barn on the place but it was of
"a little or no use" Charles Williams was then called
"by the defendant and introduced as a witness and
"after being first duly sworn according to Law testi-
"fied as follows to wit: "I am acquainted
"with place have been on the most of it have

"cut wheat on it or do so while Mr. Nair lived there the
"crop was very indifferent and the land looked quite
"poor I think the rent could not be worth more than
"50 cents per acre for the rent of a year" Here the
"defendant recalled the witness to the plaintiff who
"who upon his ^{perop} examination (the witness) testified as
"follows to wit "I live about eight miles from the place
"where Mr. Nair did, but has passed it several times
"I have been all over it, cut wheat there one year it
"was four years ago this present summer does not stand
"but whether it was the very worst year or not I
"have no recollection of the way the soil runs" here
"the plaintiff released the witness:

"The deff. then called as a witness and introduced
"Gilman Hagler who being first duly sworn deposes and
"says "I am well acquainted with the premises
"Mr. Nair purchased of Schuertz and when he lived
"before 1852. He has known the place ~~since~~
"he has known any thing in the world, when Mr. Nair
"went there the place had run down and was in
"bad repair it is very thin land and badly worn
"I should hate to tend it and give four bits an acre
"for the rent of it one year Mr. Nair sowed it down
"on the old land) and kept it sowed down in order
"to try and improve it or bring it up again it was
"sowed down the most of the time he lived there one
"year he did not tend any of it had it all in grass and
"rented ground of Mrs. Herrell" here the defendant
"released the witness upon his cross examination by plu-
"intiff's counsel he testified as follows: "the farm
"like other old hill land badly worn it is not worth
"50 cents per acre rent besides keeping it in repair I
"would not give that price and keep up the fences
"I live on the same place in the same neighbor-
"hood it is also an old worn farm but it has
"been managed a good deal and taken better care of

"than the place Mr. Fair lived on some of the Seward
"places which I have here I would be glad to rent at
"50 cents per acre I know Mr. Fair. Cleared cleared
"some about four years after he went there it was on the
"improvement and a part of the farm he let the land
"lay idle one year and tended at Mrs. Harrells the farm
"was not in very good repair when he left it much as
"it was when he got the place" Here plaintiff released
"the witness direct examination resumed "When I speak of
"the condition of the land when left left I mean the
"pieces of a stone chimney was built to the house and an
"orchard set out while he lived there" Then depen-
"dant then introduced as a witness William G. Lindsey
"who being first duly sworn testified as follows to wit
"I have seen the premises one or twice it is an old heady
"Morn farm but should not like to say what the rent
"is worth cant say what is worth here he was released

The defendant then called and introduced as a witness
William Hoaghe who being first duly sworn testified as
follows to wit "I know the premises in question before
"defendant bought them ^{saw} ~~and~~ the farm two or three
"times while he lived there it is an old farm heady
"Morn" the new ground is pretty good cant say what
"the is worth as rent, dont rent land and therefore
"cant say" Witness released no cross examination

Here defendant closed his case the plaintiff then
recalled W. E. Robinson who testified as follows "I
"knew the farm before defendant ^{rent} there and while
"he ~~lived~~ had it, it was in bad repair when he
"went there it was run down, it was not in
"much better repair when he left, I do not know
"that it was in any better repair" Cross Examination
again. "I mean by repair the condition of the
"pieces and the fence dont mean the orchard
"or churning" the plaintiff then called Lewis Hoaghe
"who testified as follows "I was acquainted

"with the farm at the time and after defendant went
"on to it, it was not in very good repair when he
"went there and it was much the same when he left
"it. last Spring was a year ago Mc Nair had chased
"some land cant say how much"

The plaintiff then called and introduced as witness
John Pruster who testified as follows to wit " I
"know the condition of the farm about two years before
"defendant got it it was not in good repair it
"was much like other old farms" dont know how
"it was when Mc Nair got it nor when he left it"

Then the plaintiff rested his case and upon this
testimony the cause went to the jury. The defendant
by his counsel asked the Court to give to the jury
certain instructions marked or numbered 1st 2nd 3rd 4th
and 5th which were in the words and figures following
to wit

1st "The defendants counsel ask the Court to instruct
"the jury that if they believe from the evidence
"that Mc Nair entered upon the land in question
"by virtue of a contract of sale under which he
"held all the time he had possession (which
"Contract was valid in law and subsisting at the
"time) then the relation of Land Lord and tenant
"did not exist and the plaintiff cannot recover
"in this form of action"

" Given

2nd "That unless the plaintiff has shown by the evidence
"that there was an express promise to pay rent by
"Mc Nair to Schuertz for the improvement on con-
"gress land then the relation of Landlord and
"tenant did not exist and plaintiff is not entitled
"to receive rent for that part "Proposed"

Third "That if the defendant entered upon the land
"in question by virtue of a contract of sale and

Fifth That the Court erred in permitting the plaintiff to show to the Jury the evidence objected to by defendant

and

Sixth That the Court erred in not permitting the defendant to prove the facts objected to by plaintiff and ruled out by the Court

But the said Court overruled the motion for a new trial therein, and rendered judgement in favor of the plaintiff for the amount of the verdict of the Jury aforesaid, to the overruling of which said motion for a new trial the said defendant by his Court then and there accepted

The defendant by his counsel then asked for permission to prepare and present a Bill of exceptions for signature in vacation which was then and there granted

The above and foregoing Bill of exceptions presents a full and fair statement of the testimony and proceedings had in the above styled cause before the Court aforesaid and hence the said defendant prays that it may be signed as such and made a part of the Record in the same

This 20th October 1853

Wm. Denning

The following is the Bill of cost in said case made by Plff and defendant at the General Term of the Circuit Court of Jackson county

Jacob Schwartz

vs
David McNear

Judgment against defendant
Plaintiff Cost Bill

Wk Bush docket by suit 3 times 30^c 3 continuances 60^c 3 orders of court 60^c \$ 1 50
 Issuing sum 35^c issuing 4 subs may term 1852 \$ 140 filing cler 20 1 95
 " 2 subs Sept term 1852 70^c filing cler 10^c issuing 2 subs may 1853 \$ 115 1 90
 filing 3 subs 15^c answering of Motions May term 1852 35 " 50
 answering 9 to affid of filing same 90^c calling & answering July 15^c 1 05
 filing 3 other papers 15^c do declaration 5^c issuing verdict 10^c " 30
 Wk Chittre docket by suit 10^c one continuance 20 entering answer of p/ff & att 15^c
 issuing 4 subs \$ 140 filing same 20^c filing of papers 35^c
 answering 10 to affids & filing them \$ 1,000 docket by Judgment 10
 calling & answering July 15^c answering 6 Motions 30
 issuing & entering verdict of Aug 10 entering final order 20^c
 entering Judgment 25^c docket sum 10 satisfaction 15^c fee 5 40
 Bill 30 issuing attached 25

Shiff Chittre on sum serving 50^c 15 miles travel 75^c Put 10^c on subs to mag
 Jan 1852 serving on 9 \$ 225 99 miles travel \$ 4,65^c Put 30^c
 on subs to Sept Jan 1852 serving on 6 \$ 450, 60 miles travel \$ 2,00 Put 20
 on notice serving on Schwartz to give up notes 60 13 85

Shiff Cop on subs to May term 1853 serving on 9 \$ 1,75 80 miles travel \$ 4 Put 30^c
 " " Sept " " " " 150 78 miles travel \$ 3,90 " 30^c
 " attachment serving 50^c 12 miles travel 60^c Put 10^c 12 95

Motions May Jan 1852 Mrs J Lindsey 4 cas \$ 2 4 00
 " " " John Brewster 4 cas \$ 2 4 00
 Sept " " Mrs J Lindsey 2 cas \$ 1 2 00
 " " " W. Robinson 2 cas \$ 1 2 00
 " " " John Brewster 2 cas \$ 1 5 00

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May Term 1853	U E Robinson 3 dcs \$50	J A Jones 2 dcs \$1.50		
" "	" Mm J Sunday 3 dcs \$150	Matthews Hoagler 2 dcs \$1.50		
" "	" Mm Hoagler 2 dcs \$1			7 00
Sept " 1853	Matthews Hoagler 4 dcs \$2	Mm J Sunday 4 dcs \$2		
" "	" J A Jones 4 dcs \$2	John Brewster 4 dcs \$2		9 00
" "	" U E Robinson 2 dcs \$1			

Jacole Schwartz
as
David Mc Nair
Bill of Cost by Defendant

U E Brewster	Bill of Cost	Sept Term 1852	\$195	2	45
Bill of Cost	Sept Term 1852	\$140	1	75	
Bill of Cost	Sept Term 1852	60	"	85	
Bill of Cost	Sept Term 1852	60	"	05	
Bill of Cost	Sept Term 1852	30	"	30	

U E Brewster	Bill of Cost	Sept Term 1853	\$105	1	75
Bill of Cost	Sept Term 1853	90	"	95	
Bill of Cost	Sept Term 1853	35			
Bill of Cost	Sept Term 1853	70		1 50	

May Term 1852	July Fee \$3	clocket Fee \$250	5	00
Sept Term 1853	July Fee \$3		3	00

U E Brewster	Bill of Cost	Sept Term 1852	\$140		
Bill of Cost	Sept Term 1852	100			
Bill of Cost	Sept Term 1852	70		7 00	

U E Brewster	Bill of Cost	Sept Term 1852	\$140		
Bill of Cost	Sept Term 1852	100			
Bill of Cost	Sept Term 1852	70		15 50	

Shiff Phelps & Co on Duke Sunday on 1-25^c 12 miles travel 60^c Post 10^c

Witness at May Term 1852 Samuel Morgan 4 cts # 2	Tillman Hoagler 4 cts # 2	
" " " Philip Hoagler 4 cts # 2	J M Gregory 4 cts # 2	
" " " Aaron Bays 4 cts # 2	Wm Hoagler 4 cts # 2	12 00
" Sept " 1852 J M Gregory 2 cts # 1 Wm Richard 1 day 50 ^c		
" " " Philip Hoagler 2 cts # 1	Wm Hoagler 2 cts # 1	
" " " Samuel Morgan 2 cts # 1	J G Lindsey 2 cts # 1	5 50
" at May Term 1853 F A Jones 3 cts # 150 Philip Hoagler 3 cts # 150 James		
Gimman 3 cts # 150 Wm G Lindsey 3 cts # 150 Wm Hoagler 3 cts # 150		
Samuel Morgan 3 cts # 150 Jacob Hoagler 2 cts # 1 Wm R		
Aernot 1 day 50		

Sept Term 1853 Philip Hoagler 4 cts # 2	Geo Gimman 4 cts # 2	Wm Hoagler 4 cts # 2	
" " Jacob Hoagler 4 cts # 2	Chas Williams 4 cts # 2	Wm Richard 1 day 50	12 50
Tillman Hoagler 4 cts # 2			

The following is the affidavit of the witnesses in the foregoing cause filed & at the several terms of the Circuit Court of Jackson County

Jac Schwartz } Jackson Circuit Court May
 as } Term 1852

David McVair } This affiant states on oath
 that he has attended four days as a witness
 in said cause at said term at the request
 of the Deft
 Subscribed & sworn to Wm Hoagler
 before this 15th day
 of May 1852
 J. H. Brusk cllk

Jacob Schwartz } South In Jackson Circuit
as } Court May Term 1852
David McEnair } This affiant on oath states
that he has attended four days as a witness
in said cause at said term at the Request of the
Deft

Subscribed and sworn to before } Philip Hoagler
me this 15th day of May 1852 }
D^o H^o Brush clk

Jacob Schwartz }
as } Jackson Circuit Court May Term
David McEnair } 1852, This affiant states on oath
that he has attended four days as a witness in said
cause at said term at the request of the Deft
Subscribed & sworn to }
before me this 15th day of May } J^oseph Mc Gregory
1852 } D^o H^o Brush clk

Jackson Circuit Court May Term A^d 1852
Jacob Schwartz } This deponent declares on oath
as } that he attended as a witness in
David McEnair } the above case on behalf of the
Deft for four days
Subscribed and sworn to in } Jellman Hoagler
open Court this 15th day of May }
1852 } D^o H^o Brush clk

Jacob Schwartz }
as } Jackson Circuit Court May
David McEnair } Term 1852 this affiant on
oath states that he has attended four days as a
witness in said case at said term at the request
of the Deft Subscribed and sworn to before me
this 15th day of May 1852 }
D^o H^o Brush clk } Samuel ^{his} Hoagler
mark

Jacob Schwartz } In Jackson Circuit Court May
vs } Term 1852

David McNeill } This affiant on oath states that
he has attended four days as a Witness in said
Cause at said term at the request of the plff
Subscribed & sworn to before me this 15th day of
May 1852

D H Brush clk } J A ^{his} Jones
mark

Jacob Schwartz }

vs

In Jackson Circuit Court
David McNeill } May Term 1852

This affiant on oath states that he has attended
four days as a Witness in said case at the said
Term at the request of Plff Subscribed &
sworn to before me this

15th day May 1852 } John ^{his} Bruster
mark

D H Brush clk }

Jacob Schwartz }

vs

In Jackson Circuit Court
David McNeill } May Term 1852

This affiant on oath states that he has attended
four days as a Witness in said case at said
Term at the request of the Plff

Subscribed & sworn to before me this 15th day
of May 1852

D H Brush clk } Mathias Hoagler

Jacob Schwartz } In Jackson Circuit Court
vs } at May Term 1852

David McNeill } This affiant on oath states
that he has attended four days as a Witness
in said case at said term at the request
of the Plff

Subscribed & sworn to before me by Lindsey
me this 15th day of May 1852 }

D H Brush

Jacob Schwartz } Jackson Circuit Court May
as } Term 1852
David McVair } This affiant states on oath
that he has attended four days as a witness
in said case at said term at the request
of the Deft. Subscribed and sworn to
before me this 15th day of May 1852
D^d H^d Brush clk } Aaron Bess

Jacob Schwartz } In Jackson Circuit Court at the
as } Sept^r Term 1852
David McVair } This affiant states on oath
that he has attended two days as a witness in
the said case at said Term at request of
the Deft. Subscribed & sworn to
before me this 15th day
of Sept 1852 } Jese M^d Jorgon
D^d H^d Brush clk }

Jacob Schwartz }
as } In Jackson Circuit Court
David McVair } at the Sept Term 1852
This affiant states on oath that he has attended
two days as a witness in the said case at said
term at request of the Deft
Subscribed & sworn to before
me this 15th day of Sept 1852 } Jese G^d Lindsey
D^d H^d Brush clk }

Jacob Schwartz }
as } In Jackson Circuit Court
David McVair } at the Sept Term 1852
This affiant states on oath that he has attended
two days as a witness in said case at said term at
the request of the Deft. Subscribed & sworn to before
me this 14th day of Sept 1852 } Samuel^{his} Morgan
D^d H^d Brush clk } make

in said case at said term at request of
the said Dept

Subscribed & sworn to by Mm Richard
before me this 15th day of Sept 1852

D W Brush clk

Jacob Schwartz } In Jackson Circuit Court Septem
15 } A. D 1852

David McVair } This affiant states on oath that
he has attended two days as a witness in said
cause at said term at the request of the plff

Subscribed & sworn before me this

16th day of September A. D 1852

} M E Robinson
D W Brush clk }

Jacob Schwartz } In Jackson Circuit Court at the
15 } Sept Term 1852

David McVair } This affiant on oath states that
he has attended two days as a witness in said case
at said term at the request of the plff

Subscribed & sworn to before me

on this 15th day of Sept 1852

} F A Jones
D W Brush clk }

Jacob Schwartz } In Jackson Circuit Court
15 } at Sept Term 1852

David McVair } This affiant states on oath
that he has attended two days as a witness in said
cause at said term at the request of the plff

Subscribed & sworn to before me

this 15th day of Sept 1852

} Wm G Lindsey
D W Brush clk }

Jacob Schwartz vs David McVair
in Jackson Circuit Court at
the Sept Term 1852
This deponent states on oath that
he has attended two days as a Witness in said
case at said Term at the request of said Plff
Subscribed and sworn to before
me this 15th day of Sept 1852 } Jacob Zimmerman
J. H. Brush clk }
}

Jackson Circuit May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has attended
as a Witness in the above case on behalf of the Deft
three days and travels }
Subscribed and sworn to } J. A. Jones
before me in open court this }
12th day of May 1853 } John Blinton clk

Jackson Circuit Court May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has attended
as a Witness in the above case on behalf of the deponent
3 days and travels
Subscribed and sworn to before
me in open court this 12th day of May Philip Hoaghe
1853 John Blinton clk }
By Cyrus Thomas depy }

Jackson Circuit Court May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he attended
as a Witness in the above case on behalf of the
defendant 3 days and travel
Subscribed and sworn to before me in open court
this 12th day of May 1853 } James L. Zimmerman
John Blinton clk }
By Cyrus Thomas depy }

Jackson Circuit Court Sept Term 1853

J. Schwartz vs D. McVair

This deponent declares on oath that he attended as a witness in the above case on behalf of the defendant four days and trunks subscribed and sworn to before me in open court this 16th day Sept 1853

J. B. Clinton clerk } Jacob ^{W. H.} Peagle
By C. Thomas deputy } mark

Jackson Circuit Court Sept Term 1853

J. Schwartz vs David McVair

This deponent declares on oath that he attended as a witness in the above case on behalf of the Plaintiff four days and trunks subscribed and sworn to before me in open court this 16th day

of Sept 1853 } John ^{W.} Bruster
J. B. Clinton Clerk } mark
By C. Thomas Deputy }

Jackson Circuit Court September Term 1853

J. Schwartz vs David McVair

This deponent declares on oath that he attended as a witness in the above case on behalf of the Plaintiff four days and trunks subscribed and sworn to before me in open court this 16th

day of Sept 1853 } J. A. ^{W.} Jones
J. B. Clinton clerk } mark
By C. Thomas deputy }

Jackson Circuit Court May Term 1853

Jacob Schwartz vs David McVair

This deponent declares on oath that he attended as a witness in the above case on behalf of the defendant 3 days and travels, subscribed and sworn to before me in open court

This 12th day of May 1853

J B Clinton clerk }
Wm G Lindsey }
By C Thomas depy }

Jackson Circuit Court May Term 1853

Jacob Schwartz vs David McVair

This deponent declares on oath that he has attended as a witness in the above case on behalf of the defendant 3 days and travels, subscribed and sworn to

before me in open court }
this 12th day of May 1853 }
Wm Hoagler clerk }

J B Clinton clerk
By C Thomas depy

Jackson Circuit Court May Term 1853

Jacob Schwartz vs David McVair

This deponent declares on oath that he attended as a witness in the above case on behalf of the defendant 3 days and travels, subscribed and sworn to

before me in open court this

12th day of May 1853

J B Clinton clerk
By C Thomas depy

} Samuel H. Morgan
clerk }

Jackson Circuit Court May Term 1853

Jacob Schwartz vs David McVair

This deponent declares on oath that he attended as a witness in the above case on

behalf of the defendant 2 days and travels miles
subscribed and sworn to before }
me in open court this 12th day of }
May 1853 J B Clinton clk } Jacob ^{Wm} Hagler
J C Thomas depy } _{mark}

Jackson Circuit Court May Term 1853
Jacob Schumartz vs David McKeir
This deponent declares on oath that he attended
as a witness in the above case on behalf of the
defendant one day and travels miles
subscribed and sworn to }
before me in open court this }
12th day of May 1853 } Wm B Arnett
John B Clinton clk }

Jackson Circuit Court May Term 1853
Jacob Schumartz vs David McKeir
This deponent declares on oath that he has
attended as a witness in the above case on behalf
of the plaintiff 3 days and travels miles
subscribed and sworn to }
before me in open court }
this 12th day of May 1853 } Wm G Lindsey
J B Clinton clk }
J C Thomas depy }

Jackson Circuit Court May Term 1853
Jacob Schumartz vs David McKeir
This deponent declares on oath that he attended
as a witness in the above case on behalf of the
plaintiff 3 days and travels miles
subscribed and sworn to }
to before me in open court } Matthias Hagler
this 12th day of May 1853 }
J B Clinton clk }
J C Thomas depy }

Jackson Circuit Court May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has
attended as a witness in the above case on
behalf of the Plaintiff 2 days and travel & miles
subscribed and sworn to
before me in open court
this 12th day of May 1853 } T. Linnon ^{per} Hoaglin
J B Clinton clerk } mark
By C Thomas Deputy

Jackson Circuit Court May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has
attended as a witness in the above case on behalf
of the Plaintiff 3 days, and travel & miles
subscribed and sworn to
before me in open court
this 12th day of May 1853 } G E Robinson
J B Clinton clerk }
By C Thomas Deputy

Jackson Circuit Court May Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has
attended as a witness in the above case on
behalf of the Plaintiff three days and travel & miles
subscribed and sworn to
before me in open court } J A Jones
this 12th day of May 1853 }
John B Clinton clerk }

Jackson Circuit Court Sept Term 1853
Jacob Schwartz vs David McVair
This deponent declares on oath that he has
attended as a witness in the above case on

behalf of the defendant four days and traveled miles
subscribed and sworn to }
before me in open court }
this 16th day of September 1853 } Chas Williams
J B Clinton clerk }
By C Thomas depy }

Jackson Circuit Court September Term 1853
Jacob Schwartz as David McVair
This deponent declares on oath that he has attended
as a witness in the above case on behalf of the
defendant one day and traveled miles
subscribed and sworn to before me in open
court this 16th day of Sept 1853 }
J B Clinton clerk } Wm Richart
By C Thomas depy }

Jackson Circuit Court Sept Term 1853
J Schwartz as D McVair
This deponent declares on oath that he has
attended as a witness in the above case on be-
half of the defendant four days and traveled miles
subscribed and sworn to before me in open
court this 16th day of Sept 1853 }
J B Clinton clerk } Yellman Hauger
By C Thomas depy }

Jackson Circuit Court September Term 1853
J Schwartz as David McVair
This deponent declares on oath that he at-
tended as a witness in the above case on behalf of
the Plaintiff four days and traveled miles
subscribed and sworn to before me in
open court this 16th day of September 1853 }
J B Clinton clerk } Mathias Hauger
By C Thomas depy }

Jackson Circuit Court Sept Term 1853
Jacob Schwartz vs David Mcnair
This deponent declares on oath that he
attended as a witness in the above case on
behalf of the Defendant four days and travelled miles
Subscribed and sworn to before me in
open Court this 16th
day of Sept 1853 } Philip Hoagler
J B Clinton clerk }
By C Thomas deputy }

Jackson Circuit Court Sept Term 1853
Jacob Schwartz vs David Mcnair
This deponent declares on oath that he has
attended as a witness in the above case on behalf
of the defendant four days and travelled miles
Subscribed and sworn to before me in
open Court this 16th
day of Sept 1853 } Jas^{high} ~~Thompson~~
J B Clinton clerk }
By C Thomas deputy }

Jackson Circuit Court September Term 1853
Jacob Schwartz vs David Mcnair
This deponent declares on oath that he
attended as a witness in the above case on behalf
of the defendant four days and travelled miles
Subscribed and sworn to before me in
open Court this 16th
day of September 1853 } Wm Hoagler
J B Clinton clerk }
By C Thomas deputy }

Jackson Circuit Court Sept Term 1853
 J Schwartz vs David McVair
 This deponent declares on oath that he attended
 as a witness in the above case on behalf of the
 Plaintiff four days and travelled miles
 subscribed and sworn }
 to before me in open court }
 this 16th day of September 1853 } Wm G Lindsey
 J B Clinton clerk }
 By C Thomas deputy }

Jackson Circuit Court Sept Term 1853
 J Schwartz vs David McVair
 This deponent declares on oath that he
 attended as a witness in the above case on
 behalf of the Plaintiff two days and travelled miles
 subscribed and sworn to before me in open
 Court this 16th day of Sept 1853
 John B Clinton clerk }
 By C Thomas deputy } W E Robinson
 The following is the process for subpoenas in this case to wit
 in the Jackson Circuit Court May Term A D 1853
 J Schwartz }
 vs } action for rent
 David McVair } Will the clerk of the Jackson Circuit
 Court please issue subpoenas for the defendant in
 the above styled cause as follows 1st a subpoena
 return for William G Lindsey J P with
 his docket and the note sued by as will convene
 at David David McVair also William Hoagbe
 Philip Hoagbe Fielding A Jones Samuel Morgan
 James Zimmerman Mr Hoagbe of Aaron Day
 and Jephthah Gregory April 21st 1853
 Wm G Robinson
 atty for Deft

To the Clerk Sir you will please issue
Subpoenas for Joel Grammer Philip Hagler
John Tillman Hagler John & Gregory
in a case of Jacob Schuartz against David
McNair & obligors &c
David McNair

Jacob Schuartz }
vs } in Jackson Circuit Court
David McNair Sept Term 1832
The clerk of said court will issue
subpoenas for Sept in said case for Tillman
Hagler Philip Hagler for Samuel Morgan
James Zimmerman & Jesse G Lindsey
Returnable to said term
(Sign) David McNair

State of Illinois Jackson County Circuit Court
Sept Term Ad 1832
Jacob Schuartz }
vs } applicant for more wages
David McNair } occupation
The clerk of said court will
please issue subpoenas for the following named
persons as witnesses in this case to wit Mrs
Lindsay Tulettin A James W & Robinson
Mathias Hagler Jacob Zimmerman & John
Brester Jenkins & Logan atty
for P & A

Jacob Schuartz }
vs } in the Jackson Circuit
David McNair } Court Sept Term 1833
The clerk will please issue a subpoena
for William G Lindsey on behalf of the
plaintiff requiring him to bring with him
his docket showing the suit brought by Schuartz
against McNair or return with return for P & A

State of Illinois Jackson County Circuit Court
Jacob Schwartz } Sept Term 1853
vs } Adverset

David McVair } name and occupation

The clerk of the Circuit Court will please
issue a subpoena for Wm G Lusk, Fielding &
Jesse U & Robinson, Matthew Hoag & John
Beuster } Lusk & Logan attys
for Plff

Jacob Schwartz }
vs } Circuit Court May Term 1853

David McVair } The clerk will issue subpoenas
for the following witnesses in behalf of Plff if they
have not been ordered to wit W G Lusk,
Fielding Jesse U & Robinson, Matthew Hoag, Jacob
Zimmerman & John Beuster Lusk & Logan for plff.

Jacob Schwartz } Sub for
vs } Titman Hoag, Philip Hoag, Samuel
David McVair, Morgan Wm Hoag, Peter Gregory
Aaron Bap Jacob Hoag, James Zimmerman
David McVair

State of Illinois Jackson County 1854

I John B
Clinton Clerk of the Circuit Court within and
for the County and State aforesaid do hereby certify
the foregoing to be a true copy of the record of
the Circuit Court of said County and State in said
Cause now on file in my office including the Bill of
Exceptions and the instructions asked for by defendant
and all other papers except the subpoenas

In Testimony whereof I have hereunto
subscribed my name and the seal of said Court
at Jackson County Illinois this 30th day of January 1854
John B Clinton Clerk of the Court
Jackson Co Ills

Daniel M^o Nais

Plaintiff in error

vs.

Jacob Scherdy

Defendant in error

Appellant for use and occupation

vs. J. J. Allen &

And the said Plaintiff in error by Logan & Co. Simon his Attornies comes and offers the following causes of error in the proceedings aforesaid to wit: 1st That the Court erred in refusing to grant a new trial ~~that the verdict of the jury was against the said trial of the case~~

2nd ~~That the verdict of the jury was against the evidence~~ That the Court erred in rendering judgment

3rd ~~That the verdict of the jury was against the evidence~~ That the Court erred in permitting Plaintiff to state facts to the jury and the evidence previous

4th That the Court erred in refusing to give instructions numbered second, third and fourth asked for by the defendant and giving instructions asked by Plaintiff

5 That the Court erred in permitting the plaintiff to show to the jury the evidence deposited to by defendant.

6th That the Court erred in not permitting the defendant to prove the facts objected to by plaintiff and ruled out by the Court. Wherefore for the causes aforesaid he prays that the said judgment of the Circuit Court may be reversed

William J. Allen and

Logan & Co. Simon

Attys for Plff. in error

James in error

Logan & Co. Simon for plff

No 22
The Supreme Court
of the State of New York
David M. Davis

1857

of and of

Department in

Revenue

Receipts for \$15,000
paid by

State of New York

Richard J. Kelly

1857

F. L. Porter

by R. B. Cook
Receipt \$5.00

No. 25.

November 1854.

David McNeil

v

Jacob Schwartz

Com. to Jackson

Opinion by

Just. C. C.

Judgment reversed &
Cause remanded.

14208