

No. 12048

# Supreme Court of Illinois

Wood

---

vs.

Morton

---

71641  7



Luke Wood } Appellant }  
George<sup>us</sup> Morton } Appellee }

In Supreme Court

And now comes the said Appellant by his Attorney Merimow & ~~and~~ Purple and says that in the Record and proceedings and in the rendition of the Judgment aforesaid there is manifest error in this to wit

1st That the said Circuit Court erred in admitting the evidence of Appellee which was objected to by Appellant.

2nd In refusing to permit Appellant's evidence offered by him to be given to the Jury.

3rd In denying the instructions asked by Appellant

4th In giving instructions asked by Appellee

5th In overruling Appellant's motion for a new trial

6. In rendering Judgment in favor of Appellee



Wherefore he Prays that the said  
Judgment may be set aside re-  
versed and wholly for nothing entered

*[Signature]*  
H. O. Munn  
for appellant

And the said dist. says that there is no error in the record  
& proceedings aforesaid & in the ~~return~~ of the  
indict. aforesaid, as is above alleged = wherefore  
he prays that the indictment may be in all things affirmed -  
And he is sworn &c. - C. Ballou for Dist  
by C. Peters, per curiam =



Be it remembered that heretofore, to wit, on the twenty first day of October in the year of our Lord one thousand eight hundred and forty four there was filed in the Circuit Court in and for the county of Poria and State of Illinois a declaration, notice, and affidavit thereto annexed, which are in the words and figures following, to wit.

Declaration

State of Illinois

Poria County

Set. In the Circuit Court of the October Term A.D. 1844  
George Morton complains of Luke Wood, for that whereas the said George Morton was on the first day of June A.D. one thousand eight hundred and forty four the rightful owner and possessor and had a fee simple estate in certain premises in the town of Poria known and designated as Lot No. Eight in Block No. Twenty in said county. And the said George Morton being so thereof possessed the said Luke Wood afterwards to wit, on the day and year aforesaid with force and arms entered into the said tenements with the appurtenances to which the said Morton was so interested and ejected the said <sup>George</sup> Morton from his said premises and other wrongs to the said George Morton then and there did ~~to~~ the great damage to the said George Morton and against the peace of the people of the said State of Illinois. Wherefore the said George Morton saith he is injured and hath sustained damages to the value of \$100 and therefore he brings his suit.

Ballance & Cooper, for George Morton.

notice attached

Mr. Luke Wood: Sir, Take notice that on Wednesday the third day of the above named court to be held on the fourteenth instant, or as soon thereafter as counsel can be heard the above declaration will be filed in said court, and that upon filing the same a rule will be entered requiring you to appear and plead to said



declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead a judgment by default will be entered against you and the plaintiff will recover possession of the above described premises. Ballance & Cooper

atty. of plff-

afft of service 3

I Charles Ballance do solemnly swear that I delivered a true copy of the above declaration and notice to the within named Luke Wood in the town of Peoria on the fourth day of October A.D. 1844.  
C. Ballance -

Subscribed and sworn to before me Jonathan R. Cooper a Justice of the peace of said county, on the date last aforesaid. Jonathan R. Cooper, J. P. P. C.

And thereupon on the same day the following proceedings were had in said court, to wit:

Rule to plead 3

George Morton  
vs  
ejectment  
Luke Wood

This day came the plaintiff by Ballance & Cooper his attorneys and filed his declaration against the said defendant together with affidavit of the service of a copy of the said declaration upon the said Luke Wood and of the notice required by law: It is now ordered by the court on the motion of the plaintiffs attorney, that the defendant appear and plead to this action in twenty days after the entering of this rule.

And thereupon afterwards the following plea was filed in said cause, to wit:

plea 3

George Morton 3  
vs 3  
Luke Wood 3  
Peoria Circuit Court, May Term A.D. 1845 -

And the said defendant comes and defends the



force and injury when he and says that he is not guilty of  
the said supposed trespass and ejectment above laid to his charge  
or any part thereof in manner and form as the said plaintiff  
has above thereof complained against him and of this said defendant  
puts himself upon the country &c. M. O. Merriman, atty for deft.  
And plaintiff doth the like

similarly 3

Ballance & Cooper

In the circuit court begun and held, at the court-house in Peoria  
in the county of Peoria and State of Illinois, on the fifth Monday  
of May in the year of our Lord one thousand eight hundred and  
forty eight, it being the twenty ninth day of said month, Present  
the Honorable John Dean Caton, associate Justice of the Supreme  
Court of the State of Illinois and Presiding Judge of the Ninth  
Judicial Circuit in said State, to wit,

Monday June 5<sup>th</sup> A.D. 1848

trial judgment 3

George Morton

vs

ejectment

Luke Wood

This day came the said George Morton by Charles Ballance  
his attorney, and the defendant Luke Wood by Henry O. Merriman  
his attorney and issue being joined it is ordered by the court, that  
a jury be impanelled to try said issue, whereupon came twelve  
good and lawful men, to wit, James Marker Jr. Amos Dunn, John  
Gibson, James Richardson, John F. Smith, Morace Bushnell,  
Albert Johnson, Abner H. Smith, James Sebold, George Nichols, James  
Saylor and Clementis Ewalt, who being duly chosen, tried and sworn  
to well and truly try the issue joined and a true verdict give  
according to the evidence upon their oaths do say, we of the jury  
do find the defendant guilty in manner and form as the plaintiff  
has alleged against him in his declaration, and that the plaintiff



has an estate in fee simple in the land and premises in the declaration mentioned sought to be recovered in this suit: Therefore it is considered that the said George Morton have and recover of the said Luke Wood possession of the premises in the said declaration mentioned to wit. certain premises in the city of Plover known and designated as Lot No. Eight in Block No. Twenty in the County of Plover, and that a writ of possession issue therefor according to the statute in such case made provided - and it is further considered that the said George Morton have and recover of the said Luke Wood his costs and charges by him about his suit in this behalf expended and that he have execution therefor. By agreement of parties ordered that Charles Ballance be released from being security for costs in this cause and Jonathan R. Cooper allowed to stand as security for costs herein alone.

Friday, June 9th A.D. 1848

George Morton

vs

defendant

Luke Wood

appeal the 3

This day this cause came on to be heard on the motion of the defendant for a new trial of this cause, on consideration whereof it is ordered that said motion be overruled and thereupon the said defendant prayed an appeal of this cause to the Supreme Court of this State, which is allowed upon his entering into bond to the plaintiff in the sum of three hundred dollars conditioned according to law with George C. Bestor as his surety and filing the same in the office of the clerk of this court in thirty days.

And afterwards, to wit, on the ninth day of June A.D. 1848 there was filed a Bill of Exceptions in said cause in the words and figures following, to wit.



George Norton }  
 do }  
 Luke Wood }

Plona Circuit Court, May Term 1848

Be it remembered that on the trial of this cause the plaintiff to maintain the issues on his part read in evidence to the jury, record & proceedings, a judgment, precept, deed to Wm S. Moss, a deed from said Moss to William Grisby, & George Q. Mitealfe, another from said Grisby Mitealfe and another from said Mitealfe to the plaintiff, which said Record, Judgment, precept and said several deeds are in the words and figures following, to wit.

List of lands and other Real Estate situate in the County of Plona & State of Illinois on which taxes remain due and unpaid for the year 1839-

| Owner names    | Description   | Lot | Block | Costs | Tax   |
|----------------|---------------|-----|-------|-------|-------|
|                |               |     |       | \$    | cts   |
|                | Town of Plona |     |       |       |       |
| "              | "             | "   | "     | "     | " "   |
| Samuel Beacock | "             | 8   | 20    | 16    | 10 00 |
| "              | "             | "   | "     | "     | " "   |

[Note by the Printer. - The valuation of each lot or tract is omitted for want of sufficient figures. The tax is 50 cents on each hundred dollars, so that the valuation can be known by the amount of the tax. Thus the first lot in the list is taxed \$2.50; the valuation thereof is \$5.00. the second lot is taxed \$7.50; valuation \$15.00: and so on.]

Notice is hereby given, that application will be made to the circuit court of Plona county, at the April Term, for judgment against said lands and town lots, for said taxes, interest and costs thereon and for an order to sell said lands for the satisfaction thereof. And all the lands against which judgment shall be pronounced, and for the sale of which such order shall be made, will be exposed to public

Collector's Report?

List of lands omitted except as per  
 as regards the land in controversy.



sale on the first Monday of May next at the Court-house  
in Peoria in said county, for the amount of said taxes, interest  
and costs due thereon: to continue from day to day until all  
are sold - Christopher Orr, Col. P.C.  
Peoria February 15<sup>th</sup> 1840 =

State of Illinois }  
Peoria County } I do hereby certify, that the foregoing advertisement  
for the sale of lands in the county of Peoria was duly published  
on the fifteenth day of February A.D. 1840 in the Peoria Register  
and Northwestern Gazetteer published in Peoria, Peoria county, Illinois,  
and that the number of transcripts and notices correspond with  
the number of newspapers printed that week and distributed to each  
subscriber and to each officer in the State of Illinois as directed by law.  
Peoria Feb 28. 1840 - Saml. H. Davis, Editor & Publisher.

State of Illinois }  
Peoria County } I Christopher Orr, Collector of said County, do  
hereby certify that the within and foregoing tracts and parts of  
tracts of land and town lots were assessed for taxes in said  
county for the year 1839, and that the taxes and costs thereon  
remain due and unpaid; and that the owners of said lands  
and town lots have no goods and chattels in my county whereon  
to levy for the taxes and costs due on the same. Given under my  
hand this 30<sup>th</sup> day of March A.D. 1840. Christopher Orr,  
Collector of Peoria county.

Judgment }

At a circuit court begun and held in the town of Peoria, in the  
county of Peoria, in the State of Illinois, at the Court-house  
on Monday the thirteenth day of April in the year of our Lord  
one thousand eight hundred and forty, present the Honorable  
Thomas Ford Judge of the ninth Judicial circuit



State of Illinois  
 Peoria County, ) Whereas Christopher Orr, collector of said County,  
 returned to the Circuit Court of said County on the thirtieth day  
 of March A.D. 1840 the following tracts and parts of tracts of land  
 as having been assessed for taxes by the assessors of said County of Peoria  
 for the year 1839 and that the taxes thereon remained due and unpaid  
 on the day of the date of the said Collector's return and that the  
 respective owner or owners have no goods and chattels within his  
 County on which the said collector can levy for the taxes, interest and  
 costs due and unpaid on the following described lands, to wit:  
 Town of Peoria!

| Description | Lot | Block | Cost | Tax |    |
|-------------|-----|-------|------|-----|----|
|             | "   | "     | 47   | "   | "  |
|             | "   | "     | "    | "   | "  |
|             | 8   | 20    | "    | 10  | 00 |
|             | "   | "     | "    | "   | "  |
|             | "   | "     | "    | "   | "  |

and Whereas due notice has been given of the intended application  
 for a judgment against said lands, and no owner hath appeared  
 to make defence or show cause why judgment should not be  
 entered against <sup>the</sup> said lands for taxes, interest and costs due and  
 unpaid thereon, for the year herein set forth: Therefore it is considered  
 by the court that judgment be and is hereby entered against the  
 aforesaid tracts and parts of tracts of land in the name of the  
 State of Illinois, for the sum annexed to each tract or parcel  
 of land, being the amount of taxes, interest & costs due severally  
 thereon, and it is ordered by the Court, that the said several  
 tracts of land or so much thereof as shall be sufficient of each

all this has omitted except  
the land in controversy



(4)

of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold as the law directs.

precept 3

State of Illinois }  
Peoria County } 3<sup>rd</sup>

The People of the State of Illinois,  
To the Sheriff of Peoria County, Greeting.

Whereas Christopher Orr, collector of said county, returns to the circuit court of said county on the thirtieth day of March A.D. 1840 the following tracts and parts of tracts of land, as having been assessed for taxes by the assessors of said county of Peoria for the year 1839 and that the taxes thereon remained due and unpaid on the day of the date of the said collectors return, and that the respective owner or owners have no goods and chattels, within this county on which the said collector can levy for the taxes, interest and costs due and unpaid on the following described lands, to wit:  
Town of Peoria

| Description | Lot | Block | Cost | Tax |    |
|-------------|-----|-------|------|-----|----|
|             | "   | "     | 47   | "   | "  |
|             | 8   | 20    | —    | 10  | 00 |
|             | "   | "     | "    | "   | "  |
|             | "   | "     | "    | "   | "  |

List of lands omitted except 20  
for as regards the law in controversy

and Whereas due notice has been given for the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said land for taxes, interest and costs due and unpaid thereon for the year herein set forth; Therefore it is considered by the court, that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land in the name of the State of Illinois for the sum annexed



(9)  
to each tract or parcel of land, being the amount of taxes,  
interest and costs due severally thereon; and it is ordered by  
the court, that the said several tracts of land or so much  
thereof as shall be sufficient of each of them to satisfy the  
amount of taxes, interest and costs annexed to them severally  
be sold as the law directs. - and make return of your doings  
herein together with this writ within twenty days after the day  
of sale.  
[L. S.]      Witness William Mitchell, clerk of our said court  
and the seal thereof at Peoria this 20th day of  
April A.D. 1840.      William Mitchell, clerk.

[Endorsed]

State of Illinois  
Peoria County      Executed the within by selling the lands within  
described or so much thereof as was struck off to the lowest bidder  
who offered to pay the amount due on each tract for the least  
number of acres. The clerk of the County Commissioners Court  
of said County who attended at the said sale kept a register thereof  
in which was entered the number of acres sold and the names of  
the purchaser. Dated this seventh day of May A.D. 1840  
Thomas Bryant S. P. C.

[the deeds referred to in the Bill of exceptions are not on file.]

The plaintiff then proved that at the commencement of this suit  
the defendant was and still is in possession of the premises in  
controversy.

The plaintiff then proved by George V. Metcalfe, that he and  
Mr. Grisby had for several years previous to 1844 been the agents  
of said Morton and said title was originally procured for him,  
but that he had heard that the plaintiff had become deranged  
several years previous to 1844 and had not thence for a long  
time heard from him and did not for a year or two before the



year 1844 hardly know whether he was agent for said plaintiff or not, and in the spring of 1844, made a conditional contract with the defendant to sell said premises to him, provided the plaintiff did not object to it - and that as the agents of plaintiff, he and said Grisby had possession of said premises previous to the time said defendant entered into possession of said premises. That he said witness leased said premises verbally to defendant in the fall of 1842 for one year 1843 and deff entered into possession of said premises under such lease until witness conveyed to said plaintiff - witness did not recollect whether he ever told Wood, that Morton had any interest in the property or not, when he leased to him. Charles Ballance then testified, that shortly after Metcalfe conveyed to Morton, he witness called on Wood as agent of plff and told him that Morton required him either to acknowledge him as Landlord of said premises and pay rent or leave the premises forthwith, and between that time and the commencement of this suit, witness had several conversations with Wood on the subject - in all of which Wood talked about the case and neither said what he would or would not do, and did not do either of the things required specifically - Wood generally said in those conversations, that he wanted to see Morton and arrange with him - and wanted to buy the property - said Morton then resided at St. Louis Missouri, & that he designed to go to Saint Louis for that purpose - He did not dispute witness' authority to act in the matter. The defendant before the evidence of said Ballance was given objected to proof of parole notice to quit being given, which objection the court overruled, to which decision of said court in overruling said objection said defendant then and there excepted.

The plaintiff here rested his case.

The defendant then proved by Jacob Gale, that he was clerk of said court, and that the court at the April Term A.D. 1840



(11)

Commenced on the 13<sup>th</sup> day of April and ended on the 24<sup>th</sup> day of April in that year.  
The defendant then proved and read in evidence to the jury a paper signed by said Morton in the words and figures following, to wit:

St. Louis March 19<sup>th</sup> 1844

Gentlemen, Mr. Luke Wood has agreed, or proposes to pay me one thousand dollars for the property he now occupies including the frame house &c. One hundred dollars on the 1<sup>st</sup> Jan'y. and one hundred dollars on the 1<sup>st</sup> April and the remainder in seven annual payments of one hundred dollars each from and after the first day of January next with interest at the rate of ten per cent per annum - But I not conclude to sell on the terms mentioned, I have agreed to pay Mr. Wood the value of a small stable or Barn, which he proposes to erect for his own private use, payment to be made out of the rent of the property he now occupies -  
To Messrs. Ballance & Cooper } Respectfully yours &c.  
George Morton.

P.S. The cost of the stable not to exceed one hundred and fifty dollars.  
G. M.

This was all the material evidence given on the trial of this cause.

On behalf of the plaintiff and at his request the court gave the following instructions.

That if the Jury believe from the evidence, that defendant entered as tenant of George B. Metcalfe and said Metcalfe was an agent of said Morton to take care of and lease said premises, that said Wood was the tenant of said Morton, and that as against said Wood said Morton has a good title, it being a principle of law that tenant shall not be permitted



to dispute his landlord's title.

That the attempt of said Wood to buy the property of said Morton as set forth by the paper introduced by said Wood tends to prove an acknowledgement of the title of said Morton.

That if the Jury believe from the evidence, that defendant refused to pay rent when due he was not entitled to notice to quit.

That if the Jury believe from the evidence, that defendant refused to acknowledge plaintiff as landlord, he was not entitled to notice to quit.

That if they believe that defendant when called on for that purpose failed to acknowledge plaintiff as landlord such failure is equal to a refusal if it was so designed by Wood.

That unless Wood has proved that the proposal made by himself to Morton for the purchase of the property in question, was subsequently acquiesced in by Morton, Wood cannot claim or hold possession under it. That if said proposal was made subsequently to the commencement of this suit and not proved to have been acquiesced in by Morton, Wood cannot claim under it.

That the sale <sup>to Wood</sup> by Mitealfe, if one was made put an end to the lease before made by him to Wood, and the sale by Mitealfe to Morton, if acquiesced in by Wood, put an end to his possession as purchaser, and if he continued in possession it was the commencement of a new term of tenancy.

To each of which the defendant by his counsel objected. The court overruled the objections and gave said instructions.



to which decisions of the Court in overruling such objections and giving such instructions and each of them the defendant by his counsel then and there excepted.

The defendant by his counsel then prayed the Court to give the following instructions.

"That if the Jury believe from the evidence that Wood went into possession of the premises in controversy under a contract with Mr. Metcalfe for one year and before the year expired, Metcalfe sold to plaintiff, still Wood had a right to remain until his year expired and a notice to leave immediately at any time within the year is insufficient, and the nonpayment is no cause for determining the tenancy, unless by the original contract the tenancy was to cease on nonpayment of rent.

2. If the first year had expired and Wood had entered upon the second year, the law implies that there was a contract from year to year, and six months notice to quit would be necessary, and that notice to specify the time when the tenancy should cease, and that at the expiration of the year.

3. If after the commencement of this suit an agreement between the plaintiff and defendant, by which Wood was to continue in possession, they must find for the defendant.

4<sup>th</sup> The only title paper shown on this trial in Boston is the tax-title.

That the agreement shown by defendant contains statements, which the jury may consider as evidence of an acknowledgement of the plaintiff's title.

The Court gave the first, second and fourth as asked and qualified the third of said instructions by adding thereto so



that it was given as follows, to wit:

"3<sup>d</sup> If after the commencement of this suit an agreement between the plaintiff and defendant, by which Wood was to continue in possession up to this time, they must find for the defendant."

To which qualification and alteration by said court said defendant then and there objected, but the court overruled the objection, and the defendant by his counsel then and there excepted to the opinion and decision of said court in overruling said objection and adding said qualification to said third instruction prayed for by the counsel.

The Jury found a verdict in favor of said plaintiff and against said defendant in the words and figures following, to wit: "We the Jury do find the defendant guilty in manner and form as the plaintiff has alleged against him in his declaration and that the plaintiff has an estate in fee simple in the land and premises in the declaration mentioned, sought to be recovered in this suit."

The defendant then moved the court to set aside said verdict and grant a new trial of said cause for the following reasons.

1. Said verdict is contrary to law.
2. Said verdict is contrary to evidence.
3. The court gave improper directions and instructions to the Jury on the trial prayed for by the plaintiff.
4. The court refused proper instructions prayed <sup>for</sup> by the defendant.
5. The court improperly qualified certain instructions asked for by the defendant, on said trial.
6. The court permitted improper testimony to go to the Jury on said trial.
7. Said verdict is otherwise insufficient and defective.



Which motion the court overruled and rendered judgment upon said verdict, to which decision of said court in overruling said motion and rendering said judgment, said defendant by his counsel then and there excepted and prayed the court to sign and seal this his bill of exceptions and make the same of record, which is done. I Deaton *Seal*

appeal Bond

And afterwards on the thirteenth day of June A.D. 1848 there was filed in the office of the clerk of the said circuit court an appeal Bond in the words and figures following, to wit: Know all men by these presents, that we Luke Wood as principal and George C. Restor as security are held and firmly bound unto George Morton in the final sum of Three hundred dollars lawful money for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. In testimony whereof witness our hands and seals this thirteenth day of June A.D. 1848. The condition of the foregoing obligation is such, that whereas at the May Term of the Florida county circuit court Anno Domini one thousand eight hundred and ~~thirty~~<sup>forty</sup> eight in an action of ejectment for the recovery of the following described premises, to wit: Lot numbered Eight in Block numbered Twenty in the Town of Floria, County of Floria and State of Illinois, wherein the said George Morton was plaintiff and said Luke Wood was defendant, a final judgment was rendered against said defendant in favor of the said plaintiff for the recovery of said premises, and whereas at the time of the rendition of said judgment an appeal was therefrom prayed by said Wood to the Supreme Court of the said State of Illinois, and which was granted by said Court. Now if the said Luke Wood shall pay the Judgment, costs, interest and damages in case the said



16)  
judgment be affirmed, and also shall duly prosecute said  
appeal, then this bond to be void, otherwise to remain in full  
force and virtue -

Luke Woods Seal  
Geo. C. Bestor Seal

State of Illinois

Provia County p:

I Jacob Gale, clerk of the circuit court in  
and for said county of Provia hereby  
certify that the foregoing is truly taken and  
copied from the Records of the proceedings  
of said in the cause therein of George Norton  
plaintiff against Luke Wood defendant.  
as the same remains of Record on file in my office.

In testimony whereof I do hereto subscribe my name and  
affix the seal of said court at Provia this twentieth day of June  
1849 -

Jacob Gale, Clerk -

Clerk's fees: for transcript \$7.50 - certificate & seal 50 - \$8.00

38  
Luke Wood

vs

George Norton

Record

Filed June 13. 1849.  
J. Deland Clk.



Wood as, Morton.

Custow Peter being duly sworn says, that, as he now  
recollects, a week ago last Sunday, he wrote a letter  
to Charles Ballance Esq. directed to Perin, informing  
him, in substance, that a week had been taken in  
the case in this went ~~in the case~~ of Cooper, vs.  
Armstrong et al., and that it required his inme-  
diate attention;— Some days afterwards, I affiant  
thinks the next Sunday, affiant wrote to Jones.  
Then H. Cooper Esq. informing him, that the case  
above mentioned had been continued, and that  
the judgment in the Exatmunt case of Wood as,  
Morton had been reversed, for non-judging  
in error, stating also that I had, as an act  
of courtesy to the court, joined in error, but  
my authority to do so had been questioned, &  
that for want of such authority, the verdict  
had been stricken out;— This last letter was  
so ~~meant~~ meant that it probably went to Perin  
by Monday's mail, but probably was not there  
in season for Mr. Ballance to receive it before  
Mr. Cooper left for Attenu; In the first letter  
above spoken, this affiant says that he is  
quite sure he said nothing about the case of Wood as,  
Morton.

Custow Peter

Subscribed & sworn to  
this 29th of June 1849  
L. Ireland Clk.



Wood vs Clanton

Appd. for appellee

D. Peters

Filed June 29. 1844.  
V. Clanton Ch.

Wm. C. Clanton  
June 1844

Chas. C. Clanton



Luke Moor

vs.

George Morton

} Appeal from Peoria.

Jonathan R. Cooper being duly sworn says

that during the pendency of this suit in the Circuit Court of Peoria County, affiant & Charles Ballance Esq. were the attorneys of said George Morton: That after the verdict & judgment in said cause & appeal prayed, said Morton, who resides in the City of ~~Peoria~~ <sup>Saint Louis</sup>, came to Peoria & entered into negotiations with said Moor for the settlement in an amicable way of said controversy. Of the particulars of the arrangement between said parties, Morton & Moor, affiant has no personal knowledge, all the proceedings pertaining thereto, having been had or taken on the part of said Morton, either by himself or said Ballance: But affiant states that from information communicated to him at the time & since by said Morton & said Ballance, as well as from general information derived from other sources & which affiant believes to be true, it was then & there stipulated & agreed by the two said Morton & said Moor to submit all matters & things pertaining to said to the decision, arbitration & award of disinterested men to be chosen & appointed by said parties: affiant states that arbitrators were in pursuance of said agreement (as affiant is in like manner informed & believes, mutually chosen selected & agreed on by said parties, which said arbitrators, both of said parties or their attorneys appearing before them, did enter upon the hearing & arbitration of said controversy, & did decide the same & make their award: The precise terms of said award, affiant cannot now give or state with exactness. Affiant only knows, from information derived as above: said which he believes, that something, but much less than was claimed by said Morton, say about the sum of \$300., was awarded to said Morton for rent due & in arrears from said Moor, and that said award required said Moor to surrender to said Morton the premises in question, and that it was the special object & design of said arbitration to take the whole matter out of ~~the~~ the courts of law



and bring the same to a final settlement by means of said arbitration.

Affiant has not had, that he now recollects, any conversation with said Wood on the subject of said award but has always understood, & believes that said arbitrators acting within the scope of their ~~authority~~ submission did in fact settle said controversy fully & completely on its merits, but that some informality existed in the manner of making up, or executing their award, what the informality was, affiant has now no distinct recollection, but believes it pertained to the time or manner of signing the award. Whatever said informality may have been, affiant states that it was not, so far as he has ever been informed, the expectation at the time, that either party would object thereto. And said Morton has always been ready & willing on his part, in good faith to comply with, & stand to the same, & thought said Wood has not, on his part, fulfilled said award, or any part thereof, affiant believes he has never refused to abide by the same, otherwise than by maintaining a "masterly inactivity" on the subject, & by now prosecuting this appeal, he, said Wood, just declining in any manner to recognize said award, but simply reading from time to time its performance.

Affiant states further that said award has never been excepted<sup>to</sup>, appealed from, or set aside. Affiant therefore states, that the prosecution of this appeal is in violation of said submission & award, & of the understanding of said parties that the same should be final in said case. Affiant further states, that as one of the counsel of said Morton



Morton he supposed the said controversy had been  
& would be fully settled by said award. & has been sur-  
prised at the action taken by said Wood on this appeal.

Affiant further states that said Ballance has  
labored under a similar impression, & is in like  
manner surprised by the proceedings herein, that  
until within a few days said Ballance has been  
detained at Springfield on ~~some~~ business of  
much importance to himself individually and  
as attorney for others in sundry suits in the  
United States court, and that on his return to...

Peoria on last, he received a letter from  
Mr. Peters, advising him that his business in this  
court required his immediate attention. Said Ballance  
would have repaired here forthwith, but then labored  
under sickness of such character, as to make it,  
in his opinion, <sup>dangerous</sup> to travel or leave his home,

Affiant further states, that on being called  
on by said Ballance, & fearing this court would  
adjourn, he left home forthwith, & has not  
had sufficient time to procure the affidavit  
of said Ballance, or other papers or evidence  
touching this case. In fact, this affiant &  
said Ballance supposed, that no serious effort  
would be made in this case, & that the material  
danger existed in another case in this court

in which this affiant & said Ballance were  
interested. Affiant further says, that by the  
letter of said Peters to said Ballance above referred to, which was the only one received from said  
Peters when affiant left, making no mention of said court, or of the reversal of the judgment in this case, great  
the present case =

delay & serious injury will result to said  
Morton.



beside much cost testimony upon said Morton  
that the premises in question, consist of  
a lot of ground & dwelling house in Peoria, ~~with~~  
worth ten or twelve dollars, or more per month, rent,  
and which said Wood has under various pretexts  
unjustly retained possession of, whereas said  
Morton, six or eight years past, although two, if  
not three trials at law have been had in the  
case, & the verdict in each trial rendered in  
favor of said Morton.

Affiant therefore prays, that the order  
reversing said judgment for want of verdict  
in error, be set aside, and that such dispo-  
sition may be made of this case, as to this honor-  
able court, shall seem proper.

Subscribed & sworn to  
this 29<sup>th</sup> day of June 1849

Before me L. Seland Clk, Jonathan B. Cooper

Filed June 29. 1849.  
L. Seland Clk.

38  
Filed & collected  
Aff'd for appellee  
J. H. Cooper



George Morton }  
vs } Ejectment  
Luke Wood }

I Charles Bullen do solemnly swear that I am one of the attorneys who brought the above suit and managed it through all its progress. That in none of the trials had in said cause did said Wood show any title to said premises, unless the facts as set forth in the record, in the opinion of the court make him a tenant of said Morton.

That on the fourteenth day of October, 1848, said parties agreed to leave the subject of this suit, and the rent due said Morton to arbitration, and on that day said Wood's attorney H. O. Meriman wrote, and said parties signed, the following agreement or arbitration bond.

~~Articles~~ "Agreement made and entered into this 14<sup>th</sup> day of October A.D. 1848, between George Morton of the one part, & Luke Woods of the other part witnesseth, that whereas disputes and difference have arisen by and between said parties, in relation to Lots No. Eight in block No. twenty, in the city of Peoria and the use and occupation thereof by said Woods. And whereas said parties have a suit now pending, and to be tried, in the Supreme court of the state of Illinois, on appeal from the circuit court of Peoria county, in said state, the appeal having been taken but not yet presented in said court, and in which said Morton is plaintiff, and said Luke Woods defendant; said suit



being for the recovery of the possession of said  
premises, from said Woods. Said Woods having  
occupied the same from the first day of July,  
A.D. 1844, up to the present <sup>time</sup>. And whereas also said  
<sup>parties</sup> are desirous of settling and adjusting the matters  
aforesaid, without further suit. And this agreement  
whereof, that said parties have and do hereby  
mutually agree, to submit the matters aforesaid  
and the use and occupation of said premises,  
to the award ~~and~~ arbitration, and final  
determination of Augustus C. Garrett, John  
Reynolds, Hugh J. Sweeney & John Wagh,  
mutually agreed upon, & chosen by said  
parties, to hear the allegations of said parties, and  
on oath, if they said arbitrators so choose and  
also such evidence as shall be offered by  
either or both of said parties, relating to the matters  
in controversy. And it shall also be the  
duty of said arbitrators, to personally view the  
said premises, and make their award of and  
concerning the matters aforesaid, according to  
justice and equity. And said parties hereby con-  
sent and agree to & with each other, that they  
will in all things stand to abide by and per-  
form all and singular such award, as shall  
be made by the said arbitrators, upon the  
said matters, so submitted to them. Provided  
said award shall be in writing, signed  
and sealed by said arbitrators, and each of  
them, and delivered or ready to be delivered  
to said parties, or their attorneys, or such of  
them as shall be ready willing to receive the same  
on or before the first day of November A.D. 1848.



The above and subsequent agreements & conditions, are to extend to and bind the respective heirs and personal representatives of said parties respectively.

And said parties each to the other binds himself, in the penal sum of one thousand dollars, to be paid by the party first making default in the conditions aforesaid.

Witness our hands & seals, this day and year first above written.

George Morton Seal  
Luke Woods Seal

And afterwards to wit on the 21<sup>st</sup> day of October, A.D. 1848, said <sup>arbitrators</sup> met in Peoria (the said Woods and Norton having notice of said meeting, and being present,) and after hearing the evidence and allegations of said parties, decided said suit against said Woods, and determined the amount he should pay for the use and occupancy of said premises.

The award as committed to writing and signed by said arbitrators, and a <sup>duplicate</sup> copy given to each of said parties, is as follows.

Peoria Oct. 21 1848

The arbitrators in the case of Morton & Woods find Luke Woods indebted to Morton in the sum of three hundred three Dols. & <sup>100</sup>/<sub>100</sub>

H. A. Sweeney Seal  
John Warrick Seal  
John Reynolds Seal  
A. O. Garret Seal

The above award, it will be seen does not in terms say that said Woods should not further prosecute said appeal, but from conversations



with both said parties and with ~~the~~ and  
all of said arbitrators, I have no hesitation  
in saying it was at the time the opinion of ~~all~~  
~~said parties~~ <sup>and</sup> ~~that~~ <sup>it</sup> ~~was~~ <sup>that</sup> ~~that~~ <sup>was</sup> ~~really~~ <sup>the</sup> ~~decision~~ <sup>decision</sup>  
of said arbitrators and that the arbitrators  
supposed <sup>that</sup> to decide that Wood should pay for the  
use of the house and lot, settled the question as  
to the proprietorship of it.

Three of said arbitrators are now residing in  
Peoria, the other, to wit, A. O. Garret I am informed  
and believe, has gone to California.

Said H. A. Meriman an the attorney of said Wood,  
were present at said arbitration.

I had no knowledge of this suit being taken up  
to the Supreme <sup>court</sup> until last night; and now learn  
that the record is entirely imperfect. It is true  
I suspected it not long since and asked said  
Meriman about it, but he did not seem to  
know whether it had been or not, and further  
affirmant saith not. This was about five days  
ago

C. Ballance.

State of Illinois

Peoria County. I, Jacob Gale, clerk of the Circuit Court for said  
County do hereby certify that on this 29<sup>th</sup> day of June A.D. 1849  
personally appeared before me Charles Ballance of said County  
and subscribed the foregoing affidavit and being duly sworn made  
solemn oath that the same was true. In testimony whereof

I hereto set my hand and affix the seal of said  
Court at Peoria this 29<sup>th</sup> day of June A.D. 1849 -

Jacob Gale, clerk.



I John Reynolds do solemnly  
swear that I was one of the arbitrators  
in the attached articles of submission  
named and who did sit on said arbi-  
tration on the said 21<sup>st</sup> day of October  
1848 and state that the amount given  
in said award to said Morton was  
for the use and occupation of the premises  
for which said action of ejectment...  
was brought And we did intend to  
settle and supposed we had settled the  
matter in dispute in said action of  
ejectment in favor of said Morton  
And further affirm with not  
John Reynolds

State of Illinois  
County of Peoria

Personally appeared before me Thomas  
Bryant probate justice of the peace of said  
county the above named John Reynolds  
and subscribed his name to the above  
affidavit in my presence and made  
oath to the truth thereof this 29 day of  
June 1849 Thomas Bryant P. J.



STATE OF ILLINOIS, }  
PEORIA COUNTY, } ss.

I, William Mitchell, Clerk of the County Commissioners' Court for  
said county, do hereby certify, that *Thomas Bryant* Esq. whose name appears subscribed to  
the foregoing certificate, was, on the day of the date thereof, *the Probate* an acting Justice of the Peace in and for the county aforesaid,  
duly commissioned and qualified, as appears of record in my office; and that, as such, full faith and credit are due to all his  
his official acts.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court,  
at Peoria, this *29* day of *June* 184*9*

*William Mitchell*

Clerk.



George Morton }  
vs. } Ejectment  
Luke Woods }

We the subscribers arbitrators  
in the above <sup>case</sup> do solemnly swear that we  
did intend to give such a decision (and sup-  
posed we had done so) as would prevent  
any future litigation between said parties;  
and we did design the decision we gave  
(and supposed it would have that effect)  
to prevent ~~said action~~ any further steps  
being taken in said action of ejectment  
Subscribed & sworn to

before me this 29<sup>th</sup> day of  
June 1849

Thomas Byrnes P.P. John Waugh

H. J. Sweeney



Hood as Elliott

appt. ve.

C. Ballance

Filia July 2<sup>d</sup> 1844

L. Ireland Clk.

Handwritten signature: *H. J. ...*



Luke Wood Appellant }  
George<sup>us</sup> Morton Appellee } In Supreme Court

State of Illinois

The People being duly  
affirmed according to law doth say  
That he has been informed by Cudlow  
Peters Esq who "per courtesy" had appeared  
and joined in error in this case on  
the part of the Appellee and that from  
such information he verily believes the  
same to be true; that he the said  
Cudlow Peters Esq has no power or au-  
thority to appear for the said Appellee  
in said Court nor for any one employed  
or authorized by said Appellee to appear  
in his behalf, and further doth not  
affirm and subscribe  
before me this 20th  
June A.D. 1849

J. L. Dickey Judge of the Ind. Dis.

The said Appellant therefore entering  
his motion that the said Joinder in Error  
in this case may be set aside and the  
judgment of the Circuit Court in said case  
reversed for want of a joinder in Error  
for the reason stated above and for the  
further reason that the said act of the  
said Cudlow Peters Esq is not obligatory upon  
the said George Morton Appellee, he having declared  
at the time of joining in Error that he acted  
without authority  
June 20th 1849.



Luke Wood }  
vs }  
George Morton }  
Affidavit  
N. H. Purser (39)

Filed June 20. 1849.  
D. Seland Clk.



Luke Woods Appellant Supreme Court  
vs. George Weston Appellee of the State  
3 of Indiana  
3 & Grand Jurisdiction

Appeal from Province

Luke Woods being first duly sworn deposes and says that the arbitrators referred to in the affidavits on file did not by their Award determine the said suit nor said Appeal, as this affiant understands said Award and it was known to Charles Bullance and said Appellee that affiant had long before the sitting of the Supreme Court at Attovoa in June 1849. and also said Award said Award as absolutely void, and that he would not comply therewith - And affiant further states that he is informed and truly believes that said Award and proceedings of said arbitrators are void, and the whole reference ~~is~~ Abusive - and affiant further states that he is informed and truly believes that said Bullance was in the office of the Clerk of the Circuit Court of Provia County while he was making the record for said Appeal, and saw said Clerk copying the same and knew its object -



affiant further states that in sep-  
-arating the only reason why said  
Baltimore did not attend to the  
case. at the term then of this  
Court A.D. 1849 was that the said  
Baltimore and H.O. Minner  
who had acted as attorney for affi-  
-ant in the Court below were during  
the first part of said term at  
the United States Circuit Court at  
Springfield, and that said Baltimore  
supposed affiant would not  
get other attorneys to sue to the  
case, but of which no agreement  
or arrangement was made to the  
knowledge of affiant - *Specimen*  
Affiant says not

Luke Woods

State of Illinois }  
Pioria County p }

I Jacob Gale clerk of the Circuit Court  
in & for said County hereby certify that  
on this 20th day of June A.D. 1850  
appeared before Luke Woods of said  
County and subscribed the foregoing  
affidavit and made solemn oath  
that the same was true -

In witness whereof I hereto set my hand & affix  
the seal of said Court at Pioria this 20th day  
of June A.D. 1850 - *— Jacob Gale, clerk.*



3  
Luke Woods Appellant Sup. Court

v  
George Morton Appellee Term 2. 1850  
3<sup>d</sup> Division

Appeal from Preria-

Harley O. Merriman being first  
- Only sworn Deposes & says that he  
never made any arrangement or  
agreement with Charles Berkance  
or any other person relative to the  
postponing or delaying attention to  
said Cause at the Term Term 1849  
of said Court. nor had any applica-  
- tion therefor, nor did Appellant say  
or do any thing from which said  
Berkance or any other person had  
any right to suppose said Cause  
appeal would not regularly be  
presented by the Appellant in  
such manner as the practice of  
said Court authorized at said  
Term Term 1849, to Appellants knowledge  
or belief-

H. O. Merriman

State of Illinois

Preria County

for: I Jacob Gale Clerk of the Circuit Court in  
for said county hereby certify that on this 2<sup>oth</sup> day  
of June A.D. 1850 came before Harley O. Merriman  
of said County & subscribed the foregoing affidavit  
& made solemn oath that the same was true.

In witness whereof I hereto set my hand & the seal of  
said Court at Preria this 2<sup>oth</sup> day of June A.D. 1850  
Jacob Gale, clerk-



Woods vs Morton

affts for appellant

Wood & Merriam

Filed June 24, 1858.  
L. Leland Clerk.

*[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]*

*[Faint handwritten notes on the right margin, including a circled section.]*



John Woods } Supreme Court of Illinois  
vs } 3d Grade Division -  
George Morton } June Term A.D. 1850

Abel Morrison being first  
and sworn deposes and says that the  
Record as made by the Clerk of the  
Circuit Court of Peoria County is  
deficient in this respect:

It does not set out the Deeds referred  
to therein, and to Wm S. Moss, a deed  
from said Moss to William Tritley  
and George T. Mulcafee, a deed from  
said Tritley & Mulcafee to George Morton  
and a deed from George T. Mulcafee  
to George Morton.

That as deponent is informed and  
truly believes said Deeds were  
produced on the trial of said Case  
in the Circuit Court, that the  
same were filed, and intended to  
be incorporated in the Bill of  
exceptions, but that the same  
were taken from the files by  
Charles Ballan the attorney for  
said Morton, and were kept by  
him, and so as to be inaccessible to  
the Clerk of said Court at the time  
and that said deponent now in possession of said Bill of  
exceptions of making said Record, and that  
the production of said Deeds  
is necessary for a full and  
complete Record of this Case -  
deponent therefore prays that an  
order be taken that requiring said Ballan



to produce said deeds & said Clerk  
and that said Clerk certify copies  
thereof & this comes to complete the  
said Record filed in this cause.

Subscribed & sworn to this }  
26th day of June A.D. 1850 }  
before me }  
S. L. Adams Clk.

A. L. Minniman

Proved to Master

appt

Filed June 26. 1850.  
S. L. Adams Clk.



Luke Woods & Supreme Court

George Morton & June Term AD 1850

I Charles Bullance do solemnly swear that I have just seen the affidavits of said Woods and Merriam. On the evening of said award, immediately after said award was made, I heard a friendly conversation on the subject between said Wood and Morton from which I supposed the whole matter was adjusted. I heard Morton in said conversation offer if said Woods had not the money awarded to him to give him certain time to pay it in and in case he desired to remain in said house until spring or some other specified time to let <sup>him</sup> ~~him~~ <sup>pay</sup> ~~pay~~ <sup>to me the money</sup> ~~that~~ <sup>he</sup> said Wood did not say positively he would or would not submit to said award, but paid such deference to said Morton's proposition and seemed so well satisfied, that I deemed the matter settled. and therefore did not call on said arbitrators to put their award in <sup>form</sup> ~~letter~~. From that time to this I have had frequent conversations on the subject with said Woods. In none of which did he say he would or would not submit to said award. In several of said conversations he talked favorably of a settlement but when I put the question to him to say he would or would not he would reply that he would consult said Merriam and then give me an answer but said answer he never gave. At some period since said award I do not remember when I was in the office of the clerk of the circuit court of Prince George's county



and send the papers in said ejectment suit  
Morton vs. Wood lying on the table (whether the  
clerk had been copying or did then copy them  
I know not but suppose <sup>now</sup> that was the object  
for which they were taken down) and asked  
said clerk the object of these papers being down  
and whether said Meryman had any idea of carry-  
ing said suit to the supreme court said gave  
some indifferent answer that I do not recollect.  
The impression on my mind left was, that  
Meryman had talked about <sup>it</sup> but the clerk doubted  
it. But after this I had conversations <sup>with said</sup> both Wood  
and Meryman in which they spoke of settling,  
and said Morton and Wood became as sociable  
as brothers and I supposed the whole matter was  
understood or would be understood between  
them. In fact but a short time before the commen-  
cement ~~before the commencement~~ of this court  
I asked said Meryman what he meant to  
do with this suit and he answered he supposed  
it would be adjusted that Morton had made  
an offer that he had advised Wood to take.  
Another circumstance convinced me that  
this case would have long ago <sup>been</sup> adjusted. Said  
Morton is a great patron of lawyers. For sever-  
al years I had been his attorney at Provia.  
In this case Morton had a good title to the  
property - Wood had none and although I had  
obtained judgment in ejectment against him  
three times - in chancery once - before arbi-  
trators once and before a justice of the peace  
twice for rent yet said Meryman's ingenu-  
ity had been sufficient to keep him in  
possession a series of years of a two story



brick house without said Morton being able for  
to get a cent of rent from these circumstances  
(as I suppose) said Morton came to the conclusion  
that one who could perform so much against  
law and justice must be a paragon. of a lawyer  
could be happen to be on the right side. At any  
rate said Morton abandoned affiant and  
adopted said Merriam as his Peoria lawyer  
and said Merriam is now employed  
in some and I presume all said Morton's  
new cases and therefore as said Merriam  
was well aware of the iniquity of the conduct  
of said Wood and as it was now his interest  
to make him do right and as I believed  
he had <sup>generally</sup> interest enough to make him do it  
~~right~~ I had but little doubt that he would  
do so And further affiant saith not

Subscribed & sworn to before me }  
June 24. 1880. }  
L. Island Ck. - }

C. O. Wallace



Lu Ki Woods  
vs. J. Affidavit  
George Morton

C. Ballance

Filed June 24. 1850.  
S. Ireland Clk.



State of Illinois }  
Supreme Court } June Term  
AD 1850

George Morton }

vs

Luke Woods }

Appeal from Peoria

Defendant Morton comes and moves the court to dismiss this appeal because it does not ~~not~~ appear from the record on file, that any appeal was ever prayed or allowed.

2<sup>nd</sup> What purports to be a record in this case, by its own showing, is only a part of a record - entirely insufficient to show the what title the plaintiff below had to the property in dispute.

C. Ballance

For deft. Morton



George Morton  
add J. Morton  
Luke Woods

Fish June 25. 1850.  
L. Island Ch.



State of Illinois } ss.  
Supreme Court } The People of the State of Illinois,  
to the Clerk of the Circuit Court of Peoria County: Greeting.

Whereas in a certain suit between George Morton  
plaintiff, & Luke Wood defendant, lately depending in the  
Circuit Court of said Peoria County, wherein judgment was  
rendered for the said Morton & against the said Wood ~~and~~  
~~of said~~ the said Wood <sup>has</sup> ~~having~~ taken an appeal from  
said judgment to the Supreme Court, held at Ottawa,  
in pursuance of the said appeal a transcript of  
the record & the proceedings in the plea aforesaid was  
transmitted. And whereas also it hath been sug-  
gested, by the said Wood that the said record has been  
diminished, inasmuch as, a Deed to William S. Mop,  
a Deed from said Mop to William Frisby & George T.  
Metcalf, a Deed from said Frisby & Metcalf to  
George Morton & a Deed from George T. Metcalf  
to George Morton, are not copied into the record &  
have not been sent up; & for as much as the  
said Supreme Court are not satisfied that there is  
a sufficient record sent up; you are therefore  
herby commanded, that within ten days from the date  
hereof, the diminution therein as aforesaid, you cause to be  
transmitted to the said Supreme Court, now in session at  
Ottawa, without any diminution or addition whatever,  
to the end that speedy justice may be done in the premises,  
according to law; whereof you are in no wise to fail;  
and you then & there this writ.

Witness the Hon. Samuel H. Treat,  
Chief Justice of our said Supreme Court,  
the Seal thereof, at Ottawa, this 26<sup>th</sup>  
day of June A.D. 1880.

L. Leland Clk. Sup. Court.



Luke<sup>12</sup> Wood  
as  
George Morton  
Clerk -

To June Term 1850.

Filed July 11. 1850.  
V. Ireland Ck.

State of Illinois

Pionia County ss:

I Jacob Gale clerk of the circuit court of  
said County, do hereby certify to the Justices of the Supreme Court  
within mentioned, that I have diligently searched the record and  
papers on file in my office, in the suit of which mention is made  
within; and that I have not been able to find the deeds stated  
within to have been omitted from the record sent to said Supreme  
Court, on file in my office or in any part of the proceedings  
between the said George Morton and Luke Wood of the plea  
within mentioned. July 9th 1850 -

Jacob Gale, Clerk of circuit court  
of Pionia County, Ills.



Supreme Court June Term AD 1850

George Morton }

vs } Ejectment

Luke Wood } Appeal from Plea

This was an action of ejectment brought in the usual manner for <sup>land and</sup> a lot in the city of Peoria. Plea of the general issue and verdict for Morton who was plaintiff below and appeal by Wood.

The record is very defective leaving out much of the evidence of plaintiff below see page 9 of the record. The certificate of the clerk does not pretend to give a complete record nor does his return to the certiorari make out the case he only certifies that certain deeds cannot be found on the files not that there is no other record remaining - For every thing appearing the deeds may have been got by calling on the one having the legal custody of them.

On account of the absence of evidence the plaintiff's title does not appear but the jury has found a fee simple estate and as the whole evidence does not appear the court will presume it right.

Metcalf proved that the title (without saying what it was) was originally (without saying when) obtained by Mr. Frisby and himself for Morton and that they for several years previous to 1844 had been the agents (but with what powers is not shown) of said Morton "that he had heard that [Morton] had become deranged several years before 1844 and had not thence for a long time heard from him and did not for a year or two before 1844 knows whether he was agent for Morton or not. In the spring of 1844 he made a conditional contract with the defendant to sell said premises to him provided the plaintiff



[Morton] did not object to it and that as the agents of plaintiff he and said Wisley had possession of said premises to the time said defendant entered in to said premises That he said witness leased said premises verbally to defendant in the fall of 1842 for one year 1843 and defendant entered in to possession of said premises under said lease until witness conveyed to said plaintiff [Morton] Witness did not recollect whether he ever told Wood whether Morton had any interest in the property or not when he leased to him!

From this garbled statement Mr. Metcalfe's testimony cannot be understood The fact was the title was derived from the county commissioners as were all the titles to the original town of Peoria but the tax had been neglected and a tax title obtained in Mr. Metcalfe which is in part shown by the record and it was this tax title that he speaks of conveying to Morton Mr. Metcalfe had contracted the property to Wood and turned the lease in to a sale but when Morton came and disapproved it he made a deed to Morton and rescinded the contract <sup>and refunded what he had paid</sup> with Wood but Wood would neither yield possession pay rent nor allow to Morton

Ballance's testimony on page 10 though very incorrectly detailed shows that Wood though peremptorily demanded neither acknowledged Morton nor paid and this without objecting to the authority that demanded it

Instead of paying rent or allowing he went to St. Louis and attempted to buy of Morton as is shown on page 11 This document was a letter from Morton to his attorneys and would not have been evidence for him but it was suppressed and given in evidence by Wood for the purpose of putting him-



self in a position to be entitled to notice to quit

Def. below cannot object to the decision refusing a new trial because all the evidence is not set out in the bill of exceptions *McLaughlin vs Walsh* 3 Leam. 185 - *Webster vs Enfield* 5 Gilman 300

- Wood not entitled to notice to quit because
- 1<sup>st</sup> The relation of land lord and tenant did not exist. Whatever the effect of his first verbal lease may have been that tenancy was destroyed and a purchase made. When Morton came and disavowed the act and took a deed from Metcalfe Wood ought to have attorned but would not.
  - 2<sup>nd</sup> He was not entitled because although Morton may have treated him as a tenant and sued him for rent he had the option (and exercised it) to treat him as a trespasser and ~~could~~ sue him without
  - 3<sup>rd</sup> He was under our statute entitled to no other notice than the copy of the declaration and notice served on him.

But if he was entitled to notice a verbal notice was necessary



George Norton Supreme Court  
vs.

Luke Wood I June Term AD 1850

In the case of Webster vs. Enfield 5 Gil. 301 the court refused to interfere with facts as found below because it was not shown that the bill of exceptions contained all the evidence

In *Gowens vs. Wilson* 12 Wen. 504 the court decide that a submission to arbitration was a discontinuance

The doctrine more fully stated in *Sarkis vs. Robbins* 2 Wen. 506 - Same doctrine in 18 *Idem* 22

See to be found in *Green vs. Pottier* 13 Wen. del. 296

~~In *Gardner vs. Edie* 1 *Oberholster* Rep.~~  
21 In *Jackson vs. Golden* 4<sup>th</sup> <sup>2784</sup> *Cowen* 284 it is decided that a notice of a foreclosure under a mortgage renders notice to quit unnecessary

In *Jackson on dem Livingston vs. Byrum* 1 *Johnson* 326 the argument and decision of the court go to show that if deft. had disclaimed before suit brought no notice would have been required

In *Jackson vs. Aldrich* 13 *John* 107 The court think the doctrine of notice to quit carried far enough and disallow it in that case

In *Jackson vs. Benson* *Benton* 1 Wen. 341 a new-  
door remained in possession 27 years and was  
then sued without notice to quit and decided to be  
right. In this the case of *Jackson vs. Aldrich* is con-  
firmed as good law

In *Whiteside vs. Jackson* 1 Wen. 422 the court decide that one who had made a contract of purchase which had not been complied with was a tenant at will and not entitled to notice to quit



In Jackson vs Miller 7 Cowen 767 The whole doctrine of notice to quit review and laid down on pages 751 & 752 that no notice necessary where party entered under a contract to purchase

The case in <sup>1</sup>Binney 333 to which the note is attached is in my favor

In Prindle vs Anderson 19 Wen. 391 There seems a verbal lease for more than a year which was void under the statute of periods The rent was paid monthly and decided to be a tenancy from month to month and a month's notice sufficient but because rent received after notice held to be a waiver of the notice

In The case of Doe and dem. Lawrence vs Shewcross 3 Bouverhall & Cresswell 342 It was decided that under a clause of the English Statute which is re-enacted in Rev. Cases 334 Sec 4 that the service of the declaration was sufficient notice

In Jackson vs Parkhurst 5 John. 127 After expiration of lease suit brought without notice and decided no notice necessary

In Jackson vs Overdon 2 John. Cases 354 Defendant held adversely by letter offered to buy or become a tenant - No notice necessary because it did not apply

In Jackson vs Rogers Cases Cases 317 defendant held under a lease from a tenant at will and no notice to quit required

The case of Jackson vs French in 3 Wend. 339 quoted is against him No notice was required

The cases in A. K. Marshall 181 & 270 are cases where the court say no notice necessary because tenants damaged their land lords and refused to pay rent

Wootton vs Wood



In *Culbert vs. Howard* 1 Bing. 557 the defendant when called upon to own or disown the land lord did neither but expressed himself willing to pay to any one who could show his right yet his failing to attend and pay rent was deemed sufficient to maintain an action without notice

In 2 *Lough's Executors* 861 it is stated that a party who has been let into possession of land under a contract to purchase for sale or for a letting which has not been completed is a tenant at will to the vendor

If tenant does any act which amounts to a disclaimer of the lessor's title, it operates as a forfeiture and notice to quit is unnecessary for the land lord may treat him as a trespasser 2 *Lough* 876

If tenants possession be adverse no notice necessary *Renn*. 114

In *Coffin vs. Hunt* <sup>2 Pickering</sup> 571 two months notice to quit deemed sufficient because it was a house let by the month and not a farm

In *Ellis vs. Page* 1 Pick. 49 The doctrine that mortgagor entitled to notice overruled Also that tenant at will is

As to notice being shorter in case of lodging see 4 *Kent* 113 Also *Solomon vs. Epstont* 134

No notice necessary when tenant has done any act disclaiming to hold under land lord *Renn*. 92 or holds adversely 114

Notice may be by parol *Renn*. 114

In *Hermit vs. Lawrence* 2 A.K. Marshall it is decided that tenant who leases for a specific term not entitled to notice

In *Jackson vs. McLeod* 12 Lohr. 182 same doctrine



George Norton  
vs  
Luke Wood.

— — —  
Ballance's  
Brief

*[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page. The text appears to be organized into several columns or paragraphs.]*



No. 38 12,  
Luke Wood

George Morton

---

1850

12048

Pepper  
Co