

No. 14583

Supreme Court of Illinois

Dupne

vs.

Trustees of Schools

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No.

250

J. W. Middleton & Co., Stationers, 196 Lake St.

Dunne

vs

Trustees

of School
Receivable

1-33

Patrick W. Dunn appellant } Supreme Court
 vs } State of Illinois
 Trustee of Schools Township } Third Grand
 Eight North & 10th & East } Division
 Ap Term 1864

And the said ~~Plaintiff~~ Appellant
 comes and moves the Court that
 the case be continued to the
 next Term of this Court for the
 reasons here to appended -

1. The appeal in this case was
 not taken and perfected in the
 Court below, thirty days before
 the Session of this Court as will
 appear by the record -

The appeal was prayed
 on the twelfth day of March 1864
 on defendant's filing in the office
 of the Clerk of this Court an appeal bond
 in two days -

The appeal was constituted
 and only granted on filing the bond -
 The case was not pending in
 this Court until the appeal bond
 was filed and approved

McRif Brannigans vs Rose 342 123 Owens vs McRif 542 79
 Reynolds vs Perry 1124 R 535 Simpson vs Alexander " " 2611
 The appeal bond was filed and
 approved and the case was therefore
 argued on the twenty first day of March 1864

In the case of Brown you will see cited from 3d Keim - The Court decide that where the time for filing and appeal bond is extended beyond the close of the term - the party receiving has a right to execution after what is adjourned - before the giving of that time was set in before Court - the offer

which was less than thirty days before the session of this Court.

The case was not pending in this Court till the appeal bond was filed and approved -

Suppose the Court had given sixty days for the filing and approval of the bond - would the case have been for trial in the Court at this Term when it was not pending in the Court?

It may be said that it is unlikely a Circuit judge would ~~not~~ give so long a time - but ~~that~~ Affeltt insists it is not wise to suspend the principle established in the cases above cited upon the perilous contingency of what a Circuit judge may do.

Affeltt therefore insists the thirty days should be reckoned from the time the case is pending by appeal in this Court - and that the cause be continued which is respectfully submitted by

Johnna C. Price Counsel for

are not unaware that this motion is at variance with an early decision of this Court - not made without dissent -

but we insist that it is not
more at variance with that decision
than the later decisions cited
above - are with the earlier one -
and we respectfully insist that it is
more in harmony with established
principles ~~not~~ to treat a case as
affirmed until it is in fact
affirmed and "pending" in this
court. While it is not pending
in this Court, it is of course
pending in the Court below -
and there is no condition of
stipulation or suspended affirmation
in cases at law in which the case
has no status in either Court

John M. Brien
Clerk for appellant

200 61
P. W. Cunningham

Trustees of Schools

8 N 8 E

Motion for Continuation

No 250

Filed April 22. 1824

L. Leland
Clerk

John C.'Brien

SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

PATRICK W. DUNNE, }
vs. }
TRUSTEES OF SCHOOLS, }
TOWNSHIP }
8 NORTH, RANGE 8 EAST. }

PLAINTIFF'S BRIEF.

Action, of Wrongful Detainer, Judgment below for complainants, the appellees.

I. We think the court below erred in admitting evidence the notice set out in the record, which is as follows :

To P. W. Dunne—You are hereby notified, on or before the 30th day of November, 1863, to come forward and execute a written lease with the trustees of Schools of Township eight North, Range eight east of the Fourth Principal meridian of the County of Peoria, for a part of lot number twenty (20) in the sub-division of fractional section number sixteen (16) in said Township, according to your agreement with said Trustees, being that part of said lot now *occupied by you*, upon condition and under same, at the sufferance of said Trustees of Schools, and in case of failure on your part to execute said lease, and pay the rent due from you for the occupation of said premises, at or before that time, the said Trustees hereby demand of you to yield up to them the peaceable possession of said premises, on the first day of December 1863.

By order of the Board of School Trustees.

WASHINGTON COCKLE,
President Board.

Said notice is returned served, by reading] and leaving a copy with defendant below, on the 20th day of November 1863

S. W. CROUSE, Constable.

Sec. 1, Chapter 43, Purples Statute provides that parties may in certain cases be adjudged guilty of Forcible Detainer of premises, "After demand made in writing for possession thereof by the person entitled to such possession."

The proceeding and jurisdiction being statutory, the statute must be pursued with reasonable accuracy. This notice does not require appellant to give possession to the appellees, or to the person signing the notice, or to the person serving it, or to any person named therein nor to any other person whatever ; but requires him in the *alternative*, either to appear before the appellees, on the 30th of November "and execute a written lease with the Trustees of Schools" &c, or yield up the possession on the first day of December, following. It is merely an *optional* proposition to lease the premises, and does not lay the foundation of an action.

2nd. As the purpose of demand is to afford the detainer an opportunity of peaceably giving up possession without suit, the demandant must be present to receive it, or must designate some person present to whom it may be given. This notice purports to have been served by a third person, ten days prior to the time named therein for giving up possession, should appellant so elect under the alternative it offers ; and it named no person to whom possession might be delivered at the day named. A demand to be sufficient foundation for this action must be unconditional, require possession at once, and some authorized person be present, receive it. The writing in question amounts to no more than a notification to execute a written lease within ten days, or turn the premises out common.

3d. There is no evidence that even this notice was ever served. This personal and private written demand of the petitioner before suit, is not a writ process or legal instrument, consequently its service and return cannot be evidence by the endorsement of a constable, but must be proved by sworn testimony like any other fact.

There is no such evidence of service.

Appearance is not a waiver of any defect in the demand, and proof of demand is essential to recovery.

Seem vs. McLees, 24 Ill. 192.

- II. We think the court below further erred in rendering said Judgment, because the said complaint does not set out facts to give the court Jurisdiction.

The complaint is in the words and figures following, to-wit :

STATE OF ILLINOIS. }
PEORIA COUNTY. } ss.

John Hamlin, of the City and County of Peoria, being first sworn says that he is the Treasurer of Schools of Peoria Township Eight North, of Range Eight East of the fourth principal Meridian in the said county of Peoria. And that on or about the 10th day March, A. D. 1859, affiant as the agent, and under the order and direction of said Trustees of Schools, did demise and lease to Patrick Dunne, of

the City and County of Peoria, the following piece or parcel of Land, viz: Part of lot numbered twenty (20) in the subdivision of fractional section sixteen (16) in said Township Eight (8), North of Range Eight [8] East, situate in the said County of Peoria, beginning at a point on the lower side of Washington street, in the said city of Peoria, from which the Northwest corner of said lot bears West 194 feet, thence down to the lower side of Washington 59½ feet, thence at right angles to Washington street 112 feet, thence parallel to Washington street 139 feet, thence at right angles towards Washington street to the North line of section [16] 38½, thence West along the section line to the place of beginning [being that part of said lot [20] now occupied by said Dunne] which said lease was made by said Trustees of Schools until the said Dunne would execute a written lease to the said Trustees of Schools for some definite time. He further states that the said Dunne has refused to execute a written lease to the said Trustees of Schools, and still doth neglect and refuse to do so although often required so to do, and wilfully and without force still remains in the possession of the said premises and hold over, although the said Trustees of Schools have notified him to leave, and still continues in the possession of the said premises without the permission of the said Trustees of Schools, notwithstanding demand has been made in writing by them, upon the said Patrick W. Dunne, to quit and deliver up possession thereof to them, wherefore he prays that the said Patrick W. Dunne may be commanded to answer to this complaint.

JOHN HAMLIN.

Subscribed and sworn to before me, this 3rd day of December 1863.

J. A. McCOY, J. P.

The said petition sets up the relation of Landlord and Tenant by virtue of an oral lease made by appellees to appellant, about the tenth day of March, A. D. 1859, but fails entirely to show that such lease had expired. It discloses but two facts in regard to this lease to wit: its commencement, and that it was to run "until the said Dunne would execute a written lease with said Trustees of Schools for some definite time. That is, it was to run an indefinite time, until he would execute a lease for a definite time. This lease could not be treated at law as expired until appellant had executed the lease for the definite time contemplated, and the same had run out. It is not alleged that appellant was bound to make said written lease upon demand of appellees, nor that said oral lease contained any conditions of forfeiture for non execution of such second lease upon demand.

The law will not presume conditions of forfeiture in a lease, but will jealously protect the tenant even against those which are expressed.

Taylor's Landlord and Tenant, page 342. sec. 489.

The complaint negatives the cause of action by showing that the tenancy had not expired.

III. Said oral lease was made March 10th, 1859, and appellant held possession there under until and at the time of the said notice, November 20th, 1863, being four years, eight months, and ten days. Whatever may have been the intention of the parties at time of making said oral lease as to its duration, it became, by the protracted occupation under it, a lease from year to year, Hunt vs. Morton, 18 Ill. 75, and could be terminated only by sixty days notice to quit at end of year.

Laws of 1861, page 136, sec. 1.

But if this lease be held strictly a lease at will, still we insist that by virtue of the 2d section of said act of 1861, thirty days notice to quit must have been given prior to suits. Even if this statute did not apply, some notice to quit would be necessary to terminate the tenancy before the premises could be demanded. Any lease which does not expire of its own limitation, must be terminated by notice to quit before the premises can be demanded.

No such notice was given. Demand for possession to precede forcible entry and detainer should be made after expiration of the lease.

Pickell
Pickell vs. Ratter, 16 Ill. 96.

This demand was made in the midst of the year while lease was in force.

2. Because the evidence shows no ground of recovery.

The oral testimony in the case is not very fully set out in the abstract, but occurs on pages 21, 22, 23 & 24 of record.

The evidence shows, first. The oral lease under which appellant occupied, and which was at first made for a temporary purpose, but without limit as to duration, had been suffered to run into and become a tenancy from year to year, and that the same as such has not expired. Second, that it contained no conditions of forfeiture and had not been forfeited. Third, that sixty days notice to quit prior to the expiration of a year had not been given. Fourth, that the demand relied upon is wholly insufficient in substance. Fifth, that such demand was made and the action brought in the midst of one of the years of a subsisting lease. Sixth, there is no proof of service of such demand upon the appellant, and Seventh, the subsisting tenancy was not affected by any notice to quit prior to the said demand of possession.

Under these circumstances the complainant ought not to have judgment for the premises.

III. Plaintiff's *below* first instruction is erroneous because, first, the statute of 1861, 2d sec. page 137, entitles tenants at will to thirty days notice to quit. Second, because it misled the jury by ignoring and taking from them the fact in evidence that defendant had been permitted to occupy from year to year under such lease, and became entitled to sixty days notice.

Below
Plaintiff's third instruction is erroneous, because the statute of 1861 fixes the reasonable notice in such cases at thirty days.

Appellant's first instruction should be given as asked, because Hamlin's testimony tended to show that while appellant was in possession, an agreement was made by the parties for a yearly renting, at fifty cents per foot.

For the same reason, appellant's 2d instruction should have been given.

Also his 3d instruction. And the modification of them by the court, by inserting the words "and that it was not a condition that such lease should be in writing" (see record page 31) are erroneous, because if it was one of the conditions of said oral lease that appellant should subsequently execute a written lease, but did not provide forfeiture in case he failed to do so, and he having failed to do so was allowed to occupy for four years, it would still be a lease from year to year, and require sixty days notice to quit.

For reasons above stated, the fifth instruction (page 32 of record) should have been given.

Also the 6th and 7th instructions. (page 33.)

The 9th instruction (page 33 and 34) is in language substantially of sec. 2 of statute of 1861, and should have been given.

JOHNSON & HOPKINS, and O'BRIEN & CRATTY,
for Appellant.

Sup. Lin. W. H. H.
Patrick W. Dume

Trustees of Schools
Innschup 5 N. Range 8 E

Pliffs Brief

April Term a D 1864

Given May 3. 1864
L. G. L. & W.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1864.

PATRICK W. DUNNE,

vs.

TRUSTEES OF SCHOOLS,
TOWNSHIP 8 NORTH, RANGE
8 EAST.

FORCIBLE DETAINER.

Defendant's Brief and Argument.

The printed abstract filed in this cause by the plaintiff, does not set out the notice to quit properly, nor the evidence on the part of the defendants sufficiently. They therefore set out said notice, and the whole of John Hamlin's testimony from the record, which is as follows:

COPY OF NOTICE.

To Mr. Patrick W. Dunne:

SIR:—You are hereby notified to come forward, on or before the 30th day of November, A. D. 1863, and execute a written lease with the Trustees of Schools of Township Eight North of Range Eight East, of the Fourth Principal Meridian, of the County of Peoria, and State of Illinois, for part of lot twenty, (20) in the sub-

Also there a testimony with a lease was made

division of fractional section sixteen, (16) in said township, Eight North of Range Eight East, according to your agreement with said Trustees, being for that part of said lot now occupied by you upon condition, and under, and at the sufferance of the said Trustees of Schools.

And in case of failure on your part to execute said lease, and pay the rent due from you for the occupation of the said premises, at or before that time, the said Trustees hereby demand of you to yield up to them the peaceable possession of the said premises on the first day of December, A. D. 1863, and that you quit and leave said premises, on the said first day of December, 1863.

By order of the Board of School Trustees,

WASHINGTON COCKLE,

PREST. OF BOARD.

November 20, 1863.

Served the within notice by reading and leaving a copy with the within named P. W. Dunne, this 20th day of November, 1863.

S. W. CROUSE, CONST.

FEES, \$1.50.

TESTIMONY OF JOHN HAMLIN.

John Hamlin being called, testified that he was the agent of said Trustees of Schools, and had charge and control of their business for several years past, and received for his services as such agent, the sum of two hundred dollars per year; that this salary or amount did not in any way depend upon his success in collecting money or rent for said plaintiff, but was a sum certain and resting upon no contingency; that he had rented lands and lots in Peoria for said plaintiff, and had collected the rents thereof for several years past. (To the competency of said Hamlin to be a witness and testify in said cause, the defendant then and there objected, which objection was overruled by the court, to which ruling the defendant then and there excepted.)

Said Hamlin further testified that some time in the month of March, 1859, the defendant, (Dunne,) came to the house of affiant, and informed affiant that Washington street in said city of Peoria was about to be opened through the lot of land that he (defendant) then occupied; that his house stood in the centre of the street so about to be opened; that he, (defendant,) wanted to lease a piece of lot twenty

in said city of Peoria, being a part of Section 16, school land, and being the property of the plaintiff; that said defendant wanted such portion of such lot, for the purposes of moving his house upon the same; that affiant told him that such part of such lot 20 was for rent, and that he could have such piece of such lot as soon as affiant could make out the papers. Defendant then said he was obliged to move his house immediately. I told him that he might move his house upon the piece of lot 20 as mentioned, and that I would make out a written lease, as I had no blanks convenient. The terms of said lease was not agreed upon.

He has never made or executed a lease since that time. I visited the lot sometime that Spring after, and found the defendant's house moved on the lot and he occupying it. I think I called upon him there two or three times that season, to execute a written lease, but failed to have it done.

At a subsequent time, I think we agreed upon the amount of rent. I told him that I thought the property occupied by him was worth 50 cents per foot, and defendant assented to it. At one time when I called upon him to execute a lease, he objected to do so until he could get the ground occupied by him of said lot surveyed, and promised to get it surveyed. I called upon him a number of times afterwards to see if he had a survey of said premises made, and was ready to execute said lease, and found that he had not. Thereupon, sometime last Summer, I procured a survey and plat of said premises to be made by the city surveyor, Mr. Russell, which plat I took to defendant and asked him to make and execute a lease for said premises according to said plat, but defendant objected to do so as he wanted to have the title to said premises examined, and that he had employed Mr. O'Brien, his attorney, to examine said title. That sometime afterwards, I made out a lease for the premises, with the first name of defendant left blank, as I did not know then what it was, and gave it to his attorney, Mr. O'Brien, to be executed, requesting him to have defendant execute the same, which was in a few days afterwards handed back to me unexecuted. There were no terms of tenancy agreed upon at any time. I did not collect any rent from defendant, or ask for any rent, for the reason that I did not want to do so until a lease was made and executed, as I did not want to do anything to acknowledge a leasing on his part until the lease was executed.

I. The notice to quit was properly admitted in evidence. It was an unconditional demand upon the plaintiff, in case he failed to execute the lease on the 30th day of November, 1863, to yield up the peaceable possession of said premises to the "said Trustees, the defendants, on the 1st day of December, 1863.

Here the notice was not on by agent, on the 30th of November the union possession? no proof of this

*What time?
How long? Blue
grind? the
was it as the
you or month
I was it for. just
just.*

*Which
times?*

The notice *does* require appellant to give possession to appellees.

II. The plaintiff upon the trial admitted that said notice was served upon him as stated in Crouse's return. He waived the calling of Crouse upon the trial to prove service.

The record shows that plaintiff admitted the return "to be correct and true." See Record.

III. The plaintiff pretends to have set out the complaint in his brief in *haec verba*, but has failed to do so. The complaint, immediately after the description of the property, reads as follows: "which said lease was made *for and during the will of said Trustees of Schools*, until the said Dunne would execute a written lease to the said Trustees of Schools" for some definite time. The words *for and during the will of said Trustees of Schools* being left out, and other words put in. See Record—copy of complaint.

The complaint shows that the appellant held the premises at the will of the appellees, until he would execute a lease. All this time he was a tenant at the will and pleasure of the appellees.

The complaint does not disclose the fact that there was a term fixed to run "until the said Dunne would execute a written lease with said Trustees of Schools," as claimed by plaintiff, but it shows that *for and during* that time he held it at the will of the appellees.

There was no objection made by appellant to the complaint at the trials below; no exception was taken to it.

The complaint also shows that there was a notice in writing served upon appellee, to quit before the complaint was made. The complaint does not show when said notice was served. It might have been thirty days before, or it might have been ten days before the commencement of the suit. And granting the construction that appellant contends for the statute of 1861, in relation to a tenancy at will; still, so far as the complaint is concerned, there cannot be any doubt but that the court had jurisdiction.

IV. The evidence in this case shows that the appellant went into possession of the premises in controversy under the appellees as a tenant; that there was no specific time fixed during which he should occupy the premises, and that there was no promise on his part to pay any sum as rent for any particular time. This, at most, could make nothing more than an agreement to lease, and the implication at law would be, that the appellant is liable as tenant to the appellees, for the use and occu-

pation of said premises, for the time he held and occupied the same, under said agreement to lease. It also establishes the relation of landlord and tenant between the parties.

Taylor's Landlord and Tenant, page 11, § 19.

V. The highest tenancy that it could establish, would be a tenancy at will. See Taylor's Landlord and Tenant, section 60.

This tenancy could be terminated at any time by the refusal or neglect of the appellant to fulfill the agreement to lease, after an opportunity and due notice given him to do so. See Taylor's Landlord and Tenant, sec. 60: "and where a party enters into the possession of premises under an agreement to accept a lease for twenty months, and subsequently refuses to accept the lease, he becomes, by such refusal, a tenant at will, or rather by sufferance, for he may be ejected immediately."

VI. The evidence shows that the appellees had been soliciting him to fulfill the agreement, to lease almost constantly, from the time when he entered upon the premises, until he received the notice to quit.

On the 20th day of November, 1863, a written notice was served upon him by the appellees, to come forward and execute his agreement to lease on or before the 30th day of November, 1863, and also, if he failed to do so, he was notified at the same time in writing to quit the premises, on the 1st day of December, 1863.

The failure or refusal of appellant to execute said lease, on or before the 30th of November, 1863, terminated the tenancy.

Here was ample time given him to execute the lease. He had been constantly solicited before this to fulfill his agreement, but had refused, and ten days had been given him in writing to do so.

The receiving of annual rent is the principal criterion of distinction between tenancies from year to year, and at will.

Taylor's Landlord and Tenant, page 30, sec. 61.

VII. In this case there can be no implication of a tenancy from year to year, from month to month, from week to week, or for any other specific time. The very actions and conduct of the appellees go to negative anything like a tenancy from year to year, or any other definite time. There was no time fixed for the tenancy, no rent accepted, none demanded, none agreed upon for any specific time, but, on the contrary, a constant demand on the part of appellees for the fulfillment of the agreement to lease.

The witness states that at one time he told appellant that "he thought the property occupied by him was worth fifty cents per foot, and appellant assented to it," but does not say whether it was worth that sum *per annum*, per month, or for any definite time. Appellant did not promise to pay it, but merely assented.

Appellant sometimes pretended he wanted a survey of the property before he would fulfill his agreement to fix the terms of the lease, but when the survey was made, he refused to lease until he could examine the title, and thus kept possession by trifling with the appellees, under pretense of executing the lease, and finally refused entirely to do so. Under these circumstances there could be no implication or understanding of a tenancy from year to year, or for any other time.

VIII. The second section of the act of 1861, does not apply to this case. It has reference to tenants holding over after the expiration of a "term" so far into another term, as to imply a leasing for another term of the same duration, or the holding over through another term of the same duration. In this case there was no holding over after any term. His right to possession *terminated* with his refusal to execute the lease.

Taylor's Landlord and Tenant, page 38, sec. 60.

This was the condition upon which he entered. No notice was necessary to terminate his tenancy or right to possession.

If it was a tenancy at will, and any notice to quit was required, the common law notice is all that was necessary—"a reasonable notice."

The statute of 1861, does not contemplate a tenancy at will, because in a tenancy at will, there is and can be no term agreed upon.

IX. The Legislature did not mean, by the passage of the act of 1861, to require a notice of 30 days, to terminate tenancies less than a month. Appellees submit that the proper construction of said statute is, that all tenancies less than one year, and greater than one month, and a tenancy by the month require 30 days notice.

X. As to the instructions given by the court on part of appellees, they are unable to perceive any error, as they are all plain propositions of law applicable to the facts proved in the case.

Three of the instructions asked for by the appellant were given without any modification, and those that were modified, were changed merely to apply to the evidence.

The instructions that were refused on the part of appellant, were substantially the same as those that were given on his part. There was no error in refusing the ninth instruction, (page 33 and 34,) because the notice described in the statute of 1861, was not required in this case for reasons already given.

A. McCOY,
For Appellees.

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In the Supreme Court,

APRIL TERM, A. D. 1864.

PATRICK W. DUNNE,

vs.

TRUSTEES OF SCHOOLS, TOWNSHIP 8
NORTH, RANGE 8 EAST.

DEFENDANT'S BRIEF AND ARGUMENT.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria, Ill.

*Filed May 9, 1864.
L. Leland
Clerk.*

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION---APRIL TERM, 1864.

ABSTRACT OF RECORD.

PATRICK W. DUNNE,

Appellant,

vs.

TRUSTEES OF SCHOOLS, OF
TOWNSHIP EIGHT NORTH
RANGE EIGHT EAST.

Appellees.

Appeal from Peoria Circuit Court.

Page of
Record.

This was an action of *detainer*, commenced before a Justice of the Peace of Peoria County, by the Appellees against the Appellant, and a judgment rendered against said Appellant, who appealed from said decision to the Circuit Court, from whence it comes by appeal to this Court.

1 Complaint made and summons issued December, 3d, 1863.

The notice given to said Appellant before the commencement of the suit, 6 was dated November 20th, 1863, and required the said Appellant, "on or before the 30th day of November, 1863, to come forward and execute a written lease with the Trustees of Schools of Township Eight North, Range Eight, East of the Fourth Principal Meridian of the County of Peoria, for a part of Lot number twenty, (20), in the sub-division of fractional Section number sixteen, (16) in said Township; according to your agreement with said Trustees, being that part of said lot now occupied by you, upon condition and under same at the sufferance of the said Trustees of Schools. And in 7 case of failure on your part to execute said lease and pay the rent due from you for the occupation of the said premises, at or before that time, the said Trustees hereby demand of you to yield up to them the peaceable possession of said premises on the 1st day of December, 1863.

By order of the Board of School Trustees.

WASHINGTON COCKLE, President Board."

November 20th, 1863.

Said notice is returned, served by reading and leaving copy with Defendant below, on the 20th day of November, 1863.

S. W. CROUSE, Constable.

[2]

The complaint made, upon which the writ issued by the Justice of the Peace, is in the words and figures following, to-wit:

STATE OF ILLINOIS, } ss.
PEORIA COUNTY. }



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J. A. McCOY, J. P.

10&11 Summons issued upon said complaint, returnable December 14th 1863.
13&14 Appeal Bond from Justice of Peace to Circuit Court.

- 15 On the 21st of January, 1864. Appearance of Plaintiffs below entered by
A. McCoy, and at same time a motion is entered to dismiss appeal.
- 17 Motion to dismiss appeal over-ruled.
- 18 Motion for new trial over-ruled.
- 19 Judgment rendered on the verdict.

BILL OF EXCEPTIONS.

Plaintiffs to maintain the issues on his part, offered and read in evidence against the objections of the Defendant, the notice served on Defendant on the 20th day of November, A. D. 1863, which said notice is heretofore substantially set out, and may be found in full on pages 20 and 21, of Record.

Plaintiffs further to maintain the issues on their part, then called

- 21 JOHN HAMLEN, Who being duly sworn testified; ~~who testified~~ that he was the agent of Plaintiffs and had charge of their business, and had been so engaged for several years past. That sometime in the month of March, 1859, Defendant came to his house and informed affiant that Washington street was
22 about to be opened through the lot of land, that he (Defendant) then occupied. That his house stood in the centre of the street about to be opened. That he (Defendant) wanted to lease a piece of lot No. twenty (20), in section No. sixteen (16), being the property of plaintiffs. That Defendant wanted such portion of said lot for the purpose of moving his house on to it. That he told
23 him he could have the lot as soon as he could make out the papers. I told him he could move his house on to the lot and after that execute a lease. That I would make out a lease as soon as convenient. There were no terms agreed upon. I afterwards called upon defendant and found him occupying said lot. He has never executed any lease. I afterwards told him that the
24 land he occupied was worth fifty cents per foot rent; and he assented to it. I did not collect any rent, nor demand any of him before the notice to quit was served.

C. WOODRUFF, Testified that Defendant's building was moved on to said lot on the 5th or 6th day of March, 1859. That defendant's family moved into the house two months afterwards, and had been there ever since.

This was all the evidence given in the case.

- 25&26 The Court upon motion of the Plaintiffs gave instructions No. 1, 2 and 3, to the giving of which, each of the defendants then and there excepted.

27&28 The Defendant then asked the Court to give to the Jury instructions
29&30 No. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, but the Court refused to give said
instructions, and each of them, and Defendant then and there excepted.

30½ The Court then modified Defendant's instructions, and gave as modified in-
31 structions, No. 1, 2, 3, 4 and 10, to the giving of which instructions as mod-
32&34 ified, the Defendant then and there excepted and objected.

The Jury found the Defendant guilty, and Defendant by his Attorneys,
then and there entered and filed a motion to set aside said verdict and for a
new trial in said case, for the following reasons, viz :

- 35 1st. The verdict is against the law.
 - 2d. The verdict is against the evidence.
 - 3d. The verdict is against the instructions of the Court.
 - 4th. The Court gave improper instructions to the Jury for Plaintiffs.
 - 5th. The Court improperly refused instructions asked by Defendants.
 - 6th. The Court improperly modified some of Defendant's instructions.
 - 7th. The Court gave improper instructions asked on the part of the Plaintiff.
 - 8th. The Court improperly admitted the "notice to quit" in evidence.
- Which motion the Court over-ruled, and Defendant then and there excepted.

ASSIGNMENT OF ERRORS.

- 1st. The Circuit Court erred in admitting the "notice to quit" in evidence.
- 2d. The Circuit Court erred in giving the instructions asked on the part
of the Plaintiffs below.
- 3d. The Circuit Court erred in refusing the instructions asked on the part of
the Defendant below.
- 4th. The Circuit Court erred in modifying the Defendant's instructions,
and in giving the same as modified.
- 5th, The Circuit Court erred in the overruling of the the motion of the De-
fendant below for a new trial.
- 6th. The Circuit Court erred in rendering judgment on the verdict
against the Defendant below.

O'BRIEN & CRATTY,
Attorneys for Appellants.

250 67
Patrick W. Dunne
Trustee of Schools
of 8 North 8 East

Abstract

Filed April 21, 1864
J. L. Leland Clerk

Pleas before the circuit court, within and for
the county of Peoria and state of Illinois, on
the fifth day March in the year of our Lord
one thousand eight hundred and sixty-four.

Be it remembered that heretofore to wit on the
1st day of February A.D. 1864, there was filed
in the office of the clerk of this court, a trans-
cript from the docket of John A. McCoy
one of the Justices of the Peace in and for
said county and state, together with the
documents appertaining to this cause
all of which are in words and figures
following to-wit:-

Manuscript	Trustees of Schools	{	Be it remembered that the third day of December A.D. 1863 at Peoria in Peoria county state of Illinois, John Hamlin, com- plain to me J. A. McCoy, one of the Justices of the Peace in and for said county
	Township Eight North		
	Range Eight East		
	Petrick W. Dunn		

Justice Costs			in the words following to-wit. "John Hamlin of
Compt	50		the city and county of Peoria being first duly sworn
Law	50		says that he is the treasurer of the Trustees of Schools
Subst	25		of Township Eight North of Range Eight East
Book	20		of the fourth principal Meridian in the
Jury ven	50		county of Peoria, and that on or about
8 Jury	15		the tenth day of March A.D. 1859 affiant
3 orally	15		as the agent and under the order and di-
at trial	200		rection of the said trustees of schools did
Judgt	25		demise and lease to Patrick W. Dunn of the
Justice Bond	200		city & county aforesaid the following de-
			scribed piece or parcel of land viz: Part of lot
Const Cause			number Twenty (20) in the subdivision and
Gen. Dnm	100		fractional section sixteen (16) in said town-
" Oak	20		ship Eight (8) north of Range Eight (8) East situ-
Jury ven &			ate in the said county of Peoria, beginning at
att. trial	200		a point on the lower side of Washington street
Jury fee	300		in the said city of Peoria from which the north
pd by Comptant			west corner of said lot bears west 194 feet
			thence down the lower line of Washington
			59 1/2 feet, thence at right angles to Washington
			street 112 feet, thence parallel to Washington street
			139 feet, thence at right angles towards Washington
			street to the north line of Section Sixteen
			(16) 38 1/2 feet thence west along the section line
			to the place of beginning (being that part of
			said lot (20) now occupied by said Dunn) which
			said lease was made for and during the term

3.
of the said Trustees of Schools, until the said Dunne would execute a written lease to the said Trustees of Schools for some definite time. He further states that the said Dunne has refused to execute a written lease to the said Trustees of Schools, and still doth neglect and refuse to do so although often requested so to do, and wilfully and without force still remains in ^{the} possession of the said premises and holds over although the said Trustees of Schools have notified him that they desire him to leave, and still continues in the possession of the said premises without permission of the said Trustees of Schools notwithstanding demand has been made in writing by them upon the said Patrick W. Dunne to quit and deliver up possession thereof to them, therefore he prays that the said Patrick W. Dunne may be commanded to answer to this complaint.

Whereupon the said John Hamlin on the third day of December 1863 prayed of me being a Justice as aforesaid to issue a summons in this behalf, and I having heard the said complaint and prayer, did thereupon issue a summons in the name of the People of the State of Illinois directed to the Sheriff or any constable of said county requiring

him to summon the said Patrick W. Dunne to appear before me at my office in Peoria on the 14th day of December A.D. 1863 at one O'clock P.M. which was duly returned with an endorsement thereon signed by J. W. Crouse Constable as follows "Served on P. W. Dunne by reading to him this writ this 3^d day of December 1863" and on the said third day of December 1863 I issued a precept for a jury of twelve good & lawful men of the county to appear before me at the return of the said summons to hear and try the said complaint which was returned by the said constable with a list of the names of the jurors on the back thereof and certified by him. And on the fourteenth day of December 1863 in pursuance of the said summons personally appeared before me as well the said Patrick W. Dunne as the said John Haulin. And the jurors of the Jury aforesaid as summoned, having been called, tried and sworn, did sit together before me, and hear the proofs and allegations of said parties which were delivered publicly in their presence (before however any proof was heard the attorney for said defendant made objection to said complaint, and moved that suit be dismissed not having been properly brought

motion overruled by the court) and after
 hearing the said proofs and allegations
 the Jury were kept together in a convenient
 place by the constable untill they had agreed
 on their verdict, and the said jury having
 agreed on their verdict come in to court
 and delivered the same publicly and there-
 by found the said Patrick W. Dunne guilty
 in manner and form as set forth in
 said complaint. It is therefore consid-
 ered by ^{me the} said Justice that the said Trustees
 of School Township Eight north of Range
 Eight East of the 4th P. M. recover and be res-
 tored to the possession of the lands and
 possessions particularly described and
 designated in said complaint and that they
 have a writ of restitution therefor - and
 it is further considered that they recover
 against the said Patrick W. Dunne the
 sum of Thirteen dollars and thirty cents
 for their costs and charges by them laid
 out and expended in and about the prose-
 cution of this suit according to the
 form of the statute in such case made
 and provided and that they have execu-
 tion therefor - In testimony whereof
 I the said J. A. McCoy, one of the Justices of
 the Peace as aforesaid have hereunto

my hand & seal in the city of Peoria in the County
of Peoria the 14th day of December 1863.

J. A. Mclay C. J. P.

State of Illinois }
Peoria County }^{es}

I, J. A. Mclay, Justice of the
Peace in and for said county do certify
that the above transcript and papers an-
nexed contain a full and perfect statement
of the proceedings had before me in the a-
bove entitled cause. Given under my hand
and seal this 14th day of January A.D. 1864.

J. A. Mclay C. J. P.

Notice

To Mr. Patrick W. Dunn,

Sir. You are hereby no-
tified to come forward on or before the thir-
teenth day of November A.D. 1863 and execute a writ-
ten lease with the Trustees of Schools of town-
ship Eight north of Range Eight east of the fourth
principal meridian of the county of Peoria and
state of Illinois, for part of lot twenty (20) in
the subdivision of fractional section sixteen
(16) in said township eight north of Range Eight
east according to your agreement with said
trustees - being for that part of said lot now
occupied by you, upon condition, and under
same at the sufferance of the said Trustees
of schools. And in case of failure on

your part to execute said lease and pay the rent due from you for the occupation of the said premises at or before that time the said Trustees hereby demand of you to give up to them the peaceable possession of the said premises on the first day of December A.D. 1863, and that you quit and leave said premises on the said 1st day of December 1863. November 20th 1863.

By order of the Board of School Trustees
Washington Co. Ark.
Pres't Board.

Return

Served the within notice by reading & deliver-
ing a copy with the within named P.W. Dunn
this 20th day of November 1863
(per #150) J.W. Crouse, Const

Complaint

State of Illinois,
Peoria county } es

John Hansen of the city and County
of Peoria being first duly sworn says that
he is the Treasurer of the Trustees of Schools of
Township Eight North of Range Eight east of the
fourth principal meridian in the said county
of Peoria - And that on or about the 15th
day of March A.D. 1859, affiant as the agent
and under the order and direction of the said
Trustees of schools did demise and leave to

Patrick W. Dunn of the city and county aforesaid, the following described piece or parcel of land, viz: part of lot numbered twenty (20) in the subdivision of fractional section sixteen (16) in said Township Eight (8) north of Range (8) east situate in the said county of Peoria, beginning at a point on the lower side of Washington Street, in the said city of Peoria, from which the north west corner of said lot bears west 194 feet, thence down the lower line of Washington 59 1/2 feet thence at right angles to Washington street 112 feet, thence parallel to Washington street 139 feet - thence at right angles toward Washington street to the north line of section (16) 38 1/2 feet, thence west along the section line to the place of beginning (being that part of said lot (20) now occupied by said Dunn) which said lease was made for and during the will of the said trustees of school until the said Dunn would execute a written lease to the said Trustees of School for some definite time. He further states that the said Dunn has refused to execute a written lease to the said Trustees of School and still doth neglect and refuse to do so although often requested so to do, and willfully and without force still remains

the possession of the said premises and hold over although the said Trustees of School have notified him that they desired him to leave, and still continues in the possession of the said premises without the permission of the said Trustees of School notwithstanding demand has been made in writing by them upon the said Patrick W. Dunn to quit and deliver up possession thereof to them, therefore he prays that the said Patrick W. Dunn may be commanded to answer to this complaint.

John Hamlin

Subscribed and sworn to
before me this 3^d day of Dec. 1863.

J. A. Muloy, J.P.

Summons

State of Illinois

Peoria County } ss The People of the state of Illinois
To the Sheriff or any constable of
said county- Greeting :-

Whereas, John Hamlin has complained this day under his oath against Patrick W. Dunn which said complaint is in substance as follows to wit- John Hamlin of the city and county of Peoria being first duly sworn says that he is the Treasurer of the Trustees of Schools of Township Eight North of Range

Eight East of the fourth principal meridian
 in the said county of Peoria, and that on
 or about the 10th day of March A.D. 1859 ap-
 pearing as the agent and under the order and
 direction of the said Trustees of Schools did
 demise and lease to Patrick W. Dunn
 of the city and county aforesaid, the follow-
 ing described piece or parcel of land,
 viz. Part of lot numbered twenty (20) in
 the subdivision of fractional section six-
 teen (16) in said Township Eight (8) north of
 Range Eight (8) east, situate in the said
 county of Peoria, beginning at a point
 on the lower side of Washington street
 in the said city of Peoria from which the
 north west corner of said lot bears
 West 194 feet, thence down the lower
 line of Washington $59\frac{1}{2}$ feet, thence at
 right angles to Washington Street $11\frac{1}{2}$ feet
 thence parallel to Washington street 139 feet,
 thence at right angles toward Washington
 Street to the north line of section (16) 38
 feet, thence west along the section line
 to the place of beginning (being that part
 of said lot twenty now occupied by said
 Dunn) which said lease was made for and
 during the will of the said Trustees of
 Schools until the said Dunn would

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execute a written lease to the said Trustees of Schools for some definite time. He further states that the said Dunn has refused to execute a written lease to the said Trustees of Schools and still doth neglect and refuse to do so although often requested so to do, and wilfully and without force still remains in the possession of the said premises and holds over although the said Trustees of Schools have notified him that they desire him to leave and still continues in the possession of the said premises without the permission of the said Trustees of Schools notwithstanding demand has been made in writing by them upon said Patrick W. Dunn to quit and deliver up possession thereof to them, therefore he prays that the said Patrick W. Dunn may be commanded to answer to this complaint."

You are ^{therefore} ~~therefore~~ commanded to summon the said Patrick W. Dunn so complained of, to appear before me at my office in Peoria, on the 14th day of December inst (1863) at one o'clock P.M. to answer unto the said Trustees of Schools in an action of forcible detainer - And hereof make due

Service and return as the law directs. —

Given under my hand and seal
this the third day of December A.D. 1863.

J. A. McCoy, J. P.

Return

Served on P. W. Dunn by reading to him
this writ this 3^d day of Dec. 1863.
(Fees \$1.00.)

J. W. Crouse, Court

Venue =

State of Illinois,

Peoria County }

The People of the State of Illinois,

To any Constable of said County - Greeting:

We command you to summon twelve lawful
men of your county to appear before me
at my office in Peoria on the fourteenth
day of December 1863 at one o'clock P. M.
who are not of kin to Trustees of said
J. & N. & E. plaintiffs or to Patrick W. Dunn
defendant to make a jury between the
parties in a plea of forcible detainer, be-
cause as well the said plaintiffs as said de-
fendant have put themselves upon the
county for trial, and have you then
and there the names of the jury and
this writ. Witness my hand and seal,
this 3rd day of December 1863.

J. A. McCoy J. P. (I.S.)

Return

Served on George Pinckney, Orin Doty,
George Ford, Peter Boots, George Walker, C. P.

Merwin, Fred. Boles, John Batten, V. Dewein
J. R. Smith, Geo. Babcock & J. H. Miller as
Jurors, this 14th day of Dec. 1863.

(Fees \$2.00)

J. W. Crouse, const.

Appeal Bond

Know all men by these Presents, That we, Patrick
W. Dunn and Edward H. Jack, are held
and firmly bound unto Trustees of Schools
Township 8 North Range 8 East of 4th P. M.
in the Penal sum of one thousand dollars,
lawful money of the United States, for the
payment of which, well and truly to be made,
we bind ourselves, our heirs and admin-
istrators, jointly and severally, and firmly,
by these presents. Witness our hands and seals,
this 18th day of December 1863.

The condition of the above obligation
is such, That whereas the said Trustees of
Schools T. 8 N. R. 8 E. did on the 14th day of
December 1863 before J. A. Mclay a Justice
of the Peace of the county of Peoria, recover
a judgment against the above bounden
Patrick W. Dunn for possession of prem-
ises described in complaint in this case of four
cible detainers, and for the sum of Thirteen
30/100 dollars as costs from which judgment
the said Patrick W. Dunn has taken an ap-
peal to the Circuit Court of the county of Peoria

aporesaid, and state of Illinois: Now if the
 said Patrick W. Dunn shall prosecute
 his appeal with effect, and shall pay & per-
 form whatever judgment may be rendered
 by the court upon dismissal or trial of said
 appeal, and also all rents becoming due
 from the commencement of said suit to the
 final determination thereof, then the above
 obligation to be void, otherwise to remain
 in full force and effect

Approved before me, at } P. W. Dunn *Ed*
 my office, on this 18 day } C. A. Jack *Ed*
 of December 1863
 J. A. McCoy, J.P.

And afterwards to wit- on the 21st day of Jan-
 uary AD 1864, there was filed in the office of
 the clerk of this court, plaintiffs appearance
 in words and figures following to wit:-

appearance

State of Illinois {
 Peoria County }
 The Trustees of Schools of } In the Circuit Court
 Township Eight North of } of Peoria County
 Range Eight East of Peoria County } by appeal from John
 Patrick W. Dunn } A. McCoy, J.P.
 } Forcible detainer

And now comes the said plaintiffs, the
 said Trustees of Schools, and waive the issuing

XX (157)

& service of process and enter their appearance in the said circuit court in the above entitled cause.

By A. McCoy, their
attorney

And afterwards to wit- on the 1st day of February A.D. 1864, there was filed in the office of the clerk of this court, "Reasons for dismissing appeal," in words and figures following to wit:-

Trustees of Schools, Township 3	}	Appeal from J. A. McCoy J. P.
S. N. & E. in Peria county, Illinois		
Patrick W. Dunn (appellant)		

And now come the said Trustees of Schools by A. McCoy their attorney and move the court to dismiss said appeal.

Because the appellant, the said defendant failed to comply with rule No. 10 of this court, by advancing three dollars to the clerk of this court, and docketing the appeal in this cause. The appellee having entered their appearance 10 days before the first day of this term, and docketed the appeal & advanced to the clerk of this court the 3^d required.

A. McCoy
atty for appellee.

16
Proceedings at a term of the circuit
court begun and held at the court
house in and for the city and county
of Peoria and state of Illinois, on the
first Monday in the month of Febru-
ary in the year of our Lord one thousand
eight hundred and sixty-four, it being
the first day of said month. Present-
the Honorable Marion Williamson,
Judge of the 16th Judicial circuit in
said state, John A. J. Murray, sheriff
and Enock Sloan, Clerk, to-wit:

Tuesday, February 2^d A.D. 1864.
Trustees of Schools S. N. & E.

15 Appeal
Patrick W. Dunn

This day this cause came on to be
heard on the motion of plaintiff to dis-
miss this appeal under the rules of this
court and it appearing to the court that
said defendant had paid the advance fee
before final action on said motion, it
is ordered that said motion be overruled
and that this cause be set down for
hearing.

Friday, March 4, A.D. 1864.
Trustees of Schools
S. North & East

Appeal from J.P.

Patrick W. Dunn

This day come the plaintiffs by McCoy their attorney, and the defendant by O'Brien & Coratty, his attorney, and it is ordered by the court that a jury be impanelled to try this cause, whereupon come a jury of twelve good and lawful men to wit- David Burns, Wm. McDougal, Jas. B. Neff, O. W. Campbell, A. O. Garrett, H. V. Flegler, John Waugh, J. G. Maxwell, Wm. Nick, Sebastian Kruse, Charles Axel & Robert Truby, who being duly chosen, tried and sworn to well and truly try this cause and a true verdict give according to the evidence, do say, we the jury find the defendant guilty. Whereupon come the defendant by his attorneys and moved the court for a new trial.

Saturday, March 12th A.D. 1864.

Trustees of Schools

S. N. S. C.

H

Appeal

Patrick W. Dunn

This day come defendant by O'Brien, attorney, and prayed an appeal to the Supreme court of this state, which is allowed on his filing in the office of the

clerk of this court in ten days an appeal bond payable to the plaintiffs, in the penal sum of five hundred dollars, with Matthew Hennesberry, as security, conditioned as the law directs.

Proceedings in the circuit court of Peoria County, Illinois, at the February term A.D. 1864, omitted to be entered in their proper place in the record by error of the clerk to wit.

Saturday, March 5th 1864.
Trustees of Schools
S. N. & E.

11 Appeal
Patrick W. Dunn

This day this cause came on to be heard on the motion of defendants for a new trial, and the court being fully advised in the premises overruled said motion. Therefore it is considered by the court that said Trustees of Schools S. N. & E. have of the said Patrick W. Dunn the possession of lot numbered twenty in the subdivision of fractional section sixteen in said township eight north of Range eight east, situate in the said county of Peoria Illinois, beginning at a point on the lower

side of Washington street, in the said city of Peoria, from which the north west corner of said lot bears west 194 feet, thence down the lower line of Washington 57 1/2 feet, thence at right angles to Washington street 112 feet, thence parallel to Washington street 139 feet thence at right angles toward Washington street to the north line of section (16) 38 1/2 feet, thence west along the section line to the place of beginning (being that part of said lot twenty now occupied by said Dunn) and that a writ of possession issue thereon and it is further considered by the court that the said Trustees of Schools S. N. & C. have and recover of the said Patrick M. Dunn, their costs and charges by them about their suit in this behalf expended and that execution issue thereon.

And afterwards to-wit, on the 12th day of March A.D. 1864, there was filed in the clerk's office aforesaid, a bill of exception in words and figures following to-wit:-
 State of Illinois } Circuit court -
 County of Peoria } February Term 1864.
 The Trustees of Schools of }
 Township eight north of }
 Range eight east of }

20 20

Peoria County }
 } Detain on
Patrick W. Dunn }

Be it remembered, that on this 4th day of March AD 1864, it being one of the days of said Feby term of said court. This cause coming on to be heard & a jury having been called & duly sworn to try the same, the plaintiffs to maintain the issues on their part introduced and offered in evidence a certain notice in writing to the dependant dated November 20, 1863, and service on the back thereof. The return of service of the said notice on the back of the same the dependant admitted to be correct:

To Mr. Patrick W. Dunn,

Sir: You are hereby notified to come forward, on or before the thirtieth day of November AD 1863 and execute a written lease with the Trustees of Schools of Township Eight North of Range Eight east of the fourth principal meridian of the county of Peoria and state of Illinois, for part of lot twenty (20) in the subdivision of fractional Section sixteen (16) in said Township Eight North of Range Eight East, according to

agreement with said Trustees - being for that part of said lot now occupied by you, upon condition, and under and at the sufferance of the said Trustees of schools. And in case of failure on your part to execute said lease and pay the rent due from you for the occupation of the said premises at or before that time, the said Trustees hereby demand of you to yield up to them the peaceable possession of the said premises on the first day of December AD 1863, and that you quit and leave said premises on the said 1st day of December 1863. November 20th 1863.

By order of the Board of School Trustees
Washington Co. N.Y.
Pres. Board

To the introduction of which as evidence the defendant by his counsel then and there objected, which objection was overruled by the court & said notice was read in evidence to the jury, to which overruling by the court the defendant by his counsel then and there excepted.

The plaintiffs further to maintain the issues on their part called John Hamlin who testified that he was the agent of said Trustees of schools and had charge and control of their business for several years past

and received for his services as such agent the sum of \$200.00 per year, that this salary or amount did not in any way depend upon his success in collecting money or rent for said plaintiff, but was a sum certain and resting upon no contingency, that he had rented lands and lots in Peoria for said plaintiffs and had collected the rents thereof for several years past, to the competency of said Hamlin to be a witness and testify in said cause the defendant then and there objected, which objection was overruled by the court, to which ruling the defendant then and there excepted. Said Hamlin further testified that some time in the month of March 1859 the defendant (Dunne) came to the house of affiant and informed affiant that Washington street in said city of Peoria was about to be opened through the lot of land that the defendant then occupied, that his house stood in the center of the street so about to be opened. That the defendant wanted to lease a piece of lot twenty in said city of Peoria, being a part of section 16, school land, and being the property of the plaintiffs - that said defendant wanted such portion of such lot for the purpose of moving his house upon the

same. That affiant told him that such part of such lot 20 was for rent and that he could have such piece of such lot as soon as affiant could make out the papers - defendant then said he was obliged to move his house immediately. I told him that he might move his house upon the piece of lot twenty as mentioned and that I would make out a written lease as I had no blanks convenient, the terms of said lease was not agreed upon. He has never made or executed a lease since that time. I visited the lot sometime that spring after and the defendant's house moved on the lot and he occupying it. I think I called upon him there two or three times that season to execute a written lease, but failed to have it done. At a subsequent time I think we agreed upon the amount of rent, I told him I thought that the property occupied by him was worth 50 cents per foot, and defendant assented to it. At one time when I called upon him to execute a lease, he objected to do so until he could get the ground occupied by him of said lot surveyed - and promised to get it surveyed. I called upon him a number of times afterwards to see if he had a survey of said property.

made and was ready to execute said lease and found that he had not - thereupon some time last summer I procured a survey and plat of said premises to be made by the city surveyor (Mr. Russell), which plat I took to defendant and asked him to make and execute a lease for said premises, according to said plat - but defendant objected to do so - as he wanted to have the title to said premises examined and that he had employed Mr. O'Brien his attorney to examine said title. That some time afterwards I made out a lease for the premises with the first name of defendant left blank (as I did not know then what it was) and gave it to his attorney Mr. O'Brien to be executed, requesting him to have defendant execute the same, which was in a few days afterwards handed back to me. ^{There were no terms of tenancy agreed upon at any time unexecuted.} I did not collect any rent from defendant or ask for any rent for the reason I did not want to do so until a lease was made and executed, as I did not want to do anything to acknowledge a leasing on his part until the lease was executed.

The plaintiff further to maintain

their issues, called as a witness Corn
Wadnuff who testified that depend-
ant's building was moved on to part
of said lot twenty about 5th or 6th day of
March 1859 & that dependant's family
moved into said house about two
months afterwards.

This was all the evidence in the
case. The court then on behalf of the
plaintiffs gave the jury the following
instructions:

Trustees of Schools

vs

P. W. Dunn

If the jury believe from the evidence
that the plaintiffs through their agent
John Hamlin agreed to let the dependant
go on to the premises described in the com-
plaint with the understanding that they
would at some future time execute
a lease and fix the time and terms of the
tenancy and if they further believe that there
was no such lease executed by and between
the parties, then and in that case the de-
pendant was only a tenant at will of the
plaintiffs and was only entitled to a notice
of one day in writing.

Given

Given
2. The mere fact of one party saying to another that they thought certain premises were worth a certain price per foot per annum, and the other party assenting to it, does not of itself constitute a leasing of said premises.

Given
3. If the dependant went into the possession of plaintiffs without fixing upon any definite time or terms of holding said premises, and that the plaintiffs during his occupancy of the premises were endeavoring to have him execute and sign a lease for said premises and dependant refused and neglected so to do, this would make him a tenant at will and only entitled to a reasonable notice to quit.

To which instructions and the giving thereof to the jury, the dependant then and there objected and excepted.

The dependant then asked the court to give the jury the following instructions.

1. The jury are instructed by the court that if they believe from the evidence that P. W. Dunn the dependant rented the premises in question for a sum certain for a year then the

modified
and given

Severely
Open
as asked

29.

jury are instructed that before the plaintiff can recover in this case, he must prove to the satisfaction of the jury that six days notice was given to the defendant to quit & deliver up such premises to the plaintiff before the commencement of this suit.

- 2 If the jury believe from the evidence that Mr. Hamlin as the agent of the plaintiff proposed to the defendant to rent such premises to said defendant for the sum of fifty cents per foot rent per annum and if they further believe from the evidence that the defendant accepted such proposition and agreed to pay such sum to and in the manner proposed by Mr. Hamlin and that such was the understanding and agreement between said Hamlin & the defendant, ^(And that it was not a condition that such sum should be in writing) And if the jury further believe that there was no precise or particular time fixed for the payment of such rent, but that the same should be paid annually, then the jury are instructed that such agreement & understanding would constitute a lease for a year of such premises.

3. The Jury are further instructed that a direct proposition of the School Trustees on one side to lease such premises for fifty cents per foot per annum, and an acceptance of such proposition by Mr. Dunne on the other side would of itself amount to a leasing of such premises - and if the jury believe that such leasing was for the term of a year, and that the rent was not to be paid before the expiration of such year, and if the jury further believe that the plaintiff after the expiration of such year permitted the defendant to hold over then such permission and holding over would amount to a tenancy for a corresponding period of time. And the jury are further instructed that before a tenancy for a year or from year to year can be terminated by the party leasing, a notice of sixty days must be given to the tenant to terminate such tenancy - and that a simple demand for such premises or notice for less than sixty days would not be sufficient to enable the plaintiff to recover.

Modified

(and that if the jury believe that the plaintiff after the expiration of such year permitted the defendant to hold over then such permission and holding over would amount to a tenancy for a corresponding period of time)

4

Hooded
given

If the jury are instructed that the notice is no evidence to prove terms of leasing - either as to payment of rent or to whether the lease should be in writing.

5

referred

The jury are instructed that if the defendant P. W. Duran went into possession of the lot in controversy & with consent of plps & remained in possession with their consent for several years, then it becomes a tenancy from year to year and deft is entitled to 60 days notice to quit.

6

referred

If the jury believe from the evidence that he lawfully took possession with consent of pltps & remained in possession with the consent of the pltp since the spring of 1859, even though they should believe he was to execute a written lease, yet it becomes a tenancy from year to year & requires 60 days notice, to terminate it.

7.

referred

The jury are instructed that in all cases of tenancy from year to year the tenant is entitled to 60 days notice to quit to be given 60 days before the end of the year.

8.

If the jury believe that at the time of the first agreement to take possession - the parties agreed that

upward

the deft should so take possession, deferring the writing of a lease to some convenient indefinite time, the jury are instructed that this does not make the writing thereof a condition of the actual leasing & they must find for the defendant.

9

upward

If the jury believe from the evidence that it was a tenancy for any period less than one year, then the deft is entitled to 30 days notice to quit.

10

upward

The jury are instructed that it is not necessary that a lease should be in writing, that a verbal leasing is as good as a written leasing - that writing is only evidence of the contract.

30 1/2

which was refused by the court, to which refusal the defendant then and excepted, but modified the same as follows:

1 The jury are instructed by the court, that if they believe from the evidence that P. W. Dunn the defendant rented the premises in question for a sum certain for a year then the jury are instructed that before the plaintiff can recover in this case, he must prove to the satisfaction of the jury that sixty days notice was given to the defendant to quit & deliver up such premises to the plaintiff before the commencement of this suit.

2

If the jury believe from the evidence that Mr. Hamlin as the agent of the plaintiff, proposed to the defendant to rent such premises to said defendant for the sum of fifty cents per foot rent per annum

Given

and if they further believe from the evidence that the defendant accepted such proposition and agreed to pay such sum to and in the manner proposed by Mr. Hamlin and that such was the understanding and agreement and that it was not a condition that a written lease should be executed, between said Hamlin & the defendant, and if the jury further believe that there was no precise or particular time fixed for the payment of such rent, but that the same should be paid annually then the jury are instructed that such agreement & understanding would constitute a letting for a year of such premises.

3, The jury are further instructed, that a direct proposition of the school trustees on one side to lease such premises for fifty cents per boat per annum, and an acceptance of such proposition by Mr. Durne on the other side, would of itself amount to a leasing of such premises - and if the jury believe that such leasing was for the term of a year, and that the rent was not to be paid before and that it was not a condition that such lease should be in writing the expiration of such year. And if the jury further believe that the plaintiff aff

Given

Given

the expiration of such year permitted the defendant to hold over then such permission and holding over would amount to a tenancy for a corresponding period of time - and the jury are further instructed that before a tenancy for a year, or from year to year can be terminated by the party leasing, a notice of sixty days must be given to the tenant to terminate such tenancy - and that a simple demand for such premises or notice - for less than sixty days would not be sufficient to enable the plaintiff to recover.

Given 4

If the jury are instructed that the notice is no evidence to prove terms of leasing, either as to payment of rent or to whether the lease should be in writing

Refused

5- The jury are instructed that if the defendant P. W. Durn went in to possession of the lot in controversy & with consent of plths & remained in possession with their consent for several years then it becomes a tenancy from year to year and deft is entitled to 60 days notice to

Refused

27 33.
6 If the jury believe from the evidence that he lawfully took possession with consent of Pepps & remained in possession with the consent of the Pepps since the Spring of 1857, even though they should believe he was to execute a written lease, yet it becomes a tenancy from year to year & requires 60 days notice to terminate it.

Refused
absolutely
prohibited
prohibited
refused

7. The jury are instructed that in all cases of tenancy from year to year the tenant is entitled to 60 days notice to quit to be given 60 days before the end of the year.

Refused

8. If the jury believe that at the time of the first agreement to take possession, the parties agreed that the deft should so take possession deferring the writing of a lease to some convenient indefinite time the jury are instructed that this does not make the writing thereof a condition of the actual leasing & they must find for the defendant.

9 If the jury believe from the evidence

Rebursed
 dence that it was a tenancy for any period less than one year, then the defendant is entitled to 30 days notice to quit.

10. The jury are instructed that it is not necessary that a lease should be in writing, unless such was the contract of the parties, that a verbal leasing for one year or less is as good as a written leasing - that writing is ~~the~~ only evidence of the contract.

To the giving of which instructions as modified, the defendant then and there objected and excepted.

The jury then returned and brought into court the following verdict:

"We the jury find the defendant guilty," ~~according to the complaint set forth:~~

The defendant then filed a motion to set aside said verdict, & for a new trial of said cause:

Trustees }
 14 } Detainer:
 Dunn } Motion to set aside ver

dict & for a new trial. for reasons

- 1st Verdict against law.
- 2^d Verdict against evidence.
- 3^d Against instructions of the court.
- 4th The court gave improper instructions to the jury for perjury.
- 5th The court improperly refused some of depts instructions.
- 6 The court improperly modified other of depts instructions.
- 7 The court improperly admitted the "notice to quit" in evidence.

O'Brien & Hratthy

which said motion was overruled by the court to which overruling the dependant then & there excepted and asked the court to sign and seal this his bill of exceptions, which is accordingly done.

M. Williamson, Judge. *[Signature]*

And afterwards to wit on the 21st day of March A.D. 1864, there was filed in said clerks office an appeal bond in words & figures following to wit

APPEAL BOND FROM CIRCUIT TO SUPREME COURT.

KNOW ALL MEN BY THESE PRESENTS: That we Patrick W. Dunne
and Matthew Hennesherry
 of the County of Peoria and State of Illinois, are held and firmly bound unto
The Trustees of Schools of Township 8 North Range East 4
Principal Meridian in the penal sum of five hundred ¹⁰⁰ Dol-
 lars, for the payment of which well and truly to be made, we, and each of us,
 bind ourselves, our heirs, executors and administrators, jointly and severally, and firmly
 by these presents, Sealed with our seals, and dated at Peoria this 15th day of
March Anno Domini, one thousand eight hundred and sixty four

The Condition of the above Obligation is such: That whereas the above
~~bounden~~ named Trustees of schools did on the
fifth day of March one thousand eight hundred and
 sixty four at a term of the Circuit Court then being holden within and
 for the County of Peoria and State of Illinois, obtain a Judgment
 against the above bounden Patrick W. Dunne
 for the sum of Dollars and Cents,
~~and~~ cost of suit, in a certain action of forcible detainer
wherein judgment was awarded against him
said Dunne for possession
 from which Judgment the said Patrick W. Dunne
 has prayed for and obtained an appeal to the Supreme Court
 of said State.

Now if the said Patrick W. Dunne
 shall duly prosecute said appeal and shall moreover pay the amount of the judgment,
 costs, interest and damages, rendered and to be rendered against him the said
Patrick W. Dunne in case the said Judgment
 shall be affirmed in the said Supreme Court, then the above obligation to
 be null and void, otherwise to remain in force and virtue.

P. W. Dunne { L. S. }
M. Hennesherry { L. S. }
 { L. S. }

State of Illinois }
 Peoria County } ss

I, Enock J. Sloan, clerk of the circuit court in and for said county and state, do hereby certify that the foregoing is a full, complete and correct Transcript of the proceedings in said court in the cause wherein the Trustees of Schools S. W. & E., Peoria county, are plaintiffs, and Patrick W. Drum is defendant, together with the papers in said cause, as the same appears of record and on file in my office. Given under my hand and seal of said court at Peoria this 16th day of April A.D. 1864. Enock J. Sloan, clerk



State of Illinois } Third Grand Division
Supreme Court } April Term AD. 1864

Patrick H. Drumm, Appellant
vs. Appeals from Tonia Circuit Court
The Trustees of School of
Town Eighth North Range } Appellees.
East -

And the said Patrick H. Drumm
Appellant, comes and says,
that in the record and proceedings
aforesaid, manifest error, hath
intervened, to the injury and wrong
of this Appellant, in this Town;
1st The Circuit Court erred in ad-
mitting in evidence, the notice to quit

2nd The Circuit Court erred in
giving the instructions asked on
the part of the Plaintiffs below

3rd The Circuit Court erred in
refusing the instructions asked
on the part of the Defendant
below,

4th The Circuit Court erred in
modifying the Defendants instruc-

tions and in giving the same
as modified

5th The Circuit Court erred in
over-ruling the motion of the De-
fendants below for a new trial

5th The Circuit Court erred in
rendering judgment on the
verdict against the Defendants
below.

For all of which reasons
said Appellant prays that
said judgment be in all
things reversed and for
nothing held and esteemed

O'Brien & Cratty &

~~Attorneys~~

Atty for Appellant

And now come the said Trustees
of Schools the said appellees by A. Mc Coy
their attorney and say that in the
said Record and proceedings and
judgment there is no error why
the same should be reversed, and
prays that the said Judgment may
be affirmed

A. McCoy

Atty for appellees

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Patrick W. Dunn
Trustee of Schools

Record

Filed April 21, 1864
L. Leland
Clerk

Recd of Mr. Wm. Dunn
my fees for this record.
\$8.00