

No. 14695

Supreme Court of Illinois

Shackelford

VS.

Bailey.

STATE OF ILLINOIS

SUPREME COURT,

THIRD GRAND DIVISION.

No. 8 47

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

Margulford
Bailey

1864

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1864.

JAMES M. SHACKELFORD, }
—vs.— } *Error to Tazewell Circuit Court.*
SAMUEL P. BAILEY. }

BRIEF FOR PLAINTIFFS IN ERROR.

This is an action of ejectment for a forty acre tract of land—the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 2, town 24, N. R. 5 W. 3d P. M. The plaintiff gave in evidence, a Patent to himself from the United States, for the land in controversy, and the defendant admitted that at the commencement of the suit, he was in possession. This was the plaintiff's case.

The defendant against the objections of plaintiff, gave in evidence as color of title under which to prove payment of taxes, two deeds, as follows:

1st. A sheriff's deed, on a sale for taxes, (amount of taxes fifty cents,) to defendant, for 34 acres out of the tract, without saying what part of the tract.

The second deed is a sheriff's deed, on a sale for taxes for 7 acres, off the east side of the SE SE section 2, town 24, N. R. 5 East.

POINT 1.

This first sheriff's deed is void for uncertainty, and is not even color of title to support payment of taxes under our statute. It is simply 34 acres out of a 40 acre tract. The land cannot be located, and the deed is wholly void for all purposes, for uncertainty. (*Laf-
lin vs. Harrington, et. al., 16th Ill., 301.*)

POINT 2.

It was error to admit the second deed, it not describing the land nor any part of it. The land in controversy is in range 5, west. This land is 5 east.

POINT 3.

Defendant showed no color of title, therefore the payment of taxes did not avail—he was a mere naked possessor. There must be both color of title and payment of taxes to avail. (*Chickering et. al. vs. Failes, &c., 26th Ill., 507.*)

POINT 4.

The first instruction for defendant is erroneous, because it makes the jury judges of what is color of title, and because there was not a particle of evidence as to whether the land was vacant or not. It was at most, an abstract proposition of law, and should not have been given. (*Vallandigham vs. Houston, 4 Gill, 127. Nealy vs. Brown, et. al., 1 Gill, 14. McBain vs. Enlow, 13th Ill., 78. Atkinson vs. Lester et. al., 1 Scam., 409.*)

POINT 5.

The court should have granted the motion for a new trial, for the reasons stated in the motion. See Abstract.

POINT 6.

The court after amending the record at the Feb. term, 1860, by altering and entering the verdict, after putting it in form, should have granted the plaintiff a new trial on payment of costs under the statute. Previous to that time there was no verdict to support a judgment, and there could be no judgment. Immediately upon the correction of the record, the plaintiff paid the costs and moved for a new trial under the statute. It should have been granted. (Purple's Statutes, Vol. 1, page 508, section 29 and 30.) Each point is deemed well taken, and the judgment should be reversed, and the cause remanded.

R. E. WILLIAMS,
For Plaintiff in Error.

No 8.

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Gas M Shackelford

vs

Samuel P. Bailey

Brief for Plaintiff
In Error

Filed April 28. 1864

L. Leonard Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

JAMES M. SHACKELFORD, }
vs. } *ERROR TO TAZEWELL.*
SAMUEL P. BAILEY.

BRIEF FOR DEFENDANTS IN ERROR.

Plaintiff assigns for Error, that the Tax Deeds offered in evidence were improperly admitted.

1st. Because they do not describe the lands.

2d. Because they have no date.

3d. Because there is no judgment or precept to support them. (Abstract p. 1)

The first deed describes the land as $3\frac{1}{4}$ acres out of the tract.

The tract is S E $\frac{1}{4}$ of S E $\frac{1}{4}$ 2, 24, 5.

1. How is the court to know that these $3\frac{1}{4}$ acres do not comprise the entire quarter? Many quarters sold, frequently do not hold out the full 40 acres. Such may be the case here. If so, the description is sufficient.

2. If the quarter contained 40 acres, these $3\frac{1}{4}$ acres must be "taken from the East side of such tract." The statute determines where the part sold shall be located. Even in this view of the case, this description is sufficiently certain as to where the $3\frac{1}{4}$ acres are situated. They are on the *East side* of the tract. The Law determines it.

That the deeds have no date does not invalidate them.

The date is not essential. They take effect from the time of their delivery And the presumption is that they were made at the proper time.

The acknowledgment shows when the deeds were made.

To the third objection that there is no judgment or precept to support these deeds, we simply reply that *none is required*.

As claim and color of title, they are *prima facie* sufficient. We are not bound to show that the pre-requisites of the statute have been complied with.

27 Ill. 483.

And to this, as well as to all of plaintiff's objections to these deeds, we might apply the doctrine as laid down in 17 Ill. 498. "That color of title may commence without any writing; and if founded upon a writing, such writing need not show on its face a *prima facie* title, but may be good as a foundation for color, however defective otherwise."

Vide also 16 Ill. 430.

The *payment of taxes* appears to have been on the *SE. SE. 2*. This is a payment on all the land in the tract.

The last deed for seven acres describes the land as being on the *East side*. This is sufficient. It locates the land, and the taxes having been paid thereon for seven years in succession, the title is good.

WEAD & COCHRAN,
for Defendants in Error.

8 41

J. Mc Shafford

vs
S. P. Bailey

Defts Brief

Filed May 9, 1864
J. L. Laidlaw

for Defendants in Error
DAVID G. COCHRAN

State of Illinois

In the Supreme Court for the 3rd Grand
Division at Ottawa.

April Term 1860

James M. Shackelford

vs

Samuel P. Bailey

Error to the Circuit Court
of Pageville County.

Upon this Record the Plaintiff assigns
the following Errors.

1st The Court erred in admitting the first
Deed offered by the Defendant in evidence
on the trial below

2nd The Court erred in admitting the second
Deed ~~offered~~ in evidence offered by the
Defendant on the trial below.

3rd The Court erred in giving the 1st, 2nd, 3rd,
4th, 5th and 6th instructions for the Defen-
dant

4th The Court Erred in not setting aside the
verdict and granting a new trial below
at the April Term 1858

5th The Court erred in not entering final
judgment upon the amended verdict
at the February Term 1860. and then
setting aside the verdict and judgment
and granting a new trial under the
Statute

6th The Court Erred at the February Term
1860 in not granting to Plaintiff a new
Trial.

7th For all and every of the above, and for
divers other errors that will be manifest

to the Court upon inspection of the
Records all of which errors are to the
prejudice of the Plaintiff, the Court
should reverse the Judgement and
remand the Cause for a new trial
in the Court below.

~~R. E. Williams~~
C. E. Williams Counsel
Plff in Error-

Defendant in error says there is
no error in said record & says that the
said judgement ought to be in all things
affirmed

In answer to answer
for reply in error

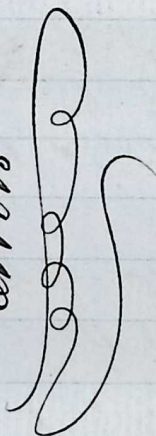
James M. Shackelford

vs.

Samuel P. Bailey

Assignment of

Errors



Filed Sept. 19, 1860

Shackelford

Att.

R. E. Williams

Pleas to a Term of the Circuit Court
begun and held at the Court House in
the City of Pekin in and for the County
of Tazewell and State of Illinois. on the
first Monday of the Month of April
the same being the sixth day of said
month in the year of Our Lord Eighteen
Hundred and fifty Seven. Present the
Honorable James Harnott Judge of the
Twenty first Judicial Circuit of the
State of Illinois composed of Tazewell
Woodford &c.

Be it remembered that on the 17th day of April
A.D. 1857. a Declaration & notice was filed in the
words and figures following to wit

State of Illinois }
County of Tazewell } 30th of the April Term of the Tazewell
Circuit Court A.D. 1857.

James M. Shackleford by B. L. Prettyman
his attorney complains of Samuel P. Bailey. Sum-
-oned &c of a Plea of wherein he with force and arms
broke and entered into all of that certain tract
or parcel of Land lying being and situate in
the County of Tazewell and State of Illinois and
known and designated. as follows viz The South
east quarter of the south east quarter of Section
Two in Township four north of Range five west

of the third principal meridian.

For that the said plaintiff heretofore to-wit: on the first day of October A.D. Eighteen Hundred and fifty six at the State and County aforesaid was possessed in fee of the following tract of Land, viz The south East quarter of the South East-quarter of Section two, in Township twenty four North of Range five west of the third principal meridian. And being so thereof possessed, the said defendant afterwards to-wit on the second day of October Eighteen Hundred and fifty six at the County and State aforesaid. Entered into and upon the said Land aforesaid, and the said defendant unlawfully withholds from the said plaintiff the possession thereof to the damage of the plaintiff of one Thousand Dollars and therefore he sues,

James M. Shackelford

By B. B. Priddyman His Atty.,

Notice

To Samuel P. Bailey.

Sir, - You are hereby notified 1st - That at the present term of the Circuit Court of Tazewell County Illinois now being holden in the City of Pekin in said County, I shall on Thursday of the second week of said present term of said court, being the sixteenth day of the month of April 1857 file in said Court the declaration of Ejectment of which the foregoing & within is a copy 2nd. That upon

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a filing the same a rule will be entered requiring you to appear and plead to said declaration within twenty days after the entry of such rule, and 3rd That if you neglect to appear and plead a judgment by default will be entered against you and the plaintiff will recover the possession of the Premises
 B.S. Portyman atty. for Plff.

I hereby enter myself security for costs in the above entitled cause and acknowledge myself bound to pay or cause to be paid all costs that may accrue to the opposite party or to the officers of this court under the laws of this State,

B.S. Portyman

And now afterwards to wit at a Term of the Circuit Court begun and held at the court house in the City of Peoria in and for the County of Tazewell and State of Illinois on the first Monday of the month of April the same being the Sixth day of said month in the year of Our Lord Eighteen Hundred and fifty Term Present the Honorable E. A. Powell Judge of the 16th judicial Circuit by interchange Hugh Fullerton Esq Prosecuting attorney Capman Wittman Sheriff and Merrill C Young Clerk the following proceedings were had in said cause to wit

April 17th 1857=

James M. Shackelford

vs.:

Samuel P Bailey

In Ejectment.

This day come the plaintiff by his attorney, and A.L. Davidson having entered the appearance of the defendant. Upon motion of Plaintiff. It is ordered that there be a rule entered upon defendant to plead in twenty days.

And now afterwards to-wit on the 21st day of April A.D. 1857 a plea was filed in the words and figures following to-wit

James M. Shackelford

vs.:

Samuel P. Bailey

Defendant

-Plaintiff

In Ejectment

And the said Samuel P. Bailey in his own proper person comes and defends ~~as~~ and says that he is not guilty of unlawfully withholding the premises claimed by the said James M. Shackelford as alleged in the said declaration of the said James M. Shackelford. of this the said Samuel P. Bailey, and of this the the said defendant puts himself upon the Country

Samuel P. Bailey

+ Plff votes the like

Pro Se

Prty man

att'y for Plff

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And now afterwards to-wit at
 a Term of the Circuit Court begun and held
 at the Court house in the city of Pekin in and
 for the County of Tazewell and State of Illinois
 on the second Monday of the month of October the
 same being the 12th day of said month in the
 year of our Lord Eighteen hundred and fifty seven
 Present the Honorable James Harriott Judge of the
 Twenty first judicial district Hugh Fulton Esq
 Prosecuting Attorney Chapman Williamson Sheriff
 and Merrill C. Young Clerk the following pro-
 ceedings were had in said cause to-wit

October 12th A.D. 1857

James M. Shackelford	}	In Ejectment
vs.		
Samuel R. Bailey		

And now on this day comes
 the parties by their attorneys and on motion this
 cause is continued Generally.

And now afterwards to-wit
 at a Term of the Circuit Court begun and
 held at the Court house in the city of Pekin in
 and for the County of Tazewell on the first Mon-
 day of the month of April the same being the
 fifth day of said month in the year of our
 Lord Eighteen hundred and fifty Eight Present
 the Hon James Harriott Judge of the Twenty first

Judicial Circuit Hugh Fullerton Esq Prosecutor
attorney Chapman Williamson Sheriff and Merritt
C. Young Clerk the following proceeding was had
in said cause to wit

April 13th A.D. 1858

James M. Shackelford

vs.

Ejectment.

Samuel R. Bailey

On this day came again
the parties by their attorneys whereupon came
a jury of twelve good and lawfull men to wit
George H. Greely, William Schellenger, J. W. Ely,
Daniel Scheer, Jesse Frohbridge, J. P. Springer, John
A. Davis, D. F. Lowry, N. Abbott, F. King Jr. Edward
Wilson, and W. H. Crosby duly elected tried and
sworn who having heard the allegations and proofs
of the parties and argument of counsel thereon for
verdict say, we the jury find for the defendant.
It is therefore ordered and adjudged by the court
that the defendant recover of the said plaintiff
the costs and charges about his suit expended
and that execution issue therefor =

And now afterwards to wit at the
Term of the Circuit Court begun and held
at the Court House in the city of Peoria on the
first Monday of the Month of February the same

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bring the sixth day of said month, in the year
of our Lord Eighteen hundred and sixty -
Present the Honorable James Harriott Judge
of the Twenty first Judicial Circuit Hugh Full-
erton Esq Prosecuting Attorney Thomas C. Reems
Sheriff and Merrill C. Young Clerk the follow-
ing proceedings were had: =

James M. Shackelford }
=vs.= } In Ejectment
Samuel R. Bailey }

And now on this day
come again the parties by their attorneys and
this cause coming on to be heard on the motion
of the plaintiff. That the Court enter up final
judgment upon the verdict of the jury given in
said cause at the April Term 1858, whereupon
it is ordered by the Court that the Clerk amend
the record of the Court in this case and put
the verdict of the jury in proper form and write
up the record accordingly whereupon the Clerk
amended the record of the Court and verdict
of the jury. so as to read as follows to wit

James M. Shackelford }
=vs.= } Ejectment
Samuel R. Bailey }

This day came again
the parties by their attorneys whereupon came

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a jury of 12 good and lawfull men to wit
George W. Brady, Wm Shellenbarger, J. W. Ely, Daniel
Behrman, Jesse Townbridge, J. P. Sprunger, John A
Davis, D. F. Lowrey, N. Abbott, J. King Jr, Edward
Wilson and W. H. Mosby duly elected tried and
sworn who having heard the allegations and
proofs of the parties and the argument of counsel
thereon for verdict say - We the jury find the defen-
-dant not guilty of ^{unlawfully} withholding the possession of
the promise in the declaration mentioned. It is there-
fore ordered and adjudged by the Court, that the
defendant recover of said plaintiff the costs and char-
ges about his suit expended and that execution
issue therefor."

Whereupon (all the costs in said cause being
first paid) the said plaintiff by his attorneys
moved the Court to set aside said verdict as
amended and the plaintiff be allowed a new
trial under the Statute - which motion is by the
Court denied. It is therefore ordered and adjudged
by the Court that the defendant recover of said
plaintiff the costs ~~in~~ charges by him ~~him~~ expen-
ded & that execution issue therefor

And now afterwards to wit on the 2nd day of April
A. D. 1857 a Bill of exceptions was filed in the
words and figures following to wit

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State of Illinois } In Circuit Court
 Lapeer County } April Term 1858

James M. Shackelford }

-vs-

Samuel R. Bailey }

Bill of Exceptions

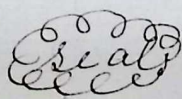
Be it remembered that on
 the trial of this cause the plaintiff introduced
 the following patent from the Government

Certificate - The United States of America -
 No 15834 }

To all to whom these presents shall come
 - Greeting - Whereas James M. Shackelford of Sau-
 - gamon County Illinois has deposited in the
 General Land Office of the United States, a certifi-
 - cate of the register of the Land Office at Springfield
 whereby it appears that full payment has been
 made by the said James M. Shackelford according
 to the provisions of an act of Congress of the 24th of
 April 1820 Entitled "An act making further
 provisions for the sale of the public Lands
 for the South East quarter of the South East
 quarter North of Range five West of the third
 principal Meridian in the district of lands
 subject to sale at Springfield containing forty
 acres according to the official plat of the survey
 of said Lands, returned to the General Land

Office by the Surveyor General which said tract has been purchased by the said James M. Shackelford - Now know Ye that the United States of America in consideration of the promises, and in conformity with the several acts of Congress in such case made and provided, have given and granted and by these presents do give and grant unto the said James M. Shackelford and to his heirs, the said tract above described. To have and to hold the same together with all the rights, privileges, immunities and appurtenances of what-soever nature, thenceunto belonging unto the said James M. Shackelford and to his heirs and assigns forever - In testimony whereof I Martin Van Buren, President of the United States of America have caused these letters to be made Patent and the Seal of the General Land Office to be hereto affixed -

Given under my hand at the city of Washington the first day of November in the year of our Lord One Thousand Eight-hundred and thirty nine, and of the Independence of the United States the sixty fourth



By the President Martin Van Buren

By M Van Buren Secy

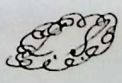
WM Gallardo Recorder of the General Land Office

Recorded Vol 39 Page 1896

It was then admitted on the part of the defendant that at the time of the commencement of this suit that he was in possession of the land for which this suit is brought. The Plaintiff then rested. The Defendant then introduced the following Deed. Know all men by these presents that Whereas at the September Term 1844, of the circuit court of Tazewell County, a judgment was obtained in said court, in favor of the State of Illinois the pt. South east quarter of the south East quarter of Section two in Township twenty four North of Range five west 3rd principal Meridian containing thirty four acres for the sum of fifty cents, being the amount of Taxes, Interest and costs, assessed upon said tract of Land for the year 1843 And Whereas, on the seventeenth day of September 1844 Robert W Briggs Sheriff of the County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid, dated the 14th day of September 1844 and to him directed, did expose to public sale, at the door of the Court house, in the County aforesaid, in conformity with all the requisitions of the Statute in such case made and provided the tract of Land above described, for the satisfaction of the judgment so rendered as aforesaid. And Whereas at the time and place aforesaid, M. Zachaberry of the County of Tazewell and State of Illinois having offered to pay the aforesaid sum

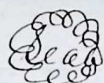
of fifty cents. for the whole of said tract of Land which was the least quantity bid for. the said land was striken off to him at that price, and the said M. Zachabry having duly assigned his certificate of Purchase to Samuel R. Bailey. Now therefore, I Robert W. Briggs Sheriff as aforesaid, for and in consideration of the said sum of fifty cents to me in hand paid by the said M. Zachabry at the time of the aforesaid sale, and by virtue of the Statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Samuel R. Bailey his heirs and assigns Thirty four acres of the South East quarter of the south East quarter of Section two in Township twenty four North Range five west 3^d principal meridian. To have and to hold unto him the said Samuel R. Bailey his heirs and assigns forever; Subject however to all rights of redemption provided by law.

In Witness whereof, I, Robert W. Briggs Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this - day of - 184

R. W. Briggs Sheriff 
Logan County Ill.

State of Illinois }
Logan County } ss. J. J. A. Jones clerk of the circuit
Court in and for said county do hereby certify, that

that this day personally appeared before me R. W. Briggs Sheriff of said County whose signature is subscribed to the foregoing deed of conveyance and acknowledged that in his official capacity he had executed the same for the purposes therein expressed.



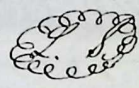
Witness my hand and official seal at
 Fortmont this 15th day of March A.D. 1848
 J. J. Jones Clerk

to the introduction of which the plaintiff objected for the reasons that there was no sufficient description of the land in question and that there was no date to the deed, and no judgment and precept to support the same - which objections were overruled by the court. To which the plaintiff at the time excepted. The Defendant then introduced the following tax receipts Tolbit. for the years 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, & 1857, also Tax receipt for year 1843. Taxes paid by M. Zachary assignor of Bailey. The defendant then offered in evidence the following deed with the acknowledgment & Certificate of Recording "Know all men by these Presents that Thomas at the September Term 1843, of the Circuit Court of Lawrence County, a judgment was obtained in said Court in favor of the State of Illinois, against the South east quarter of the South East quarter of Section two in Township Twenty four North of Range five West, 3^d principal Meridian for the sum of One

Dollar and Sixteen cents. being the amount of Taxes, Interest and costs, assessed upon said tract of Land for the year 1842, And Whereas on the 15th day of September 1843. Benjamin Briggs Sheriff of the County aforesaid, by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the 16th day of September A. D. 1843. and to him directed, did expose to public sale at the door of the Court-house in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided. The Tract of Land above described, for the satisfaction of the judgment so rendered as aforesaid, And whereas at the time and place aforesaid. M. Zachaberry of the County of Taylor and State of Illinois having offered to pay the aforesaid sum of One Dollar and Sixteen cents, for seven acres of said Land which was the least quantity bid for the said tract of was Strickland of to him at that price, and the said M. Zachaberry having duly assigned his certificate of purchase to Samuel R. Bailey. Now therefore I. Robert W. Briggs Sheriff of said County of Taylor and successor of Benjamin Briggs Sheriff as aforesaid for and in consideration of the said sum of One Dollar and Sixteen cents, to me in hand paid by the said M. Zachaberry at the time of the aforesaid sale, and by virtue of the Statute in such case made and provided, have granted, bargained and sold and by these

15 presents do grant bargain and sell unto him
the said Samuel P. Bailey his heirs and assigns
seven acres off the east side of the South East
quarter of the south East-quarter of section two
in Township Twenty four North Range five East
Third principal meridian. To him and to hold
unto him the said Samuel P. Bailey his heirs
and assigns forever. Subject however to all the
rights of Redemption provided by law.

In Witness whereof I, Robert W. Briggs Sheriff as
aforesaid by virtue of the authority aforesaid have
hereunto subscribed my name and affixed my
seal this 17 day of March 1848

R. W. Briggs Sheriff 
Taylor Co. Ill.

State of Illinois }
Taylor County }^{ss} I, J. A. Jones clerk of the Circuit
Court in and for said County do hereby certify that
this day personally appeared before me R. W. Briggs
sheriff of said County whose signature is subscri-
-bed to the foregoing deed of conveyance and acknow-
-ledged that in his official capacity, he had execu-
-ted the same voluntarily and freely for the purpose
therein expressed.

Witness my hand and official seal at Mount
this 17th day of March A.D. 1848

J. A. Jones clerk

N^o 835-2. Entered for Record the 20th day of September

1849, and duly recorded in the Records office
of Jayrull County Illinois in book R. of Deeds
pages 20. Attest M. Cronwell

Recorder

To the introduction of which the Plaintiff objected for the reasons That it did not sufficiently describe the land in question, That the deed had no date and there was no sufficient judgment & Precept to support it all of which objections were overruled by the Court and the deed made evidence to which the Plaintiff at the time excepted. The Plaintiff then proved that there was no regular judgment in the Circuit Court of Jayrull County Illinois rendered against the land in question for any year for Taxes That the Land was sold in 1848 for the Taxes of the year 1847 in said County. The Plaintiff then introduced the clerk of the County Court and proved by him, that there was no certified lists to assessments for 1842 or 1843. That there were Books containing the numbers of ^{the} Land in question but none of them were certified to be such by the assessor, but were labelled "assessors Lists." The Plaintiff then called R. W. Ireland, who testified I was clerk of the County Court of Jayrull County Illinois from 1849 to 1853. as was also deputy clerk the year 1847 & the label was put on in 1847. for our convenience, Alexander B.

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Davis was assessor for the year 1843. There is no record of any return of the assessment by him for that year found in the County Court's Office or elsewhere. I have known Bailey as a practicing Lawyer since 1850. He was frequently at the Court-house examining the records.

John A. Jones sworn. I was clerk of the Circuit Court of Taylor County Illinois from 1837 to 1856 the defendant was a practicing lawyer in this court during all that time. I have seen him examine the records frequently. A. L. Davison I have known defendant since 1837 he has been practicing more or less all that time I thought Mr Bailey a good Lawyer. but we are all boys together.

The foregoing was all the evidence given in the case the court then gave the following instructions for the Jury

- 1st - The jury are instructed that the fact of their bringing no judgment against the land in question and no listing of the same, and having an opportunity to know that the title was defective in all circumstances if brought to his knowledge tending to show the want of good faith on the part of Bailey And if they believe that he did not receive it in good faith they will find for the Plaintiff.
- 2nd - If the jury believe from the evidence that the

defendant did not pay Taxes for any one year within the same years from the time he first purchased it. they will find for the Plaintiff.

3^d - Unless the jury believe from the evidence that the defendant obtained the Tax title in good faith and believed it was a good title they will find for the Plaintiff.

The Court then gave the following instructions for defendant - The Defendant asked the Court to instruct the jury

1st - That if they are satisfied from the evidence that the defendant had color of title made in good faith, to and paid all the taxes assessed on the land in controversy, the same being vacant and unoccupied for some successive years before the commencement of this suit he shall be adjudged the legal owner thereof to extent & according to the purport of his paper title.

2nd - That a deed of the premises from an ^{officer} authorized

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to sell land for Taxes purporting to be made in pursuance of a sale for Taxes is good color of title. whether the proceedings under which the sale was made were regular or irregular.

3^d - That it is to be presumed, when a party shows color of title by deed, that the same was made in good faith, and that the party disputing such good faith is bound to prove the bad faith of the party.

4th - That good faith is the opposite of bad faith or bad faith and is always to be presumed till the contrary be proved.

5th - It is no evidence of bad faith to show defects or irregularities in the defendant's title unless the plaintiff shows also that the defendant knew of the defects.

6th - That the Patent to Shackelford does not pretend to show when the land was entered at the land office and is of itself no evidence of the time except that it was entered before the issuing of the Patent. And consequently is not evidence that the land was not taxable in 1842.

To the giving of which instructions the plaintiff at the time objected. The Judge returned a verdict for the defendant. And the

111 And now afterwards to wit on the 14th day of February
A.D. 1860 a Bill of exceptions was filed in the words
and figures following to wit-

State of Illinois } In the Farewell Circuit Court
 Farewell County } February Term A.D. 1860 and
 Eighth day of said Term.

James M. Shackelford }
 -vs.- } In Ejectment,
 Samuel P. Bailey }

And now comes on this cause to
 be heard Upon motion of said plaintiff James M.
 Shackelford, by his Attorneys Williams & Williams.
 That the Court enter up final judgment in this cause
 Which motion is in the words and figures following
 to-wit

"And now at the above term, comes the said
 Shackelford by Williams & Williams his Attorneys
 and moves the Court to render up final judgment upon the
 verdict of the Jury given in said cause at the April
 Term A.D. 1858 of this Court, said verdict being first
 put in proper form, -

Whereupon the following Order
 which contains the only judgment ever entered in said
 cause was read from the record of said Court, which
 order is in the words and figures following to-wit

"April 13th 1858"

"James M. Shackelford }
 -vs.- } Ejectment, -
 Samuel P. Bailey }

"This day came again the parties

"by their ~~their~~ Attorneys. Whereupon came a jury
 "of 12 good and lawfull men to-wit George W. Grady,
 "William Schellenberger, J. W. Ely, Daniel Leheer,
 "Jesse Trowbridge, J. P. Springer, John A. Davis,
 "D. F. Lowry, N. Abbott, F. King Jr., Edward Wilson,
 "and H. H. Lersey, duly elected tried and sworn, who
 "having heard the allegations and proofs of the parties,
 "and argument of Counsel thenor, for verdict say,
 "'We the jury find for the defendant.' It is therefor
 "ordered and adjudged by the Court, that the defen-
 "dant recover of the said plaintiff the costs and
 "charges about his suit expended, and that execut-
 "ion issue therefor."

And after argument of Counsel the
 Court overruled said motion to enter final judgment
 but entered upon his Docket in said cause in the
 words following to-wit:

"Ordered by the Court that the
 "Clerk ~~do~~ amend the record of the Court in said
 "cause, and put the verdict of the jury in proper form
 "and write up the record accordingly."

Whereupon the plaintiff (all the costs
 in said cause being first paid) by his Attorneys
 made another motion in the words following
 to-wit:

"That said verdict as amended be set asi-
 "de and the plaintiff be allowed a new trial
 under the Statute

Which motion was overruled by the Court.
to all of which ruling of the Court the plaintiff
by his said Attorneys now in open court excepts.
and prays that this his bill of exceptions may be
signed by the court and made a part of the record
in this cause which is done.

James Harriott

State of Illinois } ss.

Tazewell County }

J. Merrill C. Young,
Clerk of the Circuit Court, within, and
for said County and State, do certify
that the foregoing twenty three pages con-
tain a true & perfect & complete copy
of the record of the proceedings had in
the cause therein named, as the same
appears of record in my office.

In Witness whereof I have hereunto
set my hand and affixed the
Seal of said Circuit Court at
Pekin. this 9th day of April
A.D. 1860.

Merrill C. Young Clerk

Fees \$5.75
100

152847-69
James M. Shackelford

8 41
Samuel P. Bailey

Transcript

Filed April 19. 1868
L. Leland
Clerk



STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA. APRIL TERM, 1864.

JAMES M. SHACKELFORD,
—vs.—
SAMUEL P. BAILEY.

} *Error to Tazewell Circuit Court.*

PAGE OF RECORD.

ABSTRACT OF THE RECORD.

- 1 2 3 Declaration and notice in ejectment.
- 4 Rule to plead.
- 5 Plea, not guilty.
- 6 Trial and verdict for defendant, and judgment against plaintiff for costs.
- 7 8 Motion of plaintiff to enter final judgment. Record amended to make verdict proper. Upon this amendment of the record, plaintiff paid all the costs and moved for a new trial under the statutes. Motion denied. Bill of exceptions commences.
- 9
- 9 10 Plaintiff gave in evidence, a patent from the United States, to himself, for the land in the declaration.
- 11 Defendant admits that at the commencement of the suit he was in possession of the land.
- Plaintiff closes.
- 11 12 Defendant gave in evidence, a sheriff's deed on a sale for taxes, (amount of taxes 50 cents,) to 34-acres out of the tract, without describing it—deed has no date.
- 13 Plaintiff objects to the introduction of this deed :
- 1st. Because it did not describe the land.
- 2nd. Deed has no date.
- 3d. There is no judgment or precept to support the deed. Objections overruled, and plaintiff excepts.
- Defendant then introduces tax receipts for the years 1848, '49, '50, '51, '52, '53, '54, '55, '56, '57; also for the year 1843, paid by Tack-erberry, who was the purchaser at the tax sale, and assigned his certificate to Baily, the defendant, who took the deed.
- 13 14 15 Defendant then gave in evidence, a sheriff's deed on a sale for taxes, for 7 acres off the East side of the SE SE section 2, town 24, N. R. 5, East. Deed without date. Objected to by plaintiff because it did not describe the land--has no date, and there is no judgment or precept to support it. Objections overruled, and plaintiff excepts.
- 16 Plaintiff then proved that there was no judgment against the land for taxes for any year; no certified lists of assessments, and in general, no papers or no proper papers ; that defendant was a practicing lawyer and frequently looked at these matters in the offices, examining the records, &c. Baily was a practicing lawyer since 1837---a good lawyer.
- 17
- 18 This was all the evidence.
- Defendant's first instruction : That if the jury are satisfied from the evidence, that the defendant had color of title, made in good faith to, and paid all taxes assessed on the land in controversy ; the same

PAGE OF RECORD, being vacant and unoccupied for seven successive years before the commencement of this suit, he shall be adjudged the legal owner thereof to the extent and according to the purport of his paper title.

19

2nd Instruction.

3d Instruction.

4th Instruction.

5th Instruction.

6th Instruction.

20

Plaintiff excepts to the giving of all these instructions.

Plaintiff moves for a new trial on the ground—

1st. The verdict is against law and evidence.

2nd. The court improperly admitted sheriff's deeds for defendant.

3d. The court gave improper instructions for defendant. Motion overruled and exceptions taken.

20

Agreement as follows :

"It is agreed by the parties to this agreement, that the bill of exceptions herein, shall be taken as the record in this cause, and the facts therein set forth, shall be taken as all the proofs in this behalf ; and the Supreme Court may decide upon the merits of this case as shown by the bill of exceptions and matters and things therein contained."

Signed by the parties, &c.

21 22

Motion on the part of the defendant for final judgment. Overruled, but verdict ordered to be amended.

22

Costs being paid, plaintiff moves for a new trial under the statutes.

23

Motion overruled, and ruling excepted to.

Clerk's certificate.

ERRORS ASSIGNED.

1st. The court erred in admitting first deed offered by defendant below.

2nd. Court erred in admitting second deed offered by defendant below.

3d. Court erred in giving defendant instructions.

4th. The court erred in not setting aside the verdict and granting a new trial at the April term, 1858.

5th. The court erred in not entering final judgment then upon payment of costs, setting it aside and granting a new trial under the statute at the February term, 1860.

6th. The court erred in not granting to the plaintiff, a new trial at the February term, 1860.

Error is joined by defendant's counsel.

R. E. WILLIAMS,
For Plaintiff in Error.

No 8
Jas M Shackelford

vs
Samuel P. Bailey

Abstract

Filed April 28. 1864
J. H. L. M.