

No. 13037

Supreme Court of Illinois

Hatfield

vs.

Fullerton

STATE OF ILLINOIS.
SUPREME COURT,
Third Grand Division.

No. 255.

1860

Hutfield

vs.

Fullerton

Hutfield

vs.

Fullerton

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

MOSES C. HATFIELD, Appellant,

vs.

ALEXANDER FULLERTON, Appellee. }

*Arrar to Ctn Sup,
et of Chicago*

ABSTRACT OF THE RECORD.

Page of Rec.

1 Action distress for rent.

2 Distress warrant issued to collect the sum of \$196 85 rent for the use of lot 5, in block 60, of Russell, Mather and Roberts' addition to Chicago, dated March 17th, 1859.

3- June 10th, 1859, appearance of the defendant, Hatfield, entered by his attorneys in the superior court of Chicago.

4 On the 12th day of November, 1859, cause tried and issue found for the plaintiff, and damages assessed at \$175 00, and motion entered for a new trial.

5 On the 15th day of November, 1859, the motion so entered by the defendant, Hatfield, for a new trial was overruled, and he thereupon excepted.

The evidence consists in a stipulation and a lease. Stipulation sets forth that the action is brought by the plaintiff against the defendant for rent claimed to be due upon a lease dated May 1st, 1857, for lot 5, in block 60, in Russell, Mather & Roberts' Addition to Chicago. That the distress was made March 17th, 1859, for a balance claimed to be due of \$196 85.

8 That at the time Hatfield leased the lot of Fullerton, a portion of the lot was occupied by William Burns under Fullerton, and that Fullerton, at the time of the leasing of it, agreed to give possession of that portion of the premises occupied by this party, and the party agreed with Fullerton that he would leave; that Fullerton afterwards tore down the fence put up by this party and tried to get possession but failed, that Hatfield paid the first and second quarter's rent under protest, and that at the time he paid the second quarter's rent, he gave Fullerton notice that he would pay no further rent except said premises were cleared so that he might have possession of the entire lot.

9 That Hatfield hired said lot and intended to use the rear portion that was occupied by this party under Fullerton, and a portion adjoining it, as a wood yard; that by reason of the party continuing in the possession and refusing to give it up under any circumstances whatever, Hatfield was deprived to a great extent of the use of the lot, and entirely of the use of the portion so occupied by the party before referred to, also shutting Hatfield off from the alley.

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Errors Assigned.

1. Court erred in entering a judgment in the cause against the defendant.
2. The court erred in entering a judgment in the cause against the defendant for the amount that appeared to be due upon the face of the lease.
3. The court erred in not sustaining the objection of the defendant to the action and dismissing the cause, because distress would not lie where the party, plaintiff, had not given possession of the entire premises to the defendant.
4. The court erred in not granting a new trial as prayed for by the defendant, and in overruling his motion for a new trial.

E. F. RUNYAN,
Att'y for Appellant.

Supreme Ct of Illinois
Moses C. Kelfield *Appntg*
vs
Alexander Fullerton
Apper
Abstract

Filed Apr 26, 1860
S. L. Loomis
Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

MOSES C. HATFIELD,
vs.
ALEXANDER N. FULLERTON.

} APPEAL FROM SUPERIOR
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In a note to 3 Term Reps. *Dudley vs. Folliott*, 587, quoting from 22 H. 6. If a lease be made for a term of years by deed so that the lessor is chargeable by writ of covenant, if a *stranger*, who has no right, oust the termor, yet he shall not have a writ of covenant against his lessor. But, if *he*, to *whom the right belongs*, oust the termor, then he shall have covenant against the lessor.

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A general covenant in a lease for quiet enjoyment, extends only to entries and interruptions by those who have lawful title but not by wrong-doers ; for the tenant has his remedy by action for all tortious entries and disturbances.

Hays vs. Bickerstaffe, Vaugh. 122.

Platte on Covenants, 313.

Gardner vs. Keteltas & McCarthy, 3 Hill N. Y. Rep. 330, is a case in point. The plaintiff sought to recover damages against the defendants for not putting him in possession of premises leased to him by them. One Morse was, at date of lease, in possession, claiming under a prior lease. But, it appeared, that he had no right thereunder.

The Court say : " If the party holding is a wrong-doer, the remedy of the lessee is as perfect and effectual to dispossess him after as that of the lessor was before the execution of the lease. This is clearly so, as it respects the remedy by ejectment. * * * Indeed, as to the remedy by ejectment, the *suit* must be brought by the lessee, the right of entry being in him alone at the time. Upon the well settled construction of the covenants of title and quiet enjoyment, it is not the duty of the landlord, *when* the premises are wrongfully held by a third person, to take the necessary steps to put his lessee in possession. The latter being clothed with the title by virtue of the lease, it belongs to him to pursue such legal remedies as the law has provided for gaining it, whether few or many.

W. T. BURGESS,

25-5-

Montpelier

vs

Freemason

Depts. Brief

Filed May 1. 1860

L. Deland

Clerk

rant in this cause was delivered to the bailiff and by him served, in possession of a portion of the premises mentioned in the lease. And that he entered into that possession by virtue of the lease before referred to, and that whatever rent the portion of the premises, by him occupied, might be worth, he would be liable to Fullerton for, in an action for *use and occupation*.

The question presented to the *Superior Court*, on the trial of this cause, was, whether an action or distress for rent would lie upon the facts there presented. Hatfield insisting that the proper action would be for *use and occupation*, and that he was only liable upon the *quantum meruit* for that portion of the premises which he actually obtained the possession of and occupied; and that the failure upon the part of Fullerton to remove Burns from the premises and give him the entire possession of them, absolved him from all obligation as tenant.

There could be no question but that the appellant, Hatfield would be the tenant of Fullerton, if he had obtained the possession of the entire premises, by him leased, of the appellee, Fullerton, but when it is admitted by the appellee, that one William Burns was occupying the premises, or a portion of them, at the time that he leased them to Hatfield, and that he did not remove him, although he agreed to, and that Burns remained in the possession of the portion of the premises that he was occupying from that time up to, and until after this cause was commenced, by distraining the goods of Hatfield, and that too, when Hatfield was continually protesting against his occupancy, and insisting upon Fullerton's dispossessing him. And further, that Hatfield lost the use of a large portion of the premises that were by him leased; and was disturbed, and to a great extent deprived of the occupancy of the balance, and thus losing the benefits that he might have derived to a great extent from their possession and occupancy. We think it raises another question, and that question is, whether a distress would lie or not.

We say that distress will not lie, because the landlord has not, as he admits, fulfilled the entire conditions of his agreement. Thus, as we say, absolving the existence, by his own default, of the condition of the parties, and the obligation of Hatfield as tenant. We are not aware that this

question has ever been presented to this Court, as it is now presented, and if it has not, then we now present it upon what we believe to be the true proposition of law, to-wit: That the failure upon the part of the landlord to give possession of the entire premises by him leased, deprives the landlord of that right which the law throws around him, of distraining the goods of the tenant for rent that may be due to him for the use of that portion of the premises which he has occupied. And that the only remedy which the landlord has against the tenant is, in an action for use and occupation. We cite the Court to the case of *Lawrence vs. French*, 25, *Wendall's Rep.*, page 443, which is a case similar to the present one. The Court there decided that "where premises are demised at a fixed rent and the tenant enters, but is prevented from obtaining the whole of the premises by a person holding a part under a prior lease executed by the landlord, the latter has no right to *distrain* for a proportionate part of the rent reserved, by deducting the value of the part held under the prior lease, and demanding the residue; though it seems, that in such case the landlord is entitled to sustain an action for the use and occupation of the premises, and recover under a *quantum meruit*."

E. F. RUNYAN,
Att'y for Appel't.

255-1913
Supreme Court
Moses G. Kalfield
vs
Alex. H. Hallerton
Argument of April

Filed May 18, 1865
L. L. Daniel
Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

MOSES C. HATFIELD
vs.
ALEXANDER N. FULLERTON. }

This action is a distress for rent, brought by Fullerton, Appellee, against Hatfield, Appellant.

The first duty of the Court in an action of this kind is, to find whether the relation of Landlord and Tenant exists, and if so, then to ascertain the amount of rent due from the *tenant* to the *landlord*, and so certify to the officer making the distress.

In this cause there can be no doubt but, that Hatfield was the tenant of Fullerton under the lease of May 1, A. D. 1857, and that the tenancy would continue to exist until May 1, A. D. 1860, except the lease should be forfeited, or in some other way the relation of tenant should be absolved. There is no dispute but that Hatfield was, at the time the war-

rant in this cause was delivered to the bailiff and by him served, in possession of a portion of the premises mentioned in the lease. And that he entered into that possession by virtue of the lease before referred to, and that whatever rent the portion of the premises, by him occupied, might be worth, he would be liable to Fullerton for, in an action for *use and occupation*.

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Fullerton

Appels argument

Fuller May 18. 1860

Leland

Clara

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

MOSES C. HATFIELD,
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Filed May 1, 1860
L. Leland
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W. T. BURGESS,

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Depts. Brief

Filed May 1, 1860

Leland

Clark

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4 On the 12th day of November, 1859, cause tried and issue found for the plaintiff, and damages assessed at \$175 00, and motion entered for a new trial.

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App'ee

Abstracts

Filed Apr 26, 1860

L. Deland

Clk

Supreme Court

Hatfield

vs

Fullerton

}

appeal from Superior
Court of Chicago -

This case may be sub-
mitted on part of Appellant
on written arguments hereafter
to be filed in time to be fixed
of at the present term

April 28 1860 -

C. H. Perryman -
Att'y for Appellant

255-

Halpield
as

Fullerton

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Filed Apr. 30. 1860
L. Island
Ch.

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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

MOSES C. HATFIELD
vs.
ALEXANDER N. FULLERTON. }

This action is a distress for rent, brought by Fullerton, Appellee, against Hatfield, Appellant.

The first duty of the Court in an action of this kind is, to find whether the relation of Landlord and Tenant exists, and if so, then to ascertain the amount of rent due from the *tenant* to the *landlord*, and so certify to the officer making the distress.

In this cause there can be no doubt but, that Hatfield was the tenant of Fullerton under the lease of May 1, A. D. 1857, and that the tenancy would continue to exist until May 1, A. D. 1860, except the lease should be forfeited, or in some other way the relation of tenant should be absolved. There is no dispute but that Hatfield was, at the time the war-

rant in this cause was delivered to the bailiff and by him served, in possession of a portion of the premises mentioned in the lease. And that he entered into that possession by virtue of the lease before referred to, and that whatever rent the portion of the premises, by him occupied, might be worth, he would be liable to Fullerton for, in an action for *use and occupation*.

The question presented to the *Superior Court*, on the trial of this cause, was, whether an action or distress for rent would lie upon the facts there presented. Hatfield insisting that the proper action would be for *use and occupation*, and that he was only liable upon the *quantum meruit* for that portion of the premises which he actually obtained the possession of and occupied; and that the failure upon the part of Fullerton to remove Burns from the premises and give him the entire possession of them, absolved him from all obligation as tenant.

There could be no question but that the appellant, Hatfield would be the tenant of Fullerton, if he had obtained the possession of the entire premises, by him leased, of the appellee, Fullerton, but when it is admitted by the appellee, that one William Burns was occupying the premises, or a portion of them, at the time that he leased them to Hatfield, and that he did not remove him, although he agreed to, and that Burns remained in the possession of the portion of the premises that he was occupying from that time up to, and until after this cause was commenced, by distraining the goods of Hatfield, and that too, when Hatfield was continually protesting against his occupancy, and insisting upon Fullerton's dispossessing him. And further, that Hatfield lost the use of a large portion of the premises that were by him leased; and was disturbed, and to a great extent deprived of the occupancy of the balance, and thus losing the benefits that he might have derived to a great extent from their possession and occupancy. We think it raises another question, and that question is, whether a distress would lie or not.

We say that distress will not lie, because the landlord has not, as he admits, fulfilled the entire conditions of his agreement. Thus, as we say, absolving the existence, by his own default, of the condition of the parties, and the obligation of Hatfield as tenant. We are not aware that this

question has ever been presented to this Court, as it is now presented, and if it has not, then we now present it upon what we believe to be the true proposition of law, to-wit: That the failure upon the part of the landlord to give possession of the entire premises by him leased, deprives the landlord of that right which the law throws around him, of distraining the goods of the tenant for rent that may be due to him for the use of that portion of the premises which he has occupied. And that the only remedy which the landlord has against the tenant is, in an action for use and occupation. We cite the Court to the case of *Lawrence vs. French*, 25, *Wendall's Rep.*, page 443, which is a case similar to the present one. The Court there decided that "where premises are demised at a fixed rent and the tenant enters, but is prevented from obtaining the whole of the premises by a person holding a part under a prior lease executed by the landlord, the latter has no right to *distrain* for a proportionate part of the rent reserved, by deducting the value of the part held under the prior lease, and demanding the residue; though it seems, that in such case the landlord is entitled to sustain an action for the use and occupation of the premises, and recover under a *quantum meruit*."

E. F. RUNYAN,
Att'y for Appel't.

255-143

Watfield

vs

Fullerton

Apotts Argument

Filed May 18. 1860

L. L. Lamer
Clerk

United States of America

State of Illinois Cook County SS

Pleas before the Honorable
Judges of the Superior Court of Chicago Within and
for the County of Cook and State of Illinois at a
regular term of said Superior Court of Chicago
begun and holden at the Court House in the City
of Chicago in said County and state on the first
Monday being the seventh day of November in the
year of Our Lord Eighteen Hundred and fifty
nine and of the Independence of the United States
of America the Eighty fourth.

Present The Hon. John M. Wilson Chief Justice
of the Superior Court of Chicago
Van H. Higgins^{2nd} and Grant Goodrich Judges
Carlos. Haven. Prosecuting Attorney

attest

John Gray Sheriff of Cook County
Walter Kimball

Be it remembered that heretofore to wit on the
eighteenth day of March in the ^{year} aforesaid
came Alexander N Fullerton by his attorneys
Burgess & Hawley and filed in the office of the
Clerk aforesaid his certain Distress Warrant
in words and figures following to wit

To the Clerk of the Cook County Court
of Common Pleas

United States of America

State of Illinois Cook County SS

Pleas before the Honorable
Judges of the Superior Court of Chicago Within and
for the County of Cook and State of Illinois at a
regular term of said Superior Court of Chicago
begun and holden at the Court House in the City
of Chicago in said County and state on the first
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eighteenth day of March in the ^{year} aforesaid
came Alexander N Fullerton by his attorneys
Burgess & Hawley and filed in the office of the
Clerk aforesaid his certain Distress Warrant
in words and figures following to wit

To the Clerk of the Cook County Court
of Common Pleas

2 Herewith I return to you a copy of a
Distress Warrant to me issued by Alexander
N Fullerton dated the 17th day of March
1859 under and by virtue of which I have
levied upon the property described in the
list thereunder written which are as
follows viz -

State of Illinois ~~~ SS
Cook County ~~~

To John Canothers - you are
hereby authorised to distrain the goods and chat-
tels of Moses C Hatfield which are liable to
distress in the County of Cook, for the sum
of one hundred ninety six dollars & eighty
five cents being the amount due me for
rent of the following described premises in said
County - viz Lot Five (5) in Block sixty (60) in
Russell Mather and Roberts addition to the
City of Chicago and for so doing this shall
be your sufficient Warrant.

Given under my hand and seal
this seventeenth day of March 1859
Alex. N. Fullerton

List of property distrained -
One Boiler - One Engine - One Furnace -
One Smoke Pipe - Two Planing Machines. 1 Lot
shafts & Drivers one Lot Bands

Dated Chicago

3

John. Carothers.

Cook County Court of Common Pleas

Alexander N. Fullerton

v's

Moses C. Hatfield

Distress for Rent

On filing the above copy &
return the clerk of said Court will issue
Summons herein by law required -

Burgess & Hawley
for Plff -

And afterwards to wit on the tenth day of
June in the year aforesaid came the defen-
dant by his attorneys Brown and Bunyon
and filed in the office of the Clerk aforesaid
his certain Appearance in words and figures
following to wit:

Alexander Fullerton

v's

Moses C. Hatfield

Superior Court of Chicago

Of the June Term A.D. 1859

Distress for Rent

We do hereby enter our appearance
for the said defendant in the above cause.

Brown & Bunyon
Defts Attys

And afterwards to wit on the twelfth day

4 of November in the year aforesaid said day being one of the days of the November term of the Superior Court of Chicago the following among other proceedings was had and entered of record in said Court to wit:

Alexander A Fullerton

v's

District for Rent

Moses C. Hatfield

This day comes said plaintiff by Burgess & Hawley his attorneys and said defendant by Brown and Reunyon his attorneys also comes and this cause upon agreed case is submitted to the Court for trial and the Court now here after hearing the allegations and proofs submitted and being fully advised in the premises finds issues for said plaintiff and amount due said plaintiff for rent of the premises mentioned in the district warrant filed at the sum of One hundred and seventy five dollars.

And hereupon defendant submits his motion herein for a new trial in this cause

And afterwards to wit on the fifteenth day of November in the year aforesaid said day being one of the days of the November Term of the Superior Court of Chicago the following among other proceedings was had and entered

of record in said Court to wit:

5-

Alexander A Fullerton

v's

Distress for Rent

Moses C Hatfield

And now again comes said plaintiff by Burgess and Hawley his attorneys and said defendant by Brown and Runyon his attorneys also comes and counsel being heard on defendants motion heretofore submitted herein for a new trial in this cause the court being fully advised overrules and denies defendants said motion for a new trial herein. Wherefore said plaintiff ought to have judgment on the verdict and finding rendered by the Court.

Therefore it is considered and ordered by the Court that the finding of the Court, as aforesaid be certified under the seal of the Court to the said plaintiffs Bailiff Who made and returned the levy and distress in this cause and that he proceed thereupon forthwith to make said sum of One hundred and seventy five dollars in form aforesaid by the Court here found due together with the costs of this proceeding out of the property distrained according to the statute in such case made and provided and make due return thereof according to law.

And thereupon defendant having entered his
6 exceptions herein prays an appeal herein to
the Supreme Court which is allowed on fi-
ling his appeal bond in the sum of three
hundred dollars, to be approved by a Judge
of this Court said bond and bill of exceptions
to be filed within thirty days.

And afterwards to wit on the twelfth day of Decem-
ber in the year aforesaid said day being one
the days of the December Term of the Superior
Court of Chicago the following among other
proceedings was had and entered of record
in said Court to wit:

Alexander A Fullerton

vs

Distress for Rent

Moses C. Hatfield

And now again comes said defendant and
files herein his appeal bond to the Supreme
Court which bond is approved by the Court.

And afterwards to wit on the twelfth day of
December in the year aforesaid comes said
defendant by his attorneys and files in the
office of the Clerk aforesaid his certain Bill
of Exceptions and Appeal Bond which are
in words and figures following to wit:

7
State of Illinois ~ The Superior Court of Chicago
County of Cook ~ ss At the November Term A.D. 1859

Distress for Rent

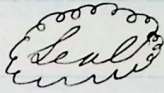
Alexander N. Fullerton ~

v's

Moses C. Hatfield ~

Be it remembered that on the Twelfth day of November A.D. 1859 the above entitled cause came on to be tried in said Court then holden at the City of Chicago in the County of Cook in the State of Illinois by and before the Hon Van H. Higgins one of the Judges of said Court a jury being waived and said cause being submitted to the Court by agreement and upon an agreed state of facts (a copy of which facts as agreed upon being hereto attached and marked "A.") and after examining said cause as agreed upon and the lease between the parties (a copy of which is hereto attached and marked "B.") the said Court found the amount due for rent on said Lease to be the sum of One hundred and seventy five dollars at which time the defendant entered a motion to set aside the finding and said judgment and grant a new trial which said motion so entered by said defendant was overruled by the Court to which ruling the

said defendant excepted and prayed an
appeal to the Supreme Court of the State of
8 Illinois and that said Court sign and certi-
fy this his bill of exceptions

Van. H. Higgins 
Judge

"A"

State of Illinois }
County of Cook } ss

Superior Court of Chicago
October Term A.D. 1859

Alexander A. Fullerton }

v's

Moses C. Hatfield }

Distress for Rent

This suit is brought by the
plaintiff against the defendant, for rent due
upon a Lease entered into between the parties
dated May 1st 1857 for Lot five in Block No sixty
in Russell Mather & Roberts addition to Chicago

The distress was made on the 17th day of March
A.D. 1859 for a balance of the rent claimed to
be due from the defendant to the plaintiff of
\$196.⁰⁰ 85.

The defense to the suit is this That at the
time of the leasing of the Lot by Hatfield of
Fullerton - a portion of the Lot was occupied
by another party under Fullerton - that he
at the time of the leasing agreed with
Fullerton to lease and give possession of

9 the portion which he occupied to Hatfield. That during the first year of the lease Fullerton went to the place and tore down the fence put up by the man in possession (Wm. Burns) but made no other effort to put him off - afterwards claiming that Hatfield had possession of enough of it - That the same party continued in possession up to and until after this suit by distress was commenced, that after that time Fullerton went and drove the party away and cleared the premises - That Hatfield paid the first and second quarters rent under protest - and at the time he paid the second Quarters rent he gave Fullerton notice that he would pay no further rent except said premises were cleared so that he might have possession of the entire Lot - That Hatfield hired said Lot and intended to use the rear a portion that was occupied by the other party together with a portion adjoining it as a wood yard - That by reason of the party continuing in the possession and refusing to give it up under any circumstances whatever, Hatfield was deprived to a great extent of the use of the Lot - and entirely of the use of the portion occupied by the party before referred to

84 - he occupying the rear and on the alley
- Thus shutting him off from the alley -
We claim that no distress will lie in any
case except the party renting the premises
obtain possession of the entire premises
leased and that Hatfield in no case
could be liable except pro rata - or in
proportion to the amount he occupied

"B"

This Indenture made this first day of May
in the year of our Lord One Thousand Eight
Hundred and fifty seven. Between Alexander
St Fullerton of the City of Chicago of the first
part and Moses H Hatfield of the same
place of the second part. Witnesseth that
the said party of the first part for and in
consideration of the covenants and agree-
ments hereinafter mentioned to be kept
and performed by the said party of the
second part his executors administrators
and assigns has devised and leased to
the said party of the second part all those
premises, situate lying and being in the
City of Chicago in the County of Cook and
in the State of Illinois known and described
as follows, to wit Lot five in Block sixty (5)
(66) in Russell Mather & Roberts Addition

11

11 to the City of Chicago. To have and to hold the said above described premises with the appurtenances and the said party of the second part — executors administrators and assigns from the first day of May in the year of our Lord One Thousand Eight Hundred and fifty seven for and during and until the first day of May One Thousand Eight Hundred and sixty ~~and~~ And the said party of the second part in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part does covenant and agree with the said party of the first part his heirs executors administrators and assigns to pay to the said party of the first part as rent for said demised premises the sum of One hundred (\$100.00) for the first year, One hundred and twenty five (\$125.00) the second year, One hundred and twenty five Dollars the third year to be paid Quarterly in advance with the right to lease said premises at the expiration of the foregoing term for two years more at a rent that shall be equal to six percent upon the valuation of said lot at the expiration of said first term and subject to all the covenants in this lease and the further

211

12.

payment of all city taxes & assessments of every description whatever to be made by said party of the second part during each of said terms the party of the first part reserving the right to make payments of such taxes & assessments in the first instance to collect the same as a part of the rent.

And the said party of the second part further covenants with the said party of the first part that the said second party has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned he will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part less by fire or inevitable accident or ordinary wear excepted; and also will keep said premises in good repair during this lease at his own expense.

13

And the said Moses C. Hatfield for himself his executors administrators and assigns agree further to pay (in addition to the rents above specified) all water rents levied or charged upon said premises for and during the time for which this lease is granted and save said premises and the

13 party of the first part harmless therefrom and that he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the City and the directions of the sewerage commissioners.

It is expressly understood and agreed by and between the parties aforesaid that if the rent above reserved, or any part thereof shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained to be kept by the said party of the second part his executors administrators and assigns, it shall and may be lawful for the said party of the first part his heirs executors administrators, agent attorney or assigns, at his election to declare said term ended and into the said premises or any part thereof either with or without process of law to reenter; and the said party of the second part, or any other person or persons occupying, in or upon the same to repel remove and put out using such force as may be necessary in so doing and the said premises again to repossess and enjoy as in his first and former estate and to dis-

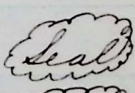
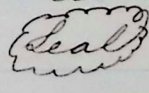
14 train for any rent that may be due thereon upon
any property belonging to the said party of the
second part whether the same may be exempt
from execution and distress by law or
not, and the said party of the second part
in that case hereby agree to waive all leg-
al rights which he may have to hold or
retain any such property under any
exemption laws now in force in this
State or in any other way. Meaning and
intending hereby to give the said party of the
first part his heirs executors administra-
tors or assigns a valid and first lien
upon any and all the goods chattels or
other property belonging to the said party
of the second part as security for the pay-
ment of said rent in manner aforesaid
anything hereinbefore contained to the
contrary notwithstanding. And if at any
time said term shall be ended at such
election of said party of the first part his
heirs executors administrators or assigns
as aforesaid or in any other way the said
party of the second part his executors ad-
ministrators and assigns do hereby cove-
nant and agree to surrender and de-
liver up said above described premises
and property peaceably to said party of

15.

16- the first part his heirs executors administrators and assigns, immediately upon the determination of said term as aforesaid and if he or they shall remain in possession of the same five days after notice of such default, or after the termination of this lease in any of the ways above named he or they shall be deemed guilty of a forcible detainer of said premises under the statute and shall be subject to all the conditions and provisions above named and to eviction and removal forcibly or otherwise with or without process of Law as above stated.

And it is further covenanted and agreed by and between the parties that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

Witness the hands and seals of the parties aforesaid

Alexander N Fullerton 
M. C. Hatfield 

\$25.00 Recd on the within twenty five (\$25.00) for amount of rent due May 1 1857 A. N. Fullerton

\$25. # Paid on the within twenty five (\$25) dollars
16 Rent due Aug 1 1857. A. N. Fullerton
per A Huntington

Know all men by these presents That we
Moses C Hatfield as principal and Eben
F. Bunyon of the County of Cook
and State of Illinois are held and firmly
bound unto Alexander N. Fullerton in the
penal sum of Three Hundred Dollars of lawful
money of the United States of America the pay-
ment of which well and truly to be made
we bind ourselves our heirs executors adm-
inistrators and assigns jointly severally
and firmly by these presents.

Witness our hands and seals the
ninth day of December A.D. 1859.

The condition of the above obligation
is such that whereas the said Alexander
Fullerton did on the Twelfth day of Novem-
ber A.D. 1859 in the Superior Court of Chic-
ago in an action of Distress for rent ob-
tain a judgment against the above boun-
den Moses C Hatfield for the sum of One
Hundred and seventy five ^{forty four} dollars and
besides costs of suit from which said judg-
ment the said Moses C Hatfield has taken
an appeal to the Supreme Court of the State

17 of Illinois. Now therefore if the said Moses C. Hatfield shall prosecute his said appeal with effect and in case of failure therein or in case of said judgment being affirmed shall pay said judgment with all costs interest and damages that may be adjudged against him then this bond to be of no force or effect, otherwise to remain in full force and virtue

M. C. Hatfield
C. F. Bunyon.

Seal
Seal

State of Illinois }
County of Cook } S.S.

I, Walter Kimball Clerk of the Superior Court of Chicago in and for said County, (formerly the Cook County Court of Common Pleas.) do hereby Certify that the foregoing is a full true and complete transcript of the pleadings on file in my office & of the proceedings and judgment entered of Record in said Court. in the case wherein Alexander N. Fullerton is plaintiff and Moses C. Hatfield is defendant.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Court, at the City of Chicago, in said County this 14th day of April A.D. 1860

Walter Kimball Clerk



18 Alexander H. Fullerton { Supreme Court of
vs Illinois, of the
Moses L. Kitchin. 18th Term
Sept, Ad. 1866
affidavit

Now comes the said defendant by E. F.
Ryan his attorney and assigns
the following as errors in said Cause,

First, The Court erred in entering
a judgment in the Cause against
the defendant,

Second, The Court erred in entering
a judgment in the Cause against
the defendant for the amount that
appeared to be due upon the
face of the lease,

Third - The Court erred in not
sustaining the objection of the defendant
to the action and dismissing the
Cause, because sisters would not
be where the party ^{plaintiff} had not given possession
of the entire premises to the defendant

19 Foulto - The Court ruled in not granting
a new trial as prayed for by the defend-
ant, and in overruling his motion
for a new trial.

Wherefore he prays that
the same be reversed
E. F. Peryon
for appellant

And the said Alexander H. Fullerton
by his Atty W. J. Phipps comes &
says that in the Record proceedings
aforesaid there is no error &
W. J. Phipps

25-5-
Hatfield
17
Fullerton
Record

~~Alexander Fullerton~~
12
~~James C. Fullerton~~

Filed Apr. 19. 1860
Ireland
Oth.

Fees
\$4.50 Paid by C. F.
Rumson Dist. atty.
W. H. Hindsall