

14680

No. _____

Supreme Court of Illinois

Prettyman

vs.

Wolston et al.

71641  7

14680

STATE OF ILLINOIS,

SUPREME COURT.

THIRD GRAND DIVISION.

No. 205

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

Prattymon

W. Velst
1864

Benjamin S. Prettyman

vs

Abraham Wolston et al

Appeal from Superior Court

Argument of E. M. Powell

on behalf of appellants

This was an action of Covenant brought by the appellants against the appellant as the assignee of a lease made by the appellants to one Richard H. Snell and assigned by him to the appellant. The suit is brought to recover rent while the appellant possessed the whole term and while he owned the whole term and before he made an assignment to another person.

The declaration contained two counts, one making profert of the lease the other making the usual allegation of excuse for the non production of the original lease.

The defendant below plead seven pleas. The first denying the execution of the lease and denying that Snell the lessee covenanted to pay rent and that he did not by virtue of said lease enter into the possession of the leased premises, but that he owned the said premises in fee and that said plaintiff had then and at no other time previous

to the commencement of the suit no right
or title to the premises Upon which plea
issue was joined

The second plea alleges that Snell fully
paid all the rent and kept all the coven-
-ants in said lease prior to the assignment
and that defendant has fully ^{paid} all rent
due since the assignment to him, Upon
which issue was joined

The third plea alleges that the said
premises were annually assessed for and
subject to State and County ^{and City} taxes from the
date of said lease until the commence-
-ment of this suit, and that the plaintiffs
were bound to pay said taxes as the land
-lords and grantors in said lease. And
alleging that he had paid said taxes
amounting to a large sum and offers
to recover the same &c.

To this plea the plaintiff below
filed two replications The first repli-
-cation says "precludi non" because they
say that said plaintiffs were not bound
to pay the taxes assessed upon said premises
but on the contrary thereof the said
plaintiffs aver that said Richard M.
Snell prior to his assignment of said lease

to said defendant was subject to said lease the owner in fee of said premises and said defendant since the said assignment to him was the owner in fee of said premises subject to said lease and the payment of said rent; and as such bound to pay and discharge all taxes accruing upon the same and concludes with a verification"

The second replication to the third plea denies the payment of the taxes upon which issue is joined

To the first replication to the said third plea the defendant below filed a demurrer which was overruled and the defendant abided by his demurrer

There were several other pleas filed and issues joined which it is unnecessary to mention as no question is raised in the assignment of errors

The 7th plea alleges that defendant had under let & assigned said premises to other persons who resided & occupied all of the same during all of the time said rent is alleged to have accrued and at the time when said suit was

brought and was not during said time said rent is alleged to have accrued in possession of said defendant."

This plea is clearly bad for the plain reason that it does not allege that the defendant, had assigned the whole of the term of the lease but only that he had under let the whole of the premises to other persons who occupied the same during the time alleged in the declaration. The law is that the lessee or his assigns are liable on the covenant for rent in a lease until an assignment of the whole term. A mere under letting for any period short of the whole term does not make the under tenant liable to the landlord on the covenant for rent or relieve the lessee or his assigns from liability. See authorities referred to in brief.

But the record does not show that this plea was either demurred to or a replication filed to it. The late James Roberts Esqr. attorney for the plaintiff, below was a very good and careful lawyer and I feel confident that he filed a replication to said plea and

and that by some accident it has been
taken from the files. The parties however
subsequent to the filing of this plea ag-
reed to waive a jury and try the case
by the Court without any action on the
part of the defendant below to take a
default for want of an answer to said
plea. And this I contend is a waiver
on the part of the defendant below of
this irregularity. The authorities referred
to in the brief to which I call the
special attention of the Court are
conclusive upon this point. And
particularly the case in 21 Ill 559.
I shall add nothing further upon this
error assigned.

The next question to which I call
the respectful attention of the Court is
the error assigned of overruling the
demurrer of the defendant below to
the first replication to the defendants
third plea.

The lease it will be seen is for the
life of Mrs. Wolsten one of the appellants
and was given by her and her husband
to her son Richard A. Hull. He at the
time owning the fee I understand that
the property leased belonged to Thomas

Shull in his lifetime and that Mrs Weston was the widow of Thomas Shull and that Richard D Shull succeeding to all the property of his father subject to the dower of his mother assigned this property to his mother for her dower and then took from her a life lease This does not appear in the record and I refer to it merely for the purpose of explaining the apparent anomaly of a person owning the fee accepting a life lease from one who apparently had no title

But to come to the question of the demurrer to this replication I think the replication was a complete answer to the plea. Shull the lessee owned the land in fee and also under the lease held the land for the life of his mother Shull the lessee and Puttymann as his assignee being tenants for life were bound to pay the taxes, and if they had paid the taxes as alleged in the plea it would not be a subject of set off against the accruing rent. As a general rule the owner of the fee has to pay the taxes And it is equally true that a tenant for life has to pay the taxes As a widow upon assignment of her

down So a mortgagor in possession who has conveyed by warranty, is bound to pay the taxes and prevent a sale of the estate; and if he acquires a tax title it ~~inures~~ inures to the benefit of the mortgagee. So with a mortgagee either in or out of possession. And the person in whose name land was listed and assessed for taxation can acquire no additional title by purchasing it in at a sale. Then it would follow as a necessary consequence that Snell & Prettyman while they held the premises were bound to pay the taxes and that the money paid was not a proper subject of set off against the rent. See authorities referred to in brief on this subject. The demurrer to the replication was properly overruled.

The next error assigned to which I call the attention of the court is the 3rd assignment, in admitting to be read in evidence the deed from Richard W. Snell to Prettyman. This deed was pertinent to the issue. It was necessary for the plaintiff below to give some evidence to show that Prettyman held the premises as assignee of Snell in order to make him liable on the covenant.

for rent as such assignee. It is true
that the presumption of law is where a
man is shown to be in possession of
leasehold premises without any more
is sufficient prima facie evidence
that he is in as assignee of the original
tenant. But the deed from Snell to
Pretzman showed conclusively that
Pretzman was the assignee of the original
lessee.

The objections to the admission of
this ^{copy of the} deed in evidence as contained
in the bill of exceptions is not upon
the ground of the insufficiency of
the notice to the defendant below to
produce the original or for the want
of its due execution or that the necessary
preliminary proof had not been made
to warrant the certified copy to be
admitted in evidence. But the objections
went solely on the grounds that the
deed was only a general quit claim
deed and the lands claimed were
not named in it; and that Snell
had other lands in the county designed
and actually were conveyed.

Now the objections made to
this deed amount to just nothing at all.
It is true that the lots named in the

lease are not described in the deed but the appellant would hate very much to say that the deed does not convey to him the lots mentioned in the lease. The deed conveys "All Lots and parts of lots in the city of Peoria and all undivided interest therein whatever in, in one own right or in common with others or in the right of either of the parties of the first part at law or in equity either in the County of Wazewell or elsewhere in the State of Illinois" This description certainly conveyed the lots covered by the lease and conveyed the lease to Prettyman. Now what difference does it make whether it was a quit claim or warranty deed. It certainly conveys the lots in the lease and also the appurtenance of the lease, and this was the object of the testimony. Or what difference does it make that the lots covered by the lease were not named in the deed so that they were conveyed. Or that Snell had other lands in the county designed to be and actually conveyed by it.

Then the objections to the admission of the certified copy of the deed in evidence for the reason

assigned in the bill of exceptions
was not error.

The objections to the admission of the certified copy of the deed in evidence was not based upon the grounds that the preliminary proof of its loss or of its being out of the power of the plaintiffs below to produce it was not sufficient but solely upon the grounds named in the bill of exceptions. And the appellant cannot in this court object that sufficient proof was made to warrant its introduction in evidence. Upon this point I call the attention of the Court to the printed brief on this point read.

The Court did not err in refusing the appellants motion for a new trial. The evidence was abundantly sufficient to warrant the judgment of the Court.

~~It was proved~~ The lease or a certified copy was read in evidence and then the deed from Shull the lessee to Pugh was read in evidence. The defendant below was in evidence. This proved the lease and the assignment. This evidence ~~of its self~~ alone is sufficient. An actual entry is not necessary.

by the assignee Taylor on Landlord
and Tenant \$4.50

The presumption of law is where a
man is shown to be in possession of
leasehold premises without any more
is sufficient prima facie evidence
that he is in as assignee of the original
Tenant. See authorities referred to in
brief on this head.

The proof also showed that
Snell & Prettyman were both in possession.
See appellants abstract page 3.

This was sufficient to show
the defendant below as assignee
without the proof of the actual assign-
ment made by the deed from Snell
to Prettyman. The evidence then is
clearly sufficient to warrant the
judgment of the Court and there was no
error in refusing to grant a new trial.

It is also objected in the record
and in the abstract although not assign-
ed as error that the Court erred in
admitting in evidence the certified
copy of the lease from appellants to Rich-
ard H. Snell.

The affidavit of Abraham Walden
one of the plaintiffs below states

clearly that he has not in his possession power or control the said lease giving a description of the same giving the day and date

The act of 1861 Session Laws page 174, has changed the law as it stood before and the affidavits of Wolston and Roberts were sufficient to allow the certified copy of the lease to be read in evidence. There was no error in this ruling of the court.

I will now very briefly notice the argument made by the Appellant.

It will be seen by the record that the deed from Snell to Puttyman was long after the making of the deed from the Sheriff to Puttyman by virtue of the judgment. Now what did Puttyman get by the deed from Snell to him. Certainly he got the assignment of the lease which was a life estate, and he certainly cannot dispute the title having entered under that title.

and took possession under Snell
as the proof shows

While Tenancy exists the
Tenant cannot dispute the Land-
lord's title by setting up title in
himself, and the same principle
applies to those acquiring possession
from the Tenant See the authorities
referred to in brief

Then this case shows this that
the lease from Wolston wife to Snell
was assigned to Pettyman by the deed
from Snell to him and that it gave
to him the whole term that Pettyman
took possession under Snell and
thereby became a tenant of the
appellees and having assumed
that relation he cannot dispute
the title under which he entered

The appellees then in the Court
below proved all they were required
to prove First the lease, and then
the assignment by the introduction
of the deed from Snell to the appellant

The suit is not brought
to recover for any part of the time
that Pettyman did not hold the
term Pettyman conveyed the property

to Ruggles in 1852. And in 1855
Ruggles conveyed to Prettyman.
The judgment was for the amount
found to be due while Prettyman
was the assignee of the whole term and
for no part of the time while Ruggles
held the term.

There is really no
evidence in the case that Snell
had any other title to the property
than that acquired by him under
the lease from the appellees. The simple
fact of showing a judgment against
Snell an execution and Sheriff's deed
in this case does not even tend to prove
that Snell had any title upon which
the judgment would operate; and
that Prettyman held the prior title.

Then I humbly submit to
the court and believe the judgment
should be affirmed.

E. N. Powell

B S Pellyman²⁰⁵
et

Abraham Wolston
et al

Argument of
E N Powell for
Appellants

Filed May 6, 1864
J. L. L. L. L. L.

Meas.

So a Term of the Circuit Court begun
and held at the Court House in Pekin
within and for the County of Tazewell
and State of Illinois on the first Monday
of the month of September A.D. 1860. Present
Hon James Marriott Judge of the 21st
Judicial Circuit of the State of Illinois,
composed of the Counties of Mason,
Tazewell &c. Hugh Fullerton State's
Attorney, Thomas C. Reeves Sheriff, and
Merrill C. Young Clerk.

Be it remembered, that on the 20th day of
September A.D. 1860, a Declaration was filed in the
Office of the Clerk of the Circuit Court of Tazewell
County, Illinois, which said Declaration is in the words
and figures following, to wit:—

1 „ State of Illinois } In Circuit Court
 „ Tazewell County } September Term A.D. 1860.
 „ Abraham Woolston and Elizabeth Woolston his wife the
 „ plaintiffs in this cause by Roberts & Ireland their attorneys
 „ complain of Benjamin S. Pettyman the defendant in
 „ this cause who has been summoned to answer the plaintiffs
 „ in a plea of breach of covenant. For that whereas, to wit:
 „ to wit: on the Seventh day of February A.D. 1851. by a
 „ certain indenture then and there made between the said

Elizabeth Woolston in her own right and the said
 Abraham Woolston her husband of the first part, and
 one Richard H. Snell of the second part, which said
 indenture sealed with the seals of the said plaintiffs,
 and the said Richard H. Snell the said plaintiff now
 brings here into Court, the date whereof is a certain day
 and year therein mentioned, to wit: the day and year
 aforesaid, the said plaintiffs (the said Elizabeth Woolston
 in her own right) in consideration of the covenants and
 agreements in said lease mentioned to kept and per-
 formed by the said Richard H. Snell, his executors,
 administrators and assigns, did demise and lease to
 the said Richard all those premises, situate, lying and
 being in the City of Pekin, County of Tazewell and State
 of Illinois, known and described as follows, to wit: Lots
 one, seventeen and eighteen in Block Seven, in the
 City of Pekin, County of Tazewell and State of Illinois.
 To have and to hold the said above described premises
 with the appurtenances, unto the said Richard H. Snell
 his executors, administrators and assigns from the first of
 February, 1851, for and during the natural life of the said
 Elizabeth Woolston, yielding and paying therefor the sum
 of Three hundred Dollars per year during the natural
 life of the said Elizabeth Woolston to be paid at the end
 of each month in equal installments, And the said
 Richard H. Snell did in consideration of the premises
 aforesaid covenant and agree to and with the said plaintiffs
 to pay the said plaintiffs their heirs, executors, administrators

assigns as rent for said demise premises the sum of three
hundred dollars per annum during the natural life of the
said Elizabeth Woolston and to the said Abraham Woolston
for one year after the death of the said Elizabeth. if the
said Abraham Woolston should survive her, said rent
to be paid at the end of each month in equal instalments
commencing with said month, and if the said Elizabeth
Woolston should survive the said Abraham, the rent
thereafter to be paid to said Elizabeth Woolston in person.
As by the said indenture reference thereto being had will
(among other things) more fully and at large appear. By
virtue of which said demise the said Richard H. Enell
afterwards, to wit: on the day and year aforesaid, entered
into and upon all and singular the said demise premises
with the appurtenances and became possessed thereof, for the
said term, so to him thereof granted as aforesaid, and
said plaintiffs in fact say that after the making of the
said indenture, and during the said term thereby granted,
to wit: on the 24th day of March 1856, aforesaid, all the
estate, right, title & interest then to come and unexpired,
property, profit, claim and demand whatsoever of the
said Richard H. Enell of and in the said demise
premises with the appurtenances, by assignment thereof
then and there made legally came to and vested in the
defendant. and although the said plaintiffs have
always from the time of making said indenture which
was well and truly performed, fulfilled and kept, all
things in said indenture contained on their part and

„ behalf to be performed, fulfilled and kept, according
 „ to the tenor and effect, true intent and meaning, to wit,
 „ at Tazewell County, aforesaid, yet protesting that the
 „ said defendant hath not performed, fulfilled or kept,
 „ any thing in said indenture contained, on his part and
 „ behalf as assignee as aforesaid to be performed, fulfilled
 „ and kept, according to the tenor and effect true intent
 „ and meaning of the said indenture, and of the said
 „ covenant so made, the said plaintiffs say that after
 „ the making of said indenture, and during the term
 „ thereby granted and after the said defendant became
 „ such assignee as aforesaid, and while he continued
 „ such assignee, to wit: on the first day of September 1860,
 „ to wit: at Tazewell County, aforesaid, a large sum of
 „ money, to wit: the sum of one thousand dollars of the
 „ rent aforesaid for three years of the said term then expired,
 „ became and was and still is in arrear and unpaid
 „ to the said plaintiffs contrary to the tenor and effect,
 „ and true intent and meaning of said indenture, and
 „ of the said covenant so made as aforesaid, to wit: at
 „ Tazewell County aforesaid, And so the said plaintiffs
 „ in fact say that the said defendant (although often
 „ requested so to do) hath not kept the said covenant so
 „ by the said Richard H. Enell for himself and his
 „ assigns so made as aforesaid, but hath broken the same,
 „ and to keep the same with the said plaintiffs hath
 „ hitherto wholly neglected and refused still doth
 „ refuse to the damage of the plaintiffs of two thousand

wherefore they sue &c

Roberts & Ireland
for Plaintiffs

Now afterwards, to wit: on the 6th day of February
A.D. 1861. Pleas were filed in said cause, in the words
and figures following, to wit:

Woolston } In the Day-Ct. Ct. A.D. 1861.
" " } Dub. Term.
" Prettyman }

No. 1.

And the said B. E. Prettyman defendant
comes and defends the wrong and injury when &c. & says
actio non because he says that the said plaintiffs did not
make the said lease alledged to ^{said} R. H. Snell, as alledged
above by said Plaintiffs, and the said Richard H. Snell
did not covenant to pay rent as therein alledged, and
the said Richard H. Snell did not by virtue of said
Lease enter into and upon the said premises, and said
defendant avers that the said Richard H. Snell owned
the said property in fee in his own right, and the said
plaintiffs had then & at no other time previous to the
commencement of this suit no right or title whatever.
& of this he puts himself upon the country &c
And the plaintiffs doth the like }
Prettyman &c.
Roberts }

No. 2.

And for further plea in this behalf said defendant
says actio non because he says that the said Richard

" H. Enell fully paid all of the rent & kept all of the covenants
 " in his said Lease, prior to the date of said assignment, and
 " the said defendant has fully paid to said Plaintiffs
 " all rent due them since said assignment & has fully kept
 " all of the covenants required by said Lease to be kept by him
 " as assignee thereof & this he is ready to verify, wherefore he
 " prays Judgment &c

Proffymant

No. 3

" And for further plea in this behalf said defendant says
 " acts now because he says that the said premises were
 " annually assessed for & subject to the State & County &
 " City for Taxes, annually from the date of said lease until
 " the commencement of this suit, and the said plaintiffs were
 " justly & lawfully bound to pay off, settle & satisfy the same
 " as the landlords & grantors in said lease, said taxes being a
 " continuing incumbrance paramount to the title of said
 " plaintiffs to said premises, and the payment thereof being
 " indispensably necessary to the enjoyment of said premises
 " under said lease, and said plaintiff wholly neglected
 " and refused to pay the same or any part thereof, said
 " Richard H. Enell during the time he remained in
 " possession of said premises after the date of said lease &
 " said defendant from the date of said assignment of said
 " premises to him, was to enable them to enjoy the same
 " compelled to pay said taxes annually thereon, and said
 " defendant avers that the taxes so paid by said Enell
 " & said defendant annually amounted to the sum of
 " three hundred dollars, and that the whole sum so paid

" for said Plaintiff on account of said taxes, aforesaid, so
" necessary for the retention and enjoyment of said premises
" amounted to a large sum, to wit: to the sum of three
" thousand dollars, and the said defendant therefore
" having been compelled of necessity & through the paramount
" right of the State to pay so much for & account of said
" Plaintiff for & on account of said taxes on said premises,
" to wit: the sum of \$3000⁰⁰ at the State & County aforesaid, now
" offers to recoup the same against any & all damages that
" has & did accrue to the said Plaintiff by reason of the
" non payment of said rent aforesaid, and defendant
" avers that the taxes so paid by him amounts to more
" than all of the rents in arrear & unpaid to Plaintiff
" as appears by the said Lease & Declaration aforesaid,
" and this he is ready to verify, wherefore he prays Judgment
" &c

Pettyman

Now afterwards, to wit: on the 22nd day of May
A.D. 1861. a Second count of the Declaration was filed
in said cause in the words and figures following, to wit:

" State of Illinois) vs. In Circuit Court
" Tazewell County) June Term 1861.
" Abraham Woolsten and Elizabeth Woolsten his
" wife complain of Benjamin S. Pettyman of a plea
" of breach of covenant. For that whereas heretofore, to wit:
" on the 7th day of February 1851, to wit: at Tazewell

5
County aforesaid, by a certain other indenture there
and there made between Elizabeth Woolston in her
own right and Abraham Woolston her husband
of the first part and one Richard H. Enell of the
second part, which indenture of lease sealed with the
seals of the said Elizabeth Woolston and Abraham
Woolston and Richard H. Enell having been lost the
said plaintiffs cannot produce the same to the Court
here, the date of which said indenture is a certain day
and year therein mentioned, to wit: the day and year
aforesaid, in & by which said indenture said Elizabeth
& Abraham Woolston in consideration of the covenants
and agreements in said indenture mentioned to
be kept and performed by the said Richard H. Enell
his executors, administrators and assigns, did demise
and lease to the said Richard H. Enell all those
premises situate, lying and being in the City of Pekin
in the County of Tazewell and State of Illinois, known
and described as follows, to wit: Lots one, seventeen
and eighteen in Block Seven in the City of Pekin
County of Tazewell and State of Illinois. To have
and to hold the said above described premises with
the appurtenances unto the said Richard H. Enell,
his executors, administrators and assigns, from the
first of February 1851. for and during the natural
life of the said Elizabeth Woolston, and the said
Richard H. Enell in consideration of the leasing
of the premises by the said plaintiffs to the said

Richard H. Enell, did covenant and agree with the said
plaintiffs their heirs, executors, administrators and assigns
to pay the said plaintiffs as rent for said devised
premises the sum of three hundred dollars per annum,
during the natural life of the said Elizabeth Woolston
and to the said Abraham Woolston for one year after the
death of the said Elizabeth Woolston, if the said Abraham
should survive her, which said rent was to be paid at
the end of each month in equal installments, commen-
cing with said month and it was provided in said
Covenant that if the said Elizabeth should survive the
said Abraham the said rent after his death should
be paid to her in person, As by said indenture reference
being thereunto had will (amongst other things) more
fully and at large appear. By virtue of which said
deed, the said Richard H. Enell, afterwards, to wit:
on the day and year aforesaid, to wit: at Tazewell
County aforesaid entered into and upon all and sine-
gular the said devised premises, with appurtenances,
and became and was possessed thereof, for said term
so to him thereof granted as aforesaid. And said
plaintiffs in fact say that after the making of said
indenture and during the said term thereby granted,
to wit: on the 24th day of March 1856, at, to wit:
Tazewell County, aforesaid, all the estate, right, title
and interest, then to come and unexpired, property,
profit, claim and demand whatsoever of the said
Richard H. Enell of and in the said devised premises,

with appurtenances by assignment thereof then and there made, legally came to and vested in said defendant, and although the said plaintiffs have always from the time of making said indenture, hitherto well and truly performed, fulfilled and kept, all things in said indenture contained on their part to be performed, fulfilled and kept, according to the tenor and effect true intent and meaning of the said indenture, to wit: at Dazewell County aforesaid, Yet protesting that the said defendant has not performed, fulfilled or kept any thing in the said indenture contained, on his part and behalf as assignee as aforesaid to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, the said plaintiffs say that after the making of said indenture, and during the said term thereby granted, and after ^{the} said defendant became such assignee as aforesaid, and while he continued such assignee as aforesaid, to wit: on the first day of September 1860, to wit: at Dazewell County aforesaid, a large sum of money, to wit: the sum of one thousand dollars of the rent aforesaid for three years of said term then elapsed, became and was and still is in arrear and unpaid to the said plaintiffs, contrary to the tenor and effect true intent and meaning of said indenture, and of the said covenant said made as aforesaid, to wit: at Dazewell County aforesaid, and so the said plaintiffs in fact say that the said defendant although often requested so to do hath not kept the said covenant

" so by the said Richard H. Enell, for himself and
 " his assigns made as aforesaid, both hath broken the
 " same, and to keep the same with said plaintiffs hath
 " hitherto wholly neglected and refused, and still doth
 " neglect and refuse, to the damage of the said plaintiffs
 " of two thousand dollars and therefore they sue &
 " Roberts & Ireland
 " for Plaintiffs

Now afterwards, to wit: on the 10th day of June
 A.D. 1863. Replications to pleas 2^d & 3^d were filed in said
 cause in the words and figures following, to wit:

" State of Illinois } In Circuit Court
 " Sangamon County } June Term 1861.

" Abraham Woolston }
 " Elizabeth Woolston }
 " vs
 " Benjamin E. Puttyman }

And the said Plaintiffs as
 " to the plea by the plaintiff secondly above pleaded, saith
 " precludi non, & Because he says that neither the said
 " Richard H. Enell nor the said defendant have ever
 " paid the said plaintiffs rents in said lease reserved or
 " any part thereof and of this they put themselves upon
 " country &c.

Roberts & Ireland

„ And said plaintiffs as to the plea by the said defendant
 „ 3^dly above pleaded says precludi non re. Because they say
 „ that said plaintiffs were not bound to pay the taxes
 „ assessed upon said premises, but on the contrary they of
 „ said plaintiffs aver that said Richard W. Snell prior
 „ to his assignment of said premises in said Declaration
 „ mentioned, to said defendant was subject to said lease
 „ the owner in fee of said premises, and said defendant
 „ since the assignment was the owner in fee subject to
 „ the incumbrance of said lease and the payment of
 „ said rent, and as such bound to pay and discharge
 „ all taxes accruing upon the same, and this they are
 „ ready to verify, therefore they pray Judgment &c
 „ Roberts & Ireland

„ And for a further replication to the said plea by the
 „ defendant 3^dly above pleaded, said plaintiffs say
 „ precludi non re, Because they say that the said defen-
 „ dant did not have to pay said taxes in order have
 „ the enjoyment of said premises, and this they are
 „ ready to verify, therefore they pray Judgment &c
 „ + Dft doth the like } Roberts & Ireland
 „ Pettysman }

Now afterwards, to wit: on the same
 day pleas 4 & 5. were filed in said cause, which said
 pleas are in the words and figures following, to wit:

At & E. Woolston } Of the June Term of the
vs. } Tazewell Circuit Court A.D. 1861.
B. B. Prettyman }

4th " And for further plea in this behalf said defendant
says actio non, because he says that he did not take said
property by assignment from the said Richard H. Snell
on the 24th day of March 1856. or at any other time, and
did not hold the same as such assignee through Snell
of Plaintiffs, and of this he puts himself upon the
country.

And Plaintiffs do the like
Robert A. Culan &

Prettyman

5th " And for further plea in this behalf said defendant says
actio non, because he says that on the 28th day of January
A.D. 1845, the said Richard H. Snell named by Plaintiffs
was the owner in fee simple of all the land and lots in
said plaintiffs declaration above named, and that on
the 28th day of January 1851, the said Richard H. Snell
so then being the owner in fee simple of all of the said
property in said plaintiffs declaration above named
was then impleaded with one Thomas Snell indebted
unto one William C. Ludwig & Jesse Kneidler as partners
& firm of Ludwig & Kneidler in a Judgment amounting
to the sum of \$ dollars rendered in the Circuit Court
of Tazewell County aforesaid at the September ^{Term} of the
Tazewell Circuit Court 1845, and which said
Judgment was then on the said 28th day of January 1851

8
" wholly unpaid and was then and had been from the
" said September Term of said Court 1845, a valid &
" subsisting lien upon said land, and defendant avers
" that on the said 28th day of Jan'y 1851, an execution
" was duly issued upon said Judgment against the
" said Richard H. Enell, and levied upon the said
" land, and on the 18th day of March 1851, by virtue of
" said execution the said land aforesaid was duly sold
" at public auction by the Sheriff of said County unto
" the said defendant as the property of said Richard
" H. Enell, and defendant avers that the said property
" was not redeemed as required by law, and on the 19th
" day of June 1852, by virtue of said sale, said Sheriff
" of said County, conveyed the land above named to said
" defendant by deed of date June 19th 1852, and said
" defendant avers that the title of said R. H. Enell was
" prior to & paramount to, and said Judgment of Ludwig
" & Kniedler against said Enell was prior to any
" title or acknowledgment thereof on the part of the
" said Enell to or in said Plaintiffs, and said defendant
" avers that he by virtue of his said purchase and deed
" aforesaid took possession of the said premises so above
" described, and not by assignment of the lease as
" alleged by said Plaintiffs & so held & kept the same
" and he avers that said Plaintiffs have no title thereto
" or right to said rents or profits therein, and that all
" pretence of title to the same on the part of said Plaintiffs
" is subsequent to the right & title of said defendant

" so derived as aforesaid, and that all of Plaintiffs
" right and title in said premises since the making
" of said lease has ceased & failed, and this he is
" ready to verify, wherefore he prays Judgment &c.
" B. B. Puttyman

Now afterwards, to wit: on the same day, a
demurrer to 5th plea was filed in said cause in the
words and figures following, to wit:—

" State of Illinois } vs. In Circuit Court
" Tazewell County } June Term A.D. 1861.

" A & E. Woolston }
" vs. }
" B. B. Puttyman }

" And the said Plaintiffs as to the
" pleas by the said defendant firstly & fifthly above
" pleaded, say that the same is insufficient in law to bar
" the said plaintiffs from having and maintaining
" their aforesaid action against said defendant, and
" said plaintiffs are not bound by law to reply to the
" same, and this they are ready to verify, wherefore
" they pray Judgment &c.
" Roberts & Ireland

Now afterwards, to wit: on the same day, a
demurrer to the Plaintiffs replication to 3rd plea was

filed in said cause in the words and figures following,
to wit:

" A & E. Woolston } June Term
" B. B. Prettyman } Day let. let. A.D. 1861.

" And the said defendant as to the
" said pliffs replications to said defendants 3^d plea above
" pleaded, says that the matters and things in said
" defendants replications in manner ~~form~~ are not
" sufficient in law to be replied to by this dept or to enable
" said plaintiffs to sustain further their said action & that
" they are ready to verify, wherefore &c.

" Prettyman,
" And said Dept shows the following special cause for
" Demurrer.

- 1st " There is no issue tendered in said replications or either
" of them upon any material allegation in the plea.
2. " The facts alleged in said replication are a departure
" from the facts set forth in the declaration & plea
3. " The replication improperly concludes with a verification
" whereas it should conclude to the country & take issue
" on the facts set forth in plea.

" Prettyman,

Now afterwards, to wit: on the 3^d day of
" September A.D. 1863. a replication of Estoppel to
" defendants 5th plea was filed in said cause, in the
" words and figures following, to wit:

" State of Illinois) In Circuit Court
" Tazewell County)²¹ September Term 1861.

" Abraham & Elizabeth Woolston)

"¹⁵ Benjamin S. Pettyman)

" And the said plaintiffs
" say that the said defendant ought not to be admitted
" or receive to plead the said plea by him fictitiously above
" pleaded as to so much thereof wherein he alleges, that
" on the 28th day of January 1845, the said Richard
" H. Snell was the owner in fee of said premises, and that
" on the said 28th day of January 1851, said Richard
" H. Snell so being the owner in fee of all of said premises
" was then and there impleaded with one Thomas Snell
" indebted to one William B. Ludwig & Jesse Kneidler as
" partners of a firm of Ludwig & Kneidler in a
" Judgment amounting to dollars recovered in
" the Circuit Court of Tazewell County, Illinois at
" the September Term thereof 1845, and which said
" Judgment was on the 28th day of January 1851.
" unpaid and a subsisting lien upon said premises
" and that execution was issued upon said Judgment
" and levied upon said premises, and that on the 18th of
" March 1851, by virtue of said execution said premises
" were duly sold, and that the said premises were not
" redeemed, and that on the 19th of June 1852, the Sheriff
" of said Tazewell County conveyed said premises to

" said defendant, and that said defendant by virtue
 " of said sale took possession of said premises. Because
 " that from the time of making said lease until on or
 " about the 24th of March 1856, said Richard H. Enell
 " occupied said premises as the tenant of said plain-
 " tiffs and as such paid them the rent for said premises,
 " and plaintiffs aver that on or about the 24th of March
 " 1856, said Enell sold and assigned his interest in
 " said lease and premises to said defendant and said
 " defendant then and there received the possession of
 " said premises from said Enell, and plaintiffs
 " further aver that said defendant after receiving
 " the possession of said premises from said R. H. Enell
 " paid rent therefor to said plaintiffs, and this the said
 " plaintiffs are ready to verify, wherefore they pray
 " Judgment whether the said defendant ought to be
 " admitted or received against his own acknowleg-
 " =ment to plead the plea by him fifthly above pleaded
 " that he holds said premises by title paramount to
 " the title of the said plaintiffs.

Roberts & Ireland
 attys for Defts

Now afterwards, to wit: on the same day a
 Rejoinder to Replication to 5th plea was filed in said
 cause, in the words and figures following, to wit:

Woolston & Woolston }
 " vs } In Covenant
 " Prettyman }

And as to the said Plaintiffs
 " Replication to said defendants 5th plea, said Deft says
 " actio non, Because he says that said Richard H. Enell
 " did not assign his lease and interest in said premises
 " to said defendant, and this he puts himself upon the
 " country &c.
 " and Plaintiffs doth the like &c }
 " Roberts & Irelande } Prettyman

Now afterwards, to wit: on the 10th day of
 February A.D. 1862, Pleas 6 & 7. were filed in said
 cause in the words and figures following to wit:-

Woolston & Woolston }
 " vs } In Covenant
 " Prettyman }

6. And for further plea in this behalf
 " said defendant says actio non, Because he says that
 " before the said rent in the said plaintiffs declaration
 " named accrued or become due, he, defendant sold &
 " assigned, all of the estate, title, interest and term, which
 " defendant then had to come in the premises to one
 " William A. Dinney & to one William P. Dinney, by
 " virtue of which sale & assignment they the said
 " William A. & Wm P. Dinney entered and was and still

11
" is possessed thereof and in full enjoyment, and in
" full possession of the same of all which said Plaintiff then
" & there had notice, and this he is ready to verify, wherefore &c
Prettyman

7. " And for further plea in this behalf said defendant says
" actio non. Because he says he had underlet & assigned
" said premises to other persons who used and occupied
" all of the same during all of the time said rent is alleged
" to have accrued and at the time when said suit was
" brought and was not during said time said rent is
" alleged to have accrued in possession of defendant, and
" this he is ready to verify, wherefore &c.
Prettyman

Now afterwards, to wit: on the same day a
Replication to 6th plea was filed in said cause, in
the words and figures following, to wit:

" A & E. Woolston) In Circuit Court
" vs.) February Term 1862.
" Benjamin B. Prettyman)

" And the said plaintiffs as to
" the plea by the defendant sixthly above pleaded, says, precludi
" non &c. Because he says, that said defendant did not
" assign his interest in said premises to William A. Dinney
" and William B. Dinney or any other persons or persons, and
" this they pray may be inquired of by the country &c.

Roberts & England
attys for Plffs

Now heretofore, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin, within and for the County of Tazewell and State of Illinois on the first Monday of the month of September A. D. 1860. (Present Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, composed of the Counties of Mason, Tazewell &c. Hugh Fullerton States Attorney, Thomas C. Reeves Sheriff and Merrill L. Young Clerk) and on the 10th day of said month, it being the 7th day of said Term, the following proceedings were had, to wit:—

10 th day	Monday September 10 th 1860.
Abraham Woolston & Elizabeth Woolston	} In Covenant
vs. Benjamin B. Pettyman	

Now come the parties, and upon agreement, this suit is to be tried before Hon James Harriott on the 3rd Monday in November, or as soon thereafter as may suit said Harriott, and to be entered of Record at next Term of this Court

Now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of February, A. D. 1861 (Present Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, Hugh Fullerton States Attorney, Chapman

Williamson Sheriff and George A. Harlow Clerk.) and on the 23rd day of said month, it being the 19th day of said Term, the following proceedings were had, to wit:-

19th day

Saturday February 23rd 1861.

Abraham Woolston &

Elizabeth Woolston

! In Covenant

19.
Benjamin B. Puttyman

This cause is continued generally.

Now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois, on the first Monday of the month of June A.D. 1861. (Present, Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, Hugh Fullerton States Attorney, Chapman Williamson Sheriff, and George H. Harlow Clerk.) and on the 14th day of said month, it being the 10th day of said Term, the following proceedings were had, to wit:—

10th day.

Friday June 14th 1864.

Abraham Woolston

Elizabeth Hoolston

In Covenant

Benjamin B. Prettyman

Now come the parties by their
attorneys, and the Plaintiffs enter their Demurrer to the
Defendants' 5th Plea, and the Court having heard argument

of counsel thereon, is of opinion that the same be overruled.
Whereupon the defendant enters his Demurrer to the
Plaintiffs first Replication to defendants 3rd Plea, and
the Court having heard argument of counsel thereon is
of opinion that the same be overruled.

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin
within and for the County of Tazewell and State of Illinois
on the first Monday of the month of September A. D. 1861.
(Present Hon James Harriott Judge of the 2nd Judicial
Circuit of the State of Illinois, G. J. Dilworth States Attorney
pro tem, Chapman Williamson Sheriff, and George R.
Harlow Clerk.) and on the 10th day of said month, it being
the 8th day of said Term, the following proceedings were
had, to wit:

8 th day,	Tuesday September 10 th 1861.
Abraham Woolston & Elizabeth Woolston	} In Covenant
vs. Benjamin B. Pettyman	

This cause is ordered to be continued,

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin
within and for the County of Tazewell and State of
Illinois, on the first Monday of the month of February

A.D. 1862. (Present Hon James Harriott Judge of the 1st Judicial Circuit of the State of Illinois, C. J. Delworth State's attorney, pro tem, Chapman Williamson Sheriff, and George H. Harlow Clerk,) and on the 10th day of said month it being the 7th day of said Term, the following proceedings were had, to wit:—

7th day
 Abraham Woolston &
 Elizabeth Woolston
 vs.
 Benjamin S. Pettyman
 Monday February 10th 1862.
 In Covenant

Now comes the defendant per se and on his motion leave is granted him to file additional pleas.

Now afterwards, to wit: on the 15th day of said month of February A.D. 1862, it being the 12th day of said Term the following proceedings were had, to wit:—

12th day
 Abraham Woolston &
 Elizabeth Woolston
 vs.
 Benjamin S. Pettyman
 Saturday February 15th 1862.
 In Covenant

Now come the parties, and upon agreement this cause is to be tried in vacation at any time the Judge shall designate, and Judgment entered as of this Term.

Now afterwards, to wit: at a Term of the Circuit

Court begun and held at the Court House in Pekin
within and for the County of Tazewell and State of Illinois,
on the first Monday of the month of September A.D. 1862.
(Present Hon James Harriott Judge of the 31st Judicial
Circuit of the State of Illinois, C. A. Roberts States Attorney
pro tem, Chapman Williamson Sheriff and George H.
Harlow Clerk,) and on the 16th day of said month, it being
the 8th day of said Term, the following proceedings were
had, to wit:-

8 th day	Tuesday September 16 th 1862.
Abraham Woolston & Elizabeth Woolston	} In Covenants
vs. Benjamin S. Prettyman	

Now come the parties by their
attorneys, and by agreement this cause is to be decided in
vacation within 60 days as of this Term, either party having
the right to appeal, and exceptions to be signed, and bond to
be approved in vacation.

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin within
and for the County of Tazewell and State of Illinois on the first
Monday of the month of September A.D. 1863. (Present Hon
James Harriott Judge of the 31st Judicial Circuit of the
State of Illinois, Abraham Bergen States Attorney, James
B. Hawkins Sheriff and George H. Harlow Clerk,) and
on the 16th day of said month, it being the 18th day of

said Term the following proceedings were had, to wit:-

18th day Saturday September 26th 1863
 Abraham Woolston &
 Elizabeth Woolston his wife } In Covenant
 vs.
 Benjamin S. Prettyman }

Now on this day comes as well the Plaintiffs by their attorneys Roberts & Ireland, as the said Defendant in his own proper person, and a Jury being waived by consent this cause is tried by the Court, and the Court having heard the allegations and proofs of parties and argument of counsel thereon, is of opinion that the Plaintiffs have sustained damages by reason of the breaches of covenants in the declaration mentioned, and assesses those damages in the sum of Four hundred and twenty five Dollars. (\$425⁰⁰), whereupon the Defendant enters his motion for a new trial, which motion the Court overrules. It is therefore ordered and adjudged by the Court that the Plaintiffs have and recover of the said Defendant the damages aforesaid in form aforesaid assessed, likewise the costs and charges by them about their suit expended and that execution issue therefor. Thereupon the Defendant prays an appeal which is granted by the Court with Bond to be filed in 30 days in the sum of One thousand Dollars, and by agreement security to be approved by the Clerk, and Bill of Exceptions to be signed in vacation.

Be it remembered, that on the 23rd day of October
A.D. 1862, a Bill of Exceptions was filed in said cause
in the words and figures following, to wit:

Abraham Woolston & Elizabeth Woolston vs Benjamin B. Prettyman	} Of the September Term of the Tazewell County Circuit Court A.D. 1862
---	--

Be it remembered that in this
case a Jury by consent of parties duly waived and the cause
was submitted to the Court, and the Plaintiffs to support
their part of the issue, offered in evidence the following copy
of a Lease from Plaintiffs to R. H. Snell, to wit:-

" Woolston & Snell

" To

" Lease

} No. 11,151. Recorded February 25, 1862.

" This Indenture made this Seventh day
" of February 1857, between Elizabeth Woolston in her own right
" and Abraham Woolston her husband of the first part and
" Richard H. Snell of the second part, Witnesseth: That the
" said parties of first part for and in consideration of the
" covenants and agreements hereinafter mentioned to be
" kept and perform by the said party of the second part, his
" executors, administrators and assigns, have demise and
" leased to the said party of the second part all those premises
" situate, lying and being in the City of Pekin in the County
" of Tazewell and State of Illinois, known and described
" as follows, to wit:- Lots one, seventeen and eighteen in

Block seven in the City of Tekin County of Paywell
 and State of Illinois. To have and to hold the ^{said} above
 described premises with the appurtenances unto the said
 party of the second part his executors, administrators
 and assigns from the First February 1851, for and during
 natural life of the said Elizabeth Woolston, and the
 said party of the second part in consideration of the
 leasing of the premises aforesaid by the said parties of the first
 part to the said party of the second part, does covenant and
 agree with the said parties of the first part their heirs,
 executors, administrators and assigns to pay the said
 parties of the first part as rent for the said devised premises
 the sum of Three hundred Dollars per annum during the
 natural life of the said Elizabeth Woolston and to the said
 Abraham Woolston for one year after the death of the said
 Elizabeth Woolston, and if the said Abraham should
 survive her, said rent to be paid at the end of each month
 in equal installments commencing with this month,
 and provided if said Elizabeth should survive the said
 Abraham the said rent after his death shall be paid to
 her in person, and it is expressly agreed that the said
 Snell may rebuild, repair, change or remove or any
 of the buildings now on said premises, provided he shall
 not materially injure the value thereof. It is hereby
 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, or if default shall be made in

any of the covenants 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 parties of
the first part, their agent, attorney, or assigns, or the said
Elizabeth if she should survive him at their election to
declare said term ended and into the said demised
premises or any part thereof either with or without process
of law to re-enter, and the said party of the second part or
any other person or persons occupying in or upon the
same to expel, remove and put out, using such force as
may be necessary in so doing, and the said premises
again re-possess and enjoy, as in this first and former
estate and to distrain for any rent that may due thereon
upon any property belonging to the said party of the
second part, whether the same be exempt from execution
and distress by law or not, and to the said party of the
second part, in that case hereby agrees to waive all legal
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 or intending hereby
to give the said party of the first part, their heirs, executors
administrators or assigns a valid and first lien upon
any and all the goods, chattels or other property, belong-
ing to the said party of the second part as security for the
payment 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 their assigns or the said

" Elizabeth if she should survive him as aforesaid or in
 " any other way, the said party of the second part, his executors
 " administrators and assigns does hereby covenant and
 " agree to surrender and deliver up said described
 " property peaceably to said party of the first, their executors
 " administrators and assigns immediately upon the determi-
 " nation of said term as aforesaid, and if he shall remain
 " in the possession of the same ten days after notice of such
 " default or after the termination of this lease in any of
 " the ways above named, he shall be deemed guilty of
 " 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, provided
 " that if said rent is not paid on the day it becomes due
 " the said Snell shall have ninety days thereafter to pay
 " the same before this deed shall become forfeited at the
 " election of said party of the first part or the survivor,
 " and provided that if said Elizabeth should survive
 " the said Abraham the said rent after his death shall
 " be paid to her in person.

" In Testimony whereof the said
 " parties have hereunto set their hands and seals the day
 " and year first above written.

" Elizabeth Woolsten (seal)
 " Abraham Woolsten (seal)
 " R. H. Snell (seal)

State of Illinois }
Sazwell County }^{ss.} On this day came before the under-
signed a Justice of the Peace in and
for said county and state aforesaid Elizabeth Woolston,
Abraham Woolston the husband of said Elizabeth, and
Richard A. Snell to me personally known to be the real
persons whose names are subscribed to the foregoing deed
as having executed the same, and the said Abraham
Woolston and Richard A. Snell acknowledged the same
to be their act and deed for the purposes therein expressed,
and the said Elizabeth Woolston being by me first
made acquainted with the contents of said deed and
the same being fully explained to her upon said examina-
tion acknowledged the same to be her act and deed &
that she executed the same voluntarily and freely and
without any compulsion of her said husband and
does not wish to retract.

Witness my hand and seal this 27th day of February 1852,
W. Jackabury J. P. (seal)

State of Illinois }
Sazwell County }^{ss.} I, Merrill C. Young, Clerk of the Circuit
Court and Ex-Officio Recorder in and for said county do
hereby certify that the foregoing 5 1/4 pages contains a true
perfect and complete copy of the case between Woolston
& Snell as the same fully appears of Record in Book "V"
page 229. in my office.

Witness my hand and seal official this
2nd day of August A.D. 1860.
Merrill C. Young Clerk
per A. P. Emerson Deputy



17
To the reading of which Defendant objected for the
reason that no foundation had been laid to authorize
the introduction of a copy - Plaintiffs then read the affi-
dants of Abraham Woolston and of James Roberts as
follows, to wit:

" State of Iowa) ss.
" Marshall County) I Abraham Woolston being
" duly sworn doth depose and say that he has not in his
" former possession or control the following described
" lease, to wit: A lease bearing date the 7th day of February
" 1851, and made by Abraham Woolston and Elizabeth
" Woolston his wife to Richard W. Snell for Lot one,
" seventeen & eighteen in Block seven in the City of
" Peoria, County of Tazewell Illinois;

" And that the same
" is necessary to be used upon a trial now pending by
" said Abraham & Elizabeth Woolston against
" Benjamin B. Puttyman in the Circuit Court of
" Tazewell County Illinois.

Abraham Woolston
" State of Iowa)
" Marshall County) Subscribed and sworn to
" before me by Abraham Woolston August 9th
" A.D. 1861.

" As Witness my hand & the Seal of the
" District Court.
"  James L. Williams Clerk
" Dist Court Marshall Co Iowa

Abraham Woolston &
Elizabeth Woolston } In Circuit Court of
Sagwell County Illinois
vs.
B. B. Prettyman }

James Roberts being duly sworn
says that he is now and has been since the commencement
of the above entitled cause of Woolston & wife vs. B. B.
Prettyman and still is the counsel of said Woolston
& wife in said cause and that he never has since the
commencement of said suit and has not now the
original lease set out in said plaintiffs declaration
and never has seen the same, and the same is not
now within the control, possession or power of this office
to produce upon the trial of this cause.

James Roberts
Subscribed & sworn to before
me this 26th day of July 1862.

James Harriott
To sufficiency of which Defendant excepted, but exceptions
and objections were overruled and the copy of lease read
by plaintiffs in evidence, to which Defendant then and
there excepted.

Plaintiffs then presented a notice to produce
Deed from R. H. Enell, as follows, to wit:
To Benjamin B. Prettyman Esq

You are hereby notified to
produce on the trial of a cause entitled Abraham Woolston
& Elizabeth Woolston vs Benjamin B. Prettyman at the

" February Term A.D. 1862 of the Sangamon County Circuit
 " Court, the following deed from Richard H. Snell
 " to Benjamin B. Prettyman, dated the 24th day
 " of March A.D. 1856, and recorded in the Recorder's
 " Office of Sangamon County, Illinois, on the 8th day
 " of April A.D. 1856, in Book A.D. page 300, to be
 " used as evidence in said cause, and in case you
 " fail to produce said deed, secondary evidence of the
 " same will be given.

" August A.D. 1861.

Roberts & Ireland
 Attys for Plffs.

And then offered to read the record of a Quit
 Claim Deed on the Records of the County from R. H.
 Snell to B. B. Prettyman dated March 24th 1856, as
 follows, to wit:

" This Indenture, made and entered into
 " the 24th day of March eighteen hundred and fifty six
 " between Richard H. Snell and Caroline his wife of
 " the first part and Benjamin B. Prettyman of the
 " second part, Witnesseth: that the said party of the first
 " part for and in consideration of Five Hundred Dollars
 " cash to them in hand paid at and before the executing
 " and delivery of these presents the receipt whereof is hereby
 " acknowledged, have granted, bargained, remised,
 " released and forever quit claimed unto him the said
 " Benjamin B. Prettyman his heirs and assigns
 " forever all of the following described tracts or lots
 " of land in the County of Sangamon and State of Illinois

" to wit: The South west quarter of Section twenty
" one, in Township twenty four, south of Range
" three West, also the North west fractional quarter
" of Section twenty eight in Township twenty six
" South of Range four West, also all our right, title
" and interest at law or in equity, of, in and to all the
" Lots and Blocks in the Town of Westley City, and in
" all lands adjoining said Town of Westley City, also
" all our right, title and interest, at law, or in equity, in
" and to all Lots and parts of Lots in the City of Pekin,
" and all undivided interest said Town, also all
" other lots and lands we may own, or have any interest
" whatever in, in our own right, or in common with
" others, or in the right of either of the parties of the
" first part, at law or in equity, either in the County
" of Bazewell or elsewhere in the State of Illinois,
" wherever, or by whatever name, number or description,
" the same may be known or called, To Have and to
" Hold to him the said Benjamin B. Prettyman
" his heirs and assigns forever.

" In Witness whereof the
" said parties of the first part have hereunto set their
" hands and seals the day and date first above written,

R. H. Snell (seal)

Caroline Snell (seal)

" State of Illinois) ss.

" County of Bazewell) I, the undersigned E. P. Bailey
" do hereby certify that on this day Richard H. Snell

and Caroline his wife, who are personally known to me
 to be the real persons who executed the foregoing deed, came
 before me and acknowledged that they executed the same
 freely and voluntarily for the uses and purposes therein
 expressed, and the said Caroline Enell wife of said
 Richard having been by me made acquainted with
 the contents of the said deed, and on being by me examined
 separate and apart from her said husband, acknowledged
 that she executed the same freely and voluntarily for
 the uses and purposes therein expressed, and never
 relinquished her right of dower to the lands therein
 described without any compulsion from her said
 husband.

Given under my hand and seal this 25th
 day of March 1856.

Saml P. Bailly (seal)
 Justice of the Peace in & for
 the County & State aforesaid.

State of Illinois }
 Deane County }
 I, John A. Jones, Clerk of the Circuit
 Court and Ex officio Recorder, in and for said county, do
 hereby certify that the within deed was entered for
 record on the 8. day of April A.D. 1856, and duly
 recorded in Book A.D. of Deeds on page 300 & 301.

No 18993

Attest.

J. A. Jones Clk. C. C. and ex officio Recorder
 per C. G. McLaran Deputy

19 To the reading of which the Defendant then and there objected for the reason that it was only a general quit claim deed and the land claimed was not named in it and that Enell had other lands in the county designed to be and actually conveyed by it. But the Court overruled the objections and the deed was read in evidence and Defendant excepted.

Plaintiffs then called Thomas C. Reeves who testified that he leased of R. H. & S. Enell in October 1854, the lots named in the lease read for one year. R. H. Enell was then in possession of them, Reeves kept them one year and thinks R. H. Enell then took possession of them and kept them in his possession some time.

Plaintiff then called one Middleton Packaberry who testified that he knew R. H. Enell and the lots named in the lease, remembered Enell selling property in Pekin to Prettyman, thinks he sold all his property to Prettyman, cant remember the time but thinks it was about 24th of March 1856. Knows Enell was in possession of these lots when he sold out to Prettyman, thinks Prettyman got possession of Enell, thinks one Benjamin Priddy took the house on the lots immediately and kept it for some time and then Stone & Wilson and Stone & M^r Dougal, and then J. B. Chapman, then Mendenhall, then M^r A. Timney took it and kept it until the commencement of this suit. Thinks that Prettyman never did reside upon these lots or keep the house. In 1856, the yard on Lot 17, was all open though

24
the lot had a frame house on it, which was used as a wash house for the Hotel. Knows that Enell owned other real estate in Pekin beside the lots claimed by Plaintiff and named in the lease.

Plaintiff then called one Samuel P. Bailly who testified that he knew all the parties and the premises described, but knew nothing of the renting of the premises. He was a Justice of the Peace at the time and acknowledged a deed from R. H. Enell & wife to B. E. Prettyman on 24th March 1856. it was a quit claim deed. Prettyman did not take possession of the property named in the lease at that time, Enell left soon after making the deed. Knows Enell's family remained in possession of these lots & the Hotel on them until after Court in April 1856. after Enell left one M. J. Appi came down and got Enell's family who were left by Enell on the premises, and took them away. Witness don't know where Benjamin Pridley then took possession of the premises, kept the Hotel for some time afterward.

Plaintiff then offered the following Lease in evidence from Prettyman to Stone & W. Dougal, and proved the handwriting of signers by one Merrill Young to wit:—

" This Indenture, made this 10th day of November 1857, between Benjamin E. Prettyman of the first part, and E. W. Stone & William H. Dougal 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, their executors,
administrators and assigns, has demised and
leased to the said party of the second part, all those
premises, situate, lying and being in the City of Pekin
in the County of Bazewell and State of Illinois, known
and described as follows. to wit: Lots one, two, seventeen
& eighteen in Block No. Seven on which is situate
the Bazewell House, out houses, stables, said Prettyman
agrees to sink a vault and remove the present Privy
so soon in the Spring of 1858, as it may be necessary
and Stone and W. Dugal are to build such Chicken &
Wood Houses as they may need at their own expense,
and when Prettyman removes the Privy - he is to tear
away all of the old stable & sheds and place the privy
at that place - and the said Stone and W. Dugal
are to be credited at the expiration of this lease with
the entire costs of fitting up the Saloon now situate in
said house, as shown by their bills for fitting up the
same - they having already fitted it up - with the
agreement that it is to be paid by Prettyman at
the expiration of this lease 2 years from date. and Prettyman
is to rebuild a Stable for the house, as near the above
lots as convenient, during the year 1858. To have and
to hold the said above described premises, with the
appurtenances, unto the said party of the second
part, their executors, administrators and assigns

21
from the 15th day of November 1857, for and during
and until the 15th day of November 1859, with the
privilege of retaining the same for three years longer, at
the same rent as hereinafter named. On giving the
said Partyman 3 months notice of their wish to retain
the same, on said terms, and if no notice should be
given 3 months before the expiration of this lease, the
same is to determine on the 15th of Nov 1859. Partyman
is to have immediate possession thereof together with
\$1346 dollars worth of such furniture as is necessary
for the house all of good quality & in good order, with
said house & fixtures. 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, do covenant and
agree with the said party of the first part his
heirs, executors, administrators and assigns, to
pay the said party of the first part, as rent for
the said demised premises, the sum of Eighteen
hundred dollars per annum, to be paid monthly
on the first day of each month, the first pay-
ment to be made on the first day of December
1857, and each payment to be one hundred and
fifty dollars, and the last payment to be made
at the termination of the lease. And the said
party of the second part further covenants with
the said party of the first part, that at the expi-
ration of the term in this lease mentioned, he will

„ yield up the said demised 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 accidents and ordinary wear
„ excepted. It is further agreed, by the said party of the
„ second part, that neither they nor their legal repre-
„ sentatives, will underlet the premises, or any part thereof
„ or assign his lease, without the written assent of the said
„ party of the first part, first had and obtained thereto.
„ nor remove the furniture of the said house during said
„ lease - \$1346. dollars worth of said furniture belongs to
„ said Prettyman, and Stone & McDougal are to return
„ the same in good order with the house, and the covenants
„ and liens hereinafter named are also to secure the
„ return of the same. It is hereby 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~~ upon the day of payment, wherein
„ the same ought to be paid as aforesaid, or if default
„ be made in any of the covenants herein contained
„ to be kept by the said party of the second part, their
„ 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 unto the said demised premises, or any part
„ thereof, either with or without process of law, to re-enter;
„ and the said party of the second part, or any other

person or persons occupying in or upon the same, to
 expel, 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 distrain for any rent that may be due
 thereon upon any property belonging to the said party
 of the second part, whether the same be exempt from
 execution and distress by law or not; and the said
 party of the second part, in that case, hereby agrees to
 waive all legal 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, administrators
 or assigns, a valid and first lien upon any and all
 the first goods, chattels, or other property belonging to the
 said party of the second part, as security for the pay-
 ment of said rent, and to oblige the covenants of said
 lease aforesaid, in manner aforesaid, any thing
 heretofore contained to the contrary notwithstanding.
 And if at any time said term shall be ended at any
 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, their executors, administrators and assigns, do
 hereby covenant and agree to surrender and deliver
 up said above described premises and property peaceably
 to the said party of the first part, his heirs, executors,

administrators and assigns, immediately upon
the determination of said term, as aforesaid; and if
they shall remain in possession of the same three
days after notice of such default, or after the termination
of this lease, in any of the ways above named they
shall be deemed guilty of a forcible detainer of said
premises, under the statute, and 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, the Kresel,
windows, doors, furniture, and everything appertaining
thereto are now delivered whole, and in good repair, and
are to be so returned at the termination of the lease
by said Stone & Mc Dougall.

In Testimony whereof, the said parties have
herunto set their hands and seals the day and year
first above written.

B. C. Pottymann (seal)

E. W. Stone (seal)

W. M. Dougall (seal)

In consideration of Pottymann's diminishing the rent
from the 15th day of July to the sum of \$125 per month
thereafter, it is agreed by Stone & Mc Dougall to release
& exonerate him from his covenant in this lease to
sink a vault for & remove the spring, and to tear away,
remove & rebuild a stable as stated in said lease,
and it is agreed by both parties that this lease
shall terminate on the 15th day of November 1858.

23
" and Stone & M^r Dougal are to keep the house
" open & unaltered & unchanged until that time & then
" return the same & everything appertaining thereto, to
" Pettyman, in all respects as per covenants in this
" lease at its termination, and the lease is in all other
" respects to remain as at present.

" B. B. Pettyman (seal)

" S. W. Stone (seal)

" W. M. Dougal (seal)

To the reading of which Defendant objected.
Because it was immaterial and irrelevant, but the
Court overruled the objection and permitted the
lease to be read in evidence, to which Defendant
excepted.

Defendant then proved that the Lots
described originally belonged unto one Thomas
Enell long since deceased, and that prior to his
decease the same was mortgaged by him to one
Geat & Rocky who foreclosed the mortgage in said
Court, making Plaintiffs defendants therein.
and under the Decree of the Court said Lots were
sold to the said Richard H. Enell on the day
of 1847. That on the day of 1845
one Ludwig & Knedler obtained a Judgment in
the Circuit Court of said Tazewell County against
said Richard H. Enell, by virtue of which upon

an alias execution on the day of 1851, the
said premises, lots above described, were levied upon
as the property of said Richard H. Snell and sold
unto the said Benjamin B. Pettyman and the
same not having been redeemed as required by
law the same was on the 19th day of June 1852,
conveyed by the Sheriff by his Deed as follows, to wit:

" Whereas William C. Ludwig and Jesse Kneidler
" did at the September Term of the Circuit for the County
" of Bazewell and State of Illinois held at Trenton
" on Wednesday the 3rd day of September A.D. 1845,
" recover a Judgment against Richard H. Snell
" impleaded with Thomas Snell for the sum of Two
" hundred & thirty two dollars and thirty three cents
" and costs of suit, upon which Judgment an execution
" was issued dated on the 28th day of January A.D.
" 1851, directed to the Sheriff of said County of Bazewell
" to execute, and by virtue of said execution the said
" Sheriff levied upon the land hereinafter described and
" the same were struck and sold to Benjamin B.
" Pettyman he being the highest and best bidder
" therefor, and the time and place of the sale thereof
" having been duly advertised according to law. Now
" therefore know all by this deed that S. William Gaither
" Sheriff of said County of Bazewell in consideration
" of the premises have granted, bargained and sold
" and do hereby convey to the said Benjamin B. Pettyman

his heirs & assigns, the following described tract
or lots of lands, to wit: Lots one (1) two (2) seventeen (7)
and Eighteen (18) in Block seven (7) in the City of
Pekin. To have and to hold the said described
premises with all the appurtenances thereto belonging
to the said Benjamin B. Puttyman his heirs and
assigns forever.

Witness my hand & seal this 19th day
of June in the year of our Lord one thousand
eight hundred and fifty two.

Interlineations made

before signing.

William Gaither (seal)
Sheriff of Tazewell County

State of Illinois vs. I John A. Jones Clerk of the
Tazewell County Circuit Court in and for
said County do hereby certify that on this day
personally appeared before me William Gaither
Sheriff of said County, whose signature is
subscribed to the foregoing deed of conveyance,
and acknowledged that in his said capacity as
Sheriff he had executed the same for the purposes
therein expressed.

Witness my hand and official seal
at Pekin this 19th day of June A.D. 1852.
John A. Jones Clerk

Filed August 21, 1852. Recorded Book W. Deeds
page 291. Taz Co. Ill.

J. A. Jones clk w off Recorder
By J. H. Ball dpty

Defendant then offered the following Deed
from B. B. Prettyman unto James W. Ruggles
in evidence, to wit:—

This Indenture, made and entered
into this third day of July in the year of our Lord
one thousand eight hundred and fifty two,
between Benjamin B. Prettyman and Sarah
A. Prettyman his wife parties of the first part
and James W. Ruggles party of the second part
Witnesseth: That the said parties of the first part for
and in consideration of the sum of Five thousand
Dollars cash to them in hand paid at and
before the enrolling and delivery of these presents
the receipt whereof is hereby acknowledged; have
granted, bargained and sold, and by these presents
do grant, bargain and sell unto the said James
W. Ruggles his heirs and assigns forever, all of the
following described lands situate in the City of
Pekin County of Bazewell and State of Illinois
and known and designated as Lots No. one, two,
seventeen and eighteen in Block No. Seven in the
Town and City of Pekin aforesaid. To Have and
to Hold the same together with the appurtenances
tenements & hereditaments therunto belonging
or in any wise appertaining, to the only proper use
of him the said James W. Ruggles his heirs and
assigns forever, and the said Benjamin B.
Prettyman doth covenant to and with the said

James M. Ruggles his heirs and assigns that at the
 time of the enrolling and delivery of these presents
 he is well seized of an estate in fee simple, has
 good right, full power and lawful authority
 to sell and convey the same in manner aforesaid,
 and the said James M. Ruggles in the quiet and
 peaceable possession of the same shall and will
 forever warrant and defend.

In Witness whereof the
 said Benjamin B. and Sarah A. Pettyman have
 hereunto set their hands and seals the day and
 year first above written.

B. B. Pettyman (seal)
 Sarah A. Pettyman (seal)

State of Illinois
 County of Darke

Know all men by these presents
 that on this day personally came before me
 Joseph Stewart an acting Justice of the Peace
 in and for said County Benjamin B. Petty-
 man and Sarah A. Pettyman his wife who
 are personally known to me to be the real persons
 whose names are subscribed thereto, and
 acknowledged that they executed the same for
 the uses and purposes therein expressed, and the
 said Sarah wife of the said Benjamin having
 been by me made acquainted with the contents
 of the same, acknowledged that she executed the

" same for the purposes therein expressed, and relin=
"=quished her right of dower therein,

" Given under my hand and seal this August 19, 1852.

" Joseph Stewart Seal J. P.

" Filed August 21, 1852, Recorded Book M.
" Deeds, page 292, Page Co. Ill.

" J. A. Jones Clk, & off Recorder
" by J. H. Ball Dpty

Which was read to the Court in evidence.

Defendant then offered the following
Deed from J. M. Ruggles to B. E. Prettyman

" James M. Ruggles wife } No. 24,673.

" To } Recorded June 2nd 1862

" B. E. Prettyman }

" This Indenture, made this
" twenty second day of October in the year of our Lord
" one thousand eight hundred and fifty five, between
" James M. Ruggles and Mary J. Ruggles of the
" County of Mason and State of Illinois of the
" first part and Benjamin E. Prettyman of the
" County of Tazewell and State of Illinois of the
" second part, Witnesseth; that the said parties of
" the first part for and in consideration of the sum
" of Eight thousand and five hundred Dollars
" lawful money of the United States of America
" to them in hand paid by the said party of the

26
second part at or before the sealing and delivery
of these presents the receipt of which is hereby ack-
nowledged, have remised, released, sold, and
forever quit claimed, and by these presents do
remit, release, sell and forever quit claims unto
the said party of the second part, and to his heirs
and assigns forever, all those tracts of land or
town lots, situate in the City of Pekin County of
Darewell and State of Illinois and known and
designated as follows, to wit: Lots numbered
one (1) two (2) seventeen (17) and eighteen (18) in Block
numbered Seven (7) as well more fully appear
by reference to the recorded plat of said City or
Town of Pekin now on record in said County
of Darewell. Do Have and to Hold the above
described premises, with all the privileges and
appurtenances thereto belonging to him the
party of the second part his heirs and assigns
forever.

In Witness whereof the said parties of the
first part have hereunto set their hand and
seals the day and year first above written.

James M. Ruggles (S)

Mary J. Ruggles (S)

State of Illinois) ss.
Mason County)

I, L. Carpenter an acting
Justice of the Peace for said county do certify
that on this day personally appeared before me

James M. Ruggles and Mary J. Ruggles his
" wife, whose names appear subscribed to the
" foregoing deed of conveyance as having
" executed the same, who are personally known
" to me to be the real persons who and in whose
" names the acknowledgment is proposed to be
" made, and acknowledged the execution thereof
" as their voluntary act and deed for the uses and
" purposes therein expressed, and Mary J. Ruggles
" wife of the said James M. Ruggles having been
" by me made acquainted with the contents of
" said deed, and by my examined separately and
" apart from her said husband, whether she had
" executed the same and relinquished her dower
" to the land and tenements therein mentioned,
" acknowledged that she had done so voluntarily
" and freely, and without compulsion of her said
" husband and does not wish to retract.
" Given under my hand and seal of office
" at Bath this 22 day of October A.D. 1859,
" J. L. Carpenter J. P. (seal)

Which was read to the Court in evidence.
Defendant then called one William A. Dimney
who testified that on the 22nd day of May 1859, he
purchased said lots described of B. Puttman
who then conveyed them to Witness, that Witness
then took possession of them and still holds

possession thereof.

And this was all the evidence in the case, the Court thereupon found for the Plaintiff and the Defendant then moved for a new trial for the following reasons, to wit,

Abraham Woolston &) Of the Term of the
Elizabeth Woolston,) Tazewell County Circuit
Court A.D. 186

" B. E. Prettyman)

And this day comes the defendant and moves the Court to grant him a new trial in the above cause for the following reasons, viz:

1. " Because the finding of the Court is contrary to the law and the facts.
 2. " Because the Court received improper testimony for the Plaintiffs in this cause.
 3. " Because the testimony in the case for the Plaintiffs was insufficient to warrant a finding for the Plaintiff.
 4. " Because the Defendants testimony showed that the Plaintiffs ought not to recover
- Prettyman
for Deft

And the Court overruled the motion for a

new trial and rendered Judgment for the
Plaintiffs, to all of which the Defendant then
and there, excepted and prayed that this his Bill
of Exceptions be signed and sealed which is done.
James Harriatt (seal)

Be it remembered that on the 20th
day of October a Bond was filed in said
Cause in the words and figures following,
to wit:

" Know all men by these presents, that we
Benjamin B. Puttyman as principal and
" Samuel P. Bailey as security are held and
" firmly bound unto Abraham Woolston and
" Elizabeth Woolston in the penal sum of One
" Thousand Dollars good and lawful money
" of the United States and well and truly to
" pay which we do hereby jointly and severally
" bind ourselves, our heirs, executors and administrators
" jointly, severally and firmly by these presents.

" Signed with our hands and sealed with
" our seals at Pekin this 20th day of October A.D. 1863.

" Now the condition of the foregoing obligation
" is such that whereas the said Abraham Woolston
" and Elizabeth Woolston recovered a Judgment in
" the Circuit Court of Tazewell County Illinois
" at the September Term thereof A.D. 1863, against
" the above bounden Benjamin B. Puttyman for the

28
sum of \$425. dollars and costs of suit, from
which the said B. E. Prettyman has waived
an appeal to the Supreme Court of the State
of Illinois which appeal the said Circuit Court
hath granted on condition that he the said
Benjamin E. Prettyman, should enter into
bond with good and sufficient security, before
the Clerk of the said Circuit Court in thirty
days from the date of the rendition of said
Judgment in the penal sum of One thousand
Dollars, conditioned that he the said B. E.
Prettyman should prosecute his said appeal to
effect, or failing therein should pay unto the
said Woolstons the said sum of \$425. dollars
and all costs, interest and damages arising
from said appeal, otherwise to be of full force and
virtue. Now therefore the condition of this obligation
is such, that if the said Benjamin E. Prettyman
shall prosecute his said appeal to effect, or failing
therein pay the aforesaid sum of \$425. dollars in
said Judgment named and all interest, costs and
damages arising thereon, then this obligation to
be void, otherwise to remain in full force and virtue.

B. E. Prettyman (seal)
Saml P. Bailey (seal)

Taken and approved by me
this 25th day of October A.D. 1863.
Geo H. Harlow Clerk &c

State of Illinois }
Tazewell County } ss.

I, George H. Harlow Clerk
of the Circuit Court within and for said County
do hereby certify that the foregoing 54 pages
contain a full true and complete transcript
of the Record of Proceedings had in the cause
therein named as fully as the same appears
of record in my office.

Witness my hand and the seal
of said Circuit Court hereto
affixed at Office in Pekin this
4th day of November A.D. 1863.
Geo H. Harlow, Clerk.
per A. P. Griswold deputy



And the said Appellants Robert
Came and say that there is in the foregoing
Record and Proceedings Manifest Error in this
viz:

- 1 The Court Erred in overruling Defendants
Demurrer to Plaintiffs 2^d Replication to Defendants
3^d Plea
- 2^d The Court Erred in rendering judgment
which the 7th Plea of Defendants by which
above Pleas should remain uncontested & undis-
puted.
- 3^d The Court Erred in suffering the Deed
from Small to Defendant to be read in evidence
- 4th The Court Erred in overruling Defendants
Motion for a Mistrial.
- 5th The Court Erred in rendering judgment
for the Plaintiffs in said Cause, against
the Defendants
- 6th The Court Erred in not rendering judgment
upon the issues & evidence in favor of
Defendant and dismissing the Cause

And for these and other Errors
Manifest in the face of the Record said
Defendant, now Appellant pray that

The judgment rendered for said My la in
all things reversed and the suit ~~against~~
him dismissed. and for such further order as
the law & facts for said custom in the Premises

Right may

Prove.

And the said appellants come and
say that in the record and proceedings
aforesaid and in the rendition of the
judgment aforesaid there is no error
wherefore they pray the judgment
may in all things be affirmed

E. W. Small
att'y for appellants

205 34
L. I. Putnam

E. H. A. Watson

Recd
on Appeal

Filed April 24. 1864
L. Leland
Clerk

Filed by appellant