

No. 14648

Supreme Court of Illinois

Bayliss

vs.

Bayliss

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 68

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

1864

State of Illinois
J^r Davie County
Fourteenth Judicial Circuit



Phase in the Circuit
Court began & held
within & for the County of J^r Davie aforesaid
on the second Monday in the month of March
A.D. 1863 before the Hon Benj R. Sheldon sole
Judge of the said Fourteenth Judicial Circuit
of the State of Illinois &

R. W. Mc Clellan Prosecuting attorney, Pro Tem
W. R. Rowley Clerk

John C. Hawkins Sheriff

Elias Baylis

vs

Elias Baylis &
Wm Bennett



Ejectment

Be it remembered
That heretofore to wit
on the 21st day of October A.D. 1863 as yet of
the October Term A.D. 1863 of said J^r Davie
County Circuit Court in the record of the
proceedings thereof in the above entitled
Cause appears the following entry to wit

Elyza Baylis

vs

Elias Baylis and
William Bennett



Ejectment



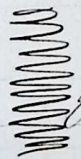
Now at this day
Comes the Plaintiff

by M. Meighy Esq her attorney and files
declaration and notice to gether with proof
of service to defendants and upon motion of
the plaintiffs attorney the defendants are
ruled to appear and plead within twenty
days

The declaration notice & proof of service
referred to in the above recited entries are
in the words & figures following to wit

State of Illinois

Co. Daviess County



In the Circuit Court
of said County of the
October Term A.D. 1862

Elyza Baylis plaintiff
in this suit complains of Elias Baylis and
William Bennett defendants in this suit in
a plea of trespass and ejectment
For that whereas the said plaintiff on the
first day of January in the year of our Lord
one thousand Eight hundred and sixty
one (1861), was entitled to the possession in
fee of the following described land and pr
mises situated lying and being in the County
of Daviess and State of Illinois to wit
The North half of Section No twenty three

(23) in Township number twenty eight (28) North of Range N^o one (1) East of the fourth Principal Meridian Containing Three hundred and twenty acres more or less and the said plaintiff possessed of the same on the day and year aforesaid and being so thereof possessed the said defendants afterwards to wit on the day and year aforesaid entered into the said land and premises and unlawfully withholds from said plaintiff possession thereof to the great damage of said plaintiff and against the peace & dignity of the People of the State of Illinois wherefor the said plaintiff says she is injured and has sustained damage to the amount of one hundred Dollars and therefore she sues &c

W. Weigley
Plaintiffs Attorney

To Elias Bayless and
William Bennett

Sirs you will please take notice that on the second day of the October Term A.D. 1862. of the Circuit Court of Jo Daviess County, Illinois to be held on the third Monday of October next in the City of Galena I will file in said Court the declaration in respectment a copy of which is herewith served upon you and upon filing the same shall move said Court for a rule upon you to appear and plead to

said declaration within twenty days thereafter and that if you neglect so to appear and plead a judgment by default will be entered against you and the plaintiff will receive possession of the premises
Galena Aug 4th 1862

Elijah Bayless
By W. Weizler, her Atty

State of Illinois
Jas Davis County

John C. Hawkins being first duly sworn deposes and says that he served the foregoing declaration & notice on the defendant Elias Bayless by delivering to him a true and correct copy on the 10th day of October A.D. 1862 and that he left a true and correct copy of said declaration & notice on the 16th day of Oct 1862 with the wife of said defendant Mrs. Bennett at his residence and explained to her the contents she being a white person of the family of said Bennett over ten years of age and said Bennett being absent

John C. Hawkins
Subscribed & sworn to before me
This 18th day of October A.D. 1862

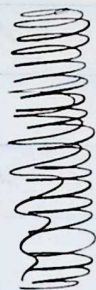
W. R. Rowley Clerk
By T. B. Bird Depty
Emdore Co.

Filed Oct 18th 1862

W. R. Rowley Clerk
By T. B. Bird Depty

And afterwards to wit on the 11th day of
March AD 1863 as yet of the March Term
AD 1863 of said Jo Davie County Circuit
Court in the record of the proceedings
thereof in the above entitled Cause appears
the following entry to wit

Eliza Bayless
vs
Elias Bayless &
William Bennett



Ejectment

Now at this day
Comes Elias Bayless one
of the Defendants in this Cause by M. J. Johnson
Esq. his attorney and files affidavit and mo-
tion for leave to file a plea in this Cause
which motion after argument by Counsel
is overruled by the Court to which ruling
of the Court the said Defendant by his attor-
ney then and there excepts And now comes
the Plaintiff by W. Weigley Esq. her attorney
and moves the Court for a default in this
Cause and the Defendants being three times
solemnly called came not nor any one
for them but made default It is thereupon
considered by the Court that the Plaintiff
have and recover of the Defendants the pos-
session of the premises described in her de-
claration herein to wit: The North half
of Section Twenty Three Township Twenty
eight N. Range one East and that a
writ of possession be awarded for that
purpose and it is further ordered that

The Defendant pay the costs of this proceeding and that execution issue against them therefor. And the defendant Elias Bayless by his attorney prays an appeal to the Supreme Court and files his bill of exceptions. wherein is certified by the Court and the defendant's appeal is granted conditioned that he enter into and file with the Clerk of this Court within thirty days from this date a good and sufficient appeal bond in the penal sum of one hundred and fifty dollars with Madison J. Johnson as security.

The affidavit & Motion referred to in the above recited entry are in the words and figures following to wit

Eliya Bayless		In the Circuit
vs		Court March Term
Elias Bayless et al		1863

Elias Bayless one of the depts in the above Cause and the landlord of Wm Bennett the other defendant in the above action of Ejectment After being duly sworn make oath and states that M. J. Johnson is and was his regular attorney in all his legal business and that when the Declaration in Ejectment was filed in this case and a rule on him to plead said Johnson was confined

as a Political prisoner in Fort Delaware
in the State of Delaware That expecting
said Johnson home before any thing could
be done in said Cause he went and sug-
gested Mr Shessler an attorney of this Court
to look after and attend to his business
during said Johnsons absence That said
Shessler was not expected to try any
Cause and was employed to do what
was necessary in continuing said Cause
That he had no knowledge what was
necessary in filing the papers under
any rule and supposed and believed that
Mr Shessler would do all that was nec-
essary in filing a plea and having the
Cause ready for a trial at this Term and
he had no knowledge but the same was
so prepared until he was informed on
Today that there was no plea and a default
was about to be taken that not filing
of a plea was not owing to any neglig-
ence on his part as he had employed
an atty of this Court to attend to the ma-
tter in Mr Johnsons absence and supposed
it was done properly But that said attor-
ney either overlooked the matter suppos-
ing it was not a case in which he was
employed to look after or forgot to plead
under the rule

He therefore asks leave to file
a plea in said Cause as no default has
been taken in the same And further

said not

Elias Bayless

Sworn and Subscribed
before me This 10. Mar 1863

W R Rowley Clerk
By J R Bird Depts

MMMMMM

Endorsed

Filed March 11th 1863

W R Rowley Clerk
By J R Bird Depts

[Faint, illegible text, possibly a reference to a previous entry or a note.]

The Bill of Exception referred to in the last
above recited entry is in the words & figures
following to-wit:

Eliya Bayless

vs

Elias Bayless et al

MMMMMM

Ejectment

In the Circuit
Court of the District
of Columbia

March Term 1863

Be it remembered on this the
ninth day of March A.D. 1863 being the first
day of the March Term of said Court before
The Hon Benj R Sheldon Judge of said
Court - My G Johnson an attorney of said
Court came unto open Court and as the

attorney of Elias Bayless moved the Court for leave to file a plea in said Cause the Plaintiff at the same time insisting upon a judgment by default deft moved the Court for time to be extended until day after tomorrow to file and affidavit in support of said motion which motion was allowed by the Court and now at this day the eleventh day of March yet of the March Term of said Court said motion was called on for a hearing before said Court and the said defendant by his attorney produced and read to the Court the following affidavit.

(Heretofore Copied)

which motion was overruled by the Court and leave refused to file a plea to which ruling and decision by the Court in refusing the leave asked the defendant then and there excepted And thereupon the plaintiff moved the Court for a default in said Cause which was granted by the Court and the Court thereupon entered the following Judgment without any evidence being introduced

(Heretofore Copied)

To which finding Judgment and order of said Court in refusing said motion to file a plea in entering a default and rendering a Judgment in said Cause the defendant then and there excepted and

prays This his Bill of Exception may be
signed & sealed in pursuance to law this
being all the evidence and proceedings
in said Cause the def^t Elias Bayless pray-
ed an appeal to the Supreme Court
which was granted by the Court and
according to Law

Endorsed. Filed March 11th 1863 *Benj R. Sheldon* *Clk*
By *W.R. Rowley* *Clk*
By *T.R. Bira* *Depy*

And afterwards to wit on the 25th day of
March AD 1863 There was filed in the
Clerks office of our said Circuit Court by
the plaintiff Attorney a procepi for
a writ of possession in accordance with
the Judgment hereto-fore entered by the
Court - which said procepi is in the
words & figures following to wit

Elias Bayless vs *Expectment - Judgment*
and writ of possession
awarded at March Term 1863

The Clerk of the Circuit
Court will issue instant writ of posses-
sion in the above entitled Cause

W. Weigley
Plaintiffs Atty.

Galena March 25 1863

Endorsed. Filed March 25th 1863 *W.R. Rowley* *Clk*
By *T.R. Bira* *Depy*

Upon the filing of which procepi There
issued out of the said Clerks Office a writ
of possession which is in the words and

and figures following to wit

State of Illinois ~~of~~ The People of the State
of Daviess County ~~of~~ of Illinois To the Sheriff
of said County Greeting

Whereas Eliza Bayless has lately,
in the of Daviess County Circuit Court
held in and for the County of of Daviess
and State of Illinois by the judgment
of said Court recovered against Elias -
Bayless and William Bennett the follow-
ing premises to wit the north one half of
Section Twenty Three (23, in Township Twenty
eight (28, North Range One East of the
fourth principal Meridian lying and
being in the County of of Daviess and State
of Illinois which said premises have been
and still are unjustly held from the
said Eliza Bayless by the said Elias Bay-
less and William Bennett whereby they are
convicted as to us appears of Record and
forasmuch as it is adjudged in the said
Court that the said Eliza Bayless have
execution upon said judgment against
the said Elias Bayless and William Bennett
according to the force form and effect of
said recovery Therefore we command you
that without delay you deliver to the said
Eliza Bayless possession of the premises
aforesaid so recovered with the appurtenances
and make return in what manner you

shall have executed the same
Witness William R Rowley Clerk
of the Circuit Court of Jo Daviess
County, Illinois at Galena this 25th
day of March A.D. 1863



Attest W R Rowley Clerk

By J R Bird Deputy

Upon which writ was duly returned into the said Circuit Clerk's
office, with the following return endorsed thereon to-wit:

Served this writ by removing the Defendant
Elias Bayless together with his effects from
the land described in this writ; Defendant
William Bennett not found on the premises
and delivering the possession of the land
and premises to one Wesley Jacobs as
the agent of the plaintiff Eliza Bayless
all of which was by me done on the 26th
day of March A.D. 1863

John C. Hawkins Sheriff

Endorsed:

Filed March 26th 1863

W R Rowley Clerk

By J R Bird Deputy

And afterwards to wit on the 1st day of
April there was filed in the Clerk Office of
said Jo Daviess County, ^{Circuit} Court ~~County~~ an
appeal bond in the above entitled cause, ^{which is in the words}
figures following to wit

Know all men by these presents that we
Elias Bayless and Madison Johnson
of the County of Jo Daviess and State of

Illinois are held and firmly bound unto
Eliza Bayliss in the penal sum of one
hundred and fifty dollars for the payment
of which well and truly to be made we
bind ourselves our heirs executors admin-
istrators and assigns firmly by these
presents Witness our hands and seals
this 28th day of March AD 1863

The Condition of the above obligation is
such that whereas The said Eliza Bayliss
has recovered in The Circuit Court of J.
Davies County, Illinois a judgment in
The Case of Eliza Bayliss vs Elias Bay-
liss & William Bennett for costs of suit
from which said judgment Elias Bay-
liss one of said defendants prays an
Appeal as well as from the judgment of
The Court in awarding possession of The
premises in controversy to said plaintiff
and The said Defendant having appeal-
ed to The Supreme Court of The State of
Illinois Now if The above bounden Elias
Bayliss shall well and truly prosecute
his said Appeal and pay whatever
judgment may be rendered by The Court
upon The trial or dismissal of said appeal
Then The above obligation to be void other-
wise to remain in full force and effect

Elias Bayliss (Seal)
Madison G. Johnson (Seal)

Taken and Acknowledged
before me this 1st day of
April AD 1863

W. R. Rowley Clerk
By J. R. Bird Depty

Endorsed.

Filed April 1st 1863

W. R. Rowley Clerk
By J. R. Bird Depty

State of Illinois  I, J. R. Rowley
Jr. Daviess County  Clerk of the Circuit
Court in and for said
County hereby certify the foregoing to be a
full true and correct transcript of the
Records and proceedings of the said Circuit
Court together with the Bill of Exceptions
as certified to by the Court in the above en-
titled cause of Eliza Bayliss vs Elias
Bayliss et al as the same appears of
record in my office In testimony whereof
I have herunto set my name and affix-
ed the seal of said Court at my office in
Galena this 11th day of April AD 1863



Attest W. R. Rowley Clerk
By John H. Haines Jr. Depty.

Clerks Fees:	Transcripts	3.50
Court. Seal. & Stamp		40
		<u>\$3.90</u>

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Eliza Bayless
vs
Elias Bayless
et al

Transcript

Motion to quash
writ of Habeas Corpus

Filed Apl. 24. 1863.
Leland
Clk.