

14170


No. _____

Supreme Court of Illinois

Miller

vs.

Pool

71641  7

No 32

Miller

Pool

Wm. W. Hoffmann

1855

For Bill made
out on Book

14170

Discontinued by request
of P. W. Coffey - Miller,

STATE OF ILLINOIS
SUPREME COURT,

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Jefferson* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Jefferson* county, before the Judge thereof, between *August M. Grant, Agent for Grovel Pool*

Plaintiff, and *Alexander Miller*

Defendant it is said manifest error hath intervened, to the injury of the aforesaid *Defendant*

as we are informed by *his*

plaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *29* *Monday of November*
next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. WALTER B. SCATES Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

25th day of *October*

in the year of Our Lord One Thousand Eight Hundred

and Fifty-five

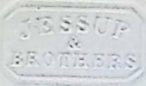
Walter B. Scates
Clerk Supreme Court.

Miller
by
Pool

Writ of error

Filed 25. Oct. 1855
A. Johnston *clerk*





STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Gallatin* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Sufferson* County, before the judge thereof, between *August M Grant, Agent for Oval Pool, Plaintiff,* and *Alexander Miller*

defendant, it is said that manifest error hath intervened to the injury of said *Alexander Miller* as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Oval Pool*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Oval Pool* notice, together with this writ.

Walter B Steates

Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *25th* day *October* in the year of our Lord, one thousand eight hundred and fifty-*five*

Joseph Johnston
Clerk of Supreme Court.



Executed the within writ by Reading
 the same to Oval Pool in the presence
 of John Doe & Richard Roe this 27th day
 October 1855
 James Davenport Sheriff
 Gal, Co, Ill

Abraham Miller

by

Oval Pool

Sheriff's fees

Serving 50

Returning 10

Postage 63

Jas Davenport
 Sheriff

14170

State of Illinois }
Jefferson County } Proceedings had in the

Circuit Court, within and for the County of
Jefferson and State of Illinois, in a certain cause
heretofore pending in said Court, wherein
Angus M. Grant agent of Orville Pool was
plaintiff and Alexander Miller was defendant
at the May Term A.D. 1855- of said Court

Be it remembered that on the 16th day
of February, A.D. 1855; John H. Watson, an acting
Justice of the Peace in and for the said County of
Jefferson, and State of Illinois, filed in the office
of the Clerk of the Circuit Court of said County,
a record of proceedings had before him as such
Justice of the Peace, and an appeal bond, which
record and appeal bond were in words and fig-
ures following, to-wit:

Angus M. Grant }
Agent for Orville Pool } Forceful Entry
As } & Detainer -
Alexander Miller }

February 5th, 1855; Summons
issued ~~on~~ complaint as filed, to Deft. Sheriff
Wm. Summers, returnable on the 12th inst. at one
o'clock, P. M. - Jury warrant same time to save
Copy of complaint: " State of Illinois, Jefferson
County, Orville Pool complains against Alexander
Miller, by A. M. Grant, his agent, who on his
oath says that he the said Orville Pool is the
owner of the following described premises, sit-
uate in said County (to-wit:) the North East
quarter of section nine, Town two South, Range
three East. That on the 15th day of January 1855;
and for a long time previous thereto, he the
said Orville Pool was in possession of the same

(Justices Transcripts)

and that on that day or about that time, the said Oval Pool still retaining the possession thereof, up to the time of the unlawful entry of the said Alexander Miller, he the said Miller did unlawfully make an entry upon said premises and possession by force that he the said Miller unlawfully holds said possession against said Complainant, and that he the said Complainant has demanded prior to this date, in writing, the possession of said premises, and that said Miller refuses to deliver up the same to him, the said Complainant or his agent." Feb 12th, 1853; summons returned duly served by reading to the defendant - Jury warrant returned with the following named persons as jurors, (to wit;) James Heails, Henry Heitselaw, Elias Smith, S. Williams, A. K. Ashby, Roland Wingo; John Trout, M. D. Bruce, Bennett Short, Wm. Roddy, Wm. Smith and Alfred Swift - The parties came and were ready for trial, and after hearing the testimony, and having heard the case fully investigated by counsel, on both sides, the Jury upon their retirement, returned into Court the following verdict: "We the Jury find the defendant not guilty - Whereupon judgment enters against the plaintiff in this case for the costs in this suit - Given under my hand and seal on the date last above written. John H. Watson, J. P. fees before justice \$15.75 - State of Illinois, Jefferson County, I hereby certify that the foregoing is a true copy of the proceedings in this case, as found of record on my docket. Given under my hand and seal, Feb.

A.D.
May 14th 1853-

J. H. Watson J.P.

And which said appeal bond is in words and figures as follows, to wit:-

Appeal Bond

"Know all men by these presents that we Angus Mc. Grant, for Oval Pool as principal, and John N. Johnson as his security are held and firmly bound unto Alexander Miller, in the peral sum of thirty-five dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, and administrators, jointly, severally and firmly by these presents, witness our hands and seals, this 13th day of February, A.D. 1853-

The condition of the above obligation is such, that whereas the said Alexander Miller did, on the 12th day of February, A.D. 1853- recover a judgment before John H. Watson a Justice of the Peace for the County of Jefferson against the above bound Angus Mc. Grant, as agent aforesaid, for the sum of fifteen dollars and 75-cents, from which judgment the said Grant, as such agent, has taken an appeal, to the Circuit Court for the County of Jefferson aforesaid, and State of Illinois:- Now, if the said Grant, as such agent, shall prosecute his appeal with effect, and shall pay whatever judgment shall be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void- otherwise, to remain in full force and effect.

Taken and approved by me } A. Mc. Grant.
at my office Feb. 13th A.D. 1853. } Agent for Oval Pool. (Seal)
J. H. Watson J.P. } John N. Johnson"

And afterwards, to wit. on the 27th day of March, A.D. 1853; summons issued out of the Circuit Court of Jefferson County State of Illinois, to the said Alexander Miller, in words and figures following, to wit:

(Summons in Circuit Court)
"State of Illinois, Jefferson County, S. J.-
The people of the State of Illinois to the Sheriff of said County: Greeting. We Command you to summon Alexander Miller, if to be found in your County, to appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden in the Court House in Mt. Vernon, on the first Monday in the month of May, next, to answer Argus M. Grant, agent for Dr. Pool, in an appeal from the docket of John H. Watson Esq, and hereof make due return to our said Court as the law directs. Witness John S. Bagan, Clerk of our said Court, and the Judicial Seal thereof at Mt. Vernon, this 27th day of March, A.D. 1853. John S. Bagan Clerk

(Return)
Upon the reverse of which summons is the following return: to wit: "Served the within summons by reading, April 21st. 1853. John R. Allen, Sheriff S. J."

And afterwards, to wit: on the 10th day of May, 1853; at the May term of the Jefferson Circuit Court, the following proceedings were had in said cause, before the Hon. Downing Baugh, Judge, and duly entered of record, to wit:

Angus M. Grant,
 Agent for Owl Pool,
 vs.
 Alexander Miller } Appeal

Order of Court

On this day came the parties in person, and by S. G. Hicks and J. N. Hoopes, solicitors for the plaintiff, and the defendant by R. S. Nelson and R. F. Wingate his attorneys, and R. S. Nelson, attorney for defendant, enters a motion to dismiss - Proofs and arguments having been adduced and heard, it is considered by the Court that said motion by of depts. counsel be overruled; and this cause being ripe for a hearing, let a Jury come: - thereupon came the jurors of the Jury, to wit: Patrick Ross, Peter Bean, Casper Harvey, Leaton Allen, John S. Lucas, John G. Tylor, William D. Daily, William A. Robinson, Jesse H. Smith, Isaac Pearson, Henry P. Moore and James M. Walter, who being elected tried, and sworn, well and truly to try the issue joined, retired to consider of their verdict, and returned into open Court the following as their finding, to wit: "We the Jury, find the defendant Guiltily" And thereupon the defendant, by his counsel, enters a motion for a new trial - The Court having heard the arguments of counsel and having fully considered the matter, overrules said motion of defendants counsel - It is therefore considered by the Court, that the plaintiff have restitution of the premises, and judgment is rendered accordingly - It is further considered by the Court, that the said plaintiff, recover of and from the said defendant, his execution therefor, &c. - to which said Judgment and order of the Court, the defendant,

by his counsel, except—

And afterwards, to wit, on the 14th day of May, A.D. 1853; the said defendant filed in the office of the Circuit Court of Jefferson County, aforesaid, his bill of exceptions, in the words and figures following, to wit:

"Orvil Pool
vs.
Alexander Miller } Forsher Entry & Detainer—

(Bill of Exceptions)
John Bagwell, a witness on behalf of the plaintiff, being called and examined, deposed that he owned an improvement on Jefferson County, on Congress land, some three years ago, and sold it to one Dotson & Humphrey—they bought it for Miller, defendant—Miller was to pay for it—was not on the note, but Miller got possession of the place—The note was for 150-bushels of corn, and Miller paid 100 bushels of corn on said note—and there was still a balance of some 60 bushels due on it—Dotson & Humphrey afterwards gave up the place to Bagwell, and he (Bagwell) gave up the said note to the said Dotson & Humphrey, and agreed to give Miller \$25 in case he could enter the land, and went to Showeetown to see about it, but when he got there, found it entered by Orvil Pool—Gave back the note some time about the last of September, or first of October—Miller was satisfied with the sale of said improvement to witness—and said he was going to move away—Witness had a conversation with him on Saturday, and Miller

4/

agreed to let witness know whether he was going away or would remain or not between that time and Monday morning - Witness sold improvement to Pool after Pool entered it, and Grant paid him \$70 or thereabout for the improvement for Pool - Miller did not send him word, but left on Sunday, and went away - C.P. - Witness did offer to pay Miller for pre-empting the place, and made contract with Dotson and Humphrey, and Miller said he was satisfied, but was not present when contract was made with Dotson - Replied - Grant paid the money & said it was Pool's money, or for Pool, he was paying it - (objected to objection, overruled and evidence allowed to go to the jury) Witness took possession of the place when Miller went away, and put up fences and shut doors. The place was left by Miller, and he (witness) fixed up fences. The place was valued by Mr. Grant and Thomas M. Casey at \$70 or \$75, and witness was paid by Grant, who was agent for Pool - Pool & myself chose Grant and Casey to value the improvement - Grant paid witness the money, and Pool afterwards sent the money by witness to Grant - The defendant by his counsel objected to the introduction of said Bagwell, on the ground, of interest, before he was sworn, in chief, and the plaintiff to qualify said Bagwell to testify, offered a release in writing not under seal which was objected to by the defendant, and ruled out by the Court, and said Bagwell was then examined as to interest, when he swore that he had not agreed to indemnify Pool in case he suffered any loss, or was unable to get possession of the place - but

agreed to put Pool into possession when he sold the improvement to him - The defendant objected to the introduction of said Bagwell as a witness on the ground of interest, but the objection was overruled by the Court - The defendant also objected to any portion of said Bagwell's testimony going to the Jury - but the Court also overruled all his objections and permitted all the foregoing evidence to go to the Jury as evidence in this cause - to which ruling of the Court the defendant excepted - Plaintiff then introduced Certificate of Register of land office to prove entry of land by Pool, which was stated by plffs counsel to be entered under "bit-law" or at 12 1/2 cents an acre - Handwriting of Register proved by J. B. Tanner, Sept. then introduced Certificate of Register suspending Claim - and objected to the introduction of certificate of entry evidence - Sept. also proved Certificate of suspension of Claim by J. B. Tanner (here insert both certificates) but the objection was overruled by the Court, and certificates of entry allowed to go to the jury as evidence - which ruling of the Court was excepted to by the defendant -

James Bagwell, another witness on behalf of plaintiff was sworn and testified that he was at Miller's on the morning that Miller left - Miller said he was going to the Bottom to work, and intended to return and make a crop in Romine Prairie, heard Miller say before that, that he had given Bagwell back the place which was all the evidence adduced by the plff. in the cause -

Defendant introduced Certificate of suspension of entry, of land in complaint described and

5/

further proved by T. B. Tamm the Handwriting of the Register
(here insert certificate of suspension of entry) Defendant
then introduced Chastain, a witness who stated that
defendant left his plow, some stock corn and hogs
on the land in dispute when he went away up to the
Bottom to Chop. That witness moved him back from
the Bottom to the place in dispute - that def^d lived
in a little cabin with a dirt floor like other wood chop-
pers in the Bottom - Defendant then introduced one Watson
as a witness in his behalf, who proved that he and one
Humphrey bot the place in dispute, of Bagwell for
Miller, and gave their notes to Bagwell for it -
That Miller paid one hundred dollars in corn and
they paid five dollars besides - That there was fifty
dollars behind, or fifty barrels of corn, for it was a
corn note, and that Bagwell offered to take the face
of the note noting corn at \$1 per barrel, or take back
the place, but said he could claim the value of the
corn at \$1 per bushel - That Miller consented to
giving up the place to Bagwell to relieve them, and
he got back the note of him and Humphrey though
Humphrey was not present - That Miller never got anything
more than that he lived on the place about 3 years
but last year Miller made nothing on account of
the failure of the crops - There was some 5 or 6 acres
cleared and fenced by Miller, and such improvement
was worth \$25 - at least - That when Miller left, witness
was present, and heard him say when he was moving
off that he was coming back to make a crop there -
The arrangement between him & Bagwell was made after
Pool entered the land, and said Miller was then in pos-
-session of the place, and was living on it on the 5th of
of August, 1854 - That Bagwell said that he might never
get anything from Pool, and had to rely on his honor
alone, and that he (Bagwell) had agreed to depend this suit

against Miller - Deft admits that the rent of the improvement of the same had been rented was one-third part of the crops - and that the average corn rent was one barrel and a half per acre, and that there was about 12 acres in cultivation, and that corn was worth \$1 per barrel in '52 & '53 - Which was all the evidence in the case on the part of plaintiff and defendant, whereupon the Jury brought into Court, after retiring to consider of their verdict, the following verdict (here insert the verdict of the Jury) and the defendant thereupon moved for a new trial, and in onset of judgment, for the following reasons (here insert reasons) which motion was overruled by the court, and rendered judgment (here insert Judgment of Court) accordingly - to which judgment and ruling of the court the defendant by his counsel excepted and prays that this his bill of exceptions be signed, sealed and made a part of the record which is done accordingly.

J. Baugh Seal

And the certificate of entry of the Register of the Land ~~at Shannectaux~~ Office is in words and figures as follows, to wit:

The reasons for asking a new trial and for assenting Judgment referred to in the foregoing bill of exceptions are the following: to wit:

- 1st The deft moves for a new trial because the verdict is contrary to law
- 2^d Because the verdict is contrary to evidence
- 3^d Because the verdict is contrary to law and evidence
- 4th Because the court instructed the jury wrong on behalf of plff, by giving 1st and 2^d instruction which was excepted to by defendant at the time - Reasons for assenting judgment.
 - 1st Because the affidavit and complaint

(Certificate of Entry)

on file in this cause do not show any ground
in law to authorize Orval Pool to recover a judgment
against the defendant in this cause.

2^d Because the notice, affidavit and com-
plaint in the above cause are given made and
filed by Angus M. Grant, whereas the
judgment ^{rendered in said case} is in favor of Orval Pool

3^d The affidavit and complaint are made
by Angus M. Grant as agent for Orval Pool,
and ^{also} by Orval Pool, by A.M. Grant his agent.

4th That this suit was brought in the name of
the agent for the benefit of the principal, and
on his behalf, and not by principal by his
said agent Grant

Wherefore for the reasons aforesaid the
defendant ~~prays~~ ^{prays} that a new trial be granted
herein, and that the judgment rendered herein
be arrested. R. S. Mellow Atty for deft

The court instructed the Jury for plaintiff as
follows as appears by the instructions now on
file in my office. To wit:

1st If the Jury believe from the evidence that
Orval Pool was the owner of the premises, and
that Mulla forcibly took and withheld the same
from Pool, then they must find for plaintiff.
Given -

2^d That it does not require that Mulla should
~~have been~~ shown to have used actual ~~force~~
positive force in getting possession of said
lands and premises - If Pool was the owner of
the same, any entry without the owners permission
is forcible in the legal sense of the term, and if Mulla
so entered without Pool's authority and withheld
the possession from Pool, he (Mulla) is guilty of

forcible entry and detainer and the Jury should find accordingly. Given

The Court instructed the Jury on behalf of the Defendant as follows, as appears by instructions on file in my office:

1st That if the Jury believe from the evidence that Miller, ~~that~~ although he consented to the arrangement ~~with~~ between Bogwell and Eston, only left the place with the intention of returning to make a crop, and had not in fact ever put Bogwell in possession, he, Miller, was not guilty of an illegal entry by force in again returning and living on the place Given

2^d That before Pool can recover in this action he must prove that he was in the actual possession of the land described in his complaint, and that Miller at the time in the complaint mentioned entered upon the possession illegally and with force, and if the Jury believe from the evidence that Miller was in the actual possession of the place before Pool entered the same, and that his possession still continued, although he went off to work a couple of months, Pool cannot recover against him for an ~~illegal~~ ^{unlawful} entry with force Given

3^d That Pool must prove, before they find the defendant guilty that the defendant entered upon the lands described in Complaint with force and the merely detaining the possession from Pool will not ~~will not~~ be sufficient grounds to sustain the action Given

4th That if the Jury believe that the witness John Bogwell is interested in the event of this suit,

54
The jury will disregard his testimony - Given
5th The court is asked to instruct the jury
for the defendant, that altho' they may believe
from the evidence, that the improvement, at
the time of the commencement of this suit
belonged to the plaintiff, such fact does not
give the plaintiff a right of recovery in this
case - he must prove that the tract of land
on which the improvement is situated belonged to
him at the commencement of this suit, and that
if the jury believe from the evidence that the
entry of said land under which the plaintiff
claims to said tract of land has been sus-
pended by the proper authorities, the plaintiff
would have no right to put the defendant out
of the possession of said tract of land during such
suspension Given

6th That the Registers certificate is evidence
of the suspension of the plff's entry of said
tract of land, proper to be considered by the
jury Given

And the certificate of suspension of entry of the Register of the Land Office, ^{at Shawneetown, on file in my office} is in words and figures as follows to wit:

(Certificate of Suspension) "I John M. Cunningham Register of the Land office at Shawneetown Illinois, do certify that there is on file in my office an application by one Alexander Meilla, to cancel an entry made by ~~one~~ Orol Pool, on the North East quarter of section No nine, Township No 2, S. Range three east, and and that the entry is suspended until an investigation can be had - Given under my hand at office ~~at~~ in Shawneetown, this the 19th day of April, 1855 - John M. Cunningham, Register"

The notice filed ^{in my office} May 11th 1855, is in words and figures following, to wit =

(Demand of Possession) "State of Illinois, Jefferson County - January 23rd 1855 - Mr Alexander Miller, Sir: You are hereby informed that I demand of you the possession of the premises occupied by you, situated in said County and designated and known as the North East quarter of section nine Town two south of Range three east of the Third Meridian, - The bearer hereof is authorized to receive said possession for me and in my name - Orol Pool, by A. M. Grant, legally authorized agent -" On the reverse of which notice is the following return: to wit: "Served by copying and leaving a copy of the within notice with the within named Alexander Miller, Feby 1st 1855 - Wm Summers."

The Complaint of Angus M. Grant, agent for Orol Pool, filed in my office, Feb. 16th 1855 - and now on file is in words and figures following to wit:

"State of Illinois Jefferson County S. S. - Orol Pool

(Complaint of O. Pool)
complains against Alexander Miller by A. M. Grant, his agent, who, on his oath, says that he, the said Orval Pool is the owner of the following described premises, situate in said county, to wit: the north east quarter of section nine, Township two south, range three east - that on the fifteenth day of January, 1853, and for a long time previous thereto, the said Orval Pool was in possession of the same, and that on that day or about that time - he the said Orval Pool still retaining the said possession up to the time of the unlawful entry of the said Alexander Miller - he the said Miller did unlawfully make an entry upon said possession and premises by force, - That he the said Miller unlawfully holds said premises against his said complainant, and that he the said complainant has demanded, prior to this date, in writing, the possession of said premises, and that the said Miller refuses to deliver up the same to him the said complainant, or his agent - A. M. Grant, agent for Orval Pool - Subscribed and sworn to before me, this 5th February, 1853 - J. W. Watson - J. P."

The summons, issued by John W. Watson, J. P. as now appears on file in my office is in word and figures as follows, to wit:

(Summons)
"State of Illinois - Jefferson County: The people of the State of Illinois to the Sheriff of said County - Greeting: Whereas, Angus M. Grant, agent for Orval Pool has this day complained under his oath against Alexander Miller, which said complaint is in the words and figures following to wit: "State of Illinois, Jefferson County - Orval Pool, Complainant -

7

plaints against Alexander Miller, by Angus
Mc. Grant his agent who on his oath & oath that
he the said Oval Pool is the owner of the fol-
lowing described premises, situate in said County
to-wit: the north east quarter section nine Town
2 south. Range 3 east - That on the 15th day
of January, 1853, - and for a long time previous
that he the said Oval Pool was in possession
of the same, and that on that day or about
that time, - he the said Oval Pool still re-
taining the said possession up to the time
of the unlawful entry of the said Alexander
Miller, - he the said Miller did unlawfully make
an entry upon said possession and premises
by force - That he the said Miller ^{still} unlawfully
holds said premises, against the complainant
and that he the said Complainant has de-
manded, prior to this date, in writing, the pos-
session of said premises, and that said Miller
refuses to deliver up the same to him the said
complainant or his agent - You are therefore
hereby commanded to summon the said Alex-
ander Miller, so complained of, to appear
before me at my office in Mt. Vernon, on the
12th day of February 1853, at 10 o'clock A.M.
to answer unto the said Angus Mc Grant agent
as aforesaid in an action for forcible entry &
detainer and hereof make due service and
return as the law directs - Given under my
hand and seal, this 5th day of February, 1853 -
J. H. Watson J.P. "

(Returns)

On the back of which summons is this return
to-wit: - "Filed 6th 1853 - Served by reading to the defend-
ant - Wm. Summers Deft Shuff, J.C. -"

State of Illinois }
Jefferson County } I, John S. Bogaw, Clerk of the
Circuit Court in and for said County of Jefferson
do certify the foregoing to be a true and correct
record of the proceedings had in the above
entitled cause as appears by the papers and
records now on file in my office.

Given under my hand and
Seal of Office, at Mt Vernon,
this 1st day of October, A.D. 1855.

John S. Bogaw Clerk

32
Appeared for me
Jefferson
Circuit Court

Alexander Miller
vs
David Ford

Plenty fees for record
\$4.95

Witness my hand
at Jefferson Mo
this 25th Oct 1855.