

No. 12690

Supreme Court of Illinois

Rankin

vs.

crow

152

17690

1858

X
Preserved

David Rankin } State of Illinois
vs } 3^d Grand Juror
John Crow } In the Supreme Court
April Term A.D. 1858

And now comes the said plain'tiff in
error by Mead & Williamson his Attornies
and says that in the record and proceedings
aforesaid and in the judgment aforesaid
manifest error hath intervened in that

1st Said Verdict & judgment are
contrary to the evidence

2. They are contrary to law

3 The verdict is contrary to the instructions
of the Court

4 The Court refused to give proper in-
structions to the jury on the part of
the plain'tiff.

5. The Court erroneously modified the instructions
asked for by plain'tiff

6. The Court gave improper instructions to the jury on the part of the defendant

7. The Court erred in refusing proper & competent testimony offered by the plaintiff and in admitting illegal and improper testimony on the part of the defendant

8. The Court erred in overruling the motion for a New Trial — for which rather manifest errors said plaintiff prays that said judgment may be reversed and for naught held.

By Wend & Williamson
his Attorneys

And now comes the defendant in error and says that in the said record and proceedings error

with not intervening &c &c &c &c
- he prays that the said judgment be affirmed. Davis & Allison
attys for Def^t

State of Illinois }
Henderson County }

Now before the Honorable John
S. Thompson Judge of the Tenth Judicial Circuit
of the State of Illinois, at a Court begun and held at
the Court house in Oglesville, County and State aforesaid
said on the third Monday of December AD 1857
it being on the 21st day of said month in the Year
of our Lord one thousand eight hundred and
fifty seven

Present

Hon John S. Thompson Judge
James H. Stewart State attorney
Hugh S. Thompson Clerk
Wilson M. Graham Sheriff

David Rankin }

vs
John Crow }

Trespass

Be it remembered that hereupon Court, on the
day of AD 1857 the plaintiff by his attorney
and filed his Declaration, in the words and figures
following to wit:

David Rankin } Circuit Court in & for the County
vs } of Henderson And State of Illinois
John Crow } April Term thereof AD 1857.

State of Illinois }
Henderson County }

David Rankin the plaintiff in
this cause complains of John Crow the defendant herein
of a plea of Trespass for that the said defendant

on the first day of November A.D. 1856 and at divers other days and times between that day and the commencement of this suit at the County of Henderson and State of Illinois with force and arms broke and entered the close of the said plaintiff situated and being in said County and State, and described as follows. To-wit: The West half of the South West quarter of Section Ten (10) in Township Nine (9) North of the base line and Range five (5) West of the fourth principal meridian, and then and there cut down and destroyed the trees, To-wit: One hundred Oak trees, One hundred Ash trees, one hundred Elm trees, One hundred Walnut trees, One hundred Hickory trees, of great value. To-wit: of the value of two hundred dollars, and the lumber and wood thereof amounting to a great quantity, To-wit: One hundred cords of Wood & lumber of the said plaintiff of great value, To-wit: of the value of one hundred dollars and took and carried away and converted and disposed of to his own use and other injuries to the said plaintiff then and there did against the peace, and to the damage of the said plaintiff three hundred dollars. And for that the said defendant on the first of November A.D. 1856. And on divers other days between that term and the commencement of this suit with force and arms at the County of Henderson and State of Illinois cut down and destroyed the trees, To-wit: One hundred Oak trees, One hundred Ash trees, one hundred Elm trees, One hundred Walnut trees, One hundred Hickory trees, One hundred Locust trees of the said

of great value, to wit: of the value of two hundred
dollars then growing and being in and upon the
certain lands then situated and took and
carried away the same, and converted and
disposed of the same, to his own use and other injuries
to the plaintiff, then and there did against the
Peace and ~~obedience~~ to the laws of the plaintiff
Three hundred dollars and therefore he sues &c.

By Mead & Williamson his attorney

This day came the defendant by his attorney and filed
his plea which read in the words and figures following
to wit: Dec 22, 1857.

State of Illinois } April Term AD 1857 of the
County of Henderson } Circuit Court of said County

David Rankin }
vs }
John Crow } Tresspass
And said John Crow comes
and defends &c. and says that he is not guilty
in manner and form as said David Rankin
hath complained against him, and of this he
puts himself upon the Country — And the
Plaintiff doth the like. By W. McHarris his attorney
Mead & Williamson

Said John Crow for
further plea in this behalf says that the closes
in said plaintiffs Declaration mentioned in
which &c was not at said time when &c was
nor at any time from thence, hitherto hath been nor
is the closes of said plaintiff in manner and form
as said plaintiff hath above in that behalf all
eged, and of this the said defendant puts himself

upon the County &c

By, Le M Harris, his attorney
And the plaintiff doth the like
Wead all claim for Off'

Be it remembered that on the trial of the above
case in the Circuit in and for said County
of Henderson and State of Illinois, wherein
David Rankin was Plaintiff and John Brown
was defendant at the term of said Court held
at the Court House in the Town of Oganshwa
December Special Term thereof AD 1857, the
Plaintiff produced the following testimony
to support his issues on his part, to wit: A
Patent from the United States of America to
John Gibson dated October 18th 1846, for the
West half of the South West quarter of section ten
in Township Nine North of the base line, Range
five West of the fourth principal meridian
of which the following is a copy to wit:

The United States of America. To all to whom
these presents shall come Greeting, Whereas
John Gibson of Warren County Illinois, has
deposited in the General Land office of the
United States a certificate of the Register of the
Register of the Land office at Quincy, whereby
it appears that full payment has been made
by the said John Gibson, according to the
acts of Congress provisions of the acts of Congress
of the 24th of April 1820. Entitled an act for
making further provision for the sale of the
Public Lands for the West half of the South
West quarter of section Ten in Township

Acres North, of Range five West in the
District of Lands subject to sale at Quincy
Illinois containing Fifty acres. According
to the Official Plat, of the Survey of the said Lands
returned to the General Land Office by the
Surveyor General which said tract has been
purchased by the said John Gibson. Now
Know Ye, that the United States of America
in consideration of the premises and in conformity
with the several acts of Congress, in such case
made and provided, Have Given and
Granted and by these presents do give & Grant
unto the said John Gibson and to his heirs the
said tract above described. To Have and
to hold the same together with all the rights
privileges, immunities and appurtenances of
whatsoever Nature thereunto belonging unto the
said John Gibson and to his heirs and assigns
forever. In Testimony whereof I Martin
Van Buren President of the United States of
America have caused these letters to be made
Patent. And the Seal of the General Land Office
hereunto affixed. Given under my hand at
the City of Washington the tenth day of October
in the Year of our Lord one thousand eight
hundred and forty, and of the Independence
of the United States the sixty fifth, by the
President Martin Van Buren. By Martin
Van Buren Secy. Jos. S. Wilson Acting Recorder
of the General Land Office - ad. interm.

Also a Deed from John Gibson
to David Rankin which reads as follows
to wit:

Know all men by these presents that John
Gibson and Ann Gibson of the County of Henderson

and State of Illinois parties of the first part for
 and in consideration of the sum of five hundred
 dollars to them in hand paid by David Rankin
 of the County and State aforesaid party of the
 second part, the receipt whereof we do hereby
 acknowledge have remised released and
 forgiven quit claimed and by this presents do
 remise, release and forgive quit claim unto
 the said party of the second part his heirs and
 assigns forever, all that certain piece or parcel
 of land known and described as the West
 half of the South West quarter of Section Ten
 (10) of Township N. 9, North. Range N. five (5)
 West. containing eighty acres be the same
 more or less. To Have and to hold the above
 granted premises unto the said party of the
 second part and to his heirs and assigns
 forever, together with all the privileges and
 appurtenances thereto belonging, or in any
 wise appertaining to the only proper use
 benefit and behoof of the said party of the
 second part and to his heirs and assigns
 forever. In Witness whereof the said parties
 of the first part have hereunto set their hands
 and seals this second day of January
 AD 1856.

Witness
 J. S. Pollock

John Gibson (Sext)
 Amos Gibson (Tally)
 mark

State of Illinois ss.
 Henderson County ss. Be it Remembered that on
 This second day of January
 AD 1856 before me the undersigned Clerk of the
 Circuit Court within and for said County personally

Came John Gibson and Ann his wife to me
Personally known to be the identical persons described
in and who executed within and foregoing deed of
conveyance and acknowledged that they ^{had} executed
the same freely for the uses and purposes therein mention-
ed and the said Ann Gibson being by me made
acquainted with the contents of said deed and
examined separate and apart from her said
husband and acknowledged that she executed
the same freely voluntarily and without compul-
sion of her said husband. In testimony whereof
I have herewith set my hand and affixed the
seal of said Court at Aquawake the day and year
aforesaid
John S Pollock Clerk

The defendant objected to the introduction of the
said patent and deed of said Gibson to said
Rankin in evidence it being admitted that the
patent was sent by the Commissioner of the Gen-
eral Land Office to the Clerk of the Circuit Court of
Henderson County with instructions from the com-
missioner to be used by both parties & delivered
to the successful party which objection was
overruled by the Court

A judgement of the
Circuit Court of Henderson County of the year 1845
against said land for taxes of 1844 judgement for
\$1.78 ¹⁰⁰ cents Tax & four cents Cost a precept issued
on said judgement & collector's Return of the sale
for taxes which are as follows

State of Illinois 3
Henderson County 3

Copy of Judgement

~~Plas~~

State of Illinois }
Henderson County }

Pleas before the Hon Richard
M Young one of the justices of the Supreme Court
& Presiding Judge by Exchange with the Hon
Jesse B Thomas of the fifth judicial Circuit
in the State of Illinois at a Court begun and holden
at the Court House at Aquawake on the first Monday
in the month of June A.D. 1845-

Richard M Young Judge

Whereas S S Leet Collector of Said County
Returned to the Circuit Court of Said County on
the 27th day of May A.D. 1845 the following
tracts & parts of tracts of Land as having
been assessed for taxes by the Assor of Said
County of Henderson for the Year 1844 and that
the Taxes thereon remained due & unpaid
on the day of the date of Said Collectors Report
& that the respective owner or owners have no
goods & chattels within his County on which
the Said Collector can Levy for the Taxes in
terest & Costs due and unpaid on the following
described Lands to wit

Acts assessed upon said tract of land for the
 year 1844 and Whereas on the seventeenth day Novem-
 ber A D 1845 S D Leet Sheriff of the County aforesaid
 by virtue of a precept issued out of the Circuit
 Court of the County aforesaid dated the 13th day of
 November A D 1845 and to the Sheriff of said
 County directed did expose to public sale at the
 door of the Court House in the County aforesaid
 in conformity with all the requisitions of the Statute
 in such case made.

Copy of list in part with headings

present owner	In whose name patented	costs	amount of Tax	year	vacation	Description
	Township Nine north Range five west					
	J Leott	4	1.69	1844	228	W $\frac{1}{2}$ A E 3
	J Gibson	4	1.78	" "	240	W $\frac{1}{2}$ SW 10.

State of Illinois }
Henderson County } 18

Notice is hereby given to all
Whom it may concern that the foregoing contains a
true list of the delinquent lands together with the
names of the owners as far as known the amount of
Taxes Interest & Costs due thereon for the years A.D.
A.D. 1844 respectively Situated in the County of
Henderson in the State of Illinois at the November
term of said Court to be holden at the Court
house in Oquawka in said County of Hen-
derson on the first Monday of the month
of November next for judgment against
said lands respectively in the foregoing list
Specified for said taxes interest & costs due
thereon and also for an order to sell the said
lands for the satisfaction thereof And notice
is hereby further given that on the second
Monday next succeeding the commencement
of said term of said Court all the lands
Specified in the foregoing list against
which Judgment shall be pronounced and
for the sale of which such order shall be
made will be exposed to public sale at the
Court house of said County for the amount
of said taxes interest & costs due thereon
and that said sale will be continued
from day to day Sundays excepted until
all of the said lands are sold for the purposes
aforesaid

J. S. Leet Sheriff
Collector of Henderson County
Illinois

Oquawka September
17th A.D. 1845

The undersigned editors & publishers
of the Folsborough Times & New Boston

advertiser do hereby certify that the foregoing list of lands and town lots situated in the county of Henderson & state of Illinois on which taxes remain due & unpaid for the year 1844 was published in the town of New Boston Mercer county Ills on the 17th day of September 1845 and that the number of transcripts correspond with the number of papers distributed for the week and also they have complied with the laws of the state in the distribution of said papers They further certify that the foregoing list was carefully compared with the original and was found correct That the numbers of the tracts & town lots accurately correspond and that the original list was literally followed in this publication

J. A. C. Freeman &
H. Answorth Editors &
publishers of the Hillsborough Times
& New Boston Advertiser

Whereas due notice has been given of the intended application for a judgment against the said lands and no owner hath appeared to make defence or show cause why judgment should not be entered against said lands for taxes interest & costs due & unpaid thereon for the year herein set forth Therefore it is considered by the court that judgment be & is hereby entered against the ~~lands~~ aforesaid tract or tracts of land or parts of tracts in the name of the State of Illinois for the sum annexed to each tract or parcel of land being the amount of taxes interest & costs due sever

ally thereon and it is ordered by the Court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes interest and costs annexed to them severally be sold as the law directs

at 76 Purple

Copy of precept

State of Illinois }
Henderson County } Act

Whereas Solomon S. Lee Collector of said county returned to the Circuit Court of said County on the 29th day of November A.D. 1845 the following tracts & parts of tracts of land as having been assessed for the taxes by the assessor of said County of Henderson for the year 1844 & that the taxes thereon remained due & unpaid on the day of the date of the said collector's return & that the respective owners or owners have no goods & chattels within his county in which the said collector can levy for the taxes interest & costs due & unpaid on the following described Lands to wit

present owners	In whose name patented	acres	amount of Tax	year	valuation	description
Township nine north range five west						
J Scott	4	1.69	1844	228	W 1/2 NE 3	
J Gibson	4	1.78	"	240	W 1/2 SW 10	
(other tracts omitted in this)						

13
1290-7

Whereas due notice has been given of the intended application for a judgment against said lands no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands for taxes interest & costs due & unpaid thereon for the year herein set forth. Therefore it is considered by the court that a judgment be & is hereby ~~rendered~~ entered against the aforesaid ~~lands~~ tracts tracts or parts of ~~land~~ tracts of ~~land~~ tracts in the name of the State of Illinois for the sums annexed to each tract or parcel of land being the amount of tax interest & costs due severally thereon and it is ordered by the court that the said several tracts of land or so much thereof as shall be sufficient of each of them to ~~severally~~ satisfy the amount of taxes interest & costs annexed to them severally be sold as the law directs

(L.S.)
J. S. Pollock

(Signed) J. H. Purple
Witness John S. Pollock Clerk
of our said Court at Oquawka
this 13th day of November A.D. 1845
John S. Pollock Clerk

Collectors return

In obedience to the within precept I have sold all the within described tracts of ~~land~~ and parts of tracts of land on which the taxes & costs were not paid prior to the day of sale all of which tracts paid or prior to said sale are marked out this X according to the directions of the statute in such cases made & provided
Dec 10 1845

J. S. Pollock collector of
Henderson County, Ill.

to the introduction of which judgment

precept & return thereon the defendant
then & there ~~excepted~~ objected but all of
which were admitted by the court

Also a Sheriff's deed for the said land
acknowledged & recorded which said
deed recited as sale of the land for taxes
the sum of two dollars & eighteen cents
tax interest & costs due on said land for the
year 1844 to Arthur O. McQuinn
dated November 30th 1847 to the introduc-
tion of which the defendant objected all
of which was admitted by the court but
the said deed which was excluded to which
the plaintiff then & there ~~excepted~~
Copy of Deeds

Sheriff's Deed to Mc Innon

Know all men by these presents that whereas at the November Term 1845 of the Circuit Court of Henderson County a judgment was obtained in said Court in favor of the State of Illinois against the following described tract of land situate in said County of Henderson and State of Illinois viz Eighty acres the West half of the South West quarter of Section Ten in Township nine North of the Base line of in Range Five West of the fourth Principle Meridian for the sum of Two Dollars and Eighteen Cents being the amount of Taxes interest and costs assessed upon said tract of Land for the year 1844 and Whereas on the seventeenth day of November A.D. 1845 S.D. Lect Sheriff of the County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the 13th day of November A.D. 1845 and to the Sheriff of said County directed did expose to public Sale at the door of the Court House in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of Land above described for the satisfaction of the judgment so rendered as aforesaid and Whereas at the time and place aforesaid David Rankin of the County of Henderson and State of Illinois having offered to pay ~~the~~ the aforesaid sum of two Dollars and Eighteen Cents for Eighty acres the whole of the tract of Land above described which was the least quantity bid for the said tract of Land was Stricken off to him at that price and Whereas the said David Rankin did by his Indorsement under his hand written on the back of the Certificate of Purchase to him executed by the Clerk of the County Commissioners Court of the said Henderson County for the tract of Land

So Sold as aforesaid at the time of the said Sale said
18 Endorsement bearing date the ninth day of November A D 1847 assign the said Certificate of purchase to Arthur O McInom of the State and County aforesaid Now therefore I Julius Gifford Sheriff of Henderson County for and in consideration of the said sum of two Dollars and Eighteen Cents to the Sheriff of said County as aforesaid in hand paid by said David Rankin at the time of the aforesaid Sale and by virtue of the Statute in such case made and provided have granted Bought and sold and by these presents do grant Bought and sell unto the said Arthur O McInom as assignee of the said David Rankin his heirs and assigns the above described tract of land viz Eighty acres the west half of the South West Quarter of Section ten in Town ship nine north of the Base line of Range Five west of the fourth Principal Meridian to have and to hold unto him the said Arthur O McInom his heirs and assigns for ever subject however to all the rights of Redemption provided by Law in witness whereof I Julius Gifford Sheriff as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this 30th day of November A D 1847

Julius Gifford
Sheriff of Henderson County
Illinois

State of Illinois 3
Henderson County 358

I certify that on the 30th day of November in the year of our Lord one Thousand eight Hundred and Forty seven Personally appeared before me Charles S Cowan Clerk of the County Commissioners Court of the County aforesaid

John Bifford Sheriff of said County of Henderson
who is personally known to me the said Clerk to be the
identical person whose name is subscribed to the fore
going deed as having executed the same and ack
nowledged that he executed the said deed for the use
and purposes therein mentioned in testimony whereof I
have hereunto subscribed name and affixed the
Seal of said Court the day and year above
written Charles J. Conner Clerk

Plaintiff also offered in evidence a deed
acknowledged & recorded from M^cQuinn
to plaintiff in connection with the above
deed to which the defendant objected &
which were also excluded by the court
from the jury to which the plaintiff then
& then excepted

(Copy of Deed from M^cQuinn)

Know all men by these presents that Arthur O McQuinn
and Sarah McQuinn his wife of the County of Henderson
and State of Illinois parties of the first part for
and in consideration of the sum of ten Dollars to them
in hand paid by David Rankin of the County and
State aforesaid party of the second part the Receipt
whereof is hereby acknowledged do remise Release
sell and forever quit claim unto the party of the second
part his heirs and assigns the following described
Parcel of ~~Land~~ or tract of Land situate in the
County of Henderson and State of Illinois and
described as fiftyfour Acres off the East side of the
West half of the South West quarter of Section
no Ten (10) of Township no. nine (9) North Range
no five 155 West of the 4th principal Meridian

Meridians To have and to hold the same together
with the Privileges and appurtenances thereunto belong-
ing or in anywise appertaining unto the said party
of the second part his heirs and assigns forever in
Witness Whereof the parties of the first part have hereunto
set their hands and seals this twenty fourth day of
August A D 1855

Arthur O. McQuinn
Sarah McQuinn (Seal)

State of Illinois
Henderson County 355

Be it Remembered that on 24th
day of August A D 1855 Arthur O McQuinn and
Sarah McQuinn his wife personally known to the unders-
igned Clerk of the Circuit Court within and for
said County to be the identical persons whose names
are subscribed to the foregoing deed and who ex-
ecuted the same. Came before me and acknow-
ledged that they had Executed the same for
the uses and purposes therein mentioned and
set forth and the said Sarah McQuinn wife
of the said Arthur O McQuinn having been by
me Examined Separate and apart from her
said Husband after the contents of said deed
had been Explained to her she acknowledged
that she had Executed and relinquished her
right to dower to said Premises freely voluntarily
and without the compulsion of her said Husband
In testimony Whereof I have hereunto set my hand
and affixed the seal of said Court at Oglesby
this 24th day of August A D 1855

John S Pollock Clerk

The Plaintiff then Proved by Robert B Wallace as follows

Witness Stated that he had been on the NW 10 9 & 5 West that he was on the land in February 1857 and saw Crow the defendant cutting timber on it He saw 6 or 8 hands cutting timber on it ~~the~~ saw timber at one time & Crow hauling. The Logs were taken towards Olney & witness saw logs that looked like the same at the saw mill in Olney said he knew where the south line of the land was but did not know where any of the other lines are there is other timber adjoining this piece the timber that was cut was principally oak timber Some White Oak Witness saw four trees cut one of which was cut down by defendant and others saw Crow haul 8 or ten logs to ranch Olney from the land the trees that were cut was worth on an average ten Dollars The land he stated was in Henderson Co Ill That there was no Person living on the land and no Improvement of any kind on it but he did not know whether there ever had been or not The Witness Stated on cross Examination that he came to the County about a year ago that he did not know the number of the land on which the timber was cut nor the lines of the land has heard it called the Dunn land he believed the Creek to be the south line did not know the Creek to be the south line only from hearsay & did not know where any other lines were the timber was cut in February 1857 saw Crow load one or two logs saw him haul 8 or 10 from what he supposed to be this land did not know whether the timber was cut on the SW 10. 9 5 or not did not know where the lines of SW 10

of 5 men did not know where the Dunn land was only what he had heard but this timber was cut and taken from what he had heard called the Dunn land. Saw one tree cut 5 or 6 Rods from the Creek the balance of the timber was cut 25 or 30 rods from an aspen grove in SW direction. Saw Crow hauling timber from the direction where the trees were cut & saw no body else haul any timber.

James Rankin Sworn testified as follows that he knew the parties that he knew the Dunn or Gibson land had heard it called the Dunn land but it was generally called the Gibson land. Saw Crow cut and haul timber from the land about the first of February last saw him cut some himself. Saw about 8 trees cut. Saw Crow hauling while others were cutting he was hauling what they cut. Sometimes the men who were cutting would assist him to load the timber that was cut was on the Gibson land. Witness knows the north south and west lines McQuinn has a piece of land adjoining this piece on the west. The north south and west lines are marked by blazes on the trees. Dunn's heirs own the land lying east & adjoining this land the timber that was cut was 15 or 20 rods from the west line and about the same distance from the south line on this land. The timber was cut on the east off acres of this 80 acres. Saw Crow haul about 8 trees altogether. He hauled most of what timber the others cut. Witness saw three or four hands cutting timber one day cutting down & cutting up the trees & saw Crow cutting and hauling timber three or four ^{different} times there was timber cut there before the first of February 1857. Knows that as many as eight

tees were taken and they are worth on an average ten Dollars per tree. The land was at the time vacant no person was living on it there was no house nor fence nor improvements of any kind on the land no one had possession of it by occupancy nor any other way that he knew of he stated that McInnis showed him (Witness) the west line of the 254 acres but did not know who showed him the other they were blazed Witness had been all over the land & saw no improvement the timber cut was principally White Oak & Black Oak trees one walnut tree The land that the timber was cut on was the land in dispute between Rankin & Crow

The Plaintiff then rested their case. The defendant then called Thomas Fort who being sworn testified as follows — that he was acquainted with J H Dunn in his lifetime & had known him from a child he died in July 1840 Is. also acquainted with John Gibson & has known him since 1834 John Gibson made a deed for the west half of SW 10 9 & 15 W to J H Dunn in August 1835 for the consideration of \$200 Witness Esq. Jamison Read the deed but does not know whether it was quit claim or warranty J H Dunn lived & died on the east half of the south west of ten nine north five west Dunn built a log Cabin & Pole stable on the W 1/2 of SW 10 9 & 15 W in 1837 or 1838 Some person lived in it a while there were three persons lived in the Cabin before it was taken off the land The Cabin was taken off by Duns family in 1841 the next year after Duns death Dunn lived on the East 1/2 of the SW 10 9 & 15 W & had made improvements on said E 1/2 in 1834 and lived there until his death

in 1840 had Double log house & Stable on East
5th Acres of SW 10 9 & 5-

To the introduction of the
Passession & improvements of Dunn of the E/2
of SW 10. 9. & 5. W the Plaintiff objected but
the Court overruled the objection & permitted
it to go to the Jury to which the Plff then & there
excepted -

Witness Stated that he had worked for
Dunn on the E/2 & also on the West 1/2 of said
land he had cut timber & made rails for Dunn
on the land in controversy both for Dunn in
his lifetime & for his heirs since his death. The im-
provements houses & Stables were taken off of the
E/2 and also W/2 by Dumno heirs in 1841 &
has been no improvement on either since no
Person has lived on either piece of land since
No part of the land was ever in cultivation and
is no improvement or cultivation now nor at
any time since the Houses were taken off.
the deed spoken of was made at Gibsons house
in ~~1835~~ August 1835 - Myself J. Hogue Wm R
Garrison Dunn & others present Hogue was there
when we went J. H. Dunn took me there to witness
the deed Hogue and myself witnessed it I was
never there to get a deed from Gibson to Dunn
before that time but was there to get Gibsons Certif-
icate of Entry there were nine besides me there
at that time it was in July 1835 - We went there and
talked to Gibson a while threatened to tie him and
also to lynch him if he did not give up the land
to Dunn nothing was talked about particularly about
what we would do with him before we went three or
four of us took hold of him and took him two
or 3 rods from the House

and told him he was going to slash him with
knives & were going to lynch him we made him
promise to give up the certificate of entry & deed
the land to J H Dunn which Gibson at last promised
to do we were going to slash him if he had not done it
I went with Dunn afterwards to see the deed ex-
ecuted I never heard Dunn threaten to mob
Gibson after Gibson executed the deed Dunn was
a very resolute man I saw the money paid to
Garrison to be paid to Dunn when he gave up the
deed it was in Gibson's house Garrison took the
acknowledgement of Gibson & wife to the deed &
gave the deed to Dunn & the money to Gibson I never
heard Dunn threaten to shoot ^{any one previous to Gibson's entry}
^{the land but he did threaten to shoot Gibson if he did not deed him the land}
The defendant then moved to exclude from the
jury all evidence of duress and which was done
by the Court & the Court refused to permit the Plaintiff
further to prove duress in the execution of the deed
to which the Plaintiff then and there excepted

E David son sworn testified

That he was acquainted

with John Gibson some time in 1835 but not positive
as to the time Gibson came to me I was acting as Justice
of the Peace Gibson made affidavit that Dunn &
others would injure him he Gibson said in his affi-
davit that they came to mob him and force a deed
from him but left again when he promised to make
a deed I asked him if he was afraid they would
injure him & he said he was not afraid after they
left & that all of them left peaceably after he agreed
to make Dunn a deed Witness stated on cross exami-
nation that he did not recollect whether Gibson
said the mob came to get a deed or the certificate
of entry or a deed but that when he agreed to it
they left peaceably he Gibson did not say he executed
deed

26 A. B. Fort Swann

I was acquainted with Dunn in his lifetime. Am acquainted with Gibson & know the SW 1/4 10 9 N 5 W Dunn lived on it when I came to the country he died there & his family after his death left it in 1841 or 42. Dunn got fire wood off the SW qr before his death & family have since don't know of their getting timber anywhere else for the use of the family when they live which is about one half a mile from the nearest part of the SW qr there is one qr between where they (Dunn's) family live & the SW qr of 10 9 N 5 W I got timber off the NW 1/4 from Dunn's heirs Coleman lives between where Dunn's heirs live & the SW qr 10 9 5-

John Kemp Swann & testified as follows

I was acquainted with Dunn we came to the country together in 1834 & have lived in the neighborhood of each other until Dunn's death. I have lived where I now live since 1835. Am acquainted with Gibson ever since he came to the country. I know the land in dispute between Rankin and Crow parties to this suit. I got Sawlogs of Dunn off the land in the winter of 1835 he always got his firewood off the SW qr but do not know he took any off the west half of the quarter or not there has been good deal of timber taken off the quarter Dunn's family don't live on the south, west Cox lives between the SW quarter and where Dunn's heirs live Coleman now lives where Cox did.

A. B. Fort recalled by defendant testified that he had got timber off the NW 1/4 SW 10 9 5 the land that Dunn's heirs now live on does not join SW qr Coleman lives between

Where Dums heirs now live and this yr I have been acquainted with D Rankin 15 years The SW 10 lies on the road leading to Burlington is also another road north of that that also leads to Burlington the road that goes past the land is south of Rankin and other that does not lead to Burlington is north of Rankin. Rankin lives nearest the one north I think I have bought & taken timber from the east half & also west half of the SW 10 timber is often stolen from timbered land I don't know how much has been hooked from this land Rankin lives about 40 Rods from the north road and Burlington lies north of where Rankin lives. Dumm from the fall of 1835 until his death has regularly taken timber off the E 54 acres of the south west of 10 9 N 5 W for his own use & his heirs have regularly taken timber off of the E 54 acres common with the ballana of said quarter for the use of the homestead ever since

William Kemp from
and testifies as follows Knew Dumm in his lifetime and knows Gibson & knows SW 10 9 5 since Spring of 1834 Defendant then proposed to prove by said witness that Dumm had got timber off the NW 10 9 5 to the giving which testimony the Plaintiff objected but the Court overruled the objection & Plaintiff excepted Witness said he had cut timber on the E 1/2 & also NW 1/2 of said quarter section for Dumm I saw the heirs get timber on said quarter since his death the family of Dumm live on Dums farm not on the SW 10 but they have exercised ownership over SW 10 Dums family have taken timber off the SW 10 ever since Dums death for the use of the farm on which they live & for fire wood

28 There has been great deal of timber taken off the
or mostly from the SW quarter corner of SW quarter
I am acquainted with David Rankin and have
been for 17 years he has lived most of the time near
the land, the following testimony was also objected
to by Duff but the objection was overruled by the
Court Plaintiff then and there excepted Plaintiff
lives near the road that runs along the north line
of the land in dispute it has been a public Road
for 20 years I have seen the Plaintiff travelling
along this road never saw him travelling along the
Road where the land is in dispute I have seen
him a mile or two from the land on this road
was no other road passible to Hoppers Mills ten yrs
ago Rankin lives near another road leading to
Burlington & Hoppers Mills this last Road is most
direct Road for Rankin to go to Burlington
Iowa Crow named Mrs. Dunn about three years
ago Duns Children lived with their mother
untill about 2 months ago Plaintiff is a good
business man Rankin lives nearest the north road
and the north Road does not go by the SW 10 9 5
the south Road runs past the land in dispute
Dunn dec'd in his life time made the improvements
on the East 54 acres of SW 10 9 5 SW which were taken
off in 1841 claiming title to the whole quarter to which
evidence the Plaintiff objected the Court overruled
the objection the Court overruled the objection
& Plaintiff excepted

S. B. Wall sworn testified as
follows I am acquainted with the SW 10 9 5
& have been 7 years ago He travels the road to
Hoppers Mills & Burlington knows that Duns family
used and Possed the land I have helped Dr. Cut timber

on the SW 10 9 5 before Mrs Dunn & Crow were married
more than once I helped to make rails on SW 10 9 5

John S Pollack sworn testified as follows
I know David Rankin the Rff & Deft. I don't
know that Rankin knew that Duns claimed
the land Rankin Rankin came to me to get me
make out a deed from John Gibson to him for
the SW 10 9 5 next he said Gibson would be up
in a day or two to execute deeds I think there was
some talk about the Duns heirs claim I don't
know that he said he knew Duns heirs ever had
a deed I have no distinct recollection about
what passed in the conversation I don't know
whether anything was said about a deed I don't
recollect distinctly but think something was said
about the claim of Duns heirs I don't recollect that
he said there was a lost deed nor do I recollect
the particulars of the conversation I am not sure that
I told him he could hold the land & don't know
that he had bought Gibson when this conversation
took place but I think he had bought I think
he asked my opinion whether he could hold the
land against Duns heirs my impression is that
Rankin asked me whether if he bought the land of
Gibson he could hold it against Duns heirs

C S Womam sworn. Testified as follows

The SW 10 9 5 has
been assessed as the property of Dunn sometimes as
the property of Dunn sometimes as the property of
Gibson from 1841 to 1856 the certificate I hold in
my hand is taken from the assessors Book showing
the assessment of the land for tax from
from 1841 to 1856 and also a copy of the
tax sales showing when sold to whom sold

30 and by whom Redeemed David Plaintiff purchased the land west 1/2 of SW 10 9 N 5 W in 1845 for taxes of 1844 the land was taxed for that year in the name of John Gibson & was Redeemed on the first day of January 1849 by a minor heir of John A Dunn Deed and money paid to Rankin as shown by the Books & the Receipt of Rankin in May 1849. to the giving of all of which ~~of~~ testifying the Plaintiff then and there objected but the Court overruled the objection & admitted the Evidence and the Plaintiff then and there excepted the defendant then offered in Evidence the copy of the assessment of the SW 10 9 N 5 E spoken of by witness and the Sales & Redemption to which witness had testified as being correct copy from the Records in the County Clerk's office

Redemption

Year	Name of Owner	Description	Sec	Town & Range	Acres
1841	Charlotte Dunn	W 1/2 SW 1/4	10	9 5-	80
1842	Charlotte P Dunn	W 1/2 SW	10	9 5-	80
1843	Same	W 1/2 SW	10	" "	80
1844	John Gibson	W 1/2 SW	10	" "	80
1845	Charlotte P Dunn	W 1/2 SW	10	" "	80
1846	C P Dunn	SW	10	" "	134
	A O McDunn	SW SW	10	" "	12
	Elisha Watson	W 1/2 SW 1/4 W 1/2 SW 1/4	10	" "	13
1847	Heirs of J H Dunn	SW	10	" "	15
	A O McDunn	SW 1/4 SW 1/4	10	" "	12
	Elisha Watson	Ept NW SW 1/4	10	" "	13
	John Gibson Par	pt W 1/2 SW 1/4	10	" "	40
1848	Heirs of J H Dunn	SW 1/4	10	" "	133
	Elisha Watson	W 1/2 NW SW 1/4	10	" "	13
	John Gibsons	Ept NW SW 1/4	10	" "	14

Year	Name of Owner	Description	Sec	Range	Acres
1849	Heirs of S H Dunn	Pr. SW ¹ / ₄	10	9 5-	133
	Elisha Watson	Pr. NW SW ¹ / ₄	10	" "	13
	Kendall & Gibson	Pr SW	10	" "	14
1850	Heirs of S H Dunn	Pr SW	10	" "	133
	A O McDunn	Pr SW SW	10	" "	11
	Elisha Watson	Wpt. NW SW	10	" "	13
	Kendall & Gibson	Pr SW	10	" "	3
1851	Charlotte Dunn	Pr SW	10	" "	133
	A O McDunn	Pr SW SW	10	" "	11
	Elisha Watson	Wpt. NW SW	10	" "	13
	John Gibson	Pr SW	10	" "	3
1852	Charlotte Dunn	Pr SW	10	" "	133
	A O McDunn	Pr SW SW	10	" "	11
	Elisha Watson	Wpt. SW SW	10	" "	13
1853	Charlotte Dunn	Part SW	10	" "	136
	A O McDunn	Part SW SW	10	" "	11
	Elisha Watson	Pr NW pr. SW SW	10	" "	13
1854	Charlotte Dunn	Part SW	10	" "	136
	A O McDunn	Pr. SW SW	10	" "	11
	Elisha Watson	Wpt. SW SW	10	" "	13
1855	Charlotte Dunn	Pr SW ¹ / ₂	10	" "	136
	A O McDunn	Pr. SW ¹ / ₄	10	" "	11
	Elisha Watson	Pr. Part SW ¹ / ₄	10	" "	13
1856	Charlotte Dunn	Part SW ¹ / ₄	10	" "	136
	A O McDunn	Part SW ¹ / ₄	10	" "	11
	Elisha Watson	Pr. Part SW ¹ / ₄	10	" "	13

balance on other page (over)

80 Acres W/2 SW 10 9 N 5 W Sold Nov 17 1844 for Tax
44 to David Rankin

Redeemed by heirs of John H Dunn
Or Abner Dunn March 4th 1850 Tax of 1845 included
Redemption Money paid to Rankin.

54 Acres W part SW 1/4 10 9 N SW Sold May 23 1848
to David Rankin for Tax of 1846. Redeemed by
Abner Dunn March 4th 1850 Redemption Money paid to
D Rankin

15 Acres SW 1/4 10 9 N SW Sold May 23 1848 to A J Graham
for Tax of 1847 Redeemed by Abner Dunn March 4th 1850
Tax of 1848 Included. Redemption Money paid to A J Graham

40 Acres part W/2 SW 1/4 10 9 N SW. Sold May 23 1848
to S S Phelps for tax of 1847 Redeemed by Abner
Dunn March 4th 1850 Redemption Money paid
to S S Phelps.

The Plaintiff admitted ~~then~~ then that the certificates sworn to were correct copies of the records in the County Clerk's Office & agreed that they might be introduced as the record of said office but objected to the same going to the jury as competent and proper evidence but the Court overruled the objection & permitted the same to be given in evidence to which ruling of the Court the Plaintiff then and there excepted.

C. P. Snow sworn testified as follows I was the wife of J. H. Dunn I had possession of all his papers after his death I do not know anything about a deed from Gibson to Dunn I have made diligent search and have not been able to find any deed I never saw such a deed I am satisfied that the deed is lost or destroyed if any deed ever was made I don't know that there ever was a deed I found the certificate of entry among other deeds the deed from Gibson to Dunn may have been destroyed.

William R. Jamison sworn testified as follows I knew John H. Dunn & I know Gibson & Thomas J. Hat I was Justice of the Peace in 1835 I took the acknowledgement from Gibson to Dunn in 1835 Thomas J. Hat was there It was at Gibson's house I only suppose the acknowledgement taken was of a deed It was acknowledged by Gibson & wife I saw no money paid that I recollect money may have been paid but if it was I do not recollect anything about I do not recollect that any person was present but Dunn and Hat I don't recollect giving Gibson any money I think the writing whatever it was was for the conveyance of land about which they had a difficulty it was signed and acknowledged by Gibson & wife I was

34 ~~was~~ there for the purpose of taking the acknowledgment of I did not draw the deed or writing myself nor do I know who did nor do not know whether it was written or printed or whether it was partly written & partly printed when I was first spoken to about this case I could not recollect it at all but brought to my recollection some circumstances about it

I M Holton sworn testifies as follows I knew him and know the family defendant was married to Mrs Dunn three years ago I have known Plaintiff some 8 or ten years I know that during that time he traveled the Public Road past this land to Hoppers Mill the Road leads to Burlington & also to Hoppers Mill I came to the neighborhood in 1839 I think $\frac{1}{3}$ of the timber has been taken off the NW 10 of NW 36 was taken about the same amount all over the land previous to the sale to Rankin I do not know how long Plff has lived in the neighborhood the North Road spoken of by the witnesses has been traveled 6 years or more I don't think there is any difference in the distance to Hoppers Mill between the north and South Roads to the giving of all of which testimony the Plaintiff objected but the objection was overruled by the court and the evidence permitted to go to the jury to which the Plaintiff then and there excepted The defendant then rested and the Plaintiff called John Gibson who being sworn testified as follows I entered the west half of the South west quarter of 10 of NW 36 Decided the land to David Rankin I never decided to Dunn I never contracted with Dunn to deed

In the land a number of Persons came to my house and threatened to mob me if I did not give up to Dunn the certificate of Entry. Dunn never demanded a deed of me, when they came to mob me, they had a man by the name of Mendenhall to decoy me out of my house. I started to go back in the house when two or three caught me and threatened to slash me if I did not give up the certificate of Entry to Dunn. I promised to give up the Certificate of Entry and they soon afterwards went away. Dunn often threatened to shoot me. He threatened to shoot me every time I saw him if I did not give up the certificate of Entry. Some time after they had been there to mob me I don't recollect the precise time Dunn came there with Wm R Garrison and wanted the Certificate of Entry. I gave him the Certificate of Entry and signed a paper authorizing the Government to issue the Patent to Dunn. I never agreed to sell the land to Dunn. Garrison never took my acknowledgement nor my wife's. Either I live about $\frac{3}{4}$ of a mile from the land in dispute & have lived where I now do ever since I entered the land. I sold to Rankin.

Ann Gibson Plaintiff then had Ann Gibson sworn who testified as follows:

I know that Dunn and others came to our house to get the certificate of Entry. They took Gibson out from the house. I am the wife of John Gibson. I never signed any deed to Dunn to this land. No other writing was ever executed by me to Dunn for the sale of the land in question. Garrison never took my acknowledgement.

William R Garrison Recalled by Plaintiff.
Testified as follows.

36 I don't recollect what the instrument was that was
Executed I think it was something to convey the
land from Gibson to Dunn or to have the Patent issued
in Dunn's name what ever it may have been I
think it was acknowledged. I can't recollect with
any certainty what it was it may have been a deed
or it may have been an instrument authorizing the
Patent to Issue in Dunn's name I don't know
what it was but it was something to settle the difficul-
ty about the land of Am Pettigrew I took the
acknowledgment of Gibson & wife
The Parties then closed the case the fore going was
all the testimony given on the trial of said Cause
in said Court.

The Plaintiff then asked the Court
to instruct the jury as follows to wit

Mr. Thawson says - Williamson }
took a copy of those instructions }
into him - W.D.H. }

Which said Instructions the Court refused to give to
which Refusal to give said Instructions the Plaintiff then
and there Excepted

The Plaintiff further asked the
Court to instruct the jury as follows to wit
{ Those Instructions given }
{ Williamson took copy of }

Which the Court refused to do but modified the Instru-
tions as follows to wit

The parties then closed the case - The foregoing was all the testimony given on the trial of the said Cause in said court

The plaintiff then asked the court to instruct the jury as follows to wit

1st The jury are instructed that they must determine this cause from the evidence & the instructions of the court

2 If the jury believe from the evidence that the plaintiff had title to the premises on which the trespass was committed at the time of committing of the trespass in the declaration mentioned and that the trespass was committed before the commencement of this suit they will find the defendant guilty

3 If the jury believe from the evidence that the plaintiff derives title from the United States through John Gibson and that the trespass was committed as charged in plaintiff's declaration ^{on the land on which the same was committed} was at the time of committing said trespasses vacant & unoccupied they will find the defendant guilty unless they believe that John Gibson had previously ~~executed~~ ^{executed} a deed for the same land to John C Dunn and also that the plaintiff had knowledge that such deed had been previously executed to said Dunn at the time he purchased

4 The jury are instructed that it is not sufficient for the defendant to prove that Gibson had executed a deed to John C Dunn but the defendant must also prove that Rankin at the time he purchased took a deed knowing that the land had been sold to Dunn

5 The jury are instructed that defendant took upon himself the burden of proving

a prior conveyance and that he must prove the same by clear and positive evidence before they find against a subsequent conveyance

6 The jury are instructed the knowledge of a prior conveyance must be clear & positive

7 The jury are instructed that the contents of a lost deed must be strictly proven and knowledge brought to the other party before. The lost deed can supersede a subsequent conveyance

8 The jury are instructed that John Gibson could not convey the land on which the trespass was committed before he acquired title to the same from the ^{legality by deed of warranty or in fee simple} United States or otherwise, and if they believe from the evidence that Gibson had not yet acquired title to the title to the land on which the trespass was committed at the time he conveyed to John H. Dunn they will find for the claimant unless they further find that such conveyance made to said Dunn was a warranty deed or a deed purporting on its face to convey an estate in fee simple to the land

9 In order to entitle a person to hold land that has been conveyed when the grantor had no title the deed must be a warranty deed or must purport to convey a fee simple in the land so attempted to be conveyed and in case of the loss of such deed the person seeking to take advantage of such lost deed must prove that it was a warranty deed or a deed purporting to convey a fee simple in the land

10 In order to charge a subsequent purchaser

with notice of a prior conveyance by possession of the premises conveyed the possession must be actual open exclusive & notorious either by building improvements or enclosures of some kind

11 The jury are instructed that occasionally ~~taking~~ cutting timber on a piece of land without other acts of ownership is not sufficient notice to a subsequent purchaser of a prior conveyance

12 The jury are instructed that if the land on which the trespass was committed was not in the possession of John H. Dennis here or some one under them or one of them at the time the plaintiff purchased the same either by enclosure improvements of some kind on the land or some part of it and if they believe from the evidence had not any other knowledge of a prior conveyance at the time they will find for the plaintiff

13 The jury are instructed that a person can not convey government land before the issuing of the patent for the same & if the jury believe that John Gibson attempted to convey the land before he acquired title from the United States and that the land then belonged to the United States they will find for the plaintiff if they believe from the evidence that Gibson conveyed to the plaintiff after he acquired such title from the United States and before the trespass was committed

The court refused the last instruction and modified the 4-10 & 12 instructions as follows

4 The jury are instructed that it is not sufficient for the defendant to prove that Gib-

40 son had executed a deed to John H. Dunn but the defendant must also prove that Rankin at the time he purchased took a deed knew that the land had been sold to Dunn or that the land was in the occupancy of said Dunn or his heirs claiming under such prior conveyance.

10 In order to charge a subsequent purchaser with notice of a prior conveyance by possession of the premises conveyed the possession must be exclusive & notorious.

12 The jury are instructed that if the land on which the trespass was committed was not in the possession of John H. Dunn's heirs or some one under them or one of them at the time the plaintiff purchased the same either by enclosure improvements of some kind on the land or some part of it or by exercising acts of ownership by cutting timber repeatedly claiming it as their own paying taxes reclaiming it from tax sales and exercising such ^{as are} generally exercised by owners over timber ~~land~~ lots of land used as appendages to farms.

To the refusing to give said instructions & also to the modification of the other instructions the plaintiff, then & there excepted.

The defendant then asked the court to instruct the jury as follows which the Court did.

1 The court will instruct the jury that it is incumbent on the plaintiff by evidence to establish his charges & not on the defendant to disprove them.

2 That unless they believe from the evidence

that previous to the 12th of February last defendant cut or took from the East 54 acres of the SW 1/4 10 9 & 5 W in Henderson County Illinois trees & timber & that plaintiff was then entitled to the possession of said land they will in any event and although they might believe from the evidence that plaintiff was then the owner of the land paid for the defendant.

3 That it is not necessary for the defendant to prove either title to land or possession thereof but the plaintiff must prove all the material allegations in his declaration to make out his cause of action.

4 The Court will instruct the jury that possession by defendant or proof of the knowledge by plaintiff of circumstances such as acts of ownership over land & payment of taxes that would induce a reasonable man to make enquiry of his the party's title is as effectual to him as would be the record of his deed.

5 That repeated acts of cutting timber during a number of years on any part of the quarter section of land under claim & color of title is possession which is effectual notice against a subsequent purchaser as his recorded deed whether the subsequent purchaser did or did not when purchasing have knowledge of said possession or the title of the first purchaser.

6 That Circumstances such as occupancy by enclosure residence repeated acts of cutting timber & general use as timbered lots are generally used by owners which would lead a prudent man to enquiry for an adverse title is notice to a subsequent title purchaser of the

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the title of a previous and as affecting
to a previous purchase as a recedee deed
whether subsequent purchaser did or did
not know of extent of the title of previous
purchaser

1 The court will instruct the jury that if
they believe from the evidence that defendant
in good faith obtained license from Thomas
Kirby to cut the trees & cut them believing they
were on the land of Thomas Kirby they will
find for him although they may further
believe from the evidence that they were on
the land of the plaintiff and that Thomas
Kirby knew that they were on the land of
the plaintiff

8

The court will instruct the jury that in
no event can they find against the defendant
if they believe from the evidence that he in
good faith obtained license from Thomas
Kirby to cut the trees believing them to be on
his Thomas Kirby's land

9

The court will instruct the jury that ad-
missions of the defendant drawn out by the
counsel of the plaintiff are testimony for the
defendant and that if they believe from
the testimony of either of the witnesses of plain-
tiff drawn out by plaintiff's counsel against
the testimony of Thomas Kirby that defendant
obtained license from Thomas Kirby to
cut the trees they will find accordingly

10

The court will instruct the jury that
proof that the trees were near the line of
plaintiff & Thomas Kirby that the line had
not been designated by any survey made pre-
vious to the cutting of the trees that it was

difficult for surveyors to find said line
that defendant paid Thomas Kirby for the trees
that plaintiff requested a surveyor to run the
line before forbidding defendant to cut the
trees or any of them are circumstances from
which they may infer that the defendant cut
the trees believing them to be on the land of Thomas
as Kirby

11

The court will instruct the jury that
testimony is that to which the witnesses depose
that they the jury are to decide from the evidence
which is the reasonable impression made upon
their minds by the testimony. Considering if they
see fit the character of the witnesses their inter-
est or feeling in the suit the consistency of their
testimony with itself and other testimony
their relationship to the parties or either of them
and their demeanor on the stand.

12

That they are not bound to take as evidence
the ~~testimony evidence~~ testimony of any wit-
ness whom they believe unworthy of credit
whether such witness be formally impeached
or not.

13

That land upon which one cuts to consider-
able extent repeatedly and which ~~the~~ is
used as timber lots are generally used as ap-
pendages to farms or claims of title is not
vacant or unoccupied land.

To the giving of all of which instructions the defend-
ant then & there excepted.

The jury then retired & returned into court
with a verdict of not guilty & the plaintiff
then & there moved the court to set aside the
verdict & grant a new trial for the following
reasons to wit

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- 1 Because the verdict is contrary to law
- 2 Because the verdict is contrary to evidence
- 3 Because the verdict is contrary to law & evidence
- 4 Because the verdict is contrary to the instructions of the court
- 5 Because the court refused to give proper instructions asked for by plaintiff
- 6 Because the court erroneously modified proper instructions asked for by plaintiff
- 7 Because the court gave improper instructions asked for by the defendant
- 8 Because the court refused proper testimony offered by the plaintiff
- 9 Because the court permitted improper testimony offered by defendant

The court overruled the motion for a new trial, ^{and rendered judgment against the plaintiff} then moved to in arrest of judgment which motion was overruled by the court all of which said rulings of said Court the plaintiff then & there excepted and asked the court to sign this bill of exceptions

Signed John S. Thompson &c

The Defendant then asked the Court to instruct the Jury as follows to wit-

- 1 The Court will instruct the Jury that it is incumbent on the Plaintiff by evidence to establish his charges and not on the defendant to disprove them
- 2 That unless they believe from the evidence that previous to the 12th February last Defendant cut or took from the East 34 acres of the S W 10 9 N SW in Henderson Co Illinois trees or timber and that Plaintiff was then entitled to the Possession of said land they will in any event and although they might believe from the evidence that Plaintiff was then the owner of the land find for the defendant
- 3 That it is not necessary for the defendant to prove either title to land or possession thereof but the Plaintiff must prove all the material allegations in his Declaration to make out his cause of action
- 4 The Court will instruct the Jury that Possession by defendant in proof of the knowledge by Plaintiff of circumstances such as acts of Ownership & Payment of Taxes that would induce a Reasonable man to make Enquiry of his the Plaintiffs title is as Effectual to him as would be the Record of his deed
- 5th That repeated acts of Cutting timber during a number of years on any part of a quarter section of land under claim of title is Possession which is as Effectual notice against a subsequent Purchaser as his recorded deed whether the subsequent Purchaser did or did not when Purchasing have knowledge of said Possession or the title of the first Purchaser

6th That Circumstances such as Occupancy by Inclosure residence repeated acts of cutting timber and General use as timbered lots are generally used by Owners which would lead a prudent man to Enquiry for an adverse title is notice to a subsequent Purchaser of the title of a previous purchaser and as Effectual to a person Purchaser as a recorded deed Whether Subsequent Purchaser did or did not know the extent of the title of Previous Purchaser

7th The Court will Instruct the Jury that testimony is that to which the witnesses depose that the Jury that the Jury are to decide from the Evidence which is the reasonable Impression made upon their minds by the testimony considering if they see fit the Character of the witnesses their Interest or feeling in the suit the consistency of their testimony with itself and other testimony their Relationship to the Parties or either of them and their Demeanor on the stand

8th That they are not bound to take as Evidence the testimony of any witness whom they believe unworthy of Credit whether such witness be formally Impeached or not

9th That lands upon which are cut timber to considerable extent repeatedly or claim of title & which is used as timber lots are generally used as appendages to farms is not vacant and unoccupied land

To the giving of which Instructions the Plaintiff then and there excepted

The Jury then Retired & Returned into Court with a verdict of Not Guilty and the Plaintiff then and there Moved the Court to set

Aside the verdict and Grant a New Trial
for the following Reasons to wit:

- 1st Because the verdict is contrary to law
- 2nd Because the verdict is contrary to Evidence
- 3rd Because the verdict is contrary to law & Evidence
- 4th Because the verdict against the Instructions of the Court
- 5th Because the Court refused to give proper Instructions asked for by the Plaintiff
- 6th Because the Court erroneously modified proper Instructions asked for by the Plaintiff
- 7th Because the Court gave improper instructions asked for by the defendant
- 8th Because the Court refused proper testimony offered by the Plaintiff
- 9th Because the Court permitted improper testimony offered by defendant

The Court overruled for a new trial
and Plaintiff then moved in arrest of judgment which motion
was Over Ruled by the Court to all of which said rulings
of the said Court the Plaintiff then and there excepted and
asked the Court to sign this Bill of Exceptions

John S. Thompson (Seal)

State of Illinois,
Henderson County 358

I Hugh L. Thomson Clerk of the said
Court in & for said County do certify that the fore-
going is a correct copy of the Record and papers on
file in my office in the above entitled Cause
witness my hand and Seal of said
Court at Canawhee this 12th day of April
A D 1858. Hugh L. Thomson
Clerk

11. 118, 00

Copy of Appeal Bond

Know all men by these Presents that we David Rankin and Alexander Rankin are held and firmly bound unto John Crow in the Penal sum of Three Hundred Dollars for the Payment of which we and truly to be made we bind ourselves our heirs Executors & Administrators jointly and severally by these Presents with our hands and Seals this 7th day of April A.D. 1858

The condition of the above Obligation is such that whereas the said John Crow did at the December Special Term of the Circuit Court in and for the County of Henderson & State of Illinois recover a Judgment in said Court against the above Bounden David Rankin for the sum of One Hundred & nine 65/100 Cents in a certain Cause then pending wherein David Rankin was plaintiff & John Crow was defendant and from which said Judgment the said David Rankin prayed an Appeal to the Supreme Court of the State of Illinois now if the said David Rankin shall prosecute his said Appeal with effect and without delay and in case the said Judgment shall be affirmed in said Supreme Court shall pay all Judgments Damages Interest and Cost that has or may be adjudged against him then the above Obligation to be void otherwise to be and remain in full force & Virtue in Law

David Rankin (Seal)
Alexander Rankin (Seal)

David Pauline

182 1/2

John Crow

Transcript

Recd April 20. 1858

W. L. L. and
W. L. K.

See p. 11. 1858

Supreme Court
David Roukin

^{my}
The Court

The defendant have submitted the following defense, and ~~ask~~ asks of the Court that they do not rely upon the objection of Plaintiff which is immaterial in material particulars.

The action is trespass ~~quare~~ claim fructu for cutting timber on W/2 S/4 10 9 & 5 or The place one not guilty and a specific traverse of Plaintiff's title. The Plaintiff must (not having been in possession) prove title. This he does not prove by patent to Gibbon and deed from Gibbon to ~~him~~ him. ~~His previous title~~ ~~case is however decided.~~

if title vests without delivery of the patent. The patent to Gibbon has never been delivered. It was sent by the Commissioner of the General Land Office to the Clerk of the Circuit Court of Henderson County to be delivered to the successful party in this suit. See record page 7-

The Plaintiff also attempted to prove a toy till to the land, and as questions may arise upon this, I will now dispose of it. This till arose on sale in 1845 for toys of 1844 to Plaintiff who assigned his Certificate of purchase to Mc. Brown and then took from Mc. Brown a deed to him, ~~used~~ for the same from Mc. Brown before the period of redemption had expired. The record shows that the minor heirs of Dunn, under whom defendant claims, redeemed ~~this~~ from this toy sale, and this fact disposes of the toy till. See testimony of C. S. Brown and exhibit of Toy Sales and redemptions, pages of record 29, 30, 31 & 32.

The witness answers to the redemption by minor heirs of Dunn, and payment of redemption money to Rankin, Plaintiff, which, of course, released all claims to the land.

But to wave all question, the record shows that no till occurred under the toy sale. The conveying order shows that the Court was

3 Held on the 12 Monday in June 1845.
That the notice was given for apphen-
-tion for judgment on the 12 Monday
in November 1845 and that the judg-
-ment was rendered at the June
term 1845. In other respects the verdict
- the judgment and precept particularly
one wholly insufficient, but I will
not unnecessarily discuss them,
relying upon the points stated as
disposing of the toy teller.

The evidence sustains the verdict.
Thomas J. Fort testified that John
Gibson, under whom the plaintiff
claims, made a deed for the close
in question in August 1835 to
J. H. Durr under whom the defend-
- ent claims, for the consideration
of \$110; that Durr lived on this quarter
section (claiming land) from 1834
to his death about 1841, that during
his lifetime Durr used the land and
worked on farms, cutting timber ~~on~~
on 1/2 of quarter and that his family
after his death continued to use
the same (for purposes of the farm
a half mile distant) up to present
time. He proves, ~~first~~, delivery
up of Gibson's certificate of entry to
Durr, the payment of the consideration
- in money and afterwards the

4 execution of the deed by Gibbons and
wife to Deen, its acknowledgments
by Justice and all the portions logs
attending the same minutely.
Record pages 23, 24 & 25.

J. B. F. was testified, that he Deen
lived on the land when he came
to the country and died there
and that his family have used the
land since, for fire wood &c
for use and support of farm
they live on half a mile from
this land. That he has got timber
off the land for Deen's heirs and
does not know of their getting
timber any where else for farm
use. Record page 26.

John Remp testified.

That Deen and himself came to
the country in ~~the~~ 1834 and also
was acquainted with Gibbons ever
since came to country in 1834—
I knew the land in ~~of~~ question and
the parties to suit— got saw logs
off the land of Deen in 1835. Deen
always got ~~his~~ his firewood off
the land— family live on another
quarter. Record page 26.

J B Fomp, testified, that Denis' heirs
live on another quarter, that he
has been acquainted with Roubin,
plaintiff, - 15 years - lived in same
neighborhood as home bought
& timber off this land, that Denis
from the fall of 1835 to his death
regularly took timber from
the land and that his heirs ever
since his death have done the
same for the use of the homestead.
Rec'd page 26, 27.

William Kemp testified that
he knew the land ever since 1834,
that he had cut timber on E 2
W 1/2 10 9 & 5th in his lifetime
and that Denis' heirs had got
timber off the same since Denis'
death. Denis' heirs ^{possibly} lived on Denis'
farm, not on this quarter, but
have exercised ownership
over E 2 W 10 9 & 5th and
used the same for timber for
the ~~same~~ use of the farm
ever since Denis' death.
Rec'd page 27. That Roubin
is, plaintiff, for 17 years
has lived near the land, that
Lew. Clifford, married
the widow of Denis about three
years ago - family lived together.

6.
Roukin a good business man -
Dun in his lifetime made improve-
-ments on part of NW 10 9 & 3-4 ~~claiming~~
claiming title to the whole.
Record page 28.

J. B. Wall testified that he was
acquainted with the land, that
Dun's family used and possessed
NW 10-9 & 3-4 - have helped
Dun's family, before widow's
marriage with low, work
on the land - cut timber, made
nails ~~and re~~
Record page 28, 29.

John J. Pollock testified that
Roukin came to him about
getting deed made from Gibson
to him for the land, thinks,
he ~~had~~ talked about claim
of Dun's heirs to the land, and
asked me, if I thought if
he got Gibson's deed he could
hold the land against Dun's
heirs. Record page 29.

C. & C. over:

Testified to sale of
land for taxes to Roukin in 1845 -
redemption by him of Dun.
and of his throwing ~~and~~

assessment of the land for taxes
to Duns heirs and widows for
fifteen years since 1841, and
redemption of the same by Duns
heirs from divers sales for
taxes, at different times, after
Duns' death.

Rec'd pages 29, 30, 31, 32.

Colm Crow testified to search
for deed, that could not be found
found, that certificate of entry
to Gibson was found among
Duns' papers - supposes deed
lost or

Rec'd page 33.

William Morrison testified,
that in 1835 he was a Justice
of Peace - went to Duns to
take acknowledgment of deed
from Gibson & wife to Duns;
that they executed the deed and
he took their acknowledg-
ment of same, that it was made
in 1835, to convey this land from
Gibson & wife to Duns. States
particulars re

Rec'd pages 33, 34.

2 H Holtori testified, that Roubin
lived in neighborhood of land
for many years - travelled the road
by this land - Roubin knew
the land as
Rec'd page 34.

Against this testimony as to the
execution of the deed by Gibson
to Durr, is the testimony of
Gibson and wife, who say
they did not execute the deed.
Rec'd pages 34, 35.

The evidence then, clearly shows,
that Gibson for more than 20 years
lived in the immediate neighborhood
and made no claim to the land -
paid no taxes - set up no claim -
knowing of the claims and possession
of Durr and Durr's heirs; that
Roubin ~~has~~ ~~has~~ ~~has~~ was for
17 years conversant with these
facts - of Durr's title and possession
and knowing the facts, got a conveyance
- as by quit claims from Gibson in
1856, and set up title. The only
conflicting evidence, is in relation
to the making of the deed to Durr in 1835,
and of the force, credibility & weight
of the evidence the jury were the proper
judges.

This evidence clearly shows:

- 1 That Gibson in August 1835 ^{had} entered
W/2 NW 10 9 & 5 W
- 2 That after the entry and while holding
the certificate of entry he executed
a deed for the same to Dunn and
received the consideration money.
- 3 That Dunn was then in possession
of the land and continued such poss-
-ession, under claim of title to
the whole quarter, till his death
about 1841. and that after Dunn's
death his widow and family toge-
-ther with Corn, defendant, after
his intermarriage with widow,
continued such possession
up to the trial.

4 That Roukin, plaintiff, well
knew such possession and also
such claim of title when he
bought of Gibson

- 5 That Gibson for more than 20
years acquiesced in the title and
claim of Dunn and his heirs and
without any objection or dissent.

These facts appearing, Roubin
 can have no title to the land,
 or right of possession. He could
 not be a bona fide purchaser.
 And not having possession,
 if he had not the right of
 possession, by reason of having
 the title which would ^{alone} ~~only~~ give
 such right of possession, and
 of action for an injury to the
 land, whatever else may
appear in the case, or whatever
errors may otherwise appear
in the record, the verdict and
judgment was properly for
the defendant.

The widow of Green and family succeeded
 on ~~Green's death~~
 A to the actual possession and to her, the
 defendant, on marrying the widow,
 succeeded to such possession, in right
 of his wife, and had this possession at
 the time of the supposed trespasses.

The evidence shows this land was a part of the homestead and used for the purposes thereof. In such case the widow took and was entitled to the possession until dower assigned. Widow's title "Dower" section 27.

This right by marriage went to Crow dependent, - he became the head of the family with whom, at the homestead, the widow and children of Dean resided.

The possession, therefore, being actual and adverse, whether it was in Crow, or him & wife & family of Dean, occupying the homestead, the plaintiff, even if he had the legal title, could not maintain the action.

Where there is adverse possession, him having the legal title cannot maintain trespass for injury to the land.

This is directly decided by this Court, Cook vs Foster, 2 Gil 655; Hollings vs The Chicago 15 Ill 558.

The possession here is very clear. It was timber land used for the farm and was so used uniformly by the Dunn family and the defendant after his marriage with the widow.

The possession was exclusive, adverse to every body and under claim of title.

The sufficiency of this possession of wood land is fully settled in following cases:

Davis vs. Cozely 13 Mc 198; and cases there cited where the doctrine is fully investigated, Brooks vs. Bruyn 18 Mc 539, to some effect.

2

The evidence shows an actual possession under claim of title by Dun and those claiming under him ever since August 1835—

more than twenty years prior
to the time of the supposed ~~trespasses~~
trespasses alleged and proved;
and, therefore, it is immaterial
in what the claim of title and
possession originated - whether
in right or in wrong - and
this possession, is all the title
the defendant has any occa-
sion to invoke and alone
would defeat the plaintiff.
See 20 years limitation law,
which bars action and entry.
Fairman vs Buel 14 Ill 244;
Also, cases above cited.

The plaintiff in this case, or in
equity, title being in issue, must
show himself entitled to possession.
He must have had right of entry,
and that right is taken away by the
statute.

3

Rouken had notice of the prior
claim of Gibson to Dunn, in fact
and constructive notice by the
possession of Dunn and his heirs
of the land. The facts are clear.

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He enquired of Pollack at the time
of his purchase, if he could hold
the land against Dun's heirs,
if he got Gibsons land. He lived
in the neighborhood of and near
the land for ¹⁷~~many~~ years and
of course, knew of the claim
and possession of Dun's heirs,
but it is immaterial whether
or not he knew of possession,
in law, the world knew it and
were bound by the consequen-
ces of such possession.

These questions were also decided
by this Court.

Reper v. Mearns, 15 Ill 542;
McCormick v. Reed, 4 Scam 123;
Dyer v. Martin, 4 Scam 151
Pitman v. Eddy, 5 Gil 186.

Robert therefore, can take
nothing by his deed, vs against
Dun & those claiming under
him.

15
4

The question of duress can have nothing to do with this case.

A deed made under duress is like the deed of an infant, in the first case there is a forced or constrained consent, in the latter an incapacity to give consent. In both cases they are voidable only. They are good in favor of the infant or the person under restraint and voidable only at their election, when in a condition to exercise free and competent choice. This is the unsystematic and low at this day.

Chitty on Cont, 194, 148, 149, 147; 2 Kent's Com 453;

Robbins on Estops, 10 A & A 561, 2-3

~~11 A & A 517, 524; 10 A & A 194;~~

~~3 A & A 353, 7 A & A 258;~~

~~Selous on Blots, 11 A & A 285;~~

~~2 Yeager 47; Richardson on B.~~

~~Am & V. 368; Coote on~~

~~Parasage, 14 A & A 158;~~

Cases cited Chitty on Conts 194.

2 Greenleaf & A 301. ##

Adams Equity 182 top 431

Deceit, must always be
specifically set up and can
only be done (like infamy)
by the party himself.

It cannot be done by
another. This is expressly
decided in McClellan v
Cummings, 3 McLean 158.
Boon's Ab. titl. "Deceit" B,

Nor can a deed be acknowledged
before by an officer of the law, be
provided by Deceit. Boon's
Ab. titl. "Deceit" C.

Must be specifically set up
Abid 2.

That deceit is a personal
privilege, like infamy, is
clearly stated in 1 Parsons
on Contracts 322, and note g; and
that it may be waived or
affirmed is the settled doctrine.
Now, whenever this is the
case, mere lapse of time
for a short period, is sufficient
notification. Here more
than twenty years elapsed and

The parties lived ~~in~~ in the same neighborhood, Ronkin Gibson and Green & his heirs.

This must be conclusive of ratification, or election to abide the sale and deed made in 1835; and, if so, no evidence was admissible touching the discovery, more than 20 years before the deed. Even possible in under the claim of title for 20 years, at common law, presumes a deed and concludes ^{all} others.

Again, Gibson retained the consideration money paid - \$110 - and if he elected to void the deed, he could only do so by returning the money - the parties always, in such case, must be placed in status quo. This is a plain principle, and needs no authority.

See Green v. Gage, 13 All 610.

No question upon this record can be raised as to instructions, except that the Court refused Plaintiff's instruction 13 and modified Plaintiff's instructions 4, 10 & 12. See pages of record 38, 39 & 40.

In this, there is no error. The 13 instruction states the law to be, that land in this State cannot be sold and conveyed until the patent has issued. This is not the law, except as regards Boundary lands, and has no application to lands entered &c

It is difficult to see from the record how the Court modified 4, 10 & 12 of Plaintiff's instructions, but no error can be found in them of which the Plaintiff can complain, and taking Plaintiff 13 instructions together there can be no error

19 I ~~cannot~~ ~~now~~ or course of
complaint in the part of
the plaintiff.

The instructions in the record
as dependent's instructions,
were not, in fact, given.
This is shown by the return
to the Certiorari marked
"filed May 6 1858."

On page 40, the words "The
dependent then ~~was~~ asked
the Court to instruct the jury as
follows" is all that is truly in
the record, ^{and} the words "which the
Court did" are improperly
there written. The return
clearly shows this fact.
The instructions contained
in the record, and appearing
to be dependent's instructions
were not given.

This fact now appearing by
the return to the Certiorari, and
that instructions given in another
case have improperly got into

this record, no question can arise upon the instructions to opposing in this case.

It is enough that the court gives no instructions were given for defendant, and this the record does show in connection with return to certiorari. If the court is in any doubt on the subject

then the only real question is, does the evidence justify the verdict? In answer to say:- The evidence ~~of two witnesses~~ proves the execution of the deed by Gibson to Deen in 1835; the claim of title and possession of Deen & family for more than 20 years; the full acquiescence of Gibson in that claim and possession for more than 20 years; the knowledge of Roukin of these facts for 17 years and active knowledge when he told his son from Gibson in 1856

It is objected that the contents of the deed and its actual loss or destruction or one not proved. To this, it is sufficient to reply, that no objection was made to the mode of proof or that the contents were not proved or ~~lost~~ lost 20. The evidence of the conveyance was given without objection. Perse proof of title is given, if not objected to.

I cannot suppose this Court would disturb a verdict where two witnesses state the affirmative fact (as the making of the deed) and two state the negative, especially where the affirmative witnesses ^{are} ~~not~~ in a position to be influenced by passion or interest but where the negative witnesses are in such position of feeling and interest and have for 20 years voted inconsistent with their testimony and consistent only with the testimony affirmative testimony: that the deed was executed.

Can it be, that after 20 years
non-claim and acquiescence
 of Gibson, another who ~~knowing~~
 knowing the facts and adverse
 title, can set up discovery
 and avoid a deed that Gibson
 the maker for so long a time acqui-
 -esced in? Rankin has
 undertaken an experiment
 which no Court will encoun-
 -age: - of buying a claim that
 the Vendor for 20 years repud-
 -iated and would not set up,
 to take his chances of getting
 for a trifle a valuable property.

So once can account for the
non-claim of Gibson for 20 years
 except upon the hypothesis, that
 he made the deed and not paid
 the owner, if it needed any
 confirmation. Can another
person now avoid it?

Respectfully to
 O. L. Skinner

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David Rankin
vs

Whitcomb

Argument
for Defendant
in error

Filed May 6, 1858

Leland
Clark

Attorney

DAVID RANKIN
vs.
JOHN CROW.

} IN THE SUPREME COURT,
} *April Term, A. D. 1858.*

APPEAL FROM HENDERSON.

This was an action of trespass to real estate, tried before Hon. John S. Thompson and Jury at the December Special Term, A. D., 1857.

The declaration contains two counts, the first for breaking and entering plaintiff's close, to wit: W. hf. S. W. 10, 9 N., 5 W. in Henderson Co., and cutting and carrying away timber thereon. The second count alleges that the defendant, between the 1st day Nov. 1856 and the commencement of the suit, with force and arms entered the plaintiff's premises and cut and carried away trees, &c.

The defendant plead the General issue and Special plea that the premises on which the trespasses were committed, were not the premises of the plaintiff. Issues were joined.

The plaintiff introduced a patent from the U. S. to John Gibson for W. hf. S. W. 10, 9 N., 5 W. in Henderson Co., dated October 10, 1840. Also a deed from John Gibson to plaintiff for W. hf. S. W. 10, 9 N., 5 W., dated January 2, 1856, duly acknowledged and recorded. Also a judgment of 1845 for taxes of 1844, — a precept issued on said judgment and tax deed, executed by the Sheriff of Henderson Co. for W. hf. S. W. 10, 9 N., 5 W., reciting sale of 1845 for taxes of 1844, dated Nov. 30th, 1847, to Arthur O. McQuown, duly acknowledged and recorded.

Also plaintiff offered in evidence a deed from Arthur O. McQuown to plaintiff for same premises, — to the introduction of which deeds the defendant objected, and the Court sustained the objection.

The plaintiff then proved by Robert W. Wallace that he was on the W. hf. S. W. 10, 9, 5, in Henderson County, in February, 1857, and saw the defendant cutting timber, — saw at one time six or eight hands cutting timber, and defendant hauling it towards Olena, and saw logs that looked like the same at the saw mill in Olena. Said he knew where the South line was, but did not know where any other lines were. The timber was cut on what was called the Dunn land; timber cut was principally oak — some white oak. I saw four trees cut, one of which was cut down by defendant and others; saw defendant haul eight or ten logs towards Olena — were worth on an average, \$10. There was no person living on the land, and no improvements of any kind. Witness came to the county about a year ago, that he did not know the numbers of the land on which the timber was cut, nor where the lines were, but had heard it called the Dunn land. Did not know where the lines of S. W. 10, 9, 5 were; did not know where the Dunn land was only from hearsay, but this timber was cut and taken from what he had heard called the Dunn land.

JAMES RANKIN SWORN. Knew the parties; knows the Dunn or Gibson land, had heard it called the Dunn land, but is generally called the Gibson land. Saw

defendant cut and haul timber from the land about the first of February last; he cut some himself; saw about eight trees cut; defendant was hauling while others were cutting, and was hauling what they cut. The men cutting would sometimes assist him load. The trees were cut on the Gibson land. Witness knows N., S. and W. lines. McQuown has land adjoining this on the west. The N., S. and W. lines are marked by blazes on the trees. Dunn's heirs own the land lying east and adjoining this land. The timber that was cut was 15 or 20 rods from West line, and about same distance from South line. The timber was cut on E. 54 acres of this 80 — saw defendant haul eight or ten trees altogether — were worth on an average, about \$10 per tree. There was timber cut there before the first of February, 1857. The land was at the time vacant. There was no house nor fence nor improvement of any kind on the land, — no one had possession of it by occupancy or any other way that witness knew of; had been all over the land, and was no improvement on it. Timber cut, white oak, black oak and walnut. The land that the timber was cut on was the land in dispute between Rankin and Crow.

The plaintiff then rested his case.

Rec'd 23-4
The defendant called Thomas J. Fort, who testified that he was acquainted with John H. Dunn in his life time — had known him from a child; he died in July, 1840. Is also acquainted with John Gibson — has known him since 1834. John Gibson made a deed for the W. hf. of S. W. 10, 9 N., 5 W., to J. H. Dunn in August, 1835, for the consideration of \$110. Esq. Jamison read the deed but does not know whether it was quit claim or Warranty deed. John H. Dunn lived and died on the E. hf. S. W. 10, 9 N., 5 W. He built a log cabin and pole stable on the W. hf. S. W. 10, 9, 5, in 1837 or '38; some person lived in it a while before it was taken off the land. The cabin and stable was taken off in 1841, the next year after Dunn's death. Dunn lived at the time of his death on E. hf. S. W. 10, 9, 5, and had made improvements on E. hf. To the introduction of proof of the improvements on E. hf. of said qr. the plaintiff objected, but the Court overruled the objection.

Witness stated he had worked for Dunn on E. hf. and also on W. hf; had cut timber and made rails on the land in dispute, for Dunn in his lifetime, and for his heirs since his death. The improvements were taken off the E. hf. and also W. hf. in 1841, and has been no improvement on either since, — no person has lived on either since, — no part of it was ever in cultivation. The deed made by Gibson to Dunn was made in Gibson's house in 1835; myself, Hogue, Jamison, Dunn, and others were present when the deed was made.

When we went, Dunn took me there to witness the deed; Hogue and myself witnessed it. I was never there to get a deed from Gibson to Dunn before that time. but was there to get Gibson's certificate of entry. There were nine besides me there at that time; it was in July, 1835. We went there and talked to Gibson awhile, — threatened to tie him and also to Lynch him if he did not give up the land to Dunn. Nothing particular was talked about before we went there what we would do with him. Three or four of us took hold of him and took him two or three rods from the house, and told him we were going to slash him with hickories, and were going to Lynch him. We made him promise to give up the certificate of entry, and deed the land to J. H. Dunn, which Gibson at last agreed to do. We were going to slash him if he had not done it. I went with Dunn afterwards to get the deed executed. I never heard Dunn threaten to mob Gib-

son after Gibson executed the deed to Dunn. Dunn was a very resolute man. I saw the money paid to Jamison, to be paid to Gibson when he gave up the deed. Jamison took the acknowledgement of Gibson and wife to the deed, and gave the deed to Dunn and money to Gibson. I never heard Dunn threaten to shoot any one previous to Gibson's entry of the land, but he did threaten to shoot Gibson if he did not deed him the land. The defendant then moved to exclude all evidence of duress from the Jury, which the Court did, and refused to allow further proof of duress to be given to the Jury. *(Stunner says this testimony as*

went to the Jury
E. DAVIDSON, sworn for defendant, testified that he was acquainted with John Gibson some time in 1835, but not positive as to the time. I was Justice of the Peace; Gibson came to me and made affidavit that Dunn and others would injure him. He (Gibson) said in his affidavit that they came to mob him and force a deed from him, but left again when he promised to make a deed. I asked him if he was afraid they would injure him, and he said he was not afraid after the mob left, and that all of them left peaceably after he agreed to make Dunn a deed. Do not recollect whether Gibson said the mob came to get a deed or certificate of entry, but when he agreed to it the mob left peaceably. Gibson did not say he executed a deed.

J. B. FORT testified: I was acquainted with Dunn in his lifetime. Am acquainted with Gibson. Know the sw 10, 9, 5. Dunn lived on it when I came to the country. He died there, and his family after his death left it in 1841 or 1842. Dunn got firewood on the sw qr before his death, and family have since. Don't know of their getting timber anywhere else for use of family. Family lives half mile from sw 10. There is one quarter between where they live and this land. Dunn's family live on sw 10, 9, 5.

JOHN KEMP, sworn, testified: He came to the country with Dunn in 1834, and lived near him until his death. Knows Gibson ever since he came to the country. Knows the land in dispute between Rankin and Crow. I got saw logs of Dunn off the land in the winter of 1835. He always got his firewood off the sw qr, but do not know that he took any off the west hf of the qr. Dunn's family don't live on the sw qr.

J. B. FORT recalled: Said he had got timber off the west hf sw 10, 9, 5. The land that Dunn's heirs now live on does not join the sw 10. Coleman lives between where Dunn's heirs now live and this quarter. Have been acquainted with Rankin 15 years. The sw 10 lies on the road leading to Burlington. There is also another road leading to Burlington north of that. That also leads to Burlington. The road that goes past the land in dispute is south of Rankin's, and other that does not lead to Burlington is north of Rankin's, and R. lives nearest the one north. I think I have bought and taken timber from the east hf sw 10, also west hf. Timber is often hooked from timber land. Don't know how much has been hooked from this quarter. Rankin lives about 40 rods from the north road, and Burlington is north of where Rankin lives. Dunn regularly took timber of east 54 acres, west hf sw in his lifetime, and his heirs have since, for firewood and use of farm, in common with the balance of the qr for the use of the homestead.

WM. KEMP, sworn, testified: He knew Dunn in his lifetime. Knows Gibson. Knows sw qr 10, 9, 5, since 1834. Defendant then proposes to prove by said

witness that Dunn had got timber off east hf sw 10, 9, 5, to the giving of which testimony the plaintiff excepted, but the Court overruled the objection and the plaintiff excepted. Witness said he had cut timber on the east hf, also on the west hf of said qr, for Dunn. I saw the heirs of Dunn get timber on the qr since Dunn's death. The family of Dunn don't live on sw 10, but have exercised ownership over it; have taken timber off sw ever since Dunn's death, for use of farm on which they live, for firewood. Has been great deal of timber taken off the qr, mostly from sw corner. Am acquainted with Rankin; have been for 17 years. He has lived most of the time near the land. The following testimony was also objected to by plaintiff, but the Court overruled the objection. Plaintiff lives near the road that runs along the north line of the land in dispute. It has been a public road for 20 years. Have seen the plaintiff traveling along the road. Never saw him along the road where the land is in dispute. Have seen him a mile or two from the land on this road. Was no other road passable to Hopper's Mills ten years ago. Rankin lives near another road leading to Burlington and Hopper's Mills. This last road is most direct road for Rankin to Burlington. Crow married Mrs. Dunn about 3 years ago. Dunn's children lived with their mother until about 2 months ago. Plaintiff is good business man. R. lives nearest north road; that does not go by the land. Dunn in his lifetime made improvements on east 54 of sw 10, which were taken off in 1841, claiming title to the whole qr.

S. B. WALL, sworn, testified: Knows sw 10, and has for 7 years. Knows that Dunn's family used the land. Have helped Dunns cut timber on sw 10 before Mrs. Dunn was married to Crow.

JOHN S. POLLOCK testified: Know plaintiff and defendant. Don't know that Rankin knew that Dunns claimed the land. R. came to me to get me make out a deed from Gibson to him for sw 10, 9, 5. He said Gibson would be up in a day or two to execute the deed. Think there was some talk about the Dunn's heirs' claim. Don't know that he said Dunn's heirs ever had a deed. Have no distinct recollection about what passed in the conversation. Don't know that anything was said about a deed. Think something was said about the claim of Dunn's heirs, but don't recollect that he said there was a lost deed, nor don't recollect the particulars of the conversation. I have not since told him he could hold the land, and don't know that he had bought of Gibson then, but think he had bought. Think he asked my opinion whether he could hold the land against Dunn's heirs. My impression is that Rankin asked whether if he bought the land of Gibson he could hold it against Dunn's heirs.

C. S. COWAN testified: The sw 10, 9, 5 has been assessed as the property of Dunn sometimes and sometimes as property of Gibson from 1841 to 1856. The certificate I hold in my hand is taken from the assessor's book, showing the assessment of the land for taxation from 1841 to 1856. Also a copy of the tax sales showing when sold, to whom sold, by whom redeemed. Plaintiff purchased west hf sw 10, 9, 5 in 1845 for tax of 1844. Taxed that year in name of John Gibson, and was redeemed on the 1st day of January, 1849, by a minor heir of J. H. Dunn, and money paid to R. To the giving of all of which testimony the plaintiff objected, but the Court overruled the objection. The defendant then offered the copy of assessor's book, tax sales, &c., in evidence, to which the plaintiff objected, but admitted that the same was a copy of the record, as it purported to be. The Court overruled the objection and admitted it in evidence to the jury.

Rec 33 C. P. CROW, sworn, testified: Was the wife of J. H. Dunn, and had possession of all his papers after his death. I do not know anything about a deed from Gibson to Dunn. I have made search and have not been able to find any deed. I never saw such a deed. Am satisfied if ever any such deed was made it is lost or destroyed. I don't know that there ever was a deed from Gibson to Dunn—I found the certificate of entry among the deeds—

Rec 33-5 WM. R. JAMESON—I knew J. H. Dunn, I know Gibson and Fort, I was J. P. in 1835 and took the acknowledgement from Gibson to Dunn, Fort was there—it was at Gibson's House, I only supposed the acknowledgement taken was of a deed, it was acknowledged by Gibson's wife—don't recollect of seeing any money paid—don't recollect that any person but Dunn & Fort was present—I don't recollect giving Gibson any money—I think the writing was for the conveyance of land about which they had a difficulty—it was signed by Gibson & wife—I was there for the purpose of taking the acknowledgement—I did not draw the deed or writing nor do I know who did, don't know whether it was written or printed or part written and part printed.

J. M. HOLTON testifies I know Dunn and know his family—Defendant was married to Mrs. Dunn 3 years ago—have known plaintiff 8 or 10 years and during that time he traveled the public road past the land to Hopper's Mills—the road leads to Burlington also—think $\frac{1}{2}$ of the timber had been taken off S. W. 10—don't know how long the plaintiff has lived in the neighborhood—the North road has been traveled years—don't think there is any difference between the N. and S. road—plaintiff objected to this testimony but court overruled it.

Here the defendant rested.

Rec 34-5 Plaintiff called JOHN GIBSON, sworn and testified as follows. I entered the W. $\frac{1}{2}$ S. W. 10 9 5—I deeded the land to David Rankin I never deeded to Dunn, I never contracted with Dunn to deed to him the land—a number of persons came to my house and threatened to mob me if I did not give up the land to Dunn the certificate of entry, Dunn never demanded deed of me—when they came to mob me they had a man by the name of Mendenhall to decoy me out of my house—I started to go back in the house when 2 or 3 caught me and threatened to slash me if I did not give up the certificate of entry to Dunn, I promised to give up the certificate of entry and they soon afterwards went away, Dunn often threatened to shoot me. He threatened to shoot me every time I saw him if I did not give up the certificate of entry—sometime after they had been there to mob me I don't recollect the precise time Dunn came there with Win. R. Jameson and wanted the certificate of entry—I gave him the certificate of entry and signed a paper authorizing the Government to issue the patent to Dunn. I never agreed to sell the land to Dunn, Jameson never took my acknowledgement nor my wife's either. I live about $\frac{1}{4}$ of mile from the land in dispute. I have lived where I now live ever since I entered the land, I sold the land to Rankin.

35 ANN GIBSON sworn, testified, I know that Dunn and others came to our house I am the wife of John Gibson. I never signed any deed to Dunn to this land, no other writing was ever executed by me to Dunn for the sale of the land in question. Jameson never took my acknowledgement.

WM. R. JAMISON recalled by plaintiff.

Rec'd 35-6
I do n't recollect what the instrument was that was executed, I think it was something to convey the land from Gibson to Dunn, or to have the patent issued in Dunn's name. I think it was acknowledged, can not recollect with any certainty what it was. It was something to settle the difficulty. It may have been instrument to authorise issuing patent to Dunn.

The parties then closed the case. The foregoing was all the testimony given on the trial of the said cause in said Court.

The plaintiff then asked the Court to instruct the jury as follows, to-wit:

1. The jury are instructed that they must determine this cause from the evidence and the instructions of the Court.

2. If the jury believe from the evidence that the plaintiff had title to the premises on which the trespass was committed at the time of committing of the trespass in the declaration mentioned, and that the trespass was committed before the commencement of this suit, they will find the defendant guilty.

3. If the jury believe from the evidence that the plaintiff derives title from the United States through John Gibson, and that the trespass was committed as charged in plaintiff's declaration, and that land on which the same was committed was at the time of committing said trespasses vacant and unoccupied, they will find the defendant guilty, unless they believe that John Gibson had previously executed deed for the same land to John C. Dunn, and also that plaintiff had knowledge that such deed had been previously executed to said Dunn at the time he purchased.

4. The jury are instructed that it is not sufficient for the defendant to prove that Gibson had executed a deed to John H. Dunn, but the defendant must also prove that Rankin at the time he purchased and took a deed knew that the land had been sold to Dunn.

5. The jury are instructed that defendant took upon himself the burden of proving a prior conveyance, and that he must prove the same by clear and positive evidence before they find against a subsequent conveyance.

6. The jury are instructed the knowledge of a prior conveyance must be clear and positive.

7. The jury are instructed that the contents of a lost deed must be strictly proven and knowledge brought to the other party before the lost deed can supersede a subsequent conveyance.

8. The jury are instructed that John Gibson could not convey the land on which the trespass was committed before he acquired title to the same from the United States unless by deed of warranty, or in fee simple, or otherwise. And if they believe from the evidence that Gibson had not yet acquired title to the land on which the trespass was committed at the time he conveyed to John H. Dunn, they will find for the plaintiff, unless they further find that such conveyance made to said Dunn was a warrantee deed, or a deed purporting on its face to convey an estate in fee simple to the land.

9. In order to entitle a person to hold land that has been conveyed when the grantor had no title, the deed must be a warrantee deed, or must purport to convey a fee simple in the land so attempted to be conveyed, and in case of the loss of such deed the person seeking to take advantage of such lost deed must prove that it was a warrantee deed or a deed purporting to convey a fee simple in the land.

10. In order to charge a subsequent purchaser with notice of a prior conveyance by possession of the premises conveyed, the possession must be actual, open, exclusive and notorious, either by building improvements or enclosures of some kind.

11. The jury are instructed that occasionally cutting timber on a piece of land without other acts of ownership, is not sufficient notice to subsequent purchaser of a prior conveyance.

12. The jury are instructed that if the land on which the trespass was committed was not in the possession of John H. Dunn's heirs, or some one under them, or one of them, at the time the plaintiff purchased the same, either by inclosure or improvements of some kind on the land, or some part of it, and if they believe from the evidence had not any other knowledge of a prior conveyance at the time they will find for the plaintiff.

13. The jury are instructed that a person cannot convey Government land before the issuing of the patent for the same, and if the jury believe that John Gibson attempted to convey the land before he acquired title from the United States, and that the land then belonged to the United States, they will find for the plaintiff, if they believe from the evidence that Gibson conveyed to the plaintiff after he acquired such title from the United States and before the trespasses were committed.

The Court refused the last instruction, and modified the 4th, 10th and 12th instructions as follows:

4. The jury are instructed that it is not sufficient for the defendant to prove that Gibson had executed a deed to John H. Dunn, but the defendant must also prove that Rankin at the time he purchased and took a deed knew that the land had been sold to Dunn, or that the land was in the occupancy of said Dunn, or his heirs claiming under such prior conveyance.

10. In order to charge a subsequent purchaser with notice of a prior conveyance by possession of the premises conveyed, the possession must be exclusive and notorious.

12. The jury are instructed that if the land on which the trespass was committed was not in the possession of John H. Dunn's heirs, or some one under them, or one of them, at the time the plaintiff purchased the same, either by enclosure, improvements of some kind on the land or some part of it, or by exercising acts of ownership by cutting timber repeatedly, claiming it as their own, paying taxes, reclaiming it from tax sales and exercising such acts as are generally exercised by owners over timber lots of land used as appendages to farms.

To the refusing to give which said instructions, and also to the modification of the other instructions, the plaintiff then and there excepted.

The defendant then asked the Court to instruct the jury as follows, which the Court did:

1. The Court will instruct the jury that it is incumbent on the plaintiff by evi-

dence to establish his charges and not on the defendant to disprove them

2. That unless they believe from the evidence that previous to the 12th of February last defendant cut or took from the East 54 acres of the S. W. 1/4 10 9 N. 5 W. in Henderson County Illinois, trees or timber and that plaintiff was then entitled to the possession of said land they will in any event and although they might believe from the evidence that plaintiff was then the owner of the land find for the defendant.

3. That it is not necessary for the defendant to prove either title to land or possession thereof, but the plaintiff must prove all the material allegations in his declaration to make out his cause of action.

4. The Court will instruct the Jury that possession by defendant, or proof of the knowledge by plaintiff of circumstances, such as acts of ownership over land, and payment of taxes, that would induce a reasonable man to make enquiry of his, the parties title is as effectual to him as would be the record of his deed.

5. That repeated acts of cutting timber during a number of years, on any part of the quarter section of land, under claim and color of title, is possession which is effectual notice against a subsequent purchaser as his recorded deed, whether the subsequent purchaser did or did not when purchasing have knowledge of said possession, or the title of the first purchaser.

6. That circumstances such as occupancy by enclosure, residence, repeated acts of cutting timber, and general use as timbered lots are generally used by owners, which would lead a precedent to enquiry, for an adverse title is notice to a subsequent purchaser of the title of a previous and as effectual to a previous purchase as a recorded deed, whether subsequent purchaser did or did not know of extent of the title of previous purchaser.

7. The Court will instruct the Jury that if they believe from the evidence that defendant in good faith obtained license from Thomas Kirby to cut the trees, and cut them believing they were on the land of Thomas Kirby, they will find for him, although they may further believe from the evidence that they were on the land of the plaintiff, and that Thomas Kirby knew that they were on the land of the plaintiff.

8. The Court will instruct the Jury, that in no event can they find against the defendant, if they believe from the evidence that he in good faith obtained license from Thomas Kirby to cut the trees, believing them to be on his, Thomas Kirby's land.

9. The Court will instruct the Jury, that admissions of the Defendant, drawn out by the counsel of the plaintiff, are testimony for the defendant, and that if they believe from the testimony of either of the witnesses of plaintiff, drawn out by plaintiff's counsel, or from the testimony of Thomas Kirby, that defendant obtained license from Thomas Kirby to cut the trees, they will find accordingly.

10. The Court will instruct the Jury that proof that the trees were near the line of the plaintiff and Thomas Kirby. That the line had not been designated by any survey made previous to the cutting of the trees. That it was difficult for surveyors to find said line. That defendant paid Thomas Kirby for the trees.

*See return to Certification
Where the facts mentioned were
not given.*

That plaintiff requested a surveyor to run the line before forbidding defendant to cut the trees, or any of them, are circumstances from which they may infer that the defendant cut the trees, believing them to be on the land of Thomas Kirby.

11. The Court will instruct the Jury that testimony is that to which the witnesses depose, that they, the Jury are to decide from the evidence which is the reasonable impression made upon their minds by the testimony, considering if they see fit, the character of the witnesses, their interest or feeling in the suit, the consistency of their testimony with itself and other testimony, their relationship to the parties, or either of them, and their demeanor on the stand.

12. That they are not bound to take as evidence the testimony of any witnesses whom they believe unworthy of credit, whether such witnesses be formally impeached or not.

13. That land upon which one cuts to considerable extent repeatedly, and which is used as timber lots are generally used, as appendages to farms, or claim of title is not vacant or unoccupied land.

To the giving of all of which instructions the defendant then and there excepted.

The Jury then retired and returned into Court with a verdict of not guilty, and the plaintiff then and there moved the Court to set aside the verdict and grant a new trial for the following reasons, to wit :

1. Because the verdict is contrary to law.
2. Because the verdict is contrary to evidence.
3. Because the verdict is contrary to law and evidence.
4. Because the verdict is contrary to the instructions of the Court.
5. Because the Court refused to give proper instructions asked for by plaintiff.
6. Because the Court erroneously modified proper instructions asked for by plaintiff.
7. Because the Court gave improper instructions asked for by the defendant.
8. Because the Court refused proper testimony offered by the plaintiff.
9. Because the Court permitted improper testimony offered by defendant.

The Court overruled the motion for a new trial, and rendered judgment against the plaintiff, and the plaintiff then moved to in arrest of judgment which motion was overruled by the court, all of which said rulings of said court, the plaintiff then and there excepted, and asked the court to sign this bill of exceptions.

Signed,

JOHN S. THOMPSON.

13-2 = 53

David Stanton

25

John Crow

Filed April 21, 1838

L. Island
W. L.

David Rankin
vs
John Crow } In the Supreme Court
April 7. 1858

Suggestions for the Court
Wead & Williamson for Plaintiff

This is an action of trespass quare
clausurae propter to recover the value of
certain timber cut by the defendant
on plaintiff's land

The defendant pleads the general
issue & also a plea denying that the land
belonged to the plaintiff

The plaintiff introduced a Patent from
the United States to John Gibson dated
10th October 1840, showing that said
land was purchased by said Gibson

He next introduced a Deed from
John Gibson to himself dated 2^d Jan'y
1856, & also proved by Robert W
Wallace and James Rankin; the Com-
mission of the trespasses complained of,
and asked his case.

The defendant then attempted to prove a conveyance to ~~himself~~ to John St Dunn in his life time by John Gibson and for this purpose called Thomas J Hort and Wm R Jamieson.

Hort testified that Gibson made a deed for the land in controversy to John St. Dunn in August 1835 - but did not know whether it was a quit claim or warranty. See Record Page 23 & 24

Jamieson testified in fact that he did not know anything about it, See Record Page 33, & also page 35 -

This was all the evidence of the existence of a deed from Gibson to Dunn
Dunn died in

To prove the loss of the deed the defendant called to P Brow who testified that she was the wife of John St Dunn & had possession of all his papers after his death - that she had searched & could not find the deed - and that she never had seen such a deed

There does not appear to have been any
proof whatever of the contents of the deed

To rebut this proof the plaintiff called
John Gibson the patentee, who swore
that he never made any such deed
See Record Page 34, & 5 &

Ann Gibson his wife that she never
signed or executed any deed or other
writing to Dunn for the land

We conclude 1st That there was no
legal proof in all this, that Gibson ever
executed a deed for the land to Dunn

2. No loss or destruction of the deed
was proved, so as to admit parol
proof of its contents

Mrs Gibson swore in effect
that the deed never was in her possession
— she never saw it. This did not
prove its loss. What did Dunn do
with the deed, if one existed? That is
for defendant to prove.

Martin vs Saunders 5 Gilman 121
Mumma vs Deget vol 1. p 723.

3. We repeat, the proof was insufficient to show that any such deed ever existed & the preponderance of proof was against it.

4. When we take the defendants 12th instruction (See abstract Page 10) into consideration we shall see why the jury found the verdict they did. That instruction told them in effect, that if for any reason, they did not believe the plaintiffs witnesses, they were not bound to pay any attention to their evidence.

This was clearly erroneous.

5. There was the strongest kind of proof to show that if Gibson executed the deed to Dunn, he was compelled to do so by, threats & fear.

See Thomas J. Hunt Record. Page 23.

" E. Davidson " " 25

" John Gibson " " 34-5

This testimony was improperly excluded by the Court

6. There is no proof whatever that Gibson had any title whatever to the land until the Patent was issued in 1840.

7. The plaintiff was an innocent purchaser without notice of Dunn's claim. The defendant failed to bring home any sufficient notice to him and in this connection Defendants 4, 5th, 6th instructions are erroneous. So is the 13th.

8 The 7th 8th 9th & 10 instructions asked by defendant are not only irrelevant, but are not law.

9. The 11th instruction is too loose, in saying that "evidence is the reasonable impression made upon the minds of the jury by the testimony"

10. The modification of Plaintiff 10th & 12th instruction was erroneous and we submit that refusing to give Plaintiff 13th instruction was also erroneous.

Wm. H. Williamson
for Plaintiff

David Rankin
vs
John Crow

Suggestions
by
Wend & Williamson
for Plaintiff

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois,

To the Clerk of the Circuit Court of *Henderson* County, GREETING:

WHEREAS, in a certain plea between *David Rankin* —
— plaintiff and *John Brow* —

— defendant, lately depending in the Circuit Court
of said county, wherein judgment was rendered for the said *John Brow* —

— and against the said *David Rankin* —

and the said *David Rankin* having appealed from the judgment
of said Court, rendered against him as aforesaid, to the Supreme Court, held at

Ottawa, on the *20th day of April A.D. 1858* and in pursuance of the said

Appeal a transcript of the record and the proceedings in the plea afore-
said was transmitted. And, also, whereas it hath been suggested, on the part of said

John Brow — that the said record has been diminished, inasmuch as
a true transcript of the will of a Captain Joseph

and sealed by the judge of the Henderson Circuit Court

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that

there is a sufficient record sent in the plea aforesaid, but in the record there is a diminu-

tion: **YOU ARE, THEREFORE, HEREBY COMMANDED**, that, without delay, *now in session*

the said *will of Captain* therein you cause to be transmitted to the Supreme Court, ~~at~~

~~at~~ *for the with* at Ottawa, ~~on the~~

~~next~~, without any diminution or addition whatsoever, to the end that speedy justice may

be done in the premises. according to law; whereof you are in no wise to fail; and send

you then there this writ.

WITNESS, the Hon. *John D. Barton* ~~Samuel H. Tamm~~ Chief Justice of

said Court, and the seal thereof, at Ottawa, this *22th*

day of *April* in the year of our Lord one thou-

sand eight hundred and fifty- *eight* —

J. Seland
Clerk of the Supreme Court.

by J. B. Rice Deputy

David Rankin
by 152

John Brown

certiorari

Clerks fee

Coping Bill of Exrs
to Instructions

\$ 7.00

Hugh S. Thomson

Clerk

Warrant

Filed May 8, 1858

L. Selman
Clerk

are circumstances, from which they may infer
that defendant lost the trees believing them
to be on the land of Thomas Kirby

State of Illinois }
County of Henderson } V Hugh L Thomson Clerk of the
Circuit Court in and for said County
do hereby certify that the foregoing is a true copy
of the instructions given by the Judge of the
Circuit Court of said County in the case of
John Curtis against Daniel McCue at the
Special December term A 1857 of the Circuit
Court of said County, and that they were
erroneously copied into the Record made by
me as such Clerk, for the Northern Division
of the Supreme Court of the State aforesaid
in the case of David Rankin against John
Brown tried at said term of said Circuit Court
and appealed to the Present term of said
Supreme Court as Instructions of Defendant
therein and that no such instructions were
asked by or given for the Defendant therein
~~and that no~~ all which appears by the Records
~~and file~~ of said office, (and that the words)
which the Court did nowhere in the bill of
Exceptions ~~are~~ or Record of said last mentioned
case follows the words in said bill of Excep-
tions to wit the words "the defendant then
asked the Court to instruct the Jury as fol-
lows to wit" or have any connection with
bearing upon or reference to them or any
of the Instructions of the defendant in
said last mentioned case, or a

In Testimony Whereof I Hugh L Thomson
do Subscribe my Name the Seal of
said Court hereto annexed this 29th
day of April A 1858

Hugh L Thomson
Clerk

The Court will instruct the Jury that If they believe from the Evidence that defendant in good faith obtained license from Thomas Kirby to cut the trees, and cut them believing were on the land of Thomas Kirby they will find for him, although they may further believe from the Evidence that they were on the land of the Plaintiff and that Thomas Kirby knew that they were on the land of the Plaintiff.

The Court will instruct the Jury that in no event can they find against the defendant if they believe from the Evidence that he in good faith obtained license from Thomas Kirby to cut ~~these~~ trees and cut them believing them to be on his Thomas Kirbys land.

- 3 The Court will instruct the Jury that admissions of the defendant Drawn out by the Counsel of the Plaintiff, are testimony for the defendant, and that if they believe from the testimony of ~~the~~ either of the Witnesses of Plaintiff drawn out by Plaintiff Counsel or from the testimony of Thomas Kirby that defendant obtained license from Thomas Kirby to cut the trees they will find accordingly.

The Court will instruct the Jury that Proof that the trees were near the line of Plaintiff and Thomas Kirby, that the line had not been designated by any Survey made Previous to the cutting of the trees that It was difficult for Surveyors to find said line that defendant paid Thomas Kirby for the trees, that Plff Requested a Surveyor to run the line before forbidding defendant to cut the trees or any of them.

182

Bankin

by

Grow

~~Amended~~
record

Filed May 6 1888

L. Leland

clerk

Return to writ
of certiorari

Supreme Court of
Michigan Ottawa term
David Perkins 1838

Appeal from Henderson
John Brown

O. Merimee atty for
Appellor deprecating that in the record in
this case in this court on the 40th
page then after the words "The dep
endent then asked the Court to
instruct the jury as follows"
appear the word "which the Court
did", that this portion of the record
is duplicate of another portion
of the same record wherein it
appears that the latter word do
not appear and which latter
officer thinking from the appear
ance of the record is the true record
as signed by the Judge below.
Therefore he prays that
the writ of Certiorari may issue
commanding the Clerk of
said Eastern District Court
in this behalf to truly
certify the said Clerk is
Henry L Thompson one of which
is true as officer believes.

O. Merimee

Subscribed & Sworn to
before me this 26th Day
of April A.D. 1838

L. Deland Clk
by J. B. Rice Deputy

152
Poulin
21
Grove

Applicant for
Certificate

Filed Apr. 26. 1858.
L. L. L. Clerk.