No. 14783

Supreme Court of Illinois

Elijah

---

vs.

Taylor

71641

STATE OF [illegible]NOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 75

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

75

SUPREME COURT,

STATE OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1865.

FRANKLIN ELIJAH,
PLAINTIFF IN ERROR.
VS.
SAMUEL C. TAYLOR,
DEFENDANT IN ERROR.

ERROR TO IROQUOIS.

FLETCHER & KINNEY,
ATTORNEYS FOR PLAINTIFF IN ERROR.

BLADES & KAY,
ATTORNEYS FOR DEFENDANT IN ERROR.

Points and Brief of Authorities of Plaintiff.

MIDDLEPORT, ILLS.
IROQUOIS PRESS PRINT.

Filed this 5. 1865
S Shankland Clk

STATE OF ILLINOIS, IROQUOIS COUNTY.

SUPREME COURT, STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

FRANKLIN ELIJAH,
PLAINTIFF IN ERROR.
vs.
SAMUEL C. TAYLOR,
DEFENDANT IN ERROR.

ERROR TO IROQUOIS.

Points and Brief on the part of the said Plaintiff in Error.

This cause was taken to the Circuit Court of Iroquois County by an appeal from J. C. Steely, Justice of the Peace of said County of Iroquois. The suit was commenced before said Justice of the Peace by said Samuel C. Taylor against Franklin Elijah, to recover a

large sum of money, which he claimed said Elijah owed him for reasons and causes set forth in his bill of particulars, filed in said Justice's court.

In the evidence it is fully shown by Taylor's own witnesses, to-wit: Elijah Courtright and Elizabeth Courtright, Susan Bowen, and others, that Mrs. Taylor, the wife of the said Samuel C. Taylor, in the absence of said Samuel C. Taylor in the fall of the year 1862, sold to said Franklin Elijah, hogs, cattle and corn, &c. The corn was in the field on the stalk, not harvested, but stood on the stalk, in two pieces, in all between 23 and 24 acres. The said Mrs. Taylor was at the time about to go on a visit to the Wabash to see her friends. The corn was raised by her boy, the said Samuel C. Taylor having helped to plant said corn, and the corn was raised *upon her own land*, which she, the said Mrs. Taylor had bought of Nelson Waity, and upon which land she lived at the time the said Elijah purchased said corn of her, and when her husband, the said Taylor, was in the army, and while she was exercising entire and complete control over said land and said corn, and using and disposing of it as her own property, which is fully shown by the evidence in the case.

It is also fully shown by the evidence in this case, that Mrs. Taylor sold said corn to said Elijah at 400 bushels. The said Elijah was to harvest said corn, and if there was more than 400 bushels, Elijah was to pay *her* at the rate of 20 cents per bushel for all there was over that amount, and was to pay *her* 20 cents per bushel for the 400 bushels. Said Elijah was to give his note for the 400 bushels when he and she should go

to the Wabash. They went to the Wabash, and Elijah gave to *Mrs. Taylor* his note for the 400 bushels, at 20 cents per bushel, for said corn. In the fall of the year 1863, Mrs. Taylor returned from the Wabash, and she and Elijah settled, and he paid her all up, paid off said note to her, and she said and expressed herself as having been fully paid, except she did not think Elijah accounted to her for corn enough,—Elijah had accounted to her for 425 bushels of corn.

Upon the trial, as the bill of exceptions fully shows, said Taylor abandoned, in open court, every other item in his cause of action except the corn, which he claimed Elijah had not accounted for under said contract made with his wife, Mrs. Taylor. It will be borne in mind that Elijah had accounted for 425 bushels of corn and settled up with Mrs. Taylor, and paid off said note, and she declared to witnesses that Elijah had settled everything, except she did not think he had accounted for corn enough.

It will also be borne in mind, by the title bond given in evidence and copied in the bill of exceptions, and by the evidence of Nelson Waity, that said land, upon which said corn was raised, was the land of Mrs. Taylor, and her own boy raised said corn, and Mrs. Taylor sold the same to Elijah and took his note for the same, and received herself the money due upon said note, and settled with said Elijah; and all was done in the absence of, and without any control or interference of her husband, Samuel C. Taylor.

It will be further perceived by the evidence, at the time of making said sale and purchase of said corn, Elijah desired Mrs. Taylor to procure some person to

help him to measure said corn, but she declined, saying she would as soon trust him, Elijah, to measure said corn as any other person. It will also be borne in mind that the amount of corn raised upon said two pieces of land is testified to by various witnesses, by giving their opinions. And it will also be recollected that none of the witnesses had an opportunity of knowing the amount of corn, raised upon said land, as well as Elijah Courtright who helped to husk a large part of it and cut up a large portion of the corn, and he says the west piece would yield 25 bushels per acre, and the east piece 20 bushels per acre. Gregory, who saw them husking said corn, confirms Courtright. The other witnesses, who testified in relation to the amount of corn, gave their opinions in relation to the number of bushels raised on said land, from merely passing by said corn.

It will also be borne in mind that Mrs. Taylor used of said corn about 100 bushels before she sold to said Elijah, which, all taken together, shows that Elijah fairly accounted for all the corn which grew in 1862 upon said two pieces of land. And it will further be borne in mind that the said Taylor has abandoned all matters in controversy except the question of the amount of corn, over the amount accounted for. Therefore, from all the evidence in this cause, the said plaintiff in error would respectfully present the following points and brief in this cause, to-wit:

I.

The first point raised in this cause is: that the land upon which the said corn was raised, and also the

corn itself, was the property of Mrs. Taylor, and not the property of Samuel C. Taylor. The statute of this State, passed in 1861, approved February 21st, 1861, on page 143 Session Laws of 1861, was passed for the express purpose of meeting such a case as this, and to prevent the husband from taking and appropriating the property of the wife for the benefit of himself.

The husband, under said statute, cannot control or interfere with the separate property of the wife.— She, under said law, is the complete, entire and absolute owner of her own property. And the husband cannot, in his own name, sue for or in any manner control her property, and she, for the purpose of controling her own property, is, by said law, for such purpose, a *feme sole*; she is to all interests and for all purposes, respecting said property, separated from her husband.

In Emerson vs. Clayton, decided by the Supreme Court of this State, the true construction is given to the said statute above referred to.

Therefore we hold it to be true that, if Mrs. Taylor was the owner of the land on which said corn was raised, and that she sold said corn under a contract made between her and the said Elijah, and afterwards her husband interfered with the transaction between his wife and said Elijah, the said Taylor cannot afterwards, in his own name, sue and recover, but if he sues, his suit must be dismissed, because he has no interest in the subject matter of the suit; and the legal title in said corn was the property of Mrs, Taylor and not the property of Samuel C. Taylor.

1 *Chitty's Pleadings, 10th American Edition, page 2, title, Parties.*

1 *Ch. Pleadings*, 10*th Edition, p.* 12.
3 *Metcalf*, *Dodge vs. Wilkinson.*
4 *Scam.* 96, *Manlove vs. McHatton et al.*

Therefore, Mrs. Taylor being the owner of said corn and having made the contract respecting the same with Elijah, the suit to recover for the breach of said contract, if any breach there was, should have been in her name, and not in the name of her husband; and the said suit having been erroniously commenced it must be dismissed.

II.

The second point made by the said plaintiff in error is: that the said instructions asked for on his part and refused by the court, should have been given, because they embody the principles of the law of 1861, and tended to enlighten the jury upon the principles of the law of 1861, above referred to; and the instructions asked for on the part of the defendant in error are contrary to the evidence given in the case, and are entirely contrary to the said act of 1861, and were well calculated to mislead the jury, and unquestionably did mislead the jury, and under the law and the evidence in this case, the said instructions should have been refused.

FLETCHER & KINNEY,
Atty's for Plaintiff in Error.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

FRANKLIN ELIJAH,
Plaintiff in Error.
vs.
SAMUEL C. TAYLOR,
Defendant in Error.

Error to Iroquois.

ABSTRACT OF RECORD:

On the 3d day of December, 1863, there were filed
2 in the office of the Clerk of the Circuit Court of Iroquois County, Illinois, a summons, transcript, and appeal bond from J. C. Steely, J. P.

2 Summons issued by the Justice of the Peace set out in full.

2 Service of summons shown by the return of the constable.

3 The transcript of the docket and judgment of the Justice of the Peace, by which it is shown that a judgment was rendered in favor of the defendant in error, and against the plaintiff in error, for $55 75.

4 The appeal bond given by plaintiff in error to defendant in error, on taking the appeal.

5 The order of the Circuit Court ordering a summons to be issued to appellee in the court below, made at the February term 1864, of said Iroquois Circuit Court.

5 Motion made by appellant in the court below for

leave to file bill of particulars, and to defend said cause, and the continuance of said cause.

5 The defendant in the court below files his pleas:

5 1st. The general issue.

6 2d. Full payment.

6–7 3d. Bill of particulars as set off.

8 Summons issued to appellee in the court below under order of court May 21st, 1864.

8 Summons set out in full, dated 21st day of May, 1864.

9 The return of the Sheriff upon the back of said summons issued against appellee by order of Circuit Court: The said Samuel C. Taylor not found; dated the 4th of June, 1864.

9–10 Said cause continued by order of the Circuit Court from the June term 1864 to November term 1864.

At the November term of the Circuit Court for 1864, the plaintiff in the court below entered his appearance in said cause by Blades & Kay, his attorneys,
10 and the defendant in the court below by Chamberlain & Fletcher, his attorneys, and thereupon the said cause was tried by a jury before said Circuit Court.

10 The names of the jury set out.

The release or Alfred Gregory, one of the securi-
11 ties on the appeal bond. Was released by order of the Circuit Court from said bond and John Woods was substituted instead of Alfred Gregory.

11 Amended appeal bond filed by the defendant.

11–12 Amended appeal bond set out in full with John Woods one of the securities.

The jury, under the instructions of the Circuit
13 Court, retired to consider of their verdict on the 22d day of November, 1864, and on the same day returned a verdict of $53.

13 Whereupon the said defendant in the court below entered his motion for a new trial.

14 And, afterwards, to-wit: on the 30th day of November 1864, the motion entered by defendant for a

new trial, was overruled by the court.

Judgment rendered by the court upon the verdict of the jury for fifty-three dollars damages together with
14 his costs in and about the prosecution of this cause expended, and that he have execution therefor against the said defendant.

The said defendant's attorneys enter exceptions to the decision of the court, and enter a motion on behalf of defendants for an appeal in this cause to the Supreme Court of this State.

Appeal granted by the court, on condition that the defendant enter into an appeal bond conditioned according to law, in the sum of three hundred dollars,
14 with John Chamberlain as security thereon, within forty days from this date, and that the defendant also procure and file with the clerk a bill of exceptions in this cause, within the same time.

14 On motion of plaintiff's attorneys the court certifies that all of the plaintiff's witnesses sworn on the trial were necessary in the cause.

And on the 2d day of January 1865, there was filed in said cause, by the said defendants in the Circuit Court, a bill of exceptions, to-wit:

David Gass, the first witness for the plaintiff, sworn. Testifies he was acquainted with the parties to this suit, and was acquainted with the farm that
15 Taylor and his wife lived on in the summer of 1862.— The farm adjoined his farm; Elijah moved on the farm about the last of November, 1862; Mrs. Taylor moved away late in the fall of 1862, after the defendant (Elijah) took possession; the defendant (Elijah) bought the corn, of Mrs. Taylor, standing in the field; that he was to husk it himself and pay 20 cents per bushel; he (the witness) saw the corn frequently on the stalk, especially the west piece; that he believed it would make 30 bushels to the acre; there were 14 acres in
16 the west piece; the defendant (Elijah) told him he had bought two calves of Mrs. Taylor at $10, and one yearling steer at $10; he also heard the defendant, Elijah, state he bought some hogs before the plaintiff went into the army; there were about 19 head of hogs; the defendant, Elijah, further stated he had bought Mrs. Taylor's chickens, and he, Elijah, used the stock
16

pasture where said corn grew; the stalks were worth
$12; the witness often saw the defendant's, Elijah's,
cattle and mules in the corn, after he bought it; Eli-
16 jah had 14 or 15 head of mules, 4 or 5 head of cattle
and 5 or 6 head of horses; the witness rode through
there one night, found fence down and stock were in
corn; saw defendant's stock in the field and corn many
times, two or three hours at a time in the field; knew
defendant used straw rick, it was worth $4 or $5; the
defendant used the fodder, worth 5 or 6 cents per
shock, and defendant used Taylor's cultivator; the de-
fendant, Elijah, went away last of August, 1864; the
house was worth 50 cents to $1 per month; he went
by the corn every day during the summer and fall of
1862; the corn would average 30 bushels per acre; he
16 adjoined the place which Elijah lived on, the Taylor
place; there were two pieces of corn, the east and the
west piece; the east piece contained 9 acres; Elijah
claimed he had bought both east and west piece; there
were 23 or 24 acres in all; Mrs. Taylor is the wife of
17 Samuel C. Taylor; Samuel C. Taylor went into the ar-
my in the latter part of summer of 1862, before Elijah
bought the corn of Mrs. Taylor; the defendant, Elijah,
had a pen built for his mules, and aimed to keep up his
mules at night, but they were often out; in the day
time the mules were on the prairie; the fences were
fair, in some places the fences were down; saw the de-
fendant's children drive the mules out, &c.

William Brown, one of the witnesses for the said
17 plaintiff in the court below, also testifies: that he was
acquainted with the corn raised on the Taylor farm in
the summer of 1862, which the defendant bought of
Mrs. Taylor; says the defendant, Elijah, stated to him
he had bought the corn and was to pay 20 cents per
bushel, and was to gather it himself; he measured the
17 ground; were 9 acres and 10 rods in east piece and 14
acres and 56 rods in west piece; the west piece would
yield 30 bushels per acre; he was better acquainted
with west than east piece; the plaintiff helped to plant
the corn and the boy ploughed it; the corn was raised
before the plaintiff went to the army; the defendant
18 was to pay $10 for a steer, which he had bought of
Mrs. Taylor, and also 2 calves, also hogs, could not say
how many; some were worth $2 apiece, while others
were worth from 75 cents to $1; the defendant bought
some potatoes of Mrs. Taylor, potatoes were worth

from 75 cents to $1 per bushel; the defendant got some shingles, shingles were worth $4 50 per thousand; there were 250 shingles in a bunch; the stalks were
18 worth 50 cents per acre; the defendant used the shocks of fodder; the shocks of fodder were worth 6 or 8 cts. per shock; the defendant used the straw rick which was worth from $3 to $4.

Cross examined.

A few rows of corn were gathered before the corn was sold to defendant; ten or twelve rows were gathered, ½ acre in all; six, eight or ten hogs were good sized ones, the others were small; he had seen some of the mules, cattle and horses in the corn several times;
18 the defendant had 16 or 18 head of mules; the defendant was to keep up the fence; one cannot always tell about the yield of corn by looking at it; he gave his opinion as to the amount of corn; it was a wet season that year and crops were generally light that year; that was a high piece of land; the witness stated that his horses were in said corn once.

Amos Pineo, the next witness for said plaintiff,
19 Taylor, stated that said corn would yield 30 bushels per acre; said the stock pasture, where the corn was raised, was worth $12; the fodder was worth 6 or 8 cents per shock; the straw rick was worth $4; the house was worth $1 per month.

Elijah Courtright, the next witness on the part of
19 the plaintiff, Taylor, testified that Mrs. Taylor is the wife of the plaintiff, Taylor; she sold the defendant, Elijah, 18 hogs at 2 cents per pound, amounting to $20; also 3 or 4 dozen chickens, worth 75 cents per dozen; Mrs. Taylor was to let defendant have hay and cabbage and 4 or 5 bushels of potatoes for moving her to the Wabash; the defendant moved Mrs. Taylor to the Wabash soon after he bought the corn crop and hogs and and chickens and calves of Mrs. Taylor; said he heard
19–20 the contract between the defendant, Elijah, and Mrs. Taylor; he bought the corn of her at 400 bushels; said he did not think there were more than 400 bushels; the defendant was to harvest the corn, and if there were more than 400 bushels he would pay her at the rate of 20 cents per bushel for all there was over 400 bushels; they could not write so they put off the giv-
20 ing of the note until they should go to the Wabash,

and concluded to make out the note when they should go to the Wabash; and if there should be less than
20 400 bushels, Mrs. Taylor was to make a deduction at the same rate; the defendant was to have the stalks of corn, straw rick and pasture, in the bargain; the defendant, Elijah, requested Mrs. Taylor to get some person to help him measure the corn, but she said she would be satisfied to have him do it, that he could not cheat her much, that she would as soon trust him to measure it as any other person.

Cross examination.

Courtright stated that after the return of Mrs. Taylor in the fall of 1863, she (Mrs. Taylor) told him that the defendant had paid off the note and she and
21 the defendant had settled, and the defendant had paid her off everything, except she did not think he had accounted to her for corn enough, that she did not think he had allowed her for corn enough; the defendant got two horses shod for Mrs. Taylor; Mrs. Taylor fed out of the corn to her hogs and other stock, before the defendant purchased it, something like 75 or 100 bushels; that he was well acquainted with both pieces of corn which the defendant bought of Mrs. Taylor in 1862; that he cut up a part of it, about 90 shocks, and helped to husk a portion of it; the corn was deceptive, the ears were short and light and did not turn out as well as he expected before it was husked; the season of 1862 was wet, and the corn was generally light; the west piece would average 25 and the east 20 bush. to the
21 acre; he lived on farm where the corn was raised, in 1862; the defendant had 18 mules and four or five head of horses; the defendant went on last of November or first of December, 1862; the defendant went into the house which Mrs. Taylor left; it was the custom of the de-
21 fendant to herd his mules in the day time and pen them at night; he never saw the mules or horses in the corn; he saw them twice in Mr. Gass's corn in the same field; he lived between the two pieces of corn; there were 22 or 23 acres in both pieces; said he heard a conversation between Mrs. Taylor and the defendant; Mrs. Taylor claimed that the defendant ought to pay
21 her rent for the house until the March next; the defendant claimed he ought not, for he said that was not the bargain; he understood in that conversation that everything was settled between the defendant and Mrs.

Taylor, except the corn; before Mrs. Taylor went to the Wabash the defendant paid her $30 and paid me $2 for her, and was to give his note to Mrs. Taylor for
21 the corn when he went to the Wabash with her; he afterwards saw defendant haul rails and fix the fence; the defendant took Mrs. Taylor to the Wabash, and returned in a few days; it was in the fall of 1863, after Mrs. Taylor returned from the Wabash, that I heard her say that the defendant had paid her up, only she did not think he had accounted to her for enough corn.

Seymour Cobb, the next witness for the plaintiff, Taylor, said the corn would yield 30 bushels to the acre; he fed the defendant's things, the next April, out of one of the cribs; were 150 bushels of corn in
22 the crib he fed out of, and there was another crib of corn, 8 feet square, nearly full.

Daniel Tuttle, the next witness for the said plaintiff, Taylor, says: said piece of corn was close to his
23 house; the east piece contained 9 acres and 10 rods; that piece would go 40 bushels to the acre; had seen defendant's stock in often before it was gathered; there were a little over 23 acres of corn in both pieces.

Susan Bowen, the next witness for the said plaintiff, Taylor, says: she was present after Mrs. Taylor re-
24 turned from the Wabash, when the defendant paid Mrs. Taylor the note he had given to her at the Wabash; he paid her all except 50 cents; this was in September, 1863; she did not remember the amount paid; the note was given up; the defendant said he had got 425 bushels of corn and Mrs. Taylor said he had not accounted for corn enough; she said there was more than that amount of corn; Mrs. Taylor and the defend-
24 ant disagreed about the amount of corn; Mrs. Taylor claimed nothing due from the said defendant, only that he had not accounted to her for corn enough, and the defendant claimed that he had accounted for all the corn.

And the said defendant to maintain the issue on
24 his part, gave in evidence to the jury:—

1st The evidence of Alfred Gregory, who testi-
24 fied: that he saw the corn in the fall of 1862, when the defendant and Elijah Courtright were husking it; he was a horseback and rode up close to where they were,

on one side of the fence outside of the field, and they were on the inside husking, not far from the fence; he
24 stopped and talked with them for one-half an hour; the corn appeared light and the ears short; he noticed many hills which had but one stalk in them, and from the appearance of the corn he thought it would not yield more than 20 bushels to the acre; he is a farmer and is acquainted with the raising of corn; the season of 1862 was a wet season and the corn was generally light.

John Hunt, the next witness for the defendant,
25 Elijah, testified: that before the plaintiff went to the army he heard him say that any trade or deal his wife would make would be all right with him; there were something over 23 acres of corn.

Elizabeth Courtright, the next witness for the defendant, Elijah, testifies: she heard the plaintiff say, before he went to the army, that any contract his wife would make he would stand by; she was present when
25 the defendant and Mrs. Taylor were settling, before Mrs. Taylor went to the Wabash in the fall of 1862; they talked over their dealings the day before Mrs. Taylor went away; Mrs. Taylor said defendant was to have the pickings of the field; everything was talked over; the defendant was to give his note to Mrs. Taylor for 400 bushels of corn, when they got to the Wabash; the defendant was to harvest the corn and pay 20 cents per bushel for it; the defendant was to pay 20 cents per bushel for all over 400 bushels, and if less
25 Mrs. Taylor was to make a deduction; the stalks, fodder, pasture, straw rick, and the pickings of the field, were all thrown in by Mrs. Taylor to the defendant in
26 the bargain; the defendant requested Mrs. Taylor to get some person to help him measure the corn; she declined; said she would as soon trust to the defendant to measure the corn as any one, he could not cheat her much any way; the wife of the plaintiff is my aunt;
26 I never saw the mules in the corn, &c.

Robert Caldwell, the next witness for the defendant, stated: he had a title bond in his possession, given by Nelson Waity to Mrs. Taylor for a deed for land;
26 Waity and Mrs. Taylor left the bond with me for safe keeping.

He produced the bond which was read in evidence,

26 which bond is set out at large on pages 26, 27, and 28 of the record.

26–27 28 The copy of title bond.

Nelson Waity, the next witness for Elijah, testified: that the bond just read was the bond of himself and Mrs. Taylor and Samuel C. Taylor, and the corn in controversy was raised in 1862 on the land described in the bond, and the corn in question, sold by Mrs. 28 Taylor to the defendant in the fall of 1862, was raised on said land; the defendant paid me $15 for Mrs. Taylor to apply on borrowed corn, &c.

James E. Woodford, next witness, stated: that a crib, 8 feet square, of ears of corn, would shell 227 29 bushels, &c.

29 James C. Steely stated the same as James E. Woodford.

Elijah Courtright, the next witness called by the 29 defendant, stated: that before Mrs. Taylor went to the Wabash the defendant paid him $30, and there was nothing besides the corn unpaid for.

At this time the plaintiff's counsel, in open court, declared to the court and jury that they claimed for 29 nothing more than the corn, over the amount which had been accounted for by the defendant to Mrs. Taylor. The said Elijah Courtright further testified: that the boy who ploughed the corn was Mrs. Taylor's boy, and not the boy of the plaintiff.

David Gass was recalled by the plaintiff; said he had passed through the west piece of said corn; it stood well; the plaintiff and himself furrowed out the 30 ground; the plaintiff covered the corn and Mrs. Taylor's boy ploughed it; the corn was laid by before the plaintiff went to the army.

William Brown was recalled by the plaintiff, and said the plaintiff helped to plant the corn and the boy ploughed it; the corn was raised before the plaintiff 30 went to the army.

30–31 Instructions asked for on the part of defendant, Elijah, and refused by the court.

31–32 33–34 Instructions asked for and given on the part of the defendant.

34–35
36 Instructions asked for and given on the part of the plaintiff, Taylor.

37 Certificate of Clerk.

37–38 Assignment of errors.

KINNEY, FLETCHER & CHAMBERLAIN,
Atty's for Plaintiff in Error.

75

H Hoyle
vs
S & J Taylor
Abstract

Filed Oct 15. 1865
L. Leland
Clk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Iroquois County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Iroquois County, before the Judge thereof, between

Samuel C. Taylor

plaintiff, and

Franklin Elijah

defendant, it is said that manifest error hath intervened, to the injury of the said Elijah

as we are informed by his complaint the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Samuel C. Taylor

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A. D. 1865, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Taylor

notice, together with this writ.

Witness, The Hon. Pinkney H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 9th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-five.

L. Leland

Clerk of the Supreme Court.

75

Franklin Elgin
No.
vs.
Samuel C. Taylor

SCIRE FACIAS.

Filed. Feb. 4. A. D. 1865
L. Leland Clerk.

Served this the within writ by reading the same to Samuel C Taylor the within named defendant in Error, and also by leaving with him the said Samuel C Taylor a true copy of the within writ, And said service of the within writ was so made by me in manner and form aforesaid upon the said Samuel C Taylor this 17th day of February A.D. 1865

Fees 10 miles travel .15
Service .50
Copy .20
Return .10
Paid in full $ .95

James P. Martin
Sheriff Iroquois County
Illinois

State of Illinois } In Supreme Court
Third Grand Division } Sa To March Term AD 1865

Francis Elijah
vs
Samuel G Taylor } Error to Iroquois County

Judgment on an appeal from Justice of the Peace at the March=
=in Term AD 1864 for the sum of fifty three dollars and Costs of suit=

Issue a Writ of Error to the Cir=
=cuit Court of Iroquois County, against Samuel G Taylor at the suit of Frank=
=lin Elijah, returnable according to Law=

Chamberlain Fletcher & Manning
Attys for Plff in Error

Dated Feb 8th 1865

To the Clerk of the Supreme Court
Third Grand Division -

P.S. Please send writ immediately as Taylor will leave in a few days.

James Fletcher

75

Taylor ats Elijah
Prentice

Filed Feby. 9th 1868.
L. Leland
Clk.

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

FRANKLIN ELIJAH *vs.* SAMUEL C. TAYLOR. } APPEAL.

We submit the evidence in this cause to the Court without remark or argument.

The position taken by the defendant in the Circuit Court is radical in the extreme, and if sanctioned by the Court, would subvert the natural domestic relations, so far as the "rights of things" are concerned, and in every case where the husband and wife live on the land of the wife, the husband would be obliged to regularly lease the land of the wife, else he would be taken to be her servant.

As the law now stands, without any forced construction, the property of the wife is hers absolutely. She can, it seems, convey her lands by her sole and separate deed.

The wife's interest in the realty of her husband is such an incumbrance as to prevent the husband from conveying *his* lands without her legal consent, even lands which constitute no part of the homestead. The wife hangs like a perpetual cloud upon the title of the husband. *His* property is liable for debts contracted by *her* for necessaries. She takes a large share of his property upon his death, while her property goes to *her* heirs, and is, we suppose, in no case liable for debts contracted by him for necessaries for the family. She is the *baron;* he is the *feme.* The Utopia of women's rights has been reached.

We cite—

Peck *vs.* Ward, 6 Harris, 506.
Thorndell *vs.* Morrison, 1 Casey, 326.
Ulp *vs.* Campbell, 7 Harris, 361.
Stoops *vs.* Blackford, 3 Casey, 214.
Steinman *vs.* Ewing, 7 Wright, 63.
Mahon *vs.* Gormley, 12 Harris, 80.
Raybold *vs.* Raybold, 8 Harris, 308.
Kenedy *vs.* Good, 9 Harris, 349.

BLADES & KAY,
For Appellee.

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Elijah v Taylor
Appellee's brief

Filed Apl. 10. 1865
Sheland
Clk.

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

FRANKLIN ELIJAH *vs.* SAMUEL C. TAYLOR. } APPEAL.

We submit the evidence in this cause to the Court without remark or argument.

The position taken by the defendant in the Circuit Court is radical in the extreme, and if sanctioned by the Court, would subvert the natural domestic relations, so far as the "rights of things" are concerned, and in every case where the husband and wife live on the land of the wife, the husband would be obliged to regularly lease the land of the wife, else he would be taken to be her servant.

As the law now stands, without any forced construction, the property of the wife is hers absolutely. She can, it seems, convey her lands by her sole and separate deed.

The wife's interest in the realty of her husband is such an incumbrance as to prevent the husband from conveying *his* lands without her legal consent, even lands which constitute no part of the homestead. The wife hangs like a perpetual cloud upon the title of the husband. *His* property is liable for debts contracted by *her* for necessaries. She takes a large share of his property upon his death, while her property goes to *her* heirs, and is, we suppose, in no case liable for debts contracted by him for necessaries for the family. She is the *baron;* he is the *feme.* The Utopia of women's rights has been reached.

We cite—

Peck *vs.* Ward, 6 Harris, 506.
Thorndell *vs.* Morrison, 1 Casey, 326.
Ulp *vs.* Campbell, 7 Harris, 361.
Stoops *vs.* Blackford, 3 Casey, 214.
Steinman *vs.* Ewing, 7 Wright, 63.
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BLADES & KAY,
For Appellee.

75

Elijah vs Taylor

Appellee brief

Filed Apl. 10. 1865.

L. Leland

Clk.

To all to whom these presents shall come-
Greeting!!

Know Ye- that we having caused to be
inspected the Records and proceedings now remain-
ing in the Office of the Clerk of the Circuit Court
of Iroquois County Illinois, in the case of Samuel
L. Taylor vs. Franklin Elijah, do find therein certain
Records and proceedings, in the words and figures fol-
lowing to-wit:

" Iroquois County Circuit Court, February Term, A. D, 1864.

" United States of America,
" State of Illinois, ss.
" Iroquois County,

" Pleas before the Honorable
" Charles R. Starr, Judge of the Twentieth Judicial
" Circuit and Presiding Judge of the Iroquois Coun-
" ty Circuit Court, in the State of Illinois, at a Term
" of the said Circuit Court, begun and held at the
" Court House, in the Town of Middleport, in said
" Iroquois County, on the third Tuesday (the same
" being the Sixteenth (16) day, in the month of Feb-
" ruary, in the year of our Lord one thousand
" Eight Hundred and Sixty-four.

" Present-
" Hon. Charles R. Starr, Judge of the Twentieth
" Judicial Circuit,
" Charles H. Wood, States Attorney, Twentieth
" Judicial Circuit,
" Harrison A. Henry, Sheriff of Iroquois County,
" Thomas Vennum, Clerk of the Iroquois County Circuit Court

Be it remembered that on the 3rd day of December, A. D. 1863, there were filed in the Office of the Clerk of said Court a Summons, Transcript and Appeal Bond, from J. C. Steely, a Justice of the Peace, which read as follows:

Summons.

"State of Illinois, } ss.
"Iroquois County, }

"The People of the State of Illinois
"to any Constable of said County, Greeting:

"You are hereby commanded to summon Frank
"Elijah to appear before me, at my office, in Middleport,
"on the 23rd day of November, A. D., 1863, at 9 o'clock, A. M.,
"to answer the complaint of Samuel C. Taylor for a
"failure to pay him a certain sum not exceeding
"one hundred dollars, and hereof make due return
"as the law directs. Given under my hand and Seal
"this 17 day of November, A. D., 1863.

"J. C. Steely, J. P. (Seal)

Return endorsed thereon as follows, to-wit:

"Served the within by reading to the within
"named defendant, this 17 day of November A. D., 1863

"J. M. Chapin, Constable

Transcript-

"State of Illinois } ss.
"County of Iroquois }

"Samuel C. Taylor,
vs
Frank Elijah. } "Damages $100 00/100
"On an account, verbal

"J. C. Steely Esqr. "A. D. 1863. November 17th Summons issued return-
Summ 25 "able the 23rd instant, at nine o'clock, A. M. and deliv-
Doc 20 "ered to constable Chapin to serve,- Summons returned

c3

"2 Sub 30
" Ent Jud 35
" Sp " 10
" 5 Oaths 35/135
"Ex 25 = 160
" Trans 25
" Cert. 25
" Ent Apl 35
" Bond 25
"Stamp 5/$2.65

"Court Chapin fee
"Sh Sum 25
" Trav 60/.85

Wit. fees.
$ 2.50

"by said constable endorsed, served the within by
"reading to the within named defendant this 17"
"day of November, A. D., 1863, fees 85.

"Two subpoenas issued of part of the Plaintiff
"& returned in blank service.

"A. D. 1863, November 23rd nine o'clock, A. M. the
"Plaintiff appears, by W. S. Kay, his atty, and declares
"on verbal account, for corn and calves sold and
"delivered to defendant. The Defendant upon being
"[illegible] comes not, but fails to appear. David Gass,
"[illegible]n Brown, Daniel Tuttle, Seymore Cobb
"& [illegible]ron Waily, were sworn as witnesses, and tes-
"tified on part of the Plaintiff and claims fees.- No
"witnesses on part of the Defendant.

"After hearing the evidence, it is considered by
"the court, that the said plaintiff have and recover
"of the said defendant, the sum of fifty-five dollars an
"seventy-five cents ($55 75/100) for his demand against
"the said defendant, and costs of suit herein taxed
"[illegible] dollars and seventy cents.-

"J. C. Sleely, J. P.

"A. D. 1863. November 27" Execution issued on oath
"of W. S. Kay Atty for Plaintiff & delivered to constable Allen
"to serve.- Said Execution recalled Nov. 30"

"State of Illinois }
"County of Iroquois } ss.

5 Cent Rev Stamp

"I, J. C. Sleely, a Justice of the
"Peace, in and for said County, do hereby certify, that
"the foregoing transcript, and the papers therewith enclosed
"being five (5) in number, including the appeal bond, con-
"tain a true copy of all the proceedings had before
"me in the cause therein entitled

"In witness whereof, I hereunto set my hand at
"my office in Middleport, in said County, this
"first day of December, A. D. 1863."

"J. C. Steely, J. P."

(Appeal Bond)

"Know all Men by these Presents, That we, Frank
"Elijah and Alfred Gregory & John Chamberlain, of
"the County of Iroquois and State of Illinois, are held
"and firmly bound unto Samuel C. Taylor, also of the
"same County and State, in the penal sum of one
"hundred & twenty-five Dollars, lawful money of the
"United States, for the payment of which, well and truly
"to be made, we bind ourselves, our heirs and administra-
"tors, jointly, severally and firmly by these presents.-
"Witness our hands and seals, this 27th day of Nov-
"ember, A. D. 1863.

"The Condition of the above Obligation is such,
"That whereas, the said Samuel C. Taylor did, on the
"33" day of November, A. D. 1863, before J. C. Steely, a justice
"of the Peace for the County of Iroquois, recover a judg-
"ment against the above bounden Frank Elijah, for
"the sum of fifty-five 25/100 Dollars & four 70/100 dollars cost,
"from which judgment the said Frank Elijah has
"taken an appeal to the Circuit Court of the County
"of Iroquois aforesaid, and State of Illinois. Now, if the
"said Frank Elijah shall prosecute his appeal with
"effect, and shall pay whatever judgment may be
"rendered by the Court upon dismissal or trial of
"said appeal, then the above obligation to be void,
"otherwise to remain in full force and effect."

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"Approved by me, at my office, this 27th day of November A.D. 1863.
"J. C. Steely, J.P.

Franklin + Elijah (Seal)
Alfred Gregory (Seal)
John Chamberlain (Seal)

And afterward, to-wit: of the 17th day of February, A.D. 1864, the same being one of the regular days of the February Term of said Court, for the year 1864, the said Court being there duly organized, and setting as a Court for the transaction of judicial business, the following proceedings were had and entered of Record by said Court, to-wit:

"Samuel C. Taylor,
vs.
"Franklin Elijah. } Appeal.

"This day comes the Defend. "and by his attorney, and enters his motion for leave "to file herein a bill of particulars and to defend this "cause. Ordered that this cause be continued, and "that the Clerk issue a Summons to the appellee"

And on the said 17th day of February, there was filed by the Defendant a copy of account, in words and figures following:

"Samuel C. Taylor,
"vs.
"Franklin Elijah, } Appeal."

"And the said defendant comes "and pleads to the above cause."
"1st That he does not owe the said plaintiff the said "sum claimed by him in the above suit, or any part

"thereof"

"2. The said defendant pleads to the above suit, "the entire and full payment of the said above "sum, which the plaintiff claims against him "in the above suit."

"3. The said defendant comes and files the following "bill of items as a set-off against the said "plaintiffs demand against this defendant, to-wit:

"Samuel C. Taylor, Dr.

"To Franklin Elijah.

"To cash	$135 00
"To work and labor done for said plaintiff,	$100 00
"To hauling rails	10 00
"To moving plaintiffs wife to Wabash,	25 00
"To rebuilding fence,	10 00
"To 10 bushels potatoes,	5 00
"To 24 Chickens,	3 00
"To 1 day butchering	1 00
"To cash paid Baily	10 75
"To cash paid plaintiffs wife	30 00
"To cash paid plaintiffs wife	130 00
"To cash paid collector of taxes in Concord Township for plaintiff	4.28
"To cash paid to Elijah Courbright for "plaintiff	554 03 / 2.00
"To cash paid to blacksmith for Shoeing "plaintiffs horses and doing other work for "plaintiff.	1 50
"To one trip to Concord to pay taxes	1.00
"To House rent	8.00

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"To cash paid to plaintiffs wife	100 00
"To cash paid to plaintiffs wife at differ-	
"ent times"	100 00

And on the 16th day of May there was filed by the Plaintiff a copy of account in words and figures following:

"Frank Elijah

To Samuel C. Taylor, Dr.

"To 1000 Bushels of Corn on the stalk, at 20	
"Cents per bushel	$200.00
" " 2 Spring Calves @ $5 @	10.00
" " 1 Yearling Steer	10.00
" " 19 Head of Stock Hogs at 2½ cts per lb	
"1170 lbs.	29.25
" " 6 doz Chickens at 12½ per doz	9.00
" " 8 Bushels Potatoes at 50 cents	4.00
" " 5 Bushels Apples " 50 "	4.00
" " 75 Heads Cabbage @ 5 cts	3.75
" " 3 Quarts Onion Setts @ 15 cents	.75
" " 1 Bushel cucumber pickles	1.25
" " 1 pr Ducks	.25
" " 1 Bunch Shingles 250	2.00
" " 1 Hand Rake	25
" " Stalk Pasture	10.00
" " 100 Shocks corn fodder	16.00
" " 1 Straw Rick	6.00
" " Use of Home furniture	6.00
" " Use of Farming utensils	5.00
" " House Rent	15.00
" " 1 Bushel Walnuts	1.00

" " 1 Bushel Hazelnuts 1.00
" " 1 Flour Barrel .20
$ 333.70

And afterwards, to-wit, on the 21st day of May A.D. 1864 there was issued from the Office of the Circuit Court, an Appeal Summons, which reads in words and figures following:

"The State of Illinois } ss.
"Iroquois County }

"The People of the State of "Illinois, to the Sheriff of said County, Greeting:
"We Command you to Summon Samuel C. Taylor "if he may be found in your County, personally to "be and appear before the Circuit Court of said "County, on the First day of the Term, to be holden "at Middleport on the Second Tuesday of June, "next, then and there to prosecute a certain suit "brought into our said Court, by appeal from the "Judgment of James C. Sturly, a Justice of the Peace of "said County, wherein Samuel C. Taylor is Plaintiff "and Franklin Elijah is Defendant; in which "said judgment was rendered in favor of the Plain- "tiff, for fifty-five Dollars and Seventy-five cents, "debt, besides Costs of suit. And have you then "this writ, with an endorsement in what manner "you shall have executed the same

"Witness Thomas Vennum, Clerk of "said Court, and the Seal thereof, at Mid- "dleport, in said County, this 21st day of "May, A.D. 1864

Seal

50 ct Stamp

Thomas Vennum, Clerk

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The following endorsement appears upon the aforesaid Summons, to-wit:

"State of Illinois }
"Iroquois County, } ss.

"The within named Samuel "C. Taylor, not found in my County, this 4th "day of June, A.D. 1864."

"A. C. Henry, Sheriff."

And afterwards, to-wit, on the 14th day of June A.D. 1864, the same being one of the regular days of the June Term of said Court, for the year 1864, the said Court being then duly organized and setting as a court for the transaction of Judicial business, the following proceedings were had and entered of Record by said Court, to-wit:

"Samuel C. Taylor }
"vs. } Appeal."
770 "Franklin Elijah }

"On motion of Plaintiffs attorneys it is "ordered that this cause be passed until Tuesday morning "of the second week of this term of Court."

And afterwards, to-wit: on the 21st day of June A.D. 1864, the same being one of the regular days of the June term of said Court, for the year 1864, the said Court being then duly organized, and setting as a Court for the transaction of Judicial business, the following proceedings in said cause were had and entered of Record by said Court, to-wit:

"This day comes the Defendant by Chamberlain and "Fletcher, his attorneys, and enters his motion to continue

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"this cause. And the Court being advised in relation
"to said motion ordered, that this cause be continued at the
"costs of the Defendant."

"It is therefore considered and ordered by the Court
"that the Plaintiff do have and recover of and from the De-
"fendant his costs of this continuance, and that he have
"Execution therefor against the said Defendant."

And afterwards, to-wit: on the 17th day of November, A.D. 1864, the same being one of the regular days of the November Term of said Court for the year 1864, the said Court being then duly organized and setting as a court for the transaction of judicial business, the following proceedings in said cause were had and entered of Record by said Court, to-wit:

"This day comes the Plaintiff into Court, by Blades and
"Kay, his attorneys, and the Defendant by Chamberlain and
"Fletcher, his attorneys, and thereupon, by order of Court came
"the jurors of a jury, to-wit: Joshua Dean, W. F. Kady, George
"Wright, Joel Brandenburg, D. D. Tullis, Charles M. Axtell,
"Hugh Wyllie, Hugh W. Moore, Robert Caldwell, Charles
"Sutton, Thomas E. Thompson and William P. Clark, twelve
"good and lawful men, who were then and there duly
"empannelled and sworn according to law, as a jury
"to try this cause, and after hearing a portion of the
"evidence adduced in the cause, upon the adjournment
"of Court in the evening, are permitted to separate with or-
"ders to appear at the organization of Court on to-morrow
"morning, for the further hearing of this cause."

And afterwards, to-wit: on the 18th day of November

A. D. 1864, the same being one of the regular days of the November Term of said Court for the year 1864, the said Court being then duly organized, and sitting as a Court for the transaction of judicial business, the following proceedings were had and entered of Record by said Court, in said cause, to-wit:

"On motion of Defendants attorneys it is ordered "that Alfred Gregory be discharged from liability on the "appeal bond in this cause, and that John Woods be sub- "stituted in his stead. And the jury in this cause, "after hearing the remainder of the evidence, on the part "of the Plaintiff and Defendant hereto, upon the adjourn- "ment of Court, in the evening, are permitted to separate "with orders to appear at the organization of Court on to-mor- "row morning, for the further hearing of this cause."

And the amended appeal bond, filed by Defendant, reads as follows, to-wit:

"Know all Men by these Presents, that we, Frank Elijah "and Alfred Gregory & John Chamberlain, of the County "of Iroquois and State of Illinois, are held and firmly "bound unto Samuel C. Taylor, also of the same County "and State, in the penal sum of One Hundred and twenty- "five Dollars, lawful money of the United States, for the "payment of which, well and truly to be made, we bind "ourselves, our heirs and administrators, jointly, severally "and firmly by these presents. Witness our hands and "seal, this 27th day of November, A. D. 1863.

" The Condition of the above obligation is such, that "whereas the said Samuel C. Taylor did, on the 25th

"day of November, A. D. 1863, before J. C. Sleely, a Justice
"of the Peace for the County of Iroquois, recover a judgment
"against the above bounden Frank Elijah for the sum
"of fifty-five 75/100 Dollars, & four 70/100 dollars costs, from
"which judgment the said Frank Elijah has taken
"an appeal to the Circuit Court of the County of
"Iroquois aforesaid, and State of Illinois. Now if the
"said Frank Elijah shall prosecute his appeal
"with effect, and shall pay whatever judgment may
"be rendered by the Court upon dismissal or trial of
"said appeal, then the above obligation to be void,
"otherwise to remain in full force and effect."

"Approved by me at my office
"this 27th day of November, A.
"D. 1863. J. C. Sleely J. P."
"Witness, James Fletcher"

"Franklin + Elijah" (Seal)
"Alfred Gregory" (Seal)
"John Chamberlain" (Seal)
"John his + mark Woods" (Seal)

And afterwards, to-wit: on the 19th day of November A. D. 1864, the same being one of the regular days of the November Term of said Court for the year 1864, the said Court being then duly organized and sitting as a Court for the transaction of Judicial business, the following proceedings were had and entered of Record by said Court, to-wit:

"Samuel C. Taylor.
vs.
"Franklin Elijah, } Appeal"

"The jury in this cause, after
"hearing the evidence as aforesaid, the arguments of
"Counsel and the instructions of the Court, retired in

"charge of an Officer, to consider of a verdict, and
"afterwards return into Court. and for verdict say
"they find for the Plaintiff Fifty-three dollars."

And afterwards, to-wit: on the 22d day of November
A.D. 1864, the same being one of the regular days of the
November term of said Court for the year 1864, the said
Court being then duly organized and sitting as a
Court for the transaction of Judicial business, the
following proceedings were had and entered of re-
cord by said Court, to-wit:

"Samuel L. Taylor."
vs.
"Franklin Elijah." } Appeal.

"This day comes the defendant
"by his attorneys and enters his motion to the Court
"for a new trial in this cause."

And afterwards, to-wit: on the 30th day of Novem-
ber, A.D. 1864, the same being one of the regular days of
the November term of said Court, for the year 1864, the
said Court being then duly organized and sitting
as a Court for the transaction of Judicial business,
the following proceedings were had and entered of
Record by said Court, to-wit:

"Samuel L. Taylor,
vs
"Franklin Elijah" } Appeal

"The motion entered by de-
"fendant for a new trial herein, coming up for

"argument, and the Court being advised in the mat-
"ter, ordered that the same be overruled"

"It is, therefore, considered and ordered by the Court
"that the Plaintiff do have and recover of and from
"the Defendant the said sum of Fifty-three dollars
"damages, together with his costs in and about the
"prosecution of this cause expended, and that he
"have Execution therefor against the said Defendant."

"And now come Defendants attorneys and en-
"ter their exception to the decision of the Court, and enter
"a motion on behalf of Defendant for an appeal in
"this cause to the Supreme Court of this State. Ordered
"that the appeal prayed for be granted, on condition
"that the Defendant enter into an appeal bond, condi-
"tioned according to law, in the sum of Three Hun-
"dred Dollars, with John Chamberlain as security
"thereon, within forty days from this date, and that
"the Defendant also procure and file with the Clerk
"a bill of Exceptions in this cause within the same
"time."

"On motion of Plaintiffs attorneys the Court does
"hereby certify that all of Plaintiffs witnesses sworn on
"the trial, were necessary in the cause."

And afterward, to-wit: on the 2d day of January
A.D. 1865, there was filed in said cause, by the Defendant,
a Bill of Exceptions, in words and figures following:

"State of Illinois"
"Iroquois County" } ss Iroquois County Circuit Court,
of the November Term, A.D. 1864.

"Samuel C. Taylor"
vs.
"Franklin Elijah".

"Be it remembered that on the
"trial of the above entitled cause, at the November
"Term of the Iroquois County Circuit Court, A. D. 1864,
"the Plaintiff, to maintain the issue on his part, gave in
"evidence to the jury, the following testimony, to-wit:"

"David Cass, being duly sworn, testified that he
"was acquainted with the parties to this suit, and
"was acquainted with the farm that Taylor and his
"wife lived on in the summer of 1862; the farm joined
"his farm; the Defendant moved on said farm
"about the last of November, 1862; Mrs. Taylor moved
"away late in the fall of 1862; after the Defendant
"took possession. The witness further stated that the de-
"fendant told him that he had bought the corn of
"Mrs. Taylor standing in the field; that he was to
"husk the corn himself and pay 20 cents per
"bushel; that he was well acquainted with
"the corn; and saw it frequently on the stock, es-
"pecially the West piece; that he believed it would
"make thirty bushels to the acre; there were about
"fourteen acres in the West piece. And further stated
"that the defendant told him that he had bought
"two Calves of Mrs Taylor, for which he was to pay ten
"Dollars, and one yearling Steer, for which he was
"to pay $10: he also heard the defendant say he bought
"some hogs of Mrs. Taylor, they were stock hogs, which Tay-
"lor had before he went into the Army; there were about
"19 head of Hogs, and Defendant further stated he
"had bought Mrs. Taylors chickens, and the witness

"further stated that the Defendant used the stock
"pasture, where said corn grew; he thought that
"the stacks were worth $12; that he often saw the
"defendants cattle and mules in the corn after he
"had bought it; the defendant had about 14 or 15
"head of mules, 4 or 5 head of cattle and 5 or 6 head
"of Horses, and further stated that he rode through there
"one night and found the fence down, next to de-
"fendants house, and the stock was in the corn; he
"saw the defendants stock in the field and corn many
"a time; saw the defendants stock often two or three hours
"at a time in the field. And further stated that he
"knew the defendant used the straw-rick on the
"place; it was worth from $4 to $5. The defendant said
"he had used the shocks of fodder, and said he was
"to pay 20 cents per bushel for the corn; the fodder
"was worth 5 or 6 cents per shock, and said he knew
"that the defendant used Taylors cultivator; the defend-
"ant went away about the last of August 1864. The
"house was worth from 50 cents to $1 per month; and
"further stated that he went by the corn almost every
"day during the summer and fall of 1862. The corn
"would average 30 bushels per acre, in his opinion.

"Cross Examination."

"Stated that he joined the place which the
"defendant lived on, the Taylor place; there were two pieces
"of corn - the East piece and the West piece; the East
"piece contained about nine acres; the defendant
"said he had bought the whole of the corn, both the
"East and West piece; there were about 23 or 24 acres
"in all; said he had no hard feelings against the

"defendant; Mrs. Taylor is the wife of the plaintiff
"the plaintiff went into the army in the latter part
"of the Summer of 1862, before the defendant bought
"the corn of Mrs. Taylor; the defendant had a pen built
"for his mules, and he believed the defendant aimed
"to keep up his mules at night, but they were often
"out of the pen; in the day time the mules run on the
"prairie; the fences were fair; in some places the fences
"were down; he sometimes saw the defendants children
"drive the mules out of the corn."

"William Brown, the next witness for the plain-
"tiff, being duly sworn, testified as follows: Stated
"that he was acquainted with the corn raised on the
"Taylor place in the Summer of 1862, which the de-
"fendant bought of Mrs. Taylor; the defendant stated
"to him that he had bought the corn, and was to
"pay 20 cents per bushel and was to gather it him-
"self. He, the witness helped to measure the ground
"on which the corn was raised; there were 9 acres
"and 10 Rods in the East piece, and 14 acres and 66
"Rods in in the West piece; he lived in 1862 near Mrs.
"Taylor's, and stated that he is a farmer, and saw the
"corn often before the defendant bought it, and said
"he was satisfied that the West piece would average
"30 bushels per acre; that he was better acquainted
"with the West piece than he was with the East piece. The
"plaintiff helped to plant the corn, and the boy plowed
"it; the corn was raised before the plaintiff went
"into the army." and stated that the defendant told
"him that he was to pay $10 for a steer which he
"had bought of Mrs. Taylor, and also said he had

"bought of two. Calves; said that he (the witness)
"bought the same steer of the defendant, and paid
"him for the steer $10; the defendant told him he had
"bought the hogs - could not say how many - some were
"worth $2 a piece, while others were worth from 75
"cents to $1; said the defendant told him he had
"bought some potatoes of Mrs. Taylor; potatoes were
"then worth from 75 cents to $1 per bushel; the defendant
"got some shingles; shingles were worth $4.50 per thou-
"sand; there were 250 shingles in a bunch; the stocks
"were worth 50 cents per acre; the defendant used
"the shocks of fodder; the shocks of fodder were worth
"6 or 8 cents per shock; the defendant used the stover
"rick, which was worth from $3 to $4."

"Cross Examined."

"A few rows of corn were gathered before
"the corn was sold to the defendant; ten or twelve
"rows were gathered, about one-half acre in all; six
"or eight or ten of the hogs were good sized ones, the
"others were small; stated that he had seen some of
"the mules, cattle and horses, in the corn several times;
"the defendant had fifteen or eighteen head of mules;
"and stated that the defendant told him he was to
"keep up the fence; one cannot always tell about
"the yield of corn by looking at it; he said he only
"gave his opinion as to the amount of corn which
"grew on said two pieces; it was a wet season
"that year, and crops were generally light; that
"was a high and nice piece of ground; and stated
"that his horses were in said corn once, and as
"soon as he saw them get in he went and drove

"them out; they did not destroy over three or four
"bushels of corn."

"Amos Pineo, the next witness for the plaintiff,
"being duly sworn, testified, that he often went past
"and around the East piece of corn, and went
"through it once; it would yield 30 bushels or more
"per acre, in his opinion; and stated, he has been
"a farmer all his life; the stock pasture where the
"corn was raised was worth $12.- 50 cents per acre;
"the fodder was worth 6 or 8 cents a shock; the straw
"rick was worth about $4; the house was worth
"$1 per month; there were no wet places or sloughs
"in the East piece; he stated he saw Taylor feeding
"damaged corn which belonged to Waitz."

"Elijah Courtright, the next witness on the part
"of the plaintiff, being duly sworn, testified, that
"Mrs. Taylor is the wife of the plaintiff; she sold to
"the defendant 18 hogs at 2 cents per pound, amount-
"ing to $20 or more; also 3 or 4 dozens of chickens;
"don't know what he was to pay for the chickens;
"they were worth 75 cents per dozen; Mrs. Taylor was
"to let the defendant have hay and cabbage, and
"4 or 5 bushels of potatoes for moving her to the Wabash;
"there were two ducks which the defendant was to have
"on the shares; the defendant moved Mrs. Taylor
"to the Wabash soon after he bought the corn crop,
"and hogs and chickens and calves and steer of Mrs
"Taylor; said he heard the contract between the de-
"fendant and Mrs. Taylor; the defendant bought the
"corn of Mrs. Taylor, and said to her he would take the

"corn at 400 bushels; that he did not think there
"was more than 400 bushels; the defendant was to have
"rest the corn, and if there was more than 400 bushels
"he would pay her at the rate of 20 cents per bushel
"for all there was over 400 bushels; the defendant was to
"give his note for 400 bushels at 20 cents per bushel; they
"could not write, so they put off the giving the note until
"they should go to the Wabash, and concluded to make
"out the note when they should get to the Wabash,
"and that if there should be less than 400 bushels, Mrs.
"Taylor was to make a deduction at the same rate;
"the defendant was to have the stocks of corn, straw, sick
"and pasture in the bargain; the defendant requested
"Mrs. Taylor to get some person to help him measure
"the corn, but she said she would be satisfied to have
"him do it, that he could not cheat her much; that
"she would as soon trust him to measure it as any
"other person."

Cross Examination.- "On cross-examination the
"said Elijah Courtright stated that after the return
"of Mrs. Taylor, in the fall of 1863, she told him that the
"defendant had paid off the note, and she and the
"defendant had settled, and the defendant had paid
"her everything, except she did not think he had ac-
"counted to her for corn enough, that she did not
"think he had allowed her for corn enough; the
"defendant got two horses shod for Mrs. Taylor;
"Mrs. Taylor fed out of the corn to her hogs and other
"stock, before the defendant purchased it, something
"like 75 or 100 bushels, and stated he was well acquaint-
ed with both of the pieces of corn, which the de-

"fendant bought of Mrs. Taylor in 1862; that he
"cut up a part of it, about 90 shocks altogether
"and helped to husk a considerable portion of it;
"that the corn was deceptive; the ears were short
"and light, and did not turn out as well as he ex-
"pected before it was husked. The season of 1862 was
"wet and the corn was generally light; the West piece
"would average about 25 bushels to the acre, and the
"East piece about 30 bushels to the acre, as he believed;
"he lived on the farm when the corn was raised, in
"the summer and fall of 1862; the defendant took his
"mules on the farm; he had 18 head of mules, and 4
"or 5 head of horses; the defendant went on last of
"November or first of December, 1862. The defendant
"went into the house which Mrs. Taylor left; it was
"the custom of the defendant to hear his mules
"in the day time and to pen them at night; and
"stated he never saw any of the mules or horses
"in the corn; he saw a part of them twice in Mrs.
"Gass' corn, which is in the same field. The house
"that he (the witness) lived in stood right between
"the two pieces of corn; that is, the East and West
"piece, and he could see all over both pieces; he was
"at home the greater portion of the time; he never saw
"any of the horses or mules in the corn; he never
"saw any of the defendants stock in the corn; there
"were 22 or 23 acres of corn altogether; he helped to
"measure the corn, and stated that he heard a con-
"versation between Mrs Taylor and the defendant, in
"which Mrs. Taylor claimed that the defendant
"ought to pay her rent for the house, till the March
"following; the defendant claimed he ought not,

"for he said that was not the bargain, but ra-
"ther than have any trouble he would fix the fence
"around the farm; this conversation was before
"Mrs. Taylor went to the Wabash; he stated further
"that he understood in the conversation that every
"thing was settled between the defendant and Mrs.
"Taylor, except the corn. Before Mrs. Taylor went
"to the Wabash, the defendant paid her $30, and
"paid me two dollars for her, and was to give his
"note to Mrs. Taylor for the corn when he went to the
"Wabash with her, and further stated that he after-
"wards saw the defendant haul rails and fix the
"fence. The defendant took Mrs. Taylor to the Wabash
"and returned in a few days; it was in the fall of
"1863, after Mrs. Taylor returned from the Wabash
"that I heard her say, that the defendant had paid
"all up, only she did not think he had accounted to
"her for enough corn. The defendant admitted that
"he had got 425 bushels of corn. Mrs. Taylor said
"that was not corn enough, and claimed that
"there was more corn than 425 bushels; the
"plaintiff is my uncle by marriage."

"Seymour Cobb, the next witness for the plaintiff,
"being called and sworn, testified, that he was well ac-
"quainted with the west piece of corn in controversy;
"that he would have been willing to take it at 30
"bushels to the acre; he lives near the farm it was
"raised on; in April following he fed the defendants
"things out of one of the cribs on the place; there was
"about 150 bushels of corn in the crib he fed out of; there

"was an other crib on the place, which was eight
"feet square, which was nearly full, about the 10th
"of April; he did not measure until since that time,
"since this suit was commenced; it was empty
"when he measured it."

"Daniel Suttle, the next witness for the plaintiff, being
"called and sworn, testified that he was well acquainted
"with the East piece of said corn; it lay close to his house;
"there or four rows of shocks were cut up on the South side;
"The East piece contained 9 acres and 10 rods; he thought
"that piece ought to go close to 40 bushels to the acre; it was
"high and dry land; the corn appeared to stand very
"well; he had seen the Defendants stock in often; more
"times than he had fingures and toes, before it was gather-
"ed; they did not all the time stay with the mules and herd
"them in the day time; he often saw the mules on the prairie;
"without any person herding them; he and William
"Brown measured the ground; there were a little over
"23 acres in the East and West pieces all together."

"Susan Bowers, the next witness for the Plaintiff
"being called and sworn, testified that after Mrs. Taylor
"returned from the Wabash, she was present when the de-
"fendant paid Mrs. Taylor the note which he had given
"to her at the Wabash; he paid her all except 50 cents;
"this was in September, 1863, she stated she did not re-
"member the amount paid; the note was given up; the
"defendant then said he had got 425 bushels of corn, and
"Mrs. Taylor said he had not accounted for corn
"enough - there was more than that amount of corn;
"Mrs. Taylor and the Defendant disagreed about the

"amount of the corn; Mrs. Taylor claimed nothing else
"from the said Defendant, only that he had not accounted
"to her for corn enough, and the Defendant claimed
"that he had accounted for all the corn."

"And the said Defendant to maintain the issue on his
"part, gave in evidence to the jury, the following, to-wit:

Alfred Gregary, the first witness for the said Defendant, being
"duly sworn, testified, that he lived two and a half or
"three miles from where the Defendant lived in the fall
"and winter of 1862; that he saw the corn in the fall
"of 1862, when the Defendant and Elijah Countright
"were husking it; he was a horse back, and rode up
"close to where they were husking it; that he was on
"one side of the fence, outside of the field, and they were
"on the inside of the field husking, not far from the fence;
"he stopped and talked with them for about one-half
"hour; the corn appeared light and the ears short; he stated
"he noticed many hills which had but one stock in
"a hill, and from the appearance of the corn he
"thought it would not yield more than 20 bushels to
"the acre; that he is a farmer and acquainted with
"the raising of corn; the season of 1862 was a wet
"season and the corn was generally light; the corn
"which he saw the Defendant and Elijah Court-
"right husking he did not think was as good as his
"corn this year, yielding only 24 bushels to the acre;
"he did not see the balance of the Defendants corn, and
"could not make an estimate of the balance, only
"from what he saw."

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"John Hunt, the next witness for the defendant, being
"duly sworn, testified that before the Plaintiff went into
"the army, he heard him say that any trade or deal
"his wife would make would be all right with him; he
"helped Elijah Courtright measure the ground on which
"the corn was raised; there were something over 23
"acres."

Elizabeth Courtright, the next witness for the Defend-
"ant, being sworn, testified, that she heard the Plaintiff
"say before he went into the army, that any contract
"his wife would make he would stand by; that she
"was present when Mrs. Taylor and the Defendant
"were settling, before Mrs. Taylor went to the Wabash,
"in the fall of 1862; they talked over their dealings the
"day before Mrs. Taylor went away; Mrs. Taylor said
"the Defendant was to have the pickings of the field;
"everything was talked over, and the Defendant was
"to give his note to Mrs. Taylor for the amount of
"400 bushels of corn, when they got to the Wabash;
"the conversation I heard was two or three weeks before
"Christmas; the Defendant was to harvest the corn
"and pay 20 cents per bushel for it; if the corn amounted
"to more than 400 bushels, the Defendant was to pay 20
"cents per bushel for all over 400 bushels, and if less
"than 400 bushels, Mrs. Taylor was to make a deduc-
"tion; I lived in rooms adjoining those of Mrs. Taylor,
"all under the same roof. The stacks, fodder, pasture,
"straw-rick, and the pickings of the field, were all
"thrown in by Mrs. Taylor to the defendant, in the
"bargain; when the sale of the corn was made, the
"defendant requested Mrs. Taylor to get some

"person to help him measure the corn; Mrs. Taylor
"said she would as soon trust to the defendant to
"measure the corn as any one; he could not cheat
"her much any way, and she refused to get any
"one to help to measure the corn."

"Cross Examined.- The wife of the Plaintiff Defendant is
"my aunt; I never saw the mules or horses in
"the corn; the house in which I lived was standing
"between the two pieces of corn; I lived in the shed
"part of the house."

"Robert Caldwell being called and sworn, stated
"that he had a title bond in his possession, given by
"Nelson Waitz to Mrs. Taylor for a deed for land;
"Waitz and Mrs. Taylor left the bond with me for
"safe-keeping; whereupon, the Defendant's counsel re-
"quested the witness to produce said bond that it might
"be read in evidence, which was produced by said
"witness accordingly, and, thereupon, the counsel for
"the Defendant offered to read the same in evidence to
"the jury, to the reading of which the counsel for
"the Plaintiff objected, but the Court overruled the ob-
"jection, and the same was then and there read in
"evidence to the jury, in the words and figures, fol-
"lowing, to-wit:

"Know all men by these presents, that I, Nelson
"Waitz, of the County of Iroquois and State of
"Illinois, am held and firmly bound unto Mary
"S. Taylor, of the County of Iroquois and State of
"Illinois in the penal sum of Two Thousand

"dollars, to be paid unto said Mary S. Taylor,
"her heirs, executors, admrs or assigns, to which
"payment well and truly to be made, I bind
"myself, my heirs, executors and administrators
"and every one of them firmly by these presents.
"Sealed with my seal this 25th day of December,
"A.D. 1861. The Condition of this obligation is
"such, that, whereas, the above bounden Nelson Waity
"hath this day sold to the said Mary S. Taylor,
"heirs and assigns, for the sum of One Thousand
"Dollars, all the following described lot or parcel
"of land, in the County of Iroquois and State
"of Illinois, to-wit: Sixty acres off the North side of
"the North half of the South West quarter of Section
"Eighteen, Township Twenty-Seven, Range Eleven,
"for which the aforesaid Mary S. Taylor gives a
"promissory note, dated and endorsed as follows,
"to-wit: Three years after date for value rec'd we
"either or both of us promise to pay Nelso Waity, or bearer,
"the sum of Five Hundred Dollars, at ten per cent.
"interest from date, without any relief from the
"exemption or appraisement laws whatever."

("Signed") "Samuel C. Taylor"
"Mary S. Taylor."

"Upon the payment of the said sum being made
"at the time and in the manner aforesaid, the said
"Nelson Waity, his heirs, executors and assigns cov-
"enants and agree to and with the said Mary S.
"Taylor, her heirs, executors, admrs and assigns, to
"execute a good and sufficient Deed of Conveyance
"in fee simple, from all incumbrance, with full
"and proper covenants of Warranty for the above

"described premises. Now, if the said Mary S. Tay-
"lor shall well and truly, keep observe and perform her
"said covenants and agreements herein contained,
"on her part, then this Obligation is to be void,
"otherwise to remain in full force and virtue."

"Signed, Sealed and delivered" Samuel C. Taylor [seal]
"in presence of" Mary S. Taylor [seal]
"Robert Caldwell." Nelson Waitz [seal]"

"Nelson Waitz, the next witness for the defendant being
"duly sworn, testified, that the Bond just read to the jury
"is the bond of himself and Mrs. Taylor and Samuel C
"Taylor, and the corn in controversy, was raised in
"in 1862, on the land described in the bond just read;
"and the corn in question, sold by Mrs. Taylor to the
"defendant, in the fall of 1862, was raised on said
"land; that he was well acquainted with the land
"described in said bond, and was acquainted with
"the corn in question; before the Plaintiff went into
"the army, he borrowed of me 100 bushels of corn;
"corn was then a shilling a bushel; after the
"Plaintiff went away Mrs. Taylor got 20 bushels
"of corn of me; they did not pay it back; so Mrs.
"Taylor paid me $10 in money, and the defend-
"ant paid me $15 for her to apply on said corn
"which they borrowed of me."

"James C. Woodford, the next witness for the de-
"fendant being sworn, testified that he had made
"a calculation of the number of bushels of corn a
"crib would hold, which is 8 feet long 8 feet wide

"and 8 feet high; such a crib filled with ears,
"would shell two hundred and twenty-seven
"bushels."

James E. Sleely, the next witness ~~called for~~ the
"defendant, being sworn, testified that he had made
"a calculation of the number of bushels of corn a crib
"8 feet wide, 8 feet long and 8 feet high, would hold of
"ears of corn, and states that such a crib, when filled
"with ears of corn, would shell two hundred and
"twenty-seven bushels."

"Elijah Courbright, the next witness called by the
"defendant, and being sworn, stated that before Mrs.
"Taylor went to the Wabash, the defendant paid her $30, and
"there was nothing besides the corn unpaid for, and
"all that remained to be paid for was the corn for
"which the defendant was to give his note Mrs. Taylor
"when they should go to the Wabash. When and at this
"time, the Plaintiffs Counsel, in open Court, declared to
"the Court and jury, that they claimed for nothing
"more than the corn over the amount which had been
"accounted for by the defendant to Mrs. Taylor. The
"said Elijah Courtright further testified that the boy
"who plowed the corn, was Mrs. Taylors boy, and not
"the boy of the Plaintiff."

David Gass was recalled by the plaintiff, and
"stated that he had passed through the West piece
"of said corn often; it stood well and was fair corn;
"the plaintiff and himself furrowed out the ground,
"the plaintiff covered the corn and Mrs. Taylors boy

"ploughed it; the corn was laid by before the plain-
"tiff went to the army."

"William Brown was also recalled by the plain-
"tiff, who testified that he considered the corn a toler-
"able fair stand of corn; the plaintiff helped to
"plant the corn and the boy ploughed it; the corn
"was raised before the plaintiff went to the army."

"Which was all the evidence offered by either of the
"said parties. The said defendant then moved
"the Court, upon the evidence aforesaid, to instruct
"the jury as follows, to-wit:

"The Court instruct, that if they believe from the
"evidence that a contract was made by the plaintiff
"or his wife, by which the corn in question was to be
"sold to the defendant, for the sum of 20 cents per
"bushel, and the defendant was to measure the
"same, and the plaintiff was to be satisfied with
"the defendants measurement, and the corn was so
"measured by the defendant, then the plaintiff
"is bound by such agreement, and the law is for
"the defendant."

"2d Instruction. The Court instructs the jury, that,
"if they believe from the evidence of Mr. & Mrs. Court-
"right, that the said Mrs. Taylor asked and requested
"the defendant to measure said corn for her, or her
"husband, and he complied with such request, he
"the said defendant became the agent for the other

"party, so far as the measurement of said corn
"was concerned, and if such measurement was
"made by virtue of an agreement between the parties,
"then both parties to such agreement are bound by it;
"and the law is for the defendant."

"Which instructions the Court refused to give
"the jury, to which the said defendant then and
"there excepted. But the Court did then and
"there give the jury the following instructions
"for the said defendant, which were asked for by
"the said defendant, to-wit:

"3 Inst.- "The Court instructs the jury that
"under the Act of the Legislature of the State of Illinois
"of February 21st 1861, a married woman is placed
"in the same position, as to her own property, as
"though she was single and unmarried, and has
"the absolute control and disposal of such property
"as though she was unmarried."

4 Inst.- "The Court instructs the jury that if
"they find from the evidence, that Mrs. Taylor had a
"contract, or bond, for the said land on which the
"corn was raised, and she was in the possession
"thereof, and such corn was raised thereon, while
"she so held the land, and the possession thereof,
"then the law presumes that she was the owner of said
"crop, until the contrary appears; and if the
"jury believe from the evidence, that she was the
"owner of said corn sued for in this case, as her
"own property, then the plaintiff - her husband -
"cannot sue therefor, in his own name, and the

"law is for the defendant."

5th Inst.- "The Court instructs the Jury that un-
"der the Law of the State of Illinois, a married woman
"can hold and possess, both real and personal pro-
"perty, in her own name, independent of her
"husband, and has the right to sue and be sued
"therefor, and said property so being hers, is not
"under the control of her husband, and she can sell
"or dispose of the same, as she deems proper, indepen-
"dent of her husband."

6th Inst.- "The Court instructs the Jury that a
"married woman, as to her property, owned by her ~~and~~
"in her own right, stands in the same position as
"to such property as any other person; and if the
"Jury believe from the evidence, that she was
"rightfully in the possession of the land on which
"such corn was grown, such possession of such
"land carries with it the possession of the
"crops thereon, until the contrary is shown."

7th Inst.- "The Court instructs the Jury that under
"the Statute of 1861, the wife can own property indepen-
"dent of her husband, and, as to such property, is in
"no manner, under the control of her husband, and
"as to such property, he has no right to sue; and in
"case he does so sue for such property, it appears
"that he does not own such property, and the same
"is the property of his wife, such husband cannot
"recover, and the Law is for the defendant, and the

"can the Jury believe the property in this case
"was the property of Mrs. Taylor, and not of the
"plaintiff, then the Law is for the defendant, and
"and the plaintiff cannot recover."

8th Inst:- "The court instructs the Jury that in
"case of special contracts between parties, the par-
"ties are bound by their contracts, and they cannot
"in Law disregard their Special Contracts, un-
"less both parties agree to abandon the contract
"between them. Therefore, if the jury believe from the
"evidence that a contract was made between Mrs. Tay-
"lor and the defendant in this suit, respecting the
"sale of the corn and property in controversy, and
"a note was given as the consideration of the sale
"of said corn and property, and a note was given
"for the purchase money therefor, and the note
"aforesaid was paid off by the said defendant
"to the said Mrs. Taylor, the wife and agent of said
"plaintiff, then the said plaintiff cannot at this
"time repudiate said contract, but said contract
"must stand, unless the jury believe, from the
"evidence, that both parties repudiated and a-
"bandoned the contract; and if the jury believe,
"from the evidence, that defendant fully settled
"up everything which he was bound for, under said
"contract, then the Law is for dft."

9th Inst:- "The Court instructs the Jury that Tay-
"lor the plaintiff, as to the property in question in
"this suit, stood in the same position as any other
"person, and his being the husband of Mrs. Taylor

"does not make him, under the Law, as it now
"is, the owner of her property, and if the jury
"believe, from the evidence, that she is the
"owner of such property, then the husband can-
"not recover in his own name, and the Law
"is for the defendant."

And the Court, at the instance of the plain-
tiff, instructed the jury as follows, to-wit:

1st Inst.- "Gentlemen - On the part of the plaintiff
"you are instructed that, although you may
"believe that the wife of Taylor is the owner of
"the Land, upon which the corn was raised, yet, if
"you further believe that Taylor, previous to going in-
"to the army, lived with his wife, he was still the
"head of the family, and the law did not release
"him from his duties and obligations to support
"and maintain his family including the wife;
"and if you believe further that Taylor planted
"and raised the crop and exercised the usual acts
"of ownership over it, you will be fully justified in
"coming to the conclusion that it was Taylor's crop,
"and finding accordingly."

2nd Inst.- "You are further instructed that if
"you believe that there was any mistake or mis-
"representation, as to the amount of corn, or if you
"believe that Elijah acted unfairly in measuring
"the corn, you will be authorized to find for the
"plaintiff, for the excess of corn not accounted for

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"if there was any."

3rd Inst.- You are further instructed that
"if you believe from the evidence, that Elijah was
"to pay 20 cents a bushel for all the corn, whether
"more or less than 400 bushels, he is bound to pay
"for all excess of 400 bushels, even though you
"may believe that she previously declared that
"she would be satisfied with his measurement of
"the corn."

4th Inst.- "You are further instructed that if
"you believe from the evidence, that there was more
"corn in the pile bought by Elijah, at the time of
"the sale, than was gathered; and if you believe fur-
"ther from the evidence, that defendant was to gather
"and account for the whole of the corn, you will
"be authorized in finding for all excess over the
"amount which Taylor's wife and Elijah mutually
"supposed there was, even though Elijah did not
"gather and account for all such excess."

"To the giving of said Instructions of the plain-
"tiff, the defendant then and there excepted, and
"thereupon the said Jury gave their verdict against
"the defendant; whereupon, the counsel for the defend
"ant moved the Court for a new trial, but the
"Court overruled the said motion, and gave judg-
"ment upon said verdict of said Jury, against
"the said defendant, to which the said defendant
"then and there excepted; and, inasmuch as the
"matters aforesaid do not appear of Record, the

"Counsel for the defendant presents this Bill
"of Exceptions, and prays that the same may
"be signed and sealed by the Court, and made
"a part of the Record in said Cause, and it is
"done accordingly"

"A. R. Starr." Seal

"Judge of the 20th Judicial Circuit"

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State of Illinois
Iroquois County ss

I Thomas Bennnnn Clerk of the Circuit Court in and for the said County in said State do hereby certify that the above and foregoing is a true and complete copy of the Record of the proceedings of the Iroquois County Circuit Court had in the cause between Samuel b Taylor Plaintiff and Franklin Elijah Defendant and that the same contains a true copy of all the papers filed in said cause forming any part of the Record of said Court therein.

Witness Thomas Bennnnn Clerk and the seal of said Court hereunto affixed at office in Middleport this 31st day of January AD 1865.

Thomas Bennnnn
Clerk

State of Illinois.
Third Grand Division } ss

In Supreme Court:
To April Term AD 1865

Franklin Elijah, Plaintiff in Error
vs
Samuel b Taylor Defendant in Error } Assignment of Errors

And now the said Franklin Elijah plaintiff in Error, Comes and says, that in the record and proceedings aforesaid there is manifest Error in this to wit:

1st The Circuit Court Erred in giving the first, second, third, and fourth instruction of the said defendant in Error.

2d The Circuit Court Erred in refusing to give the first and second instruction asked for on the part of the plaintiff in Error

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5th The said Verdict of the Jury is manifestly against the Evidence in this Case.

4th The said Verdict of the Jury is manifestly against the law in the case

5th The Circuit Court Erred in Overruling said Motion for a new trial

6th The Circuit Court Erred in rendering a Judgment upon said Verdict of the Jury in this Case.

7th The Circuit Court Erred in not dismissing said Cause. By reason Whereof the Plaintiff pray that said Judgment may be Reversed &c

Frankl in Elijah

By Chamberlain Fletcher & Kenney

Attys for Plff in Error

Joinder in Error
April 7th 1865

Blades & Kay
for Deft in Error

75—16

Samuel C. Taylor
vs
Franklin Elijah

Record &
Errors

Filed Feby. 9. 1865
L. Leland
Clk.

$9.40 Franciscot fee paid
Defendant per Chamberlain
Mc Kennon
Clerks fees $9.40