

No. 13353

# Supreme Court of Illinois

Booth et al

---

vs.

Rees

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

No. 191.

---

*Bank et al  
vs  
Pease*

13353



United States of America }  
State of Illinois }  
Le County } sc

Hens in the Le County  
Circuit Court in the Le County Circuit Court  
in the 22<sup>d</sup> Judicial Circuit of the State of  
Illinois in the matter of Jeremiah J. Rees  
Plaintiff against Kirkland F. Booth, George  
Kingson and Orange D. Reed Defendants in an  
action of Trespass.

Be it remembered that on the Twenty  
ninth day of October in the year of our  
Lord One Thousand Eight Hundred and  
Fifty nine, the said Jeremiah J. Rees Plaintiff  
commenced a certain action of Trespass in  
said Court against Kirkland F. Booth, George  
Kingson and Orange D. Reed Defendants  
and thereupon a summons issued out of  
and under the seal of said Court in the  
words following to wit:—

" State of Illinois }  
Le County } sc

Summons }

The People of the State of  
Illinois to the Sheriff of said County Greeting:  
We

command you that you summon  
Kirkland F. Booth, George Kingson & Orange D. Reed



Summons } if they shall be found in your County  
personally to be and appear before the Circuit  
Court of said County, on the first day of the next  
Term thereof, to be holden at the Court House  
in Dixon in said County, on the 4<sup>th</sup> Monday  
of November next to answer unto Jeremiah J.  
Reese in a plea of Nonassess to the damage of  
said Plaintiff as he says in the sum of Three  
Hundred dollars. And have you then and there  
this writ, with an endorsement thereon, in what  
manner you shall have executed the same.

Witness Isaac S. Bowman Clerk of said  
Court, and the Seal thereof  
at Dixon aforesaid this 29<sup>th</sup> day  
of October A.D. 1859

Isaac S. Bowman Clerk  
J. J. Ball D. C.

(Endorsed) Filed Dec 15<sup>th</sup> 1860. B. F. Snow Clerk "

Endorsement } also endorsed "Served the within by recording the same in  
Summons } the hearing of the within named K. F. Booth, along  
"Hempstead Spring, I Read this 2<sup>nd</sup> day of November 1859  
Per se

Lester Hanching Sheriff  
By E. A. Snow Deputy "

And afterwards, to wit: on the 15<sup>th</sup> day of  
November A.D. 1859, the Plaintiff in said  
cause filed his Declaration in the words  
following to wit:—



State of Illinois,  
Lee County } ss.

Lee County Circuit Court,  
of the November Term, A.D. 1859,

Declaration }

Jeremiah J. Rees Plaintiff in this suit, by  
Bernard H. Truswell, his Attorney, complains  
of Kirtland H. Booth, Alonzo Kinyon and  
Orange M. Reed, Defendants herein who  
were summoned, etc., in a plea of Trespass:  
For that whereas the said Defendants here-  
before, to wit: On the first day of April  
in the year of our Lord one thousand eight  
hundred and fifty nine, with force and  
arms, to wit: at Amboy in the County  
of Lee, aforesaid, seized, took and carried  
away the following <sup>personal</sup> goods and chattels the  
property of the said Plaintiff, to wit:  
One sett of stone China ware, one sett of  
glass ware, one sett of tin ware, one feather  
bed, twelve feather pillows, two feather  
bolsters, one sack of feathers, four new  
patch work quilts, eight woolen blan-  
kets, six comforters, one Mahogany stand  
one cottage bedstead, one brass Kettle,  
one clock, twelve cane bottom chairs  
one cotton Mattress, one grass Mattress,  
four moss pillows, two clothes baskets  
one lounge, one trunk, forty grain  
bags, one cloth cloak, Ten Brooms



Declaration } forty books and twenty pictures, three  
Continued } mirrors, fourteen wire screens, six  
 oilcloths of great value, to wit: of the value  
 of three hundred dollars in all, then there  
 found and being and converted and disposed  
 of the same to there own use and other  
 wrongs to the said Plaintiff then and there  
 did to the damage of the said Plaintiff  
 of three hundred dollars and therefore he  
 brings suit, etc., etc.,

Bernard H. Trusdell,

Atty of Plaintiff.

Enclosed - "Filed Nov. 15<sup>th</sup> 1859,

J. S. Boardman, Clerk."

And afterwards to wit on the seventeenth  
 day of February Anno Domini One Thousand  
 Eight Hundred and Sixty the said  
 Defendant Kenneth F. Booth filed his  
 plea in the words following, to wit: -



State of Illinois } ss.  
Lee County }

Lee County circuit court,  
February, Term, A. D. 1860.

Jeremiah J. Kees

vs.

Kirtland J. Booth,

Orange M. Reed and

Alonzo Kinyon.

Trespass.

Pleas of  
Defendant  
Booth

And the said Kirtland J. Booth one of said Defendants by Kinyon & Williams, his Attorneys comes and defends the force and injury when &c., and says that he is not guilty of the said supposed trespass above laid to his charge or any or either of them or any part thereof in manner and form as the said Plaintiff hath above thereof complained against him, and of this he puts himself upon the country.  
(And the Plaintiff doth the like.)

B. H. Trusdell, Plaintiff.

Kinyon & Williams, Attys for Deft.

And for a further plea in this behalf said Defendant Booth, says as to the supposed trespass in taking and carrying away the goods and chattles mentioned in said Plaintiff's declaration the said Defendant says as to the following articles.



6  
Booth's plea } to wit: Six chairs, one barrel and contents,  
Continued } one bedstead, one bag of bags, one lounge, one  
stand, two baskets of dishes, four comforts, one  
straw Mattrap, one cotton Mattrap, one  
dozen pillow, more or less, one clock, one  
Trunk and contents, and one looking  
glass, part and parcel of the goods and chattles  
mentioned in said Plaintiff's declaration.  
actis non, because he says, that on the  
eighth day of March, A.D. 1858, before the  
time when the said Trespass is supposed to  
be done, he was and for a long time  
prior thereto and now is a Justice of  
the Peace, duly elected and qualified, in and  
for the County of Lee and State of Illinois  
that on said day one Alonzo Kinyon  
applied to this defendant in his capac-  
ity of Justice of the Peace aforesaid for  
an Attachment against the personal effects  
of said Plaintiff under the name and  
style of J. S. Pees, and made the follow-  
ing oath and complaint before him,  
to wit:

State of Illinois } ss.  
Lee County }      Affiant

The oath and complaint of  
Alonzo Kinyon taken before N. D. Booth  
a Justice of the Peace of said County, doth



Booth's Pleas  
continued

depose and say that J. S. Rees is justly indebted to Alony Kinyon in the sum of 45<sup>25</sup>/<sub>100</sub> Dollars and that the said J. S. Rees is not a resident of this State as this affiant has been informed and believes and ask that an Attachment may issue against the personal effects of said J. S. Rees. Subscribed and sworn to before me this 8<sup>th</sup> day of March, 1858,

A. Kinyon (Seal)

N. H. Booth (Seal)

That the said Alony Kinyon then and there gave a good and sufficient Attachment Bond as is by law required and the said defendant then and there having jurisdiction issued as he is by law required a writ of Attachment against the said Rees, which said writ was delivered to one Orange D. Reel a Constable in and for said County of Lee and the same was afterwards, to wit: on the 8<sup>th</sup> day of March A. D. 1858, returned by said Constable with the following endorsement thereon to wit: March 9<sup>th</sup>, 1858, By virtue of the within I have this day levied on the following property, 6 chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, 2 baskets of



8  
Booth's pleas } dishes, 4 comforts, one Straw Mattrap, one  
continued } Cotton Mattrap, one dozen pillows, more or  
less, one clock, one trunk and contents, one  
looking glass, C. H. Reed, Constable.

Said goods and Chattels levied upon being  
the same herein before described as part and  
parcel of the goods and Chattels described in said  
Plaintiff's declaration, that afterwards, to wit:  
on the 22<sup>d</sup> day of March, A.D. 1859,  
such proceedings were had before this defendant  
as Justice of the Peace aforesaid as that judg-  
ment was rendered in favor of said George  
Kinyon and against said Plaintiff for the  
sum of forty five & <sup>35</sup>/<sub>100</sub> dollars and costs  
of suit thereupon pursuant to said  
judgement and in conformity with the  
Statute in such case made and provided  
this defendant as Justice aforesaid issued  
an order of sale of said goods and chattels  
so attached as aforesaid to satisfy said  
judgement which said order of sale was  
delivered to said Constable and was duly re-  
turned executed all which said proceedings  
were in conformity with the Statute in such  
case made and provided. Which are the same  
trespass whereof said Plaintiff hath above  
complained against the Defendant, and  
all this said Defendant is ready to verify.



Whereof he prays judgement, &c.,

"

Kinyon & Williams,

Endorsed - Filed Feb. 17<sup>th</sup> 1860.

Attys for Deft.

J. S. Boardman, Clerk.

And on the said Seventeenth day of February the said Defendant Henry Kinyon also filed his separate pleas in the said Cause in said Court in the words following to wit: -



State of Illinois } ss.  
Lee County

Lee County Circuit Court.  
February Term, A.D. 1860.

Jeremiah J. Rees

vs.

Orange M. Reed,  
Kirtland J. Booth, and  
Alonzo Kinyon

Plea of the  
Defendant  
Kinyon

And The said Defendant Alonzo Kinyon  
by his Attorneys Kinyon & Fuller comes  
and defends the force and injury when &c.,  
and says that he is not guilty of the said  
supposed Trespass above laid to his charge  
or any or either of them or any part  
thereof in manner and form as the said  
plaintiff hath above thereof complained  
against him, and of this he the said  
defendant puts himself upon the country.  
(And the Plaintiff doth the like.)

B. H. Trusdell, Atty for Pltff.  
Kinyon & Fuller, Atty for Deft.

And further plea in this behalf the said  
defendant says, as to the supposed Trespass  
in taking and carrying away the goods and  
chattles in said Plaintiffs declaration men-  
tioned as to certain part, of the same  
that is to say the following articles, to wit:



12  
Hinson's pleas }  
Continued

Six chairs, one barrel and contents, one bedstead, one bag of bags, one lounge, one stand, two baskets of dishes, four comforts, one straw Mattress, one cotton Mattress, one dozen pillows, more or less, one clock, one trunk and contents, and one looking glass. Actio non, because this defendant says that on the eighth day of March, A. D. 1858, the said Plaintiff was owing to and indebted to this defendant in the sum of forty five dollars and twenty five cents, which said indebtedness was evidenced by a certain promissory note made executed and delivered by the said plaintiff by the same style and description of J. S. Rees to one J. M. McEwin and endorsed by the said McEwin to this defendant which said promissory note is in words and figures following, to wit: Due per McEwin one hundred dollars in boarding at the Exchange Hotel, Cambridge, Ill., for value received for said McEwin and wife.

Sept. 15<sup>th</sup>, 1858. (Signed) J. J. Rees.

On the back of said note is the following endorsement, to wit: December 13 received on the within \$50, also the name of the payee of said note endorsed, in blank to wit: (Jeremiah McEwin) That on



Kinyon's plea }  
Continued

The said eighth day of March, after having filed a bond as required by law, this defendant the following affidavit as he lawfully had a right to do, before one Kirtland J. Booth, a justice of the Peace, in and for the County of Lee, and State of Illinois, duly elected commissioned and qualified according to law, in words and figures following, to wit:

### Affidavit.

State of Illinois.

Lee County

} ss.

The oath and complaint of Abner Kinyon, taken before K. J. Booth a justice of the Peace of said County, doth depose and say that J. S. Rees is justly indebted to Abner Kinyon in the sum of 45<sup>25</sup>/<sub>100</sub> dollars, and that <sup>said</sup> J. S. Rees is not a resident of this State as this affiant has been informed and believes, and asks that an attachment may issue against the personal effects of the said J. S. Rees.

A. Kinyon, Seal

Subscribed and sworn to before me this 8<sup>th</sup> day of March, 1859.

K. J. Booth, J.P. Seal

In which affidavit the name of the said Plaintiff was by mistake written J. S.



Kingon's pleas }  
 Continued } Rees instead of J. B. Rees; That on the said eighth  
 day of March the said Booth justice of the  
 Peace as aforesaid issued the following writ of  
 Attachment as he lawfully had right to do,  
 against the goods and chattles of the said  
 Plaintiff by the name, style and description  
 of J. B. Rees, in words and figures follow-  
 ing, to wit:

Attachment Writ.

State of Illinois } ss.  
 Lee County }

The people of the State  
 of Illinois, to any Constable of said County,  
 Greeting: Whereas, Alonzo Kingon, has  
 on this day filed an affidavit, before H.  
 J. Booth, a justice of the Peace of the said  
 county, that J. B. Rees is justly indebted  
 to Alonzo Kingon, in the sum of 45<sup>00</sup>/<sub>100</sub>  
 Dollars and that said J. B. Rees is not  
 a resident of this State as this affiant is  
 informed and believes, and the said Alonzo  
 Kingon having given bond and security  
 according to law, we therefore command  
 you that you attach so much of the  
 personal effects of the said J. B. Rees.  
 to be found in your County, of value  
 sufficient to satisfy the said debt and costs  
 and such property by you attaching you  
 are to secure or so to provide that the same



*of any one's pleas*  
Continued } May be liable to further action therein  
before the undersigned justice of the Peace,  
and in case that personal property of  
value sufficient cannot be found you  
will summon all persons that the plain-  
tiff or his agent may direct, to appear  
before me at my office in Amboy on the  
12<sup>th</sup> day of March, 1858, at 10 o'clock  
P. M., to answer what may be objected  
against him or them as garnishee and  
there have you this writ with what you  
have done thereon. Given under my hand  
and seal this 8<sup>th</sup> day of March, 1858.  
K. J. Booth, J. P. Seal

And delivered the same on the said eighth  
day of March to one Orange M. Reed an  
acting Constable in and for the County  
of Lee, and State of Illinois, duly elected  
and qualified according to law: That  
on the ninth day of March, A. D. 1858,  
said Reed as he lawfully might, by virtue  
of said writ of Attachment, seized and  
took possession of the said goods and chattels  
belonging to the said plaintiff hereinbefore  
described and endorsed his doings thereon  
upon the back of said writ of Attachment  
and on the said ninth day of March



Kinyon's, pleas  
Continued

returned the said writ to the said justice of the Peace as by law he was required to do, That afterwards having advertised ten days for service as required by law, to wit: on the twenty second day of March, A.D. 1859, such further proceedings were had before the said justice as that a judgement was rendered in favor of the said Alongs Kinyon and against the said Plaintiff by the man style and description of J. S. Rees for the sum of forty five Dollars and twenty five cents and three Dollars and fifty cents costs; and afterwards, to wit, on the twenty third day of March, A.D. 1859, the said justice of the Peace as lawfully might and by law was required to do, issued a special execution or order of sale in words and figures following, to wit:

State of Illinois }  
Lee County } ss.

The people of the State of Illinois, to any constable of said county; Greeting: Whereas, heretofore, to wit: on the 6<sup>th</sup> day of March, A.D. 1859, Alongs Kinyon, sued out before the undersigned a justice of the Peace in and for said county, an attachment against J. S. Rees and <sup>caused</sup> said attachment to be levied



Kingyon's place  
Continued

on six chairs, one barrel and contents, one  
bedstead, one bag of bags, one lounge, one  
stand, two baskets of dishes, four comforts  
one straw mattress, one cotton mattress  
one dozen pillows more or less, one clock,  
one trunk and contents, one looking  
glass as the property of said J. S. Rees  
and whereas afterwards to wit: on the 22<sup>d</sup>  
day of March 1857, such further proceedings  
were had before said justice as that a  
judgement was rendered in favor of said  
Abouzo Kingyon and against J. S. Rees for  
the sum of 45 dollars and 25 cents in a plea  
of assumpsit, besides costs of suit which  
are endorsed thereon and taxed at 3 dollars  
and 50 cents and the property attached ordered  
to be sold for the satisfaction of said judge-  
ment and costs. You are hereby com-  
manded that pursuant to said judge-  
ment, and in conformity with the  
Statute in such case made and provided,  
you proceed without delay to make sale of  
said property, attached and make said  
debt and costs and make due return of  
your doings hereon. Given under my  
hand and seal this 23<sup>d</sup> day of March, 1857.

(Signed)

K. J. Booth, Deal

justice of the Peace.



Kinyon's pleas  
Continued

And delivered the same to said Reed con-  
stable as aforesaid, by virtue of which  
execution or order of sale, said Reed after-  
wards after having advertised said goods and  
chattel at public vendue for the purpose  
of satisfying said execution and costs for  
selling said goods as lawfully he might  
and by law was required to do; and on  
the said eleventh day April returned  
said execution or order of sale to said  
justice of the Peace, with his doings thereon  
endorsed on the back of the same as  
required by law which is the said sup-  
posed Trespas in the introductory part  
of this plea mentioned and whereof  
the said plaintiff hath above com-  
plained against him the said defen-  
dant is ready to verify, wherefore he prays  
judgement if the said plaintiff ought  
to have or maintain his aforesaid action  
thereof against him.

Kinyon & Fuller,  
Attys for Defendant.

Endorsed "Filed Feb. 17<sup>th</sup>, 1860.

J. S. Boardman, Clerk.

And on the said seventeenth day of February the said  
Defendant Reed, also filed his separate pleas in said cause  
in the words following to wit:—



State of Illinois  
Lee County } ss.

Lee County Circuit Court.  
February Term, A.D. 1860.

Jermiah J. Rees  
vs.

Kirtland T. Booth  
Orange H. Reed, &  
Alonzo Kinyon

Action, Trespass.

Hears of }  
Defendant }  
Reed }  
And the said defendant Orange  
H. Reed by his Attorneys Kinyon & Fuller  
comes and defends the force and injury  
when &c., and says that he is not guilty  
of the said supposed Trespass above laid  
to his charge or any or either of them  
or any part thereof in manner and  
form as the said plaintiff hath above  
thereof complained against him, and  
of this he the said defendant puts him  
self upon the Country. (And the plain-  
tiff doth the like)  
B. H. Trussell,  
Atty for Pltff.  
Kinyon & Fuller,  
Attys for Deft.

And for further plain this behalf the  
said defendant says, as to the supposed  
Trespass in taking and carrying away the  
goods and chattles in said plaintiff's declara-  
tion mentioned or to certain part



Reel's pleas  
Continued

of the same, that is to say, the <sup>following</sup> articles,  
to wit: Six chairs, one barrel and contents,  
one bedstead, one bag of bags, one lounge, one  
stand, two baskets of dishes, four comforts,  
one straw mattrap, one cotton mattrap, one  
dozen pillows, more or less, one clock, one trunk  
and contents, and one looking glass, acts  
mon, because the said defendant says that  
on the first day of April A.D. 1853, and  
for a long time prior thereto, to wit, for  
more than one year this defendant was  
an acting Constable within and for the  
County of Lee and State of Illinois,  
duly elected and qualified according to  
law: That on the eighth day of March  
A.D. 1853, one Kirtland J. Booth a justice  
of the Peace in and for the County of  
Lee and State aforesaid duly elected, com-  
missioned and qualified as required by law,  
issued the following writ of Attachment as  
he lawfully had a right to do, against  
the goods and Chattles of the said plain-  
tiff by the name style and description  
of J. S. Reel, in words and figures, to wit:

State of Illinois }  
Lee County } s.s.

Attachment Writ:

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



Reed's pleas  
Continued

Executing: Whereas, Alongs Kinyon has on this day filed an affidavit before N. J. Booth a justice of the Peace of the said County, that J. S. Rees is justly indebted to Alongs Kinyon, in the sum of 45<sup>00</sup> Dollars, and that the said J. S. Rees is not a resident of this State as this affiant is informed, <sup>and believes</sup> and the said Alongs Kinyon having given bond and security according to law, we therefore command you that you attach so much of the personal effects of the said J. S. Rees to be found in your County, of value sufficient to satisfy the said debt and costs, and such property by you attached, you are to secure or so to provide that the same may be liable to further action before the undersigned justice of the Peace and in case that personal property of value sufficient cannot be found, you will summon all persons that the plaintiff or his agent may direct, to appear before me at my office in Ambury on the 12<sup>th</sup> day of March, 1853, at 1 o'clock P. M., to answer what may be objection against him or them as garnishee, then and there have you this writ, with what you have done thereon. Given under



Reed's pleas } My hand and seal this 8<sup>th</sup> day of  
Continued } March, 1859.

K. F. Booth, J. T. seal

And delivered the same on the said eighth day of March, to this defendant Constable as aforesaid: That on the ninth day of March A. D. 1859, this defendant as he lawfully might, by virtue of said writ of Attachment, seized and took possession of the said goods and chattels belonging to said plaintiff, hereinbefore described, and endorsed his doings thereon, upon the back of said writ of Attachment, and on the said ninth day of March returned said writ to the said justice of the Peace, as by law he was required to do. That afterwards, after having advertised ten days for service as required by law, to wit: on the Twenty Second day of March A. D. 1859, such further proceedings were had before the said justice as that a judgement was rendered in favor of the said George Kinson and against the said plaintiff by the same style and description of J. S. Reed, for the sum of forty five Dollars and twenty five cents, and three Dollars and fifty



Reed's Pleas  
Continued

cents costs, And afterwards to wit: on the  
Twenty third day of March A. D. 1859,  
the said justice of the Peace as he lawfully  
might and by law was required to do:  
issued a Special execution or order of Sale  
in words and figures following, to wit:

State of Illinois } ss.  
Lee County }

The people of the State of  
Illinois, to any Constable of said County;  
Greeting; Whereas, heretofore, to wit:  
on the 8<sup>th</sup> day of March, A. D. 1859,  
Alonzo Kinyon sued out before the under-  
signed, a justice of the Peace, in and  
for said County an attachment against  
J. S. Rees, and has caused said attach-  
ment to be levied on six chairs, one  
barrel and contents, one bedstead, one  
bag of bags, one lounge, one stand, two  
baskets of dishes, four comforts, one straw  
mattress, one cotton mattress, one dozen  
pillows, more or less, one clock, one trunk  
and contents, one looking glass, as  
the property of said J. S. Rees, and where-  
as afterwards, to wit: on the 22<sup>nd</sup> day of March  
1859, such further proceedings were had  
before said justice as that judgement  
was rendered in favor of said Alonzo



Reed's Pleas }  
Continued }

Kinyon and against J. S. Rees for the sum of 45 dollars and 25 cents, in a plea of assumpsit besides costs of suit which are endorsed hereon and taxed at 3 dollars and 50 cents and the property attached, ordered to be sold for the satisfaction of said judgment and costs. You are therefore, <sup>hereby</sup> commanded, that pursuant to said judgment, and in conformity with the statute in such case made and provided, you proceed without delay to make sale of said property attached and make said debt and costs, and make due return of your doings hereon. Given under my hand and seal this 23<sup>d</sup> day of March, 1857,

(Signed) N. J. Booth. Seal

Justice of the Peace.

And delivered the same to this defendant Constable as aforesaid, by virtue of which execution or order of sale, this defendant afterwards, after having advertised said goods and Chattels for sale ten days as required by law, to wit: On the eleventh day of April A. D. 1857, at ten o'clock A. M., of said day sold said goods and Chattels at public vendue for the purpose of satisfying said execution



and costs for selling said goods, as law  
Read's Pleas } fully he might and by law was re-  
continued } quired to do; and on the said eleventh  
day of April, returned said execution  
or order of sale to said justice of the  
Peace, with his doings thereon endorsed on  
the back of the same as required by  
law, which is the said supposed  
Trespass, in the introductory part of  
this plea mentioned, and whereof the said  
plaintiff, hath above complained against  
him, and this the said defendant is  
ready to verify, <sup>wherefore</sup> he prays judgement if the  
said plaintiff ought to have or maintain  
his aforesaid action thereof against him.

Kington & Fuller,  
Attys for Deft. "

Embraced "Filed Feb. 17<sup>th</sup> 1860.

J. S. Baerman, Clerk. "

And afterwards, on the eighth day of May  
AD 1860, the said Plaintiff in said cause  
filed his Demurrer to the second plea of the  
said Defendant Kington in the words following  
that is to say: -



State of Illinois }  
Lee County } ss.

Lee County circuit court.  
May Term, A. D. 1860.

Jeremiah J. Rex  
vs.

Alonso Kinyon  
Trespas with Orange  
H. Reed, and  
Nathan H. Booth

Trespas  
Demurrer to second plea

Demurrer to  
Kinyon's 2<sup>d</sup>  
plea

And the said plaintiff as to the  
said plea of the said defendant Kinyon by  
him secondly above pleaded, with that the  
same and the matters therein contained, in  
manner and form as the same are above  
pleaded and set forth, are not sufficient  
in law to bar or preclude him the said  
plaintiff from having or maintain-  
ing his aforesaid action thereof against him  
the said defendant Kinyon, and that he the  
said plaintiff is not bound by law to ans-  
wer the same. And this he the said  
plaintiff is ready to verify. Wherefore by  
reason of the insufficiency of the said plea  
in this behalf the said plaintiff prays  
judgement and his damages by him sus-  
tained on occasion of the committing of  
this said Trespas, to be adjudged to him &c.,

Entered "Filed May 8<sup>th</sup> 1860.

Bernard H. Truettell, Atty for Plff."

J. S. Boardman, Clerk.



And on the said 8<sup>th</sup> day of May 1860 the said Plaintiff also filed his Demurrer to the second plea of the said Defendant Booth in the words following, to wit: \_\_\_\_\_

State of Illinois } ss.  
Lee County }

Lee County circuit Court.  
of the May Term, 1860.

Jeremiah J. Rees  
vs.

Hirshland J. Booth  
impleaded with  
Orange H. Rees, &  
Alonso Kniryon

Trespass.

Demurrer to Second plea

Demurrer to }  
Booth's 2<sup>d</sup> }  
pleas }  
And the said plaintiff as to the said  
plea of the said defendant Booth by him  
secondly above pleaded, saith that the same  
and the matters therein contained, in man-  
ner and form as the same are above plea-  
ded and set forth, are not sufficient in  
law to bar or preclude him the said  
plaintiff from having or maintaining his  
aforesaid action thereof against him the said  
defendant Booth, and that he the said plain-  
tiff is not bound by law to answer the same.  
And this the said plaintiff is ready to verify.  
Wherefore by reason of the insufficiency of the  
said plea in this behalf the said plaintiff  
prays judgement and his damages by  
him sustained, on occasion of the commit-  
ting of the said Trespass, to be adjudged to  
him &c.,

Bernard H. Trusdell,

Entered Filed May 8, 1860.

Att'y of Plaintiff.

J. S. Boardman, Clerk.



And on the said eighth day of May  
AD 1860, the said Plaintiff also filed his  
Demurrer to the second separate plea of  
of the said Defendant Reed, whose  
said Demurrer is in the words following  
to wit: -

State of Illinois }  
Lee County } ss.

Lee County Circuit Court,  
of the May Term, 1860.

Jeremiah J. Rees  
vs.

Orange D. Reed, impleaded  
with Kirtland F. Booth &  
Abner Kingon.

In Trespass.  
Demurrer to second plea

Demurrer to  
Reed's 2<sup>d</sup>  
pleas.

And the said plaintiff as to the  
said plea of the said defendant Reed by  
him secondly above pleaded, saith that  
the same, and the matters therein contained  
in manner and form as the same are  
above pleaded and set forth are not  
sufficient in law to bar or preclude  
him the said plaintiff from having or



Maintaining his aforesaid action thereof  
against him the said defendant Read,  
and that he the said plaintiff is not  
bound by law to answer the same.

And this the said plaintiff is ready to  
verify. Wherefore by reason of the insuffi-  
ciency of the said plea in this behalf the  
said plaintiff prays judgement and  
his damages by him sustained, on  
occasion of the committing of the said  
Trespases to be adjudged to him &c.

Bernard H. Truswell,

Att'y of Plaintiff.

Embraced. Filed May 8<sup>th</sup>, 1860.

J. S. Boardman, Clerk.



Record }

At a regular Term of the Lee County  
Circuit Court begun and holden at  
the Court House in the City of Dixon  
in said Lee County on the first Monday  
in May in the year of Our Lord One thousand  
Eight hundred and Sixty.

Present, Honorable John D. Custace Judge  
of the said 22 Judicial Circuit

Present, Robert C. Emvick States Attorney  
for said 22 Judicial Circuit

Present, Isaac S. Doornbosson Clerk  
of the said Lee County Circuit Court

Present, Lester Hamilton Sheriff of  
said Lee County

And  
on the sixteenth day of May aforesaid  
the following is the Record entry in said Cause  
in said Court, at said Term to wit:-

"Jammiah J. Rees

Kimball F. Booth, Henry S. Emvick  
and Orange D. Reed

} Decedent

On this  
day comes the Plaintiff by Emvick his  
Attorney, and the Defendants by Emvick



Record }

& Williams, their attorneys, and the Defendants to the special pleas of each of said Defendants coming on to be heard, are now by the Court sustained. "

And afterwards to wit: at another regular Term of the said Dec County Circuit Court begun and holden at The Court House in Dexon aforesaid, on the fourth Monday of November in the year of Our Lord One Thousand Eight Hundred and Sixty- and one one of the regular days of the said November Term to wit on the seventh day of December AD 1860

Present Honorable John B. Easton Judge  
Said Dec Judicial Circuit

Present David McCourtney, States  
Attorney for said Circuit

Present Benjamin F. Shaw Clerk of  
said Dec County Circuit Court

Present Aaron L. Porter Sheriff said County  
and the said cause coming on to be heard  
the following proceedings were had in that  
behalf as appears to us of Record to wit:



Jeremiah J. Rees

Record }

Kimball J. Booth, George Kimyon  
and Orange O Reed

} Indisputable

On this day  
comes the Plaintiff by Samuel J. Lee & Lee,  
his attorneys; also come the Defendants by  
Kimyon & Williams their attorneys, and the  
issues being joined also come a jury of good  
and lawful men to wit; David C. Smith  
B. P. Burr Stephen C. Finley, Herman O. Mead  
Horace C. Mead, Merit A. Morse, Melan  
R. Barnes, Harvey O. Williams, John Huntington  
John Holden, Herman Zimmerman, the  
panel of regular jurors being exhausted Reuben  
A. Woods, was called as a talesman from the  
laystanders, and he together with the eleven  
jurors of the regular panel were duly elected  
tried and sworn: and now comes the said  
Plaintiff and enters a Noli Prosequi as to  
the Defendant Orange O Reed, and so the  
trial proceeds; and the jury in this case  
after hearing the evidence, and the argument  
of Counsel, retire to consider of their verdict;  
and by agreement of parties the said jury  
have come to deal their verdict, and to meet  
the Court tomorrow morning at Nine O'Clock.



34  
Record }

And afterwards, at another regular day of said November Term to wit on the eighth day of December, 1866. the following entries appear to us of Record in this docket, that is to say:

"Jesse J. Rees

vs. <sup>4</sup>William S. Booth & George Knigon  
inf<sup>ts</sup> &c

} Writ of Habeas Corpus

On this day again come the said parties by their respective Counsel; also come the jury heretofore empanelled in this docket; and the said jury now return a Verdict that they find the Defendants Knigon & Booth Guilty, and that they assess the said Plaintiff's Damages in the sum of Two Hundred Dollars (\$200<sup>00</sup>), and thereupon the said Defendants enter their motions for a new trial and in arrest of judgment.

And the following is the Verdict in said cause, so rendered by the jury in said cause

"We the jurors find the Defendants Knigon  
" & Booth Guilty, and assess the Plaintiff's  
" Damages at two hundred Dollars (signed &c)

Verdict }



And the instructions asked in said course  
on the trial thereof are in the words following  
to wit:

"Jermann & Reed  
Kinyon et al.

The Defendants ask the Court to instruct the jury that unless the plaintiff has proven that he was either in the possession of the property taken, at the time of the alleged trespass, or that he was at that time the owner of such property, and entitled to the immediate possession of the same, they must find for the Defendant.

That unless the Plaintiff has proven that these  
Defendants either assisted in taking the  
property, or ordered or directed it to be taken  
they must find for the Defendants

That unless the Plaintiff has proven, that the goods left in the house or granary in Dec 1858 were the same goods, and chattels taken by Witness, Reed in the Spring of A.D 1859, and by the direction these defendants or one of them, that he cannot recover the value of such property left in the house or granary, and that the Plaintiff can only recover the Damages for the property.



Instructions } belonging to the Plaintiff actually taken by the  
 continued } Witness Reed, under the Direction of the Defendants  
 or either of them.

Given } That unless the Plaintiff has proven that  
 the Defendant Booth either assisted in  
 taking the property, or ordered or directed it  
 to be taken they must find the Defendant  
 Booth not guilty.

And the same law is  
 applicable to the Defendant King.

Given } That the simple fact that Booth received the  
 proceeds of the sale of the property, or any  
 portion of the same, is not sufficient to  
 constitute him a trespasser, unless it is  
 also proven, that he either aided, assisted or  
 directed in the Commission of the trespass.

Given } If the Jury believe from the evidence that  
 Booth Commanded Reed to take this property,  
 and the same was accordingly taken and  
 received from said Reed or portion of the proceeds  
 of the sale, of the same, these facts are sufficient  
 to connect Booth with the Trespass, if the  
 taking of the property was a trespass.



Answer

The Jury are instructed that there is no evidence before them tending to prove justification.

Instructions continued

Refused

That if the evidence shows that the command of Booth to take <sup>no</sup> property, was made in writing that the plaintiff <sup>must prove</sup> such command by the writing itself, and not by parol evidence -  
(endorsed "Filed Dec 8<sup>th</sup> 1860 B F Shaw Clerk  
Joseph H. Ball D.C. "

And afterwards to wit on the fifteenth day of December aforesaid the undersigned one of the regular clerks of said November Term the following Record entries appear to us in this behalf that is to say: -

"Jammiah J Rees

Record continued

Kirkland J. Booth & George Lemmon  
(impleaded with Orange B Reed

Disputed

On this

day again come the said parties by their respective Counsel, and the motions in arrest of judgment; and for a new trial coming on to be heard, are by the Court overruled; to which rule of the Court, the said Defendants by their Counsel then and there except.

It is considered and adjudged by the Court that the said Plaintiff have and recover of



Record }

of the said Defendants the sum of Two Hundred Dollars, his Damages by him in this behalf sustained, together with his costs and charges by him in and about this suit expended and that he have Execution therefor

And now come the Defendants and pray an appeal which is allowed, on the Condition however that the said Defendants do within sixty days from the date hereof, file an appeal Bond in the sum of Five Hundred Dollars, with Rufus H. Mollen, and Henry C. Sadger as securities, properly conditioned and which said Bond, is to be approved by the Clerk of this Court.

And afterwards to wit on the Eleventh day of February AD 1868, the said Defendants file their Bond in the words following to wit:-



“  
Appeal Bond } Know all Men by These Presents;  
that we Kirtland J. Booth and Alonzo  
Kinyon as principals, and we Rufus H. Mellen  
and Henry E. Badger as securities all of  
Amboy in the County of Lee and State  
of Illinois, are held and firmly bound  
unto Jeremiah J. Rees in the sum of Five  
Hundred Dollars good and lawful money,  
for the payment of which well and truly  
to be made we and each of us bind ourselves  
our heirs executors and administrators jointly  
and severally firmly by these presents.  
Witness our hands and seals this 11<sup>th</sup> day  
of February, A. D. 1861.

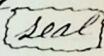
The condition of the above obligation  
is such that, Whereas judgement was ren-  
dered against the above bounden Kirtland  
J. Booth and Alonzo Kinyon in favor  
of the said Jeremiah J. Rees in the Circuit  
Court of said Lee County in the State  
of Illinois, at the November Term there-  
of A. D. 1860, for the sum of Two hun-  
dred Dollars damages besides costs of suit,  
to be taxed, in which judgement and  
proceeding the said Kirtland J. Booth and  
Alonzo Kinyon complain and believe that  
there is error therein, and thereupon have  
prayed an appeal from the decision of

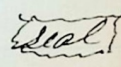


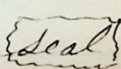
40  
Bond app<sup>l</sup>  
Continued

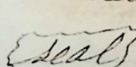
Said Court, in that behalf, to wit: at the  
November Term of said Court as afore-  
said. Now therefore if the said Kirtland  
J. Booth and Abner Kinyon shall prosecute  
their appeal to effect, and without delay,  
and shall pay such judgement and costs  
as aforesaid in case such judgement shall  
be affirmed, as also all such costs as  
may accrue upon a trial or dismissal  
of said appeal, then this obligation to  
be void, otherwise to remain in full  
force and effect.

Sealed and Delivered  
in presence of  
Everett C. Chase.

Kirtland J. Booth 

Abner Kinyon 

R. H. Mellen 

H. C. Badger 

Endorsed - "Filed & approved Feb: 11<sup>th</sup> AM 1861"

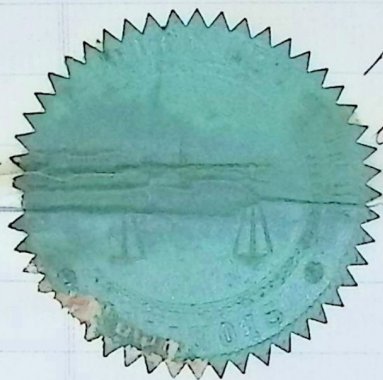
B. F. Shaw, Clerk

Per. Joseph Ball, At. Secy "



State of Illinois } ss.  
Sevier County }

Certificate } J. Benjamin F. Shaw Clerk  
of the Circuit Court within and for  
the County of Sevier in the State aforesaid  
do hereby certify that the foregoing is  
a full true and complete transcription  
of all the proceedings of record in said  
cause as appears from the books & files  
of my office.



In testimony whereof I have  
hereunto set my hand and the  
Seal of said Court at Oxford  
this 12<sup>th</sup> day of March 1884  
Benjamin F. Shaw Clerk  
per Joseph Ball D.C.

Cost of this Transcript \$8.50  
Clerk's Fee in Case 10.20  
Sheriff's Fee in Case 12.75  
Witnesses Fee in Case 24.00  
County Fee in Case 4.25  
\$59.70



193

198

Kirkland J. Booth  
+ Alouzo Kinyon  
Depts in error

Jimmie J. Rees  
Depts in error  
appeal from Lee

Filed Apr. 16, 1861.  
S. Ireland  
Clerk.



And <sup>now</sup> Come the said Appellants, Alonzo Kingon  
and Rutland H. Booth, by Kingon & Stevens their  
Attorney and say that there is manifest error in  
the Record of the proceedings, of the said Court aforesaid  
in the said Cause aforesaid in this, to wit: First:  
Because the said Court sustained the said demurre  
to the said 2<sup>d</sup> Plea of the said Booth, and the demurre to the said  
2<sup>d</sup> Plea of the said Kingon. Whereas the said demurre ought  
to have been overruled. <sup>And</sup> There is also error in this, to wit: that  
by the Record aforesaid it appears that the Judgment aforesaid  
in form aforesaid was given for the said Jeremiah I. Rees  
against the said Rutland H. Booth and Alonzo Kingon whereas  
by the <sup>law</sup> ~~fact~~ of the case the said Judgment ought to have been  
given for the said Rutland H. Booth and Alonzo Kingon  
and against the said Jeremiah I. Rees; and the said Rutland  
H. Booth and Alonzo Kingon pray that the Judgment aforesaid  
for the errors aforesaid, and other errors in the Record and pro-  
ceedings aforesaid, may be reversed, annulled, and altogether  
held for nothing, and that they may be restored to all things  
which they have lost by occasion of such Judgment &c

Kingon & Stevens  
Attys for Appellants