

No. 11965

Supreme Court of Illinois

Misner.

vs.

Lighthall

Peter A. Misner } Error to Salace
Joseph Light-hale }

And now comes the said
plaintiff in Error by Glover & Cook his
attys and say that in the record and
proceedings aforesaid and in the rendition
of the Judgment aforesaid there is manifest
error in this Court

The Court erred in sustaining the
demurrer of of the plaintiff to the
second and third pleas of the defendant

The Court erred in rendering Judgment
for the Plaintiff in the Court below

The Court erred in rendering the Judgment
aforesaid in manner of form aforesaid

A. Hoar
~~Glover & Cook~~
attys for pty in Error

And now comes the said defendant in error by E. S.
Seland his attorney & says that there is no error in the
record & proceedings in said Cause & in the rendition of
Judgment aforesaid

E. S. Seland
for Dft in Error

"LaSalle Circuit Court March Term A.D. 1847"

"State of Illinois, s.c. Pleas before the Hon. John D. Catron
LaSalle County Clerk one of the Justices of the Supreme Court
of said State and presiding Judge of
the ninth Judicial Circuit of said State, at a Circuit Court
commenced & held in & for the County of LaSalle aforesaid on
Friday the twenty sixth day of March A.D. 1847, the same being
the second first year of the Independence of the United States
of America."

Presents

The Hon. John D. Catron, Presiding Judge.
Sorenz Island, Clerk.
Beaton C. Cook, State Attorney.
Henry Haulbach, Sheriff.

Be it known that hereupon to wit: on the 27th day of
February A.D. 1847, Joseph Lighthall send out of the Clerk's office
of the Circuit Court of said LaSalle County, a summons
against Peter A. Weimer, which is in words and figures
following to wit:

"State of Illinois, s.c. The People of the State of Illinois to the
LaSalle County Clerk Sheriff of Kendall County Greeting;

"We Command you to summon Peter A. Weimer if to be found
in your County, personally to be and appear before the Circuit Court of said
LaSalle County on the first day of the next term thereof to be holden at the
Court House in Ottawa on Friday the 26th day of March next to answer
Joseph Lighthall of a plea of Trespass Quare Clausum to his damage one
hundred dollars, as he says, and have you then and there this writ, and
make return thereon in what manner you execute the same. Witness
Sorenz Island Clerk of said Court and the Seal of said Court at Ottawa
this 27th day of February A.D. 1847. S. Island Clerk."



Which said summons was returned & filed in said Clerk's office March 23^d. 1847. enclosed as follows viz:

"Executed this

with March 20th. 1847 / reading to Peter A. Meisner

"James S. Canale Sheriff"
"J. B. Chapin Deputy"

Serv & Returning .63
Mileage .96
1.59⁰⁰

And afterwards to wit on the 9th day of March 1847 and after the suing out of said summons the following declaration was filed in said Clerk's office, which is in words & figures following viz:

"State of Illinois ss. Circuit Court of said County March
Sasale County Term 1847

— Joseph Lighthall the

plaintiff in this suit complains of Peter A. Meisner defendants of a plea of trespass. For that the said defendants on the first day of August 1846 & on divers other days and times between that day & the day of issuing the summons in this case with force & arms broke and entered a certain close of the plaintiffs situate in the County of Sasale & then & there broke & tore down the fence of the defendants in & around said close and with his hogs eat up and destroyed then & there the corn of the plaintiff of the value of one hundred dollars then & there growing and being, and other wrongs to the plaintiff then & there did against the peace of the People of the State of Illinois, to the damage of the plff. one hundred dollars, therefore he brings suit &c.

And for that the said defendants on the first day of August 1846 & on divers other days & times between that day & the day of the date of the summons in this case with force & arms by & with his hogs broke & entered a certain other close of the plaintiff situate in said Sasale County & then & there by & with said hogs broke & tore down the fence of the plaintiff in said close & then & there by & with said hogs eat up & destroyed the corn of the Plff. of the value

LaSalle Circuit Court March term A.D. 1847

"State of Illinois ~~County~~ Sec. Pleas before the Hon. John D. Catron
Seaball County one of the Justices of the Supreme Court
of said State and presiding Judge of
the ninth Judicial Circuit of said State, at a Circuit Court
commenced & held in & for the County of Seaball aforesaid on
Friday the twenty sixth day of March A. D. 1847, the same being
the seventieth year of the Independence of the United States
of America. "P. 1

Present

The Hon. John D. Eaton, Presiding Judge.

Lorenzo Secundo, Clerk.

Benton C. Cook, State Attorney.

Henry Houlbur Sheriff. 1820

Be it known that herefore to wit: on the 27th day of February A.D. 1847, Joseph Lighthall send out of the Clerk's office of the Circuit Court of said LaSalle County, a summons against Peter A. Weissner, which is in words and figures following to wit:

State of Illinois, ss. The People of the State of Illinois to the
Seale County Sheriff of Kendall County Greeting;

We Command you to summon Peter A. Weimer if to be found
in your County, personally to be and appear before the Circuit Court of said
Saidle County on the first day of the next term thereof to be holden at the
Court House in Ottawa on Friday the 26th day of March next to answer
Joseph Lighthall of a plea of Trespass Quare Clausum to his damage one
hundred dollars, as he says, and hear you then and there this writ, and
make return thereon in what manner you execute the same. Witness
my hand and Seal of said Court, and the Seal of said Court at Ottawa
this 27th day of February A.D. 1847. Leland Clerk.



"of One hundred dollars then and then standing
and being and other wrongs to the Plff then and
there did against the peace of the people of the State
of Illinois to the damage of the Plff. One hundred
dollars therefore he brings Suit

I mean And the said Plaintiff avers that the defendant in this case at the time of the Commencement of this Suit resided in Hendall County in this State that the Plaintiff then resided in said Lafalle County and that the Cause of action in ~~both~~ of said Counties above specified accrued in said County of Lafalle.

Dickey & Leland
for Plff

And afterwards to sit at the November Term A.D.
1847 of said Court on Monday ^{of November} 8th of said Term the
following Order was made by said Court and entered
of record viz

Joseph Lighthall 3
 or 2
 Peter A Mismur 3
 Thomas Duane Clauson 4
 1

This day came the Plaintiff by
Dicky & Leland his Attorneys and upon their motion
the defendant is ruled to plead herein by to mor-
row morning

And afterwards to wit on Tuesday
Nov 9th of said last mentioned Term the following
further Order was made by said Court to wit

Joseph Lighthall
Peter A. Minor

Peter A. Minner } This day came the
parties by their respective attorneys and by their agreement
this cause is continued until the next term of this Court at
the plaintiffs costs to be taxed

Lafayette Cit Court

Peter A Minner

ad fm

Joseph Lighthall

as to trespasses newly assigned

and the said deft by Hove

his atty Comes & defends

the force & injury when &c and says that
he is not guilty of the premises above
laid to his charge in manner & form
as the said plff hath above in that behalf
Complained Against him &
and of this he puts himself upon the Country
&c - and plff ~~deals~~ ^{the like}

and for a further ^{Dickens Island} plea in this behalf
the said deft by leave &c says as this now
became he says that the said Close in
the first Count of plffs declaration
mentioned and the said Close in the second
Count of plffs declaration mentioned
and in which &c are one and the same
Close & not other ~~or~~ different and that
the said Close now is and at the said
several times when &c was the Close
Soil & freehold of the said deft to wit
at &c aforesaid wherefore the said
def't by himself & his hogs at the said
several times when &c committed the said
several supposed trespasses in the said
declaration mentioned in the said Close
in which &c so being the Close Soil and
freehold of the said def't ~~for the same~~ as they
~~say~~ lawfully might for the same aforesaid - which
are the said several supposed trespasses whereof
the said plff hath above Complained against
him & this def't is ready to verify &c wherefore &c

not pleaded as to trespasses?
newly assigned

2nd

and for a further plea in this behalf
to the 2nd Count of plffs declaration and the matter therein alleged
as being assigned by leave &c says a true non &c because
he says he said that the said close
is the first Count of plffs declaration
~~mentioned~~
and the said close is the second Count
of plffs declaration, ^{mentioned} one and
the same close and not other or different
and that the said close, ^{in said second Count mentioned} at the said times
when & did lie and still doth lie
contiguous & next adjoining to a large
and extensive tract of unimproved and
uncultivated prairie and timber land not
surrounded by any enclosure or in the
actual possession or occupation of any person
but lying open and common to the ^{horses} cattle
& other stock of all persons residing in the
neighborhood of the said close & had for a
long time prior to the committing of the said
alleged trespasses so remained and still
does remain

and the said deft avers that at the time of the
committing of the said alleged ^{trespasses} & for a
long time prior thereto ~~and since~~ he resided
& still does reside in the neighborhood of the
said close & that prior to the committing said
alleged trespasses the said horses of the said
deft in the said first and second Count
of plffs declaration mentioned were
suffered by said deft to run at large
upon ~~upon~~ the said unimproved and
uncultivated prairie & timber land to obtain
the benefit of the range of the same and that
the said horses of said deft so running at large
at the said times when &c entered ^{premises}

from the said tract of unoccupied and
uncultivated prairie & timber and land
in & upon the ^{said} close of said plff ~~became~~
without the knowledge & against the will of
said deft through defects & insufficiency
of the fences of said plff and the said deft
avows that the said close ^{in which} at the said times
of the committing of the said alleged trespasses
or either of them was not protected ^{or separated} from the
said tract of common & ^{uncultivated} improved prairie
& timber land by any good & sufficient fence
& this deft is ready to verify &c wherefore
&c

3 and for a further plea in this behalf the
said deft by leave of ^{as to the ver count of plffs declaration and the matter} the court ^{in which} ~~has~~ ^{is} ~~been~~ ^{is} ~~ordered~~ ^{is} ~~that~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~close~~ ^{is} ~~not~~ ^{is} ~~other~~ ^{is} ~~or~~ ^{is} ~~different~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~defendant~~ ^{is} ~~that~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~close~~ ^{is} ~~at~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~times~~ ^{is} ~~when~~ ^{is} ~~&c~~ ^{is} ~~was~~ ^{is} ~~not~~ ^{is} ~~enclosed~~ ^{is} ~~by~~ ^{is} ~~any~~ ^{is} ~~good~~ ^{is} ~~&~~ ^{is} ~~insufficient~~ ^{is} ~~fence~~ ^{is} ~~wherefore~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~defendant~~ ^{is} ~~travels~~ ^{is} ~~without~~ ^{is} ~~the~~ ^{is} ~~knowledge~~ ^{is} ~~&~~ ^{is} ~~against~~ ^{is} ~~the~~ ^{is} ~~will~~ ^{is} ~~of~~ ^{is} ~~said~~ ^{is} ~~defendant~~ ^{is} ~~through~~ ^{is} ~~the~~ ^{is} ~~defects~~ ^{is} ~~&~~ ^{is} ~~insufficiency~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~fence~~ ^{is} ~~of~~ ^{is} ~~said~~ ^{is} ~~plaintiff~~ ^{is} ~~which~~ ^{is} ~~is~~ ^{is} ~~broken~~ ^{is} ~~&~~ ^{is} ~~entered~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~close~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~plff~~ ^{is} ~~which~~ ^{is} ~~are~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~supposed~~ ^{is} ~~trespasses~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~said~~ ^{is} ~~count~~ ^{is} ~~of~~ ^{is} ~~plffs~~ ^{is} ~~declaration~~ ^{is} ~~mentioned~~ ^{is} ~~and~~ ^{is} ~~this~~ ^{is} ~~defendant~~ ^{is} ~~is~~ ^{is} ~~ready~~ ^{is} ~~to~~ ^{is} ~~verify~~ ^{is} ~~&c~~ ^{is} ~~wherefore~~ ^{is} ~~&c~~ ^{is}

Hors Defts atty

Lafayette Dist Court

Filed Apr 4 1848

Wm
Lighthall

Leland clk

Filed Apr 5 1848

L.L.

Joseph Lighthall
vs
Peter A. Missouri

Replication to 2^d plea
Filed April 4th 1848
L. Leland clk
By J. F. Nash secy

Lafayette Circuit Court March Term 1848

Joseph Lighthall }
vs }
Peter A. Missouri }

And the said Plaintiff as to
this plea by him secondly above pleaded says ~~preclusion~~
~~and~~ & as to the trespass therein attempted to be justified
says preclusion because he says that the said
piece or parcel of land in the said first and second
Counts of the declaration mentioned at the said several
times when he was and is a certain close in the County
aforesaid, described as follows The fenced enclosure in
the South west corner of the north east fractional
quarter of Section Thirty-six of Township Thirty-five
north of Range five East of the third Principal Meridian
in which the Plaintiff raised a crop in the year
1846 which said close now is & at the said several
times when he was another and different close from the
said close in said second plea of said defendant
mentioned and therein alleged to be the close soil
& free hold of the defendant and this the Plaintiff is
ready to verify. Wherefore in as much as the said defend-
-ant hath not answered the said trespass by him Com-
-mitted in the said close in which he above newly assigned
the said Plff prays judgment and his damages on occasion
of the committing the trespass above newly assigned to be
adjudged to him

Dickey & Leland
for Plff

Joe Lighthall
vs
P A Minner

Demurrer
Filed April 4th 1848
L Leland clk
By J F Nash Deft

Filed Apr 5 1848
L Leland clk

Lafayette Circuit Court March Term 1848

Joe Lighthall
vs
Peter A Minner

And the said Plaintiff ~~cannot~~
~~defend & & &~~ as to the pleas of the defendant by
~~him~~ ^{to the matter set forth in now a plea oner} ~~thirdly & fourthly~~ pleaded, saith that the same & the
matter and things therein contained in manner and form
as the same are pleaded are not sufficient in law to
bar or preclude him the ^{said} Plaintiff from having or main-
taining his aforesaid action thereof against him and that
the plff is not bound by law to answer the same, and
this he is ready to verify wherefore &c

Dickey & Leland
for plff

And afterwards to wit on the said fourth day of
April the following order was made by the Court to wit
Joseph Lighthall vs Trespass Quare Clamum Fregit
Peter A Minner

This day came the Plaintiff by Dickey
& Leland his Attorneys & the defendant by How his Attorney
& the demurrer to the third & fourth pleas was taken
up & argued & sustained

~~Continued.~~ 20

And afterwards to wit: on the ^{5th} day of April the following further proceedings were had in said cause viz:

Joseph Lighthall
vs
Trespass Quam Clausum Juris
Peter A. Moismen

This day again came the parties hereto by their said Attorneys & the demurrer to the new assignments was sustained & the issues being made up, thereupon came the following names of a jury to wit: Wm. Gentlemen, John Kennedy, Geo. Hendrix, L. A. Jones, Wm. Packerham, Wm. Boggs, L. P. Huggs, H. Daggett, John E. Wilson, G. W. Hunter, S. Baldwin, & W. B. Jeff, who were elected tried & heard the issues herein well & truly to try according to the evidence & after hearing the evidence, retired to consider of their verdict. And after due consideration had thereon, returned the following verdict to wit: We the Jury find the issues for the plaintiff & assess his damages at four dollars. It is therefore considered that the plaintiff recover from the said defendant the said sum of \$4.00 for his damages & also his costs & charges by him herein expended & that he have execution therefor.

State of Missouri }
Lafayette County } J. Philo Lindsay, Clerk of the Circuit Court in & for said County do hereby Certify that the foregoing is a true full and complete copy of all the pleadings and all the orders of Court in the foregoing Cause as the same appears of record and on file in my office.
In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 8th day of July AD 1857
J. Lindsay Clerk

to say
Wm. H. Lupton

Wm. H. Lupton

Record

Record & appt. of uns
filed July 9. 1854.
L. H. Lupton & Co.

Prepared

Sup. Court
Petitioner
Peffer in Error
vs
Joseph Lightner

Clk will please
issue writ Facias returnable
to my l. l. l.

Hans Schmidt

May 30th 1881

La Valle County
Peter A. Oliver
Joseph Lighthall

Prince
108.

Filed May 30. 1854.
L. Heland Clk.

11965

1852

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *La Salle* - GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *La Salle* county, before the Judge thereof, between _____

Joseph Lighthall

plaintiff - and _____

Peter A. Ellisner _____

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

as we are informed by *his* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the
Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same,
under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county
of La Salle, on the *2nd Monday in June* - next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *30th* _____
day of *May* - in the year of our Lord one thousand eight
hundred and fifty *one*.

S. Seland Clerk of the Supreme Court.

La Valle County
Peter A. Ellis
Joseph^W Lighthall
Mist of Enor

Filed July 9, 1854.
V. A. Ellis Clerk

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *La Salle* — 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 *La Salle* county, before the Judge thereof, between *Joseph Lythall plaintiff*
v *Peter A. Mieser* —

Defendant, it is said that manifest error hath intervened, to the injury of the said —

Peter A. Mieser —

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 *Joseph Lythall*

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 *second* Monday in *June* next, to hear the records 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 *Joseph Lythall* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *30th* day of *May* — in the year of our Lord one thousand eight hundred and fifty *one* —

A. Seland Clerk of the Supreme Court.

Chas. W. Lighthall

Sec. Pa.

Directed this note
by mailing to Charles
Lighthall, May 30th
1857 R. B. Grindle

Shops & Co. 4th
Cmille $\frac{30}{90}$

Filed July 9. 1857

William D. D.