

No. 13694

Supreme Court of Illinois

Dunning

vs.

Moore

71641  7

305

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 121

305

305

Quinn

Moore

1862

~~13690~~

Referred

13694

1 State of Illinois In Ogle Circuit Court
Ogle County ss

At a term of said Circuit Court begun and holden in and for the County of Ogle aforesaid at the Court-house in Oregon on the 3rd Monday of March in the year of our Lord one thousand eight hundred and fifty nine then & there being present the Honorable John V Eustace Judge of the 2nd Judicial Circuit of the State of Illinois

Frederick G. Petrie Sheriff
Robert C. Burchell State Atty
Mortimer W. Smith Clerk

was filed in this Court

Be it remembered that afterwards to wit on the 30th day of March A.D. 1859 a declaration notice & proof of service in a cause wherein Gabriel Downing was plaintiff and Henry W Moore was defendant, which said declaration notice & proof of service now remaining on file in said Court is in the words and figures to wit -

Ogle Circuit Court of the Term of March in the year of our Lord one thousand eight hundred & fifty nine

Ogle County of Gabriel Downing plaintiff by Wright & Sawyer his attorneys complainants of Henry W Moore defendant in an action of ejectment

For that whereas the said

the declaration

2 Plaintiff on the first day of March in the year of our Lord one thousand eight hundred & fifty nine was possessed of certain parcels of land in said County of Ogle situated with the appurtenances known & designated as the East half of the ^{South} West quarter & the North West quarter of the South West quarter of Section No Thirty four in Township Forty two North in Range two East of the third principal meridian containing one hundred & twenty acres and a part of the North West quarter of the North West quarter of Section No Ten in Township Forty one North in Range two aforesaid bounded as follows to wit Commencing at the North East corner of said lot thence running South sixty rods thence West twenty nine rods thence North Easterly to a point Twenty six rods west of the place of beginning about sixty rods thence East to the place of beginning containing ten & a half acres which said premises the said Plaintiff claims in fee and he the said Plaintiff being so possessed there of the said Henry W Moore defendant afterwards to wit on the first day of March in the year aforesaid entered into the said premises & ejected the said Plaintiff there from and unjustly withheld from said Plaintiff the possession thereof. To the damage of the said Plaintiff of Five hundred dollars & therefore he brings suit &c

Wm W Sawyer
Plffs Atty's

2 Plaintiff on the first day of March in the year of our Lord one thousand eight hundred & fifty nine was possessed of certain parcels of land in said County of Ogle situated with the appurtenances known & designated as the East half of the ^{South} West quarter & the North West quarter of the South West quarter of Section No Thirty four in Township Forty two North in Range two East of the third principal meridian containing one hundred & twenty acres and a part of the North West quarter of the North West quarter of Section No Ten in Township Forty one North in Range two aforesaid bounded as follows to wit Commencing at the North East corner of said lot thence running South sixty rods thence West twenty nine rods thence North Easterly to a point Twenty six rods west of the place of beginning about sixty rods thence East to the place of beginning containing ten & a half acres which said premises the said Plaintiff claims in fee and he the said Plaintiff being so possessed thereof the said Henry W Moore defendant afterwards to wit on the first day of March in the year aforesaid entered into the said premises & ejected the said Plaintiff there from and unjustly withheld from said Plaintiff the possession thereof. To the damage of the said Plaintiff of Five Hundred dollars & therefore he brings suit &c

Wm W Sawyer
Plffs Atty's

4 was living on the premises described
in said declaration and is a white person
of above the age of ten years -

Sworn before me this

17th day

3rd day of March 1859

Wm R Buser Constable

W W Smith clerk.

Upon the back of said declaration notice
& proof of service appears the following
endorsement

Filed March 31 1859

W W Smith clerk.

And afterwards to wit on the 31st day
of March AD 1859 the same being one of the
days of the said March Term AD 1859 of said
Court the following proceedings were had
in said cause to wit

order

Gabriel Dunning

vs

Ejectment

Henry W Moore

This day comes the said
Plaintiff by Wight his attorney and files
his declaration notice & proof of service
thereof and it appearing to the Court that
the same are served upon Mrs Moore the wife
of the said defendant a white person above
the age of ten years on the premises in question
in this cause and that the defendant is absent
from the State. It is ordered on motion of Plaintiff
attorney that the defendant plead to said
cause by the first day of June next.

And afterwards to wit on the 2nd day

2
day of May A.D. 1859 the said defendant filed
in this Court in said cause his plea which
in the word & figures is to wit:

Plea

State of Illinois } To the June Term of the
Ogle County ss } Circuit Court of said
County 1859

Gabriel Downing

vs

Henry W Moore

And the said Henry W
Moore by W A Mix his atty comes and says
that he is not guilty of unlawfully with hold-
ing the premises claimed by the said Gabriel
Downing as alleged in said declaration
of the said Downing and of this he the
said Moore puts himself upon the country
W A Mix atty
for Moore

On the back of said plea is an endorse-
ment to wit

Filed May 22 1859

W W Smith clerk

And afterwards to wit at the March Term
A.D. 1860 and on Friday the 23rd day of March
A.D. 1860 it being one of the days of the said
March Term the following proceedings were
entered of record in said cause in said Court
to wit

Order

Gabriel Downing

vs

Henry W Moore

Ejectment

This day comes the said
5 Plaintiff by Wignar and Sigur his attorneys and

6 The said defendant comes by his Attorney
and by agreement between the said parties
It is ordered that this cause be continued
generally

And afterwards to wit on the 27th
day of March A.D. 1860 it being still one of
the days of the said March Term aforesaid
the following proceedings were had in said
cause in said Court to wit

Order Gabriel Downing  Ejectment
vs
Henry W Moore

Now on this day comes
the said Plaintiff by Wignall and Sigurd his
attornies and on his motion It is ordered
that the order for a continuance heretofore
entered herein be vacated.

And afterwards to wit on the 28th day
of March A.D. 1860 it being still one of the days
of the said March Term aforesaid the follow-
ing proceedings ^{of the Court} were had in said Court in said
cause to wit

Order Gabriel Downing  Ejectment
vs
Henry W Moore

This day comes the said
parties as heretofore and by agreement be-
tween the said parties. It is ordered that ^{this} ~~the~~
cause be continued generally

And afterwards to wit at the June Term

AD 1860 and on Tuesday the 12th day of June AD
1860 it being one of the days of the said June
Term the following proceedings were entered of
record in this Court in said cause to wit:-

Order

Gabriel Dimming
vs
Henry W Moore



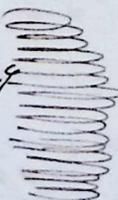
Excerpt

This day comes the said
Plaintiff by Wigwam and Sigur his Attorneys &
the said defendant comes by Mix and Houston
his Attorneys and now to try the case herein
come the jurors of a jury good and lawful
men to wit: Horam Blumhart Luther M. Stroh
Ernest J. Raymond David Werry Jacob William
Edgar Finnes Erson Fay Samuel S. Fox
Barnabas Brundage Ho J. Farwell B. B. Locke
Wood and James Bailey who being duly
elected tried and sworn after hearing the
evidence the argument of counsel and the
instructions of the Court retire to consider
their verdict.

And afterwards on the 13th day of June
AD 1860 it still being one of the days of the
said June Term aforesaid the following
proceedings were had ⁱⁿ in said cause in said
Court to wit:

Order

Gabriel Dimming
vs
Henry W Moore



Excerpt

This day come the said
parties as were to fore and the jury empanelled
& herein also come and present their verdict

as follows " We the jury find the defendant guilty of withholding the premises described in the Plaintiffs declaration and that the Plaintiff is entitled to an estate in fee simple therein. And there upon the said defendant enters his motion in arrest of Judgment and for a new trial herein

And on said 13th day of June AD 1860 a verdict was filed in said court in this cause. Which said Verdict is in the words and figures following to wit-

Verdict
 Deering }
 vs. } Ejectment
 Moore }
 }
 }

We the Jury find the defendant guilty of withholding the premises described in the plaintiffs declaration & that the Plaintiff is entitled to an estate in fee simple therein

- Arthur M. Strook
- B. Brundage
- Jacob Williams
- E. A. Furness
- Ernest J. Norman
- Samuel S. Fouts
- B. B. Lockwood
- Wiram Blumentart
- Henry J. Farrell
- O. C. Fay
- James Bailey
- David Wright

On the basis of said verdict appears the following endorsement

Filed June 13 1860

In W Smith ckh

By W J. Smith dep-

And afterwards to wit at the said June Term Ad 1860 and on Saturday the 23rd day of June it being one of the days of the said June Term the following proceedings were entered of record in said Court in said cause to wit

Order

Gabriel Downing

vs

Exemption

Henry W Moore

This day came the parties as heretofore and now comes on to be heard the motion of the ^{said} defendant heretofore made for a new trial herein and after argument of counsel and consideration by the Court it is ordered that said motion be sustained upon payment by the said defendant of all costs herein and it is further ordered by the Court that said costs be paid within thirty days from this date

And afterwards to wit at the November Term Ad 1860 of this Court and on Thursday the 8th day of said November it being one of the days of the said November Term the following proceeding were entered of record in said Court in said cause to wit

Gabriel Downing
vs
Henry W Moore

Exemption

Order Now on this day comes
the said Plaintiff by Wigwam and Sigur his
Attorneys and the said defendant comes
by Nix and Horation his Attorneys and now
to try the issue herein again come the jurors
of a jury good and lawful men to wit
W A Hammond David Peble Ralph Shanny
John Owens Daniel E Green Elijah Clark
John Mc Kenney Henry Shaver H B Dudley
Joseph Foreman William Signer and Joseph
H. Priest who being duly elected tried and
sworn the trial proceeds and before the
conclusion thereof the hour of adjournment
having arrived the said jury are adjourned
to the opening of Court to morrow morning

And afterwards to wit on the 9th
day of November A D 1860 it being still one
of the days of said November term A D 1860
aforesaid the following proceedings were
in said Court in said cause entered of
record to wit -

Order Gabriel Downing
vs
Henry W Moore

Exemption

And now on this day
comes the said Plaintiff as heretofore and
the jury empanelled herein also come and
the defendant also comes as heretofore
and now the said Plaintiff by his said
Attorneys desmises his suit as to the Part

12) said Plaintiff by Wiggins & Sawyer his
Att'y and dismisses this suit as to the
part of the North West quarter of the East
North West quarter of the Section No 34
(11) in Township forty one (41) North Range
Two (2) E of the 3rd principal meridian
described in said Plaintiff's declaration

Wiggins & Sawyer
Plff's Att'ys

On the back of the same is an enclosure
ment as follows to wit:

Filed Nov 9 1860

M W Smith Clk

By H J Smith Dep

And on said day to wit the ninth day
of November A D 1860 a verdict was filed
in said cause in said court and is in the
words & figures following to wit:

Verdict *Denning*
vs *Moore*  Ejectment

We the jury find the defend-
ant guilty of withholding the possession
from the Plaintiff of the East half of
the South West Quarter and of the North
West Quarter of the South West Quarter
of Section number Thirty four (34) in Township
Number Forty two (42) North of Range number
Two (2) East of the Third (3) Principal Meridian
and that the Plaintiff is entitled to an
estate in fee simple therein -

W C Dudley Daniel S Green Henry Shaver

J. H. Priest W. B. Syner J. Foreman
Ralph Chaney John Curran David Petrie
John McKimney E. Legan Clark Wm A. Hammond

On the back of said Verdict is the following endorsement to wit

Filed Nov 9 1860

W. W. Smith Clk

By J. H. Smith dep

And afterward to wit at at the said November Term A. D. 1860 and on Friday the 23^d day of said November it being still one of the days of the said Term the following proceedings in said cause in said Court were entered of record to wit

Order

That in and against
Henry W. Moore
vs
Ejectment

And now on this day come the parties hereto as heretofore and now comes on to be heard the motion of the defendant for a new trial herein and after argument of counsel and the Court being fully advised in the premises it is ordered that said plaintiff have and recover the possession of the said premises described in the Plaintiff's declaration and in the verdict of the said jury and that he also recover of the said defendant his costs and charges in this behalf expended and that he have is writs of possession and of execution therefor

And afterwards to wit on the same day before-
 said the following proceedings were entered of
 record in said cause in said suit to wit-
 versus Gabriel Downing
 or
 Henry W Moore



Ejectment

And now on this day
 comes the said defendant by H. A. Dix his attorney
 and it appearing to the Court that the said
 defendant has paid the costs herein on his
 motion it is ordered that this cause be re in-
 stated upon the docket and that the judg-
 ment here before on this day entered herein
 be set aside and vacated.

And afterwards at a term of the Territorial
 Court begun & holden at the Court house in
 Oregon in said County & State on the 1st Monday
 of November A.D. 1861 to wit on Tuesday the 6th
 day of said November A.D. 1861 - then & there being
 present the

Honorable William W. Frazer ^{Judge}
 Frederick U. Petrie Clerk
 John A. Hughes Sheriff
 and David Mc Carthy States Attorney

And afterwards on Tuesday the 19th day
 day of November A.D. 1861 it being still one
 of the days of the said November Term A.D. 1861
 then & there being present the

Hon. Ira O. Wilkinson Judge ⁱⁿ Ju. Cir.
 Frederick U. Petrie Clerk
 John A. Hughes Sheriff
 and David Mc Carthy States Attorney

The following proceedings were entered of record in said cause to wit

Order Gabriel Downing
vs
Ejection
Henry W Moore

Now again on this day came the said Plaintiff by Wether & Waterway & Ligut his attorneys and the defendant by Horaton and Dix his attorneys and issue being joined thereupon came the jurors of a jury good & lawful men to wit A Mc Mustor H Briggs Thomas Butledge G B Grimes Edmond Longs Don Mason Taylor Charles F Emerson Rufus H Frisbee E J Bortle William N Cook E L Forbes & Daniel Eicholtz - who being duly elected tried & sworn well and truly to try the issue joined between the parties and a true verdict render according to the evidence and the said jury after hearing the evidence argument of counsel & instructions of the Court retire to consider their verdict and afterwards on this day return their verdict into Court to wit -

That the jury find the issue for the Plaintiff and that he has established on the trial a title in himself in fee simple in and to the lands & premises described in his declaration & that the defendant is guilty of withholding the possession thereof as charged in Plffs declaration and we assess the Plaintiffs damages at one cent.

And thereupon the defendant enters his motion for a new trial which being heard and considered by the Court is overruled

16 And there upon it is considered by the Court
that the said Plaintiff have and recover, ^{of} from
the said defendant the said premises
according to the form & effect of said recovery
and that the Plaintiff recover of the defend-
ant his costs in this behalf expended & that
he have execution therefor. And there upon
the defendant entered a motion for an ap-
peal to the Supreme Court and that said
appeal be allowed without the name of the
defendant (as he had gone to parts unknown)

And there upon it was agreed by said parties
that said appeal be allowed upon the filing
of a bond in the penal sum of one thousand
dollars within thirty days after the adjourn-
ment of this Court executed by Jesse Cook or
William F. Pomy and it was further ordered
by the Court that said defendant have the
same period of time to prepare his bill of
exceptions in this cause.

And afterwards to wit on the 14th day of November A.D. 1861 the verdict was filed in said cause. Which said verdict is in the words and figures following to wit:

Verdict We the jury find the issue for the Plaintiff and that he has established on the trial a title in himself in fee simple in & to the lands & premises described in his declaration and that the deft is guilty of withholding the possession thereof as charged in pffs declaration and we assess the plaintiffs damages at one cent
Rufus K. Finster
Foreman

On the back of said verdict appears the following endorsement

Filed Nov 14 1861

J. L. Petrie Clk

By B. B. Shue to depts

And afterwards to wit on the 20th day of November A.D. 1861 a "bill of exceptions" was filed in this cause in this court. Which said bill of exceptions is in the words & figures following to wit:

Bill of exceptions State of Illinois Circuit Court of said
Ogle County County Nov 3 1861

Abrial Lanning vs Eyrtemont
Henry W. Moore

Be it remembered that on the trial of the above entitled cause the plaintiff

to establish the issue in his part introduced a Trust deed made by the defendant & wife to John H. Penfield which deed is in the words and figures following.

This indenture made this Twenty Eighth day of June in the year of our Lord one thousand eight hundred and fifty eight - Between Henry W Moore and Sarah A Moore his wife of the County of Ogle and State of Illinois of the first part and John H. Penfield of the County of Waukegan and State of Illinois of the second part - Witnesses the Parties as the said party of the first part are justly indebted to Livingston Compton in the sum of Sixteen hundred and fifty one & $\frac{92}{100}$ dollars (\$1651.92) according to the tenor of the three certain promissory notes of said H W Moore of even date herewith payable to said L. Compton at the office of A. S. J. Penfield in Rockford as follows to wit the first for the sum of One hundred and ninety eight & $\frac{58}{100}$ dollars due October 4th 1858, the second for Seven hundred & forty six & $\frac{17}{100}$ dollars due November 28th 1858 and the last for the sum of Seven hundred and six & $\frac{17}{100}$ dollars due November 28th 1859 and being desirous of securing the prompt payment of the said moneys to be paid or the due performance and fulfillment of the matters and things to be performed and fulfilled as aforesaid - Now therefore the said party of the first part fully confiding in the integrity and discretion of the said party of the second part and in consideration of the sum of one dollar to them in hand paid by the said

party of the second part before the sealing and
delivery hereof the receipt whereof is hereby
acknowledged do hereby give grant bargain
sell convey and confirm unto the party of the
second part and to his Executors Administrator
and assigns forever the following described
tract or parcel of land situate in the County
of Ogle and State of Illinois and described
as follows to wit: The East half of the South
West quarter and the North West quarter of the
South West quarter of Section No Thirty four (34)
in Township forty two (42) North of Range two East
of the Third principal meridian containing
one hundred and twenty acres more or less
Also a part of the North West quarter of the
North West quarter of Section No Two (2) in Town-
ship forty one (41) North of Range two East of
the Third Principal meridian bounded as
follows to wit Commencing at the North East
Corner of said lot thence South Sixty rods
thence West twenty nine (29) rods thence North
Easterly to a point twenty six rods West of the
place of beginning about sixty rods thence
East to the place of beginning containing land
a half (1/2) acres more or less

Together with all and singular the tenements
tenements privileges and appurtenances
there to belonging or in any wise appertaining
and all the interest of said party of the first
part therein: To have and to hold the same
to the said party of the second part and to his
heirs and assigns forever: In Trust however
for the uses and purposes following that is to
say: If default is made in the payment of said

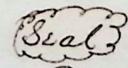
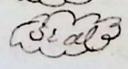
21
money, or interest or any instalment or balance
thereof or in the due performance and fulfill-
ment of the matters and things to be performed
and fulfilled as aforesaid at or before the time
specified for such payment performance or
fulfillment - then and in such case the said
party of the second part his heirs executors
administrators or assigns or his attorney or
attorneys by him constituted for that purpose
by writing under his hand & seal duly ack-
nowledged and recorded is and are hereby
expressly authorized to enter into and upon
and fully take possession of the premises
hereby conveyed and close up this trust
and to sell and dispose of the same at
public sale to the highest bidder or bidders
for cash in hand at the door of the Court-
house or place of holding courts of the
County of Warrumbago first giving notice by
advertisement describing the ^{premises} premises as
above and specifying the day hour place &
terms of sale in a public news paper such ad-
vertisement to be inserted a least once a week
for three successive weeks the last publication
to be not less than thirty days before the
time therein named for said sale. Said sale
may be postponed one or more times notice being
given. And the proceeds of the sale shall be
applied first to the payment of all reasonable
costs and charges of the creation and manage-
ment and closing up of this trust the adver-
tisement and sale and the transfer of title to
the purchaser or purchasers and to the
payment of all taxes existing against said

premises or any part thereof at or before the date of the making of this Trust or that may hereafter be levied or assessed thereon and to the refunding with interest of all monies paid for said taxes by or for the trustee or party secured herein or either or both of them; Second, towards the discharge of the indebtedness or liability or the performance or fulfillment aforesaid. And if any overplus then remain it shall be paid over to the party of the first part or order or executors administrators or assigns on demand. The certificate of the printer of said publication of the notice of the sale & of the adjournment or adjournments thereof with a printed copy of said notice annexed or the record of such certificate and notice in the recorder's office of the County in which said premises or any part of them lie or are situate shall be final and perfect evidence that said publication and notice has been duly made and given. Upon making sale as herein authorized the party of the second part or his attorney or attorneys executors administrators or assigns shall as the attorney or attorneys of the said party of the first ^{part} removable or in other form execute acknowledge and deliver a conveyance or conveyances of the premises to the purchaser or purchasers and the title and all rights and interests & equity of redemption of the above named party of the first part shall hereby be as effectually conveyed and released to such purchaser or purchasers as if the said

22
party of the first part had in their own
proper person executed signed sealed deliver-
ed and acknowledged the same and the
same is and are hereby ratified and confirmed
And in consideration of the further sum of
one dollar to them in hand paid before the
ensuing and delivery hereof, the receipt of
which is hereby acknowledged the said party
of the first part do hereby waive and relinquish
all right and benefit of exemption of said
premises under the exemption laws of the
State of Illinois -

If the debt or liability aforesaid shall be duly
paid or discharged by the said party of the first
part then this Indenture shall be null & void
and the manner and form of cancelling the
same and releasing said Trust shall be the same
as is prescribed by law for the release of mortga-
ges which cancelling & releasing shall be sufficient
whether given by the party named or by said
Trustee or his attorney executors administrators
or assigns which release shall be at the expense
of the party of the first part.

In Witness Whereof, the said party of the
first part have hereunto set their hands
and seals the day and year first above
written

Executed in Presence of  Wm W Moore 
Wm F Perry - Sarah A Moore 

State of Illinois } ss
Ogle County

I Wm F Perry Justice of the
peace in and for the said County do hereby

7
Certify that Henry W Moore personally known
to me to be the person whose name is subscri-
bed to the foregoing deed as having executed
the same appeared before me this day in person
and acknowledged that he signed sealed
and delivered the same as his free and voluntar-
y act and deed for the uses and purposes
therein set forth -

And the said Sarah A Moore personally known
to me to be the wife of the said Henry W Moore
and as the person who subscribed said deed
as such having been by me made acquainted
with the contents and meaning of said
instrument of writing and examined separate
and apart from her husband acknowledged
that she had executed the same and rein-
quished her dower and all rights whatever
whether of dower or otherwise in and to the
lands and tenements therein mentioned volun-
tarily freely and without compulsion of her
said husband and that she does not wish
to retract -

Given under my hand & seal at Synnott
this 7th day of July A.D. 1858

Wm F Perry Justice Peace

Endorsed on Back -

State of Illinois
Ogle County

Recorder's Office

Filed for record on the 13th
day of July A.D. 1858 at 4 o'clock P.M. Recorded
in Book 46. of mortgages page 153 and
examined

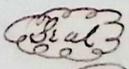
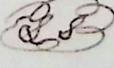
W W Smith Recorder
By W J Smith dep.

Assignment

Know all men by these presents that I Livingston Compton the party secured in and by a certain deed of Trust from Henry W Moore and Sarah A Moore dated the Twenty eight day of June A.D. 1858 and recorded in Book 40 of Mortgages page 153 in the office of the Recorder of the County of Ogle in the State of Illinois in consideration of the sum of Sixteen Hundred and fifty one dollars to me in hand paid by Gabriel Hemming of the County of Winnebago and State of Illinois the receipt of which is hereby acknowledged do hereby assign transfer set over and give claim to the said Gabriel Hemming and to his heirs and assigns forever the said deed of Trust and the Note or Notes Bond or Bonds matters & things therein secured and all rights and interest in and to the same and all my right interest and claim in and to the lands and tenements in and by said deed of Trust described or conveyed. To have and to hold the same as fully and effectually to all intents and purposes as I now do or heretofore have and with the same powers rights and authority.

In Witness Whereof I have hereunto set my hand and seal this thirty first day of August in the year of our Lord one thousand eight hundred and fifty eight

In Presence of
A. C. Spafford

L. Compton 
J. Compton 
Assignee

State of Illinois Warrabago County ss.

I A B Spafford a Notary Public
in and for the said County do here by certify
that Livingston Compton and John Compton
Assigne personally known to me to be the
persons whose names are subscribed to the
foregoing assignment or writing as having
executed the same appeared before me this
day in person and acknowledged that they
signed sealed and delivered the same as their
free and voluntary act and deed for the
uses and purposes therein set forth

Given under my hand and Notarial
seal at Rockford this Twenty first
day of August A.D. 1858
A B Spafford
Notary Public

— Endorsed on back —

State of Illinois
County of Ogle

Filed for record of
Assignment September 4th 1858 at 5 P.M.
and Recorded in Book A of Miscellaneous
Records Page 486 and examined

W W Smith Recorder
By W J Smith dep.

And further to maintain his case
the plainiff introduced a deed from
John H. Penfield to the Plaintiff which is
in the words and figures following

This Indenture made this Twenty fifth
of January in the year of our Lord one
thousand eight hundred and fifty nine

Between John H. Peasfield of the County of Hancock and State of Illinois of the first part and Gabriel Downing of the same County and State of the second part. Whereas Henry W Moore and Sarah A Moore his wife on the Twenty eighth day of June in the year of our Lord one thousand eight hundred and fifty eight to wit come to one Livingston Compton the payment of Sixteen hundred & fifty one dollars and seventy two cents being the amount of three certain promissory made by said Henry W Moore to the said Compton of that date one thereof being for the amount of One thousand & ninety eight dollars and fifty eight cents and payable with ten per cent interest after due on the fourth day of October 1858 at the office of J. H. Peasfield & Co another thereof being for the sum of Seven hundred & forty six dollars and Sixty seven cents payable with ten per cent interest after due on the twenty eighth day of November 1858 at the same place the other of said notes being for the sum of Seven hundred & six dollars and sixty seven cents payable in like manner with interest at the same rate of ten per cent after due at the place aforesaid on the Twenty eighth day of November 1859 did make execute and deliver to the party of the first part their certain deed of conveyance commonly called a trust deed therein conveying to the party of the first part the lands and premises herein after described and conveyed upon trust however that in case of default of the said Henry W Moore in the payment of the monies above mentioned or of any instalment

or balance there of or interest there on or in
the due performance or fulfillment of any of
the matters or things to be performed or ful-
filled by the said deed of trust ⁱⁿ or before
the time specified for such payment perform-
ance and fulfillment, then and in such case
the said party of the second part therein and
party of the first part herein was by said
trust deed authorized to enter onto and upon
the said premises thereby conveyed to take pos-
session of the same and to close up the said
Trust and to sell & dispose of the said same at
Public Sale to the highest bidder or bidders for
cash in hand at the door of the Court house
or place of holding courts of the County of
Winnibago first giving notice by advertisement
describing the said premises as therein described
for some successive weeks the last publication
to be not less than thirty days before the time
therein named for said sale. The proceeds of
said sale to be applied in the payment of
the costs and expenses of the management
and closing up said Trust. The advertisement &
sale and transfer of the title to the purchaser
to the payment of the taxes existing against
said premises or that might thereafter be assess-
ed against the same; second the discharge
of the indebtedness secured by said Trust deed
and if any surplus there should remain
that the same shall be paid over to the said
Moore his executors assigns or administrators
on demand and upon making the said sale as
therein authorized the said party of the first
part was thereby authorized to execute acknowledge

and deliver to the purchaser a conveyance of the said premises as in and by said trust deed reference being there to had will more fully appear which said Trust Deed was in due form of law acknowledged and recorded in the Recorders office of Ogle County where the said premises are situated in Book No. of Mortgages page 133- on the 13th day of July 1858-

And whereas the said Henry W Moore wholly failed to pay the said money mentioned in said notes secured by said Trust Deed as the same became due and payable as by said Trust Deed required but on the contrary those of the two first above mentioned notes became and fell due at the several times they were made payable as above mentioned and the said Henry W Moore did not nor did any one for him pay the said promissory notes or either of them or any part thereof but wholly failed to do so and the party of the first part acting under the said Trust Deed and the several trusts powers and provisions therein contained and to him thereby given and granted did on the day of the date hereof at the door of the Court House in Rockford in said County of Winnebago at the hour of two o'clock P.M. of said day sell at Public Auction to the highest bidder the said lands and premises in said trust deed described and herein after described to the party of the second part for the sum of Two thousand dollars he being the highest bidder therefor and the said

sum being the highest sum bid for the same And whereas notice of the time place and terms of said sale was given by publication in the Ogle County before a weekly news paper published in said County of Ogle from the ninth day of December to the time of the said sale in every issue thereof as will appear by a copy of said notice and a certificate of publication thereof hereto attached and made part of these presents. And whereas the full amount of money mentioned in the two first notes secured by said Trust deed was at the time of said sale due and unpaid.

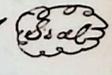
Now therefore this Indenture Witnesseth that the party of the first part in consideration of the premises and also in consideration of the sum of Two Thousand Dollars to him in hand paid by the party of the second part the receipt whereof is hereby acknowledged has Granted Bargained and sold and by these presents doth hereby Grant Bargain and sell unto the party of the second part his heirs and assigns ^{to wit} all those several tracts pieces and parcels of land in said County of Ogle situate being the same parcels of land in and by ^{said} Trust deed conveyed and by him the party of the first part sold as aforesaid and more particularly described as follows to wit The East half of the South West quarter and North West quarter of the South West quarter of Section No Forty four (34) in Township No Forty Two (2)

North of Range Two (2) East of the third principal meridian containing one hundred and twenty acres also a part of the North West of the North West quarter of Section No 10 in Township No 40 N and (4) North of Range Two (2) East of the third Principal meridian bounded as follows to wit commencing at the North East corner of said lot thence South Sixty rods (60) thence West Twenty nine (29) rods thence North easterly to a point twenty six (26) west of the place of beginning about sixty rods thence East to the place of beginning containing ten and one half (10 1/2) acres more or less.

Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold to the party of the second part his heirs and assigns to his and their only proper use benefit and behoof forever In Witness where of the party of the first part has here to set his hand and seal the day and year first above written

Signed Sealed & Delivered

In presence of the words "notary" on the 3^d page of "holder" on the 4th inserted

John Spafford 

A. C. Spafford

State of Illinois
Winnebago County

Before me a Notary Public in and for the County of Winnebago personally appeared this first day of March 1859 John Spafford to me known as the same person

described in said who executed the foregoing
 deed and acknowledged the same to be
 his free act and deed for the uses and
 purposes therein expressed Given under
 my hand and Notarial seal this first day
 of March A.D. 1859

E Seal

A. C. Spafford Notary Public

State of Illinois
 Ogle County ss

State of Illinois.
Trustee's Sale of Real Estate.
 BY VIRTUE of the power contained in a certain Trust
 Deed made to me, the undersigned, by Henry W. More and
 Sarah A. More, his wife, bearing date June 28th, 1858 con-
 veying to me the hereinafter described premises, in Trust,
 to secure to Livingston Compton, the payment of three
 promissory notes, made by the said Henry W. Moore to the
 said Compton, of the same date, the one thereof for \$1-
 98.55-100, payable October 1th, 1858, one thereof for \$7-
 46. 67 1/4, payable November 23, 1858, and the other for
 \$703.67-100, payable November 23th, 1859, which Trust
 Deed was recorded in the Recorder's Office of Ogle county
 in Book II of Mortgages, page 153, and which notes and
 Trust Deed have been assigned to and now belong to Ga-
 briel Dunning. On Tuesday the 25th day of January next
 at two o'clock p. m. of said day, at the Court house, in
 Rockford, in the county of Winnebago, in said
 State of Illinois, I shall sell at public auction
 to the highest bidder for cash the lands and prem-
 ises described in and conveyed by said Trust Deed, which
 lands and premises are described as follows, to wit: The east
 half of the south west quarter and the north west quar-
 ter of the south west quarter of section No. thirty four,
 in township forty two, north of Range two, east of the
 third principal meridian, containing one hundred and
 twenty acres, more or less; Also a part of the northwest cor-
 ner of the northwest quarter of section No. ten, in township
 forty-one, north range two, east of the third principal
 meridian, bounded as follows, commencing at the north
 east corner of said lot, thence south sixty rods, thence
 west twenty nine rods thence north easterly to a point
 twenty six rods east of the place of beginning about sixty
 rods, thence east to the place of beginning, containing
 ten and a half acres, more or less, which lands and prem-
 ises are situate in the county of Ogle in the State of Illi-
 nois, aforesaid. Default having been made in the payment
 of the two first notes described in and described by said
 Trust Deed, and there being now due thereon the sum of
 One Thousand dollars, or thereabouts. Dec. 1, 1858.
 JOHN G. PENFIELD, Trustee.
 Wight & Sawyer Att'ys. -216.

I E. H. Suggs Publisher of
 "The Ogle County Reporter"
 a weekly public news paper
 published at Oregon in said
 County & State do hereby certify
 that the annexed notice was
 published in said News paper
 for & during seven successive
 weeks; the first of said pub-
 lications being on the 9th day
 of December A.D. 1858 and the
 last on the 14 day of January
 A.D. 1859. E. H. Suggs Publisher
 Printers Fee \$7.00.

Received of White & Sawyer by Mr. B. Bigler Payment
 in full for publishing annexed notice as certified
 above.

E. H. Suggs

Said deed was endorsed on back as follows to wit-

State of Illinois
 Ogle County

Filed for Record March 26th

A.D. 1862 at 8 o'clock A.M. Recorded

in Book 28 of deeds at Page 338 & examined

J. G. Penfield

Recorder

to the introduction of which defendant ex-
 cepted and thereupon the Plaintiff introduced
 Jesse Cook a witness who being duly
 sworn testified as follows

I lived in Lynnville on the 30th of March
 1859 I used to know Henry W Moore, he lived
 in Lynnville I am not sure that Moore was
 here in March 1859 I think he had gone in
 the winter of 1858 or spring of 1859 Previous to
 his going away he lived on Sec 34 Town 42 North &
 Range (2) two he lived on & occupied all the
 quarter except the South West quarter of the
 South West of Section (34) Barry farm

I am sure Henry Moore has been gone two summers
 he may have been there on the 18th of March
 1859 he left wife and children there at the time
 since ever since there frequently saw them
 there last week, my house is about a mile
 from theirs - he had been there one year certain
 before he left - after he left the family stayed
 on the farm - left wife and several children -

He left a man on the place the man did work
 He had thrashing done and managed farm
 On cross examination witness says that I think
 Moore was there in the Spring of 1858. I am not
 certain that he was there in the 1859 I am
 not positive but he left in the spring of
 1858. (Wid Moore's) wife and family occupied
 the place. The man managed the farm I
 think some of my family borrowed some oats
 of him - The mans name was John Willey. I
 think Moore was there in 1858 -

And the Plaintiff further offered in evidence
 the affidavits ^{return} on the declaration which is in

words and figures following
Ogle County ss.

William R Buser of said
County of Ogle being duly sworn deposes &
says that on the 18th day of March instant
he served a copy of the above declaration
& notice upon Mrs Moore the wife of Henry W
Moore the defendant in the above entitled
cause upon the premises in the above declara-
tion described by delivering a copy thereof to
her, that this deponent was unable to find
the said defendant & was told by his said
wife that he had left the State of Illinois
and this deponent further says that the said
Mrs Moore was living on the premises described
in said declaration and is a white person
of above the age of ten years - fees 1.75

Sworn before me this } W^m R Buser Constable

30th day of March 1859 }

Mr W Smith Clerk

The plaintiff ^{has} closed his testimony the defen-
dant introduced John Wiley a witness
who being duly qualified and sworn deposed
as follows -

I am was acquainted with Moore
I know the premises I was there when
Moore left in 1858 it was in the fall of
1858 he was not there in the spring of 1859
I have never heard of him since. Henry
Moore has had nothing to do with the
farm since 1858. From the time of his leaving
up to this time he has not contributed
to the support of the family that I know of
or had any thing to do with them. He has

had nothing to do with the support of family since he left. I was in occupancy of land in 1858 & worked it with another man (Blemm's). Moore's wife and children resided there. I and Blemm's worked it during the season of 1858 we worked it in squares I paid rent of 1858 to Henry W Moore I paid him a part of the crop. On cross examination the witness said Moore was not there after first of January 1859 he left in fall I was moving away when he left I think it was in September it was not as late as December 1858 I think he left in September 1858 I boarded in his family. I went to Rockford with wheat in the winter weather not cold.

Jesse Cook Recalled

The house is on North East quarter of South West Section 34 Township (42) North R 2 The value of the North half of South West quarter is about (\$12) Twelve dollars per acre the E 1/2 of S W 1/4 is of about the same value as north half but little difference the North half is worth quite as much the land is worth twelve dollars all around.

There upon the defendant by his counsel stated that he selected the North half of the South West quarter of Section 34 T 42 N R 2 East of the 8 P M as a homestead & claimed the same under the exemption laws of this State

And after the introduction of the foregoing

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Evidence the defendant moves to exclude from the consideration of the jury the deed of Trust from Moore to Penfield which motion being heard and considered is overruled.

The foregoing was all the evidence offered in this cause.

And thereupon the Plaintiff asked the following instructions

- Given
1. That the deeds offered in evidence and admitted on the part of the Plaintiff are prima facie evidence of title in the Plaintiff, and if the jury find from the evidence that the defendant was in possession of the premises in question at the time of the commencement of this suit the Plaintiff is entitled to recover.
 2. That if the jury believe from the evidence that the wife of the defendant was in the possession of the premises at the time of the commencement of this suit residing upon the same in the absence of the defendant and that she was so left in possession by him with his family, such possession of the wife is evidence of possession by the defendant if said premises were at said time his home.
 3. If the jury believe from the evidence that the defendant with his family resided upon the premises in controversy in 1858 and that
- 35

The defendant left his family residing there and that they continued to reside there until the commencement of this suit & that the witness Wiley was there as his or their employe to work ^{the place for not on his own account} then such occupancy of the family would be an occupancy by the defendant.

And there upon the defendant asked the following instructions -

Ogle County Circuit Court
 Gabriel Downing } November Term A.D. 1860
 vs }
 Henry W. Moore }

The defendant asks the Court to instruct the jury as follows
 1 In cases where lands are actually occupied the action of ejectment can only be maintained against the party in actual possession or occupancy of the land and unless the jury believe from the evidence that the defendant was in the possession of the premises described in plaintiffs declaration at the time this suit was commenced the jury should find the defendant not guilty.

2 If the jury believe from the evidence that Mr Wiley at the time of the commencement of this suit worked and cultivated the farm on his own account & managed & dealt with it in his own name as tenant and not merely as a hired hand this would be sufficient to warrant the jury in finding that the said Wiley was in the possession

of the farm notwithstanding the jury should believe from the evidence that the said Wiley boarded in the family of the Mrs Moore who lived in the dwelling house situated upon the farm -

3. If the jury believes from the evidence that Mr Wiley occupied the premises in question as a tenant at the time of the commencement of this suit the jury should find the defendant not guilty if they believe that he Wiley was the sole occupant -

4. That the action of ejectment lies only against the persons in actual possession and not against those claiming title & having some one in possession for or under them -

5. That possession of the defendant at the time suit was commenced must be distinctly proved & should not be inferred except from actual testimony of some person knowing the fact -

The defendant asks the Court to instruct the jury -

6. That the defendant if proved to have a wife & children living as his family on the land in controversy at the time of the service of the declaration in this cause is entitled to have and retain the possession of the same or so much of the same as does

not exceed in value the sum of One thousand dollars including the residence of the defendant's family & as to so much thereof as is so used and occupied as a home stead the jury should find for the defendant if the jury further believe that defendant at the time of executing his deed in evidence in this case occupied such premises as a home stead & with his family-

That where a person being the head of a family residing with the same upon a tract of land occupying the same as a homestead conveys the same by trust deed as security for money then having a wife & such wife does not by such deed and acknowledgment duly release such homestead & her rights to the same as provided by statute & the premises so occupied & claimed as a homestead do not exceed in value one thousand dollars the grantee in such trust deed or one claiming under him cannot maintain ejectment against such grantor while his wife & family so continue to occupy such premises as a homestead & being in fact their only home & place of residence. And if all the premises so conveyed exceed in value one thousand dollars and are susceptible of division without material injury so as to leave the residence of the grantor with a portion of the same of the value of one thousand dollars then such grantee can only recover the residue not included in the tract whereon such residence

is similar -

And there upon the Court gave all said instructions but the two numbered "b" and "c" which the Court refused to which ruling the defendant excepted. And there upon the jury retired to consider of their verdict. And afterward on the same day the jury came into Court with a verdict for the Plaintiff as follows -

We the jury find the issue for the Plaintiff and that it was established on the trial a title in himself in fee simple in & to the lands & premises described in his declaration and that the deft is guilty of withholding the possession thereof as charged in plaintiffs declaration and we assess the Plaintiffs damages at one cent.

Rufus B. Foster Foreman

And there upon the Plaintiff enters his motion for a new trial and assigns as grounds for said motion -

1st That the Plaintiff failed to show the defendant in the actual possession of the premises at the time of the commencement of this suit.

2nd That the Court erred in overruling the motion of the defendant to exclude the trust deed offered in evidence by the Plaintiff.

3rd That the Court erred in giving the instructions offered by the Plaintiff.

4th That the Court erred in refusing to give the instructions No "b" & "c" offered by

The defendant's
 And for other causes apparent upon
 the record and proceedings had in this
 cause -

Which motion being heard and consider-
 ed is overruled - to which ruling the de-
 fendant is exceptio and requests that this
 his bill of exception may be signed and sealed
 and made a matter of record in this Court
 which is done in open Court.

Endorsed on back -

Ira O. Wilkinson *I.O.W.*

Filed Nov 20 1861

Judge &c

F. L. Petrie Clerk

By B. F. Sheets dep

And afterwards on the 18th day of
 December A.D. 1861 an appeal bond was filed
 in said Court in said cause. Which said
 Appeal bond was in words & figures following
 to wit -

Appeal Bond

Know all men by these presents
 that I Jesse Cook of the County of Ogle
 and State of Illinois am well and firmly
 bound unto Gabriel Manning in the penal
 sum of One Thousand dollars lawful money
 of the United States for the payment of
 which well and truly to be made I bind
 myself my heirs executors administrators
 and assigns firmly by these presents

Witness my hand and seal this 16th day
 of December A.D. 1861 Jesse Cook -

The condition of the above obligation
 is such that whereas the said Gabriel
 Manning did on the day of November

Ad 1861 it being one of the days of the November Term of said year of the Ogle Circuit Court held in and for the County of Ogle and State of Illinois recover a judgment in execution for the recovery of the possession of the premises described in the Plaintiff declaration and that the said Gabriel Demming did then & there recover a judgment for damages in the sum of one cent - from which said judgment of said Circuit Court the said Henry W Moore has prayed an appeal to the Supreme Court of the State of Illinois which was allowed upon Jesse Cook or William F Perry's filing a bond herein in the penal sum of one thousand dollars within thirty days from the adjournment of said Court

Now if the said Henry W Moore shall prosecute his appeal with effect and without delay and well and truly pay all judgments costs interest and damages as may be awarded against him in case the said said judgment shall be affirmed then this obligation to be void otherwise to remain in full force & effect

Jesse Cook 

Endorsed on back

Filed December 18th 1861

J. G. Peirce Clerk

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State of Illinois of J. Frederick G. Elzie Clerk of
Ogle County of the Circuit Court in and for
said County and State do hereby
Certify that the above and foregoing is a true full and
perfect Transcript of all the papers on file and all of the
proceedings of Record in my office in a cause lately
pending in said Court wherein Gabriel Dunning was
Plaintiff and Henry W Moore was defendant
Witness my hand and the Seal of said
Court at Oregon in said County this 18th
day of April AD 1862,

J. F. Elzie Clerk
By B. F. Sheets Dep

Costs of Trans \$8.50

Now Comes the Saide Henry W
Moore Appellant by Glover, Cook
Campbell his Atty and says
that in the Record and proceed-
ings aforesaid and in the ren-
dering of the Judgment aforesaid
in manner and form aforesaid
there is manifest error in this
Court

1 The Court Erred in Overruling
the Motion of saide Defendant to
Exclude from the Consideration
of the Jury the Trust Deed from
Duff wife to Saide Penfield

Supreme Court

Gabriel Dunning
Appellee
vs

Henry W. Moore
Appellant

Joinder in Error

James M. Wright
atty for appellee

State of Illinois
Supreme Court
Gabriel Dunning
appellee

VS

Henry W. Moore
appellant

} Appeal from
the Ogle
County Circuit
Court.

And the said
appellee by James M. Wight
his attorney, comes and says,
that there is no such error in
the records and proceedings in
the above entitled cause in the
Court below, as is by the appellant
in his above assignment of errors
thereof supposed.

James M. Wight
atly for appellee

- 2 The Court Erred in Admitting in Evidence to the jury the said Deed from said Purpinner to said Plaintiff
- 3 The Court Erred in giving to the jury the said 1st 2^d & 3^d Instructions each of them asked by said Plff -
- 4 The Court erred in refusing to give to the jury the 6th & 7th Instructions each of them asked by the Defendant
- 5 The verdict of said jury was against the law & the Evidence & The Court Erred in overruling the said Motion of the Def^t for a new trial in said Cause
- 6 The Court Erred in rendering the judgment of or said in manner of or said

Glover, Book Campbell
 Atty for app^ts

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Henry W. Moore
vs
Gabriel Dunning

Record and
Acyt. of Ems.

Filed April 24. 1862
L. Leland
Clerk

Cook