

12142

No. _____

Supreme Court of Illinois

Thompson

vs.

Prentice

71641  7

Kane County Circuit Court
John Thompson
vs.
Harriet Prentice

Copy of Record

Be it remembered that on
the tenth day of September AD 1830 at the
September Term of this Court the Plaintiff filed his
declaration in this cause in the words and figures
following to wit:

"Kane County Circuit Court
"Of the term of September in the year of our
"Lord One thousand eight hundred & Fifty:
"Kane County:
"John Thompson Plaintiff by Harriarth
" & Ferguson his attorneys complains of Stephen West
"Defendant.

"For that whereas the said Plaintiff on the 1st day
"of January AD 1844 was possessed of a certain farm
"tract piece or parcel of land with the appurtenances
"situate in the said County of Kane it being the South
"West quarter of section number three (3) in township
"number forty two (42) North Range number six (6)
"East of the third principal meridian containing One
"hundred and sixty acres of land more or less which
"said premises the said John Thompson claims in
"fee and he the said Plaintiff being so possessed thereof
"the said Stephen West afterwards to wit on the first
"day of January AD 1830 entered into the said premises
"and he unlawfully withholds the possession thereof to the
"damage of the said Plaintiff of One hundred dollars
"and therefor he brings his suit &c."

"Harriarth & Ferguson Attys"

And now at this day to wit: the 5th
day of December A.D. 1830. at the November term
of said Court. the following order was made by the
Court.

" John Thompson }
" Stephen West. } Esquirement

This day comes Harriet
Prentice by Fridley Hook her attorneys and
moves that she be allowed to defend in this cause
in the place of Stephen West. Ordered by the Court
upon argument of parties that she be allowed to
defend in place of Stephen West and that said West
be discharged.

And now comes the said Harriet
Prentice at the said November term of this Court
and files the following plea therein, to wit:

" State of Illinois

" Hancock County and Circuit Court thereof
November term A.D. 1830

" And now comes Harriet Prentice who
is admitted to defend in place of said Defendant
by leave of the Court and for plea to the declaration
of the Plaintiff says that he is not guilty of unlawfully
withholding the above described premises or any
part thereof in manner and form as the Plaintiff
hath above thereof declared against the said
Defendant. and that she prays may be acquit
by the Country.

" W. F. Fridley Defts atty."

And the Pff did the like to

State of Illinois
Circuit Court
John Thompson
vs
Harriet Prentice

March Term A.D. 1851

Now in Ejectment for the S.W.
quarter of Section No. 3 Township
42 North. R. No. 6. E. of the third
principal meridian.

plea. General issue.

Jury waived and trial by the Court.

Be it remembered that on the trial of this
cause the Plaintiff read in evidence a stipulation between
the attorneys of the respective parties filed at the foot term
of this Court A.D. 1851. and in the words and figures following
to wit:

"Circuit Court.

"John Thompson

vs

"Stephen West."

It is hereby stipulated that on the
trial of this above entitled cause the following facts be admitted
1st That at the times this suit was commenced the said
Defendant Stephen West was and now is in the occupation
and possession of the premises and farm mentioned in the
declaration in this cause and to recover which this suit is
brought.

2nd That said Stephen West in said occupation and
possession of said premises was and is the tenant of one
Thomas Hill

3rd That said Hill was the tenant of one Harriet Prentice
and had leased the premises of her. -
The Plaintiff then read in evidence a
certificate of the Register of the land office at Chicago

(having proved the same) said certificate is in the words and figures following to wit.

"W. S. Land office Chicago Ill.
" August 7th 1846.

" I William W Jackson Register of the Land Office
" at Chicago Illinois do hereby certify that on the 2nd
" day of September A.D. 1839 Lewis Prentice of Kane
" County State of Illinois purchased from the United States
" according to law and as appears from the records at this
" office the South West quarter of Section No Three (3)
" in Township No Forty two (42) North. Range No
" Six (6) East of the Third principal meridian, and
" containing One hundred Sixty acres, according to the
" United States surveys, for which he has paid at the rate
" of One dollar and twenty five cents per acre

" Wm W Jackson Register "

The Plaintiff next read in evidence a deed of the same premises from Lewis Prentice and wife to Michael W. Mills dated November 23rd 1840 acknowledged Nov. 30th 1840 and recorded Decr. 21st 1840 which said deed is in the words and figures following to wit:

" Known all men by these presents that we Lewis
" Prentice and Harriet his wife of the County of Kane
" and State of Illinois, in consideration of the sum of
" One dollar to us in hand paid the receipt whereof, we
" hereby acknowledge, and for the additional consideration
" that Michael W. Mills of the County of Cook and State
" of Illinois has this day entered himself as bail for the
" said Lewis Prentice in the penalty of two hundred
" dollars on an indictment for larceny found by the Grand
" Jury of said County of Cook at the special term of the
" Circuit Court thereof held in the month of October A.D.
" 1840 conditioned that if the said Lewis Prentice shall
" be and appear before the said Cook Circuit Court to be

" holden at the City of Chicago on the sixth Monday
" after the first Monday in the Month of March next
" to answer said indictment. and not depart the said
" Court without leave have permitted, released and forever
" quit claimed, and do by these presents remise, release
" and forever quit claim unto the said Michael M. Mills
" his heirs and assigns forever the South West quarter of
" section number three (3) in township Number forty two
" (42) North of Range number six East of the third principal
" meridian containing One hundred & sixty acres lying
" and being in the said County of Kane. To have and
" to hold the same together with all the privileges and
" appurtenances thereto. belonging to him the said
" Michael M. Mills his heirs and assigns forever.

" On witness whereof we the said Lewis Pentice
" and Harriet Pentice his wife have hereunto set
" their hands and affixed their seals this twenty
" third (23rd) day of November A.D. 1840

" In presence of Lewis Pentice Seal
" J. M. Stride for Lewis Pentice Harriet Pentice Seal
" In presence of mark

" W. H. Whittmore

The Plaintiff next offered in evidence
a deed of the same premises from Michael M. Mills
and wife to Charles W. Hoat dated April 14. 1842. pur-
porting to have been executed in the State of Indiana
in the presence of Alex M. Donald as subscribing witness
& Recorded Nov. 9. 1843, the proof, certificates &c endorsed
on said deed are in the words and figures following to wit:
" State of Indiana Lake County to wit:

" Be it remembered
" that the within named Michael M. Mills and Abigail
" his wife came this day personally before me Alexander
" McDonald Notary public by authority of law duly

" appointed and qualified and acknowledged that they signed
" sealed and delivered the within Indenture as their act and
" deed for the purposes therein specified and the said Alistia
" being of full age and being by me duly examined sep-
" arate and apart from her husband and the contents
" of the said Indenture being made known to her declare
" that she relinquished all her right and title of dower
" in and to the lands and tenements in the within In-
" denture set forth and described and that she voluntarily
" and of her own free will and accord and without any
" coercion or compulsion of her husband, signed sealed
" and delivered the said Indenture as her act and deed
" for the purposes aforesaid.

" In testimony whereof I have hereunto set my
" hand and affixed my notarial seal this
" fourteenth day of April Eighteen hundred
" and forty two
" Alexander McDonald "

" State of Indiana
" Lake County

" This day personally appeared
" before me the undersigned Alexander McDonald who
" is personally known to me to be the real person whose
" name is subscribed to the within deed as subscribing
" witness who being by me first duly sworn doth depose
" and say that Michael M. Mills and Celista Mills
" whose names appear subscribed to the within deed as
" grantors are personally known to him to be the real persons
" who executed the same & that he the said subscribing
" witness subscribed his name thereto in their presence
" as such witness and at their request
" Subscribed and sworn " A McDonald "
" before me this 24th day

" of February 1848.
" Samuel Cooke
" Justice of the peace "

" State of Indiana
" Lake County ss. To all whom these presents shall
" come greeting: "

" Be it known to you that on the 24th
" day of February A.D. 1848 Samuel Cooke was a duly
" qualified acting Justice of the peace within and for
" the said County of Lake. And I have full faith and
" confidence that his signature and official act, as it
" appears upon the instrument to which this certificate is
" sealed, is true and genuine as it purports to be, and entitled
" to full faith as such, by all persons therein concerned.

" Seal "

" In witness whereof I have hereunto affixed
" the seal of the Circuit Court of said County
" and my name as Clerk thereof. This
" 24th day of February A.D. 1848
" David R. Pettibone Clk. S. C. C.

" State of Indiana
" Lake County ss. "

" I David R. Pettibone Clerk
" of the Lake Circuit Court (which Court being a Court
" of record) do hereby certify that the deed to which this
" certificate is attached from Michael M. Mills & wife
" to Charles W. Shat is executed and acknowledged in
" conformity with the laws of the said State of Indiana

" Seal "

" In testimony whereof I have hereunto
" set my hand as Clerk and affixed the
" seal of the Lake Circuit Court at
" Brown Point the 23rd day of October 1850
" David R. Pettibone
" Clerk "

To the admission of which said deed the Defendants Counsel objected. The Court permitted the deed to be read reserving however the question of its admissibility to be determined on the final decision of the cause.

The plaintiff next read in evidence Deft objecting a deed from Charles W. Hoat^{to Deft} of the same premises dated Nov 14. 1843 and acknowledged on the same day and recorded December 29th 1843. having first proved by B. S. Morris that Russell was an acting notary public at the date of his certificate of acknowledgement this signature was genuine. Deft excepted; the certificate of acknowledgement was as follows.

" State of Illinois
" County of Cook p:

I John B. F. Russell Notary
" public in and for the said County, in the State aforesaid
" do hereby certify, that Charles W. Hoat personally
" known to me as the person whose name is subscribed
" to the within deed appeared before me this day in
" person and acknowledged that he signed sealed
" and delivered the said instrument of writing as
" his free and voluntary act for the uses & purposes
" therein set forth

" Given under my hand this Fourteenth day
of November A.D. 1843 "

Seal

" J. B. F. Russell "

" Notary Public "

The Defendant introduced as a witness James W. Stride, who testified that he drew the deed from Prentice and wife to Mills and that at the same time a bond was executed from the said Mills to Prentice. The witness was then asked. What was

the consideration of the deed from Prentice and wife
to Mills ^{Court overruled the objection. Plffs excepted} to which question Plffs Counsel objected, and
witness answered. that it was the giving the recogni-
-zance mentioned in the deed, that that was all
the consideration he knew of, that there was no
money passed that he saw or knew of & would have
known it probably if there had been money passed.

The Defendant then offered the said bond in
evidence (after having proved its execution, to which
the Plffs' Counsel objected. The objection was overruled
and Plaintiffs' Counsel excepted and the bond was
read in evidence and is in the word figures following
to wit:

"I know all men by these presents that I Michael
"Mills of the County of Cook & State of Illinois am
"held and firmly bound unto Lewis Prentice of the
"County of Kane and State of Illinois in the penal
"sum of One thousand dollars current money of the
"United States to the payment of which well and
"truly to be made I bind myself my heirs and
"assigns firmly by these presents. Witness my hand
"and seal this 23rd day of November A D 1841.

"The condition of the above obligation is such
"that whereas the said Lewis Prentice was confined
"in the Jail of the said County of Cook on a charge
"of larceny and the amount of bail required was
"the sum of two hundred dollars, and whereas
"the above bounden Michael Mills this day at
"the request of the said Lewis Prentice entered himself
"as one of the bail of the said Lewis Prentice in
"the said sum of two hundred dollars conditioned
"that if the said Lewis Prentice should be and appear
"before the Circuit Court of said Cook County to be holden
"at the Court House of said County in the City of

" Chicago on the sixth Monday after the first Monday
" in the month of March next, then and there to answer
" to a certain judgment for larceny found against
" the said Lewis Prentice at a special term of the Circuit
" Court in and for said Cook County held in the month of
" October A.D. 1848. and not depart therefrom without the
" leave of said Court &c. And whereas the said
" Lewis Prentice to indemnify the said Michael M
" Mills has this day assigned & conveyed by a quit
" claim deed and also assigned all his right title
" claim and demand of in and to the South West
" quarter of section number three (3) in Township
" Number forty two (42) North of range number six
" (6) East of the third principal meridian, to the said
" Mills in case the said Mills should be damaged for
" entering himself as bail of the said Lewis Prentice
" as aforesaid. Now if the said Lewis Prentice shall
" appear before the said Cook Circuit Court & surrender
" himself into the custody of said Court or otherwise
" procure the discharge of the said Mills as his bail as
" aforesaid. So that the said Mills shall not have to
" incur any expense in consequence of his entering
" himself as one of the bail of the said Lewis Prentice
" aforesaid, then and in that case the said Mills his
" heirs and assigns is to convey the said tract of land
" herein described to the said Lewis Prentice his heirs
" or assigns and this bond to be void. But should the
" said Prentice procure the discharge of the said Mills
" as his bail as aforesaid and should the said Mills
" on that case fail and neglect or refuse to convey the
" said tract of land herein described to the said Prentice
" his heirs or assigns within a reasonable time after such
" discharge, then this bond is to continue and remain in
" full force and virtue "

"In presence of"

"J. M. Stode"

"W. W. Mills. Seal"

"Received for record February 25th 1846 at
"10 o'clock A.M. and recorded the same in Book 8
"of mortgages page 296"

"George W. Gorton"

"Recorder State of Ill"

The witness Stode further testified that Hoat came to him before he bought of Mills to inquire as to the land and as to the title to it. Hoat said that Mills directed him to inquire of the witness as witness knew all about it, that witness told Hoat what the consideration of the deed to Mills was, that it was given to secure Mills for becoming Prentice's bail and that if Mills had the \$200 to pay he could get it out of the land and gave Hoat a full explanation of the transaction.

The witness further testified that he drew the deed from Mills to Hoat at Mills request ^{and in that matter acted as the atty of both Hoat & Mills as he understood it}.

The Defendant then called as a witness Amos B. Coon. who testified that Lewis Prentice and wife went into possession of the premises in question in 1838 and ever then till 1844 and Mrs Prentice was in possession all the time till 1844 & 1845. She was in possession prior to 1843 and up to that time there was a house on the premises in which she lived. She claimed as owner. She had built fences, broke up prairie and dug a well. She had two boys with her Horatio & Erasmus from 1840 to 1844 & 1845. The witness further testified that he had a conversation with Thompson the Plaintiff in 1844 or 1845 in which Thompson stated that he knew there was an outstanding bond against the premises before he purchased the land. The witness further stated that Lewis Prentice left the County soon after executing the deed to Mills leaving his family

in possession of the premises and had not resided here since but had been back.

Nancy Harland, who testified that Hoat came to Mrs Prentice when she lived on the land, that Hoat said that Mills told him of the bond before he bought, but said that the bond went good because it had not been recorded. That she was in possession up to the time of renting it to Hill and that the boys Horatio & Erastus were with her on the place.

To all which testimony Pff's Counsel objected. Court overruled the objection & Pff excepted. Deft further proved by the production of the records of the Circuit Court of Stone County that on the 22nd July 1846. Deft filed therein her bill in Chancery vs. Lewis Prentice her then husband praying for a divorce & for alimony and such proceedings were therein afterwards had that on the 24th April 1847, by a decree of said Court said Deft was fully divorced from said Lewis Prentice and on the 16th Sept. 1848. said Court decreed the premises herein sued for to her as alimony and ordered George W. Norton to convey the same to her and by the production the deed proved that said Norton did so convey on the 16th Nov. A.D. 1850.

The above is substantially all the evidence given on the trial of this cause. The Court thereupon found for the Defendant to which finding the Pff's Counsel excepted. And prays that this his bill of exceptions may be signed which is done.

J. Tisle Dickey Seal

Filed Apr. 8th 1851

C. B. Mills Clerk

And now at this day to wit the 20th day of March
of March Term A.D. 1851 of the said Court. the
following proceedings were had and Order entered
therein. to wit:

John Thompson

Harriet Prentice

} Ejectment.

This day comes the Plaintiff
by James W. Ferguson his attorney and the Defendant
by Fridley Hook her attorney also come. waive a jury
and submit this cause to the Court for trial. after
hearing the evidence the Court finds the Defendant
not guilty. It is therefore considered by the Court that
the Defendant have and recover of the Plaintiff her
costs in this suit expended and have execution therefor.

Hereupon afterwards to wit. April 8th 1851. the
Plaintiff filed herein his bill of Exceptions as follows
to wit.

John Thompson
?
Harriet Prentice

Error to Kane

And the said Plaintiff by
Tarnsworth & Ferguson his attorneys comes and appears
for error in the ruling in judgement of said Court in
said cause

First

The Court erred in permitting the witness Storde
to testify as to the consideration of the deed from Prentice
and wife to Mills.

Second

The Court erred in permitting the bond from Mills
to Prentice to be read in evidence, or receiving the same
in evidence.

Third

The Court erred in allowing the evidence of the
entrapers James M. Storde, Amos B. Coon & Nancy
Hariland.

Fourth. The Court erred in giving judgement for
the Defendant. The judgement was against the law
upon the evidence in the cause, and the judgement of
the Court should have been in favor of the Plaintiff.

And for these reasons the Plaintiff
prays that a writ of Error may be awarded him
by the Supreme Court of said State. that the errors
aforesaid and the said ruling and judgement of the
said Circuit Court in the premises may be therein
enquired into and reversed.

Tarnsworth & Ferguson
Plffs' attys.

State of Illinois
Kane County

I Charles P. Wells Clerk of Kane County

Circuit Court do hereby certify that the
following are true and perfect copies of the original
papers on file in my office in which they pertain
to be. and of the record of final judgment in the
case of John Thompson vs Harriet Peatrice as
appears of record.

In Testimony whereof I have
hereunto set my hand and seal
of said Court this 3^d day of May
AD 1851

Charles P. Wells.
Clerk

Kane County
Supreme Court.

John Thompson

To

Marshall Pentice

Copy Record &c.

Error to Kane.

Filed May 29, 1884.
L. Seland Clk.

St Charles May 26th 1851

Sir -

Yours of the 20th after a somewhat
trivious journey has just come to hand.

We do not care about a supersedeas,
we are only anxious to get a sci fa served
in time for a hearing at this Term of the
Court. I suppose the writ can be made
returnable on the 3^d (~~at~~) Monday of the
Term, which will give a chance for a hearing.

Please therefore to send the writ
of error, & sci fa immediately.

Yours Respectfully

Samuel B. Tynes

Kane County

Filed May 29, 1854.

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 *Kane* — 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 *Kane* — county, before the Judge thereof, between —

John Thompson —

— plaintiff — and *Harriet Prentiss* —

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

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 plaint 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 *Second 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 *29th* —
day of *May* — in the year of our Lord one thousand eight
hundred and fifty *one*.

L. Keland Clerk of the Supreme Court.

Kane County
John Thompson
Harriet Prentice
Wit Enos

Filed May 29. 1854.
Leland Clerk.

State of Illinois, ss.

John Thompson of the County of Kane,

To the Clerk of the Circuit Court for the County of Kane,

GREETING:

WIT OF ME: JAMES L. LEECH, 1854.

according to law.

Witness, the Hon. Samuel H. Tamm, Chief Justice of our said
County, and the seal thereof, at Ottawa, this 29th day of May, 1854, in the year of our Lord one thousand eight
hundred and fifty four.

Witness, the Hon. Samuel H. Tamm, Chief Justice of our said

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

To the Sheriff of the County of *Kane* _____ 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 *Kane* _____ county, before the Judge thereof, between *John Thompson* plaintiff
& *Harriet Prentiss* _____

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

John Thompson
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 *Harriet Prentiss* _____

that *she* 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 *she* 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 *Harriet Prentiss* _____ notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief
Justice of our said Court, and the seal thereof, at
Ottawa, this *29th* day of *May* -
in the year of our Lord one thousand eight hundred
and fifty *one*.

S. Ireland Clerk of the Supreme Court,

468
Kane County
John Thompson
vs
Harriet Prentice

Sci. fa. -

June Term 1884.

The within named
Defendant is not found
in this County.

General Term (2nd 1884)

Suther, Jacobson

Sheriff

per S. W. Kinnick

dep

25 miles \$1.25-

Ret .10

\$1.35-

Filed June 26. 1884.
L. Seland Clk.

St Charles May 15th 1851
Ireland Esq. Mr. Sullivan (Clerk of Court)
I trust you some time since the record
has for a writ of error, will you please
inform me if you have procured the
allowance of the writ, & if so be kind
enough to send it immediately, as I
am anxious to try it at the ensuing
June Term. & the fees shall be forwarded
you at once.

Please attend to it at once
as I shall lose the benefits which I
hope to derive from the writ of error
unless I can get it at this Term.

I have been trying to telegraph
to you for a day or two but the lightning
does not seem to work between this and
Chicago -

Yours Truly,
Samuel Northrup

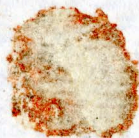
25-4-1877

Paid 4

PAID



L. Leland Esq
Clerk Supreme Court
Ottawa
Que



Warren County

John Thompson

2

vs

Harriet Prentice

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1854

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