No. 14364

Supreme Court of Illinois

Windett.

vs.

Taylor.

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 213

1831

Taylor
vs
Wyatt

4382

Petition

Printed by Beach & Barnard, 14 South Clark St. Chicago.

SUPREME COURT,

Third Grand Division,
April Term, A. D. 1862.

ARTHTUR W. WINDETT,
APPELLANT,

vs.

AUGUSTUS D. TAYLOR,
APPELLEE.

Appeal from Superior Court of Chicago.

ABSTRACT OF RECORD.

Page 1 This action is for an alleged forcible detainor by *Taylor vs. Windett.* Verdict before the justice, "*Not guilty.*"

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2 Summons.

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On the trial, Springer (witness for Taylor) testified that he, as agent, served notice on Windett to quit and surrender possession October 4th, 1861, at Windett's office on Lake street. At the time Windett said he would see Mr. Taylor. He *neglected* to give possession.

14 Windett's counsel asked witness if he (at the time of service of the notice to quit as stated by him) was not informed by Windett that Taylor had agreed to renew the lease for another year, or words to that effect. Objected to by Taylor's counsel. Objection sustained by the court. } assigned for error.

Windett's counsel then asked if the witness had not so testified in the former trial of this cause. Objected to by Taylor's counsel. Objection sustained. To which opinions Windett excepted. } assigned for Error.

Here the plaintiff below rested.

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15 The complaint says the premises were leased to Windett from October 1st, 1860 to October 1st, 1861, but omits to say he was in under the lease or by consent otherwise.

~~**The plaintiff then rested.**~~

16 **The plaintiff below then testified,**

That Windett had occupied the premises since 1857 under various
17 leases as his tenant. In September, 1861, Windett asked to stay another year, and would like to know if he could have the house. Witness replied, "he liked the way Mrs. Windett took care of the house," and had *no objections* to his (Windett's) staying, if he would pay his rent *promptly*, which he had not done as he knew; afterwards on 24th Sept., 1861, he "*consulted* Windett about a bond of $5,000.00 of R. R. Co., he asked his charge, but Windett said it was not much; he paid nothing; always friendly; he *found no fault*, except he was not prompt pay.

18 That he called on Windett 2d October, 1861, (after the lease expired) for rent, when Windett informed him he had some money for him at his house; call there and get it, and he might apply it on the *old* or *new* rent. Witness called and got $30 in gold and applied it on old rent; that he had not made a new lease, *and so stated as he went out of the door*, but could *not state whether Windett heard it.*" He had not then or before told Windett he could or could not have the house. On the 3d Oct.
19 1861, Windett came and said he thought it was *understood* he was to have the house again. Witness said no; but come down in the morning and see about it. So October 4, he "told Windett to go to his agents;" "they would rent it to him. Windett said no; "*we* can do the business." Witness testified he had not rented it to Windett, and *never had any idea of doing so.*

Argument = (*All this shows he induced* Mr. Windett to believe he should have it), but fraudulently *concealed* his good intention.

This was all the evidence in substance, touching the right of possession.

B. Morris for Appellant.

64 213

A. W. Windett
vs.
A. D. Taylor

Abstract.

Filed May 3. 1862
L Leland
Clerk

abstract & pltff
point &

Defts point
Reply

Printed by Beach & Barnard, 14 South Clark St. Chicago.

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Third Grand Division,
April Term, A. D. 1862.

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vs.

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☞ (*All this shows he induced* Mr. Windett to believe he should have it), but fraudulently *concealed* his good intention.

This was all the evidence in substance, Touching the right of Possession.

B. S. Morris atty. for Appellant

64 213

A. M. Winchell
vs.
A. D. Taylor

Abstract of Record.

Filed May 3. 1862
S Leland
Clerk

Printed by Beach & Barnard, 14 South Clark St. Chicago.

SUPREME COURT,

Third Grand Division,
April Term, A. D. 1862.

Augustus D. Taylor,
Defendant in Error.

ADSM.

Arthur W. Windett,
Plaintiff in Error,

} Error from Superior Court of Chicago.

DEFENDANT'S POINTS.

There is no error in the record, and the proof sustains the verdict.

E. &. A VANBUREN,

Attorneys for Defendant in Error.

213

Supreme Court

Augustus L Taylor
Deft in Error

vs

Arthur W Wardlett
Plff in Error

Deft's Points

Filed Aug 28, 1842
L Leland
Clerk

Ed A Van Buren
Defts Atty

Printed by Beach & Barnard, 14 South Clark St. Chicago.

SUPREME COURT,

Third Grand Division,
April Term, A. D. 1862.

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Plaintiff in Error,

Error from
Superior Court of Chicago.

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Supreme Court

Augustus D Taylor
Deft in Error

ads

Arthur W Wendell
Plff in Error

Deft's Points
I am unable to discover
any point in this case
worthy of argument
E Van Buren
for Deft in Error

Filed Apr. 28. 1842
E. Delavan
Clerk

E & A Van Buren
Deft's Atty's

Supreme Court of Illinois

Augustus D Taylor
aojsn Appellee
Arthur W Windett
Appellant

When I made out my printed points in this case, I had examined the record and as I could discover no point for discussion I could only make the point I did. As the abstract however does not give the complaint & but very little of the evidence I deem it proper to reply to some of the positions taken by appellant

I

His first point is, that the complaint is insufficient, in not alleging, that he entered in or took possession

The complt alleges that plaintiff is entitled to the possession of the premises

That on the 1st day of October 1860 he leased the premises to defendant until the 1st day of October 1861 - That on the 4th day of October 1861, and after the expiration of said lease he demanded possession of said premises of Windett, and that Windett the appellant wilfully and without force holds over the possession of said land

after the termination of said lease, and after demand in writing as aforesaid for the possession thereof &c

This is a flagrant allegation that he is in possession under the lease - he could not even sell without the possession unless he was in possession - If he was in possession & had taken a lease of premises I submit it is pretty clear, that he was in possession under the lease

II

The second point of appellant is to show that it is proper for to appeal it

Taylor sent a man to serve notice upon Minett to deliver up possession, Minett claims that when the notice was served, he told the messenger that Taylor had agreed to renew it - That Taylor had agreed to renew, & that Minetts declaration was evidence of it - according to that doctrine a tenant could never be put out, particularly if he knew enough of the tricks, without any of the integrity of the profession, to claim to have a new lease - He might even go further and claim to be the owner, and therefore according to this profound doctrine he was the owner - No Lawyer would even

advance such a proposition, unless he wanted to occupy a main house in town paying rent, as is the case in this cause

The decree handed down in Cross case is for $200 - has no application whatever, since the declaration gave character to the act, it was part of the res gestae - In this case the Complainant had nothing to do, but to serve the notice

The defendant never denied that he was in possession

Maj W Springer testified that Deft was in possession left himself bound by Taylor "that defendant had occupied the premises in question from October 1-1857 under an Expired lease which had then one year to run from that time that he had renewed that lease for two years and on the Expiration of that renewal Oct 1-1860 he had given defendant a new lease of the premises in question for one year at $300 a year" See Testimony of Taylor

The Instructions on part of Pltf were proper

The one complained of in Defts 2d point on page 2nd of Points, is not given in full, a true Extract is given so far as the Extract goes, I can

It was claimed by defendant, that leasing might be inferred from the conversation between the parties, it was therefore proper to show the acts of the ~~defendant~~ plaintiff to show that he did not understand the conversation as entering to a new lease

The ninth instruction of defendant, refused was of similar import with the second, he asked the Court to say, that the notice was not evidence of terminating the lease, this was clearly wrong the notice is evidence of the termination of the lease

The instructions are not given in full even in the abstract or points - The defendant has no right to make more ~~excluded~~ garbled extracts from the instructions and then ask the Court to pass upon them - It is neither fair or honest -

It is said there is no evidence of a refusal to deliver possession - An express refusal is not necessary - It is enough that he neglects to give possession, that is a wilful holding over

It will be remembered that Winchell had occupied the house since 1857, that new leases had been given from time, & the last lease was given for one year from 10th of October 1860

The testimony of Taylor shows beyond cavil that he did not make a new lease nor did he in any way intimate to Winchell that he might remain, there was good reason why he should not do so. Winchell was largely indebted to him for back rent, Taylor had deducted $200 & other depts notes for balance which have never been paid

On the 2 of October 1861 when defendant called upon plaintiff for some money Defendant saw he had lost the confidence of his landlord Taylor on the rent, as he was leaving defendants office defendant said to plaintiff he might apply to him for old or new lease, but was probably intended to play sharp on

the defendant, and trap him into an
acknowledgement of a new lease —
but defendant replied " that he would
apply it on the old lease that he had
not made a new lease ~~when~~ that this
reply was made as he went out the
door and he could not say whether
or not Mr Vinnett heard the last words,
that settles the rent. & the house and
$30 " in Gold of Mrs Vinnett — on the
evening he called & told Vinnett those
gold pieces were not as large as he expected
— he expected $20 — pieces — Vinnett replied
that double Eagles were not very plenty in
these times — he then told Vinnett he was
not smart enough to rent his house
& that he had have to employ an agent
to rent it, that he had not on that day or
any day ~~told~~ before told Deft that he
could not have the house

" That after the notice to rent was
put up on the house Oct 3. 1861 Deft
came to his house and said there was a
notice put on the house offering it for
rent, that he had thought there was an
understanding that he was to have the
house, that Plff replied no there was
no understanding that he was to have

" H. when Minett said that was a mis-
" understanding, that Bishop then told
" Minett he would come down in the morn-
" ing and see if they could come to any
" understanding about it; That on the next
" Morning 4th October, he went to Minett's
" office, when Minett took down a Law
" Book & began to read to Bishop, & afterwards
" said he should have given him notice
" the day the lease was up, when Bishop
" saw that Minett meant to stay there,
" he then told Minett he demanded
" his house, afterwards in the same Con-
" versation he told defendant he would
" have to get rid of his agents Young & Spurgin
" who he had employed to distrain house;
" and that any arrangement he could
" make with them would be satisfactory
" & defendant said he would not do that
" that we could do our ourselves
" Bishop further states that he had not
" visited but twice the premises & Min-
" nett & had never had any idea of doing
" so "

This is all the testimony in relation to the tenancy, and the defendant was called as a witness by pltff, the testimony shows any thing but a tenancy Minnett owed & still owes the plaintiff a large amount for back rents - Minnett

Evidently wanted to get some advantage of the pltff, by which he could remain in the house and cheat him out of his rent — And when he began to read his law Books, it is no wonder the plaintiff began to think "he was not smart enough to rent his house"

There was no holding over by consent, the pltff did all he could to get possession of his house, & acted with diligence in doing so

There is no error in giving the Instructions on the part of the pltff — nor in refusing those on part of deft —

And I can see no point in them to discuss —

I submit that the Judgment below be affirmed

E Van Buren
Atty for Appellee

64
213.
Supreme Court of Illinois
Augustus Dexter Taylor
Appellee
adv
John W. Winslett
Appellant

Argument for Appellee

E Van Buren
Atty for Appellee

Filed May 6th 1862
L Leland
Clerk

Printed by Beach & Barnard, 14 South Clark St. Chicago.

SUPREME COURT,

Third Grand Division,
April Term, A. D. 1862.

Augustus D. Taylor,
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E. & A VANBUREN,

Attorneys for Defendant in Error.

64 2.13

Supreme Court

Augustus D Taylor
Defft in Error

vs

Arthur W Windett
Pltff in Error

Defts Points

Filed Apl 28. 1862
S Leland
Clerk

Ed N A Van Buren
Defts Atty

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L Leland
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B. S. Morris atty for Mr Windett

64 213

A. M. Mendetta

vs,

A. D. Taylor

Abstract.

Filed May 3. 1862

J. Lecaine

clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Sixth day of January in the year of our Lord One Thousand Eight Hundred and Sixty Nine and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M Wilson Chief Justice of the Superior Court of Chicago.

Van H Higgins
and Grant Goodrich
} Judges.

Charles Barnes Prosecuting Attorney.

Anthony Ehrling Sheriff of Cook County.

Attest, Thomas B Carter Clerk.

Be it remembered that heretofore to wit on the Twenty first day of October in the year of our Lord One Thousand Eight Hundred and Sixty one, Arthur D Whidden filed in the office of the Clerk of the Superior Court of Chicago a Certain Transcript and attached Bond in words and figures following to wit:

101

20.2.39

Justice fee	
Doc	30
Summ	50
Compl	50
Venire	50
Order	25
Cont	15
Jury fee	3 00
Pd by Defft	
3 Subs	75
Cont	15
Jury of 12 & Sw	60
Jury of 12 & Sw	60
3 Sw	15
1 day Trial	2 00
Cost Proceedings	2 00
Cost Verdict	25
Judge	25
Clerk	10
Cost Appeals	25
Jury fees	3 00
Pd by Defft	
	14,95
Appeal fee Pd	
Mc Springs	50
Wm H Storrs	50
	1.00
Attf & Sw	
Cost Appeld	1 00
	2 00
	3.00

Augustin D Taylor } Forcible Detainer.
vs } October 8/61 Compl filed &
Arthur W Wridett } Summ issued to Affld Const
Nettle October 15th 61 at 9 A.M. returned Served by
reading to the Deft October 8/61 Cont to October 18th 61 at
9 A.M. in Case it shd Case Called. Parties present, Constable not present
with the Venire & Case Cont to Octob 19th 61 at 12 A.M.
when Case Called. Parties present. Jury Called & Sw
Writ Sw. after hearing the Evidence Jury returned their
Verdict that they find the Deft not Guilty of a forcible
Detainer as described in the Complaint. Whereupon
Judgment rendered against Plff for Costs
October 21/61 Plff appeals to Superior Court of
Chicago and files Bond with Alfred Bn Tulley as
Sec

State of Illinois }
Cook County } ss

I Certify the foregoing to a
true Transcript of all the proceedings before me in
the above entitled Cause from my Docket and
the Papers Lyen with transmitted to Said Court Containing
a full and perfect Statement of all the proceedings
before me

Witness my hand and Seal this 21st day
of October A D 1861

Calvin D Wolf Seal
Justice of the Peace

2.

Know all men by these Presents, That we Augustin D Taylor & Alfred McTalley of the County of Cook in the State of Illinois are held and firmly bound unto Arthur H Windett in the penal sum of Thirty Dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents,

Witness our hands and seals, this 21st day of October A D 1861

The Condition of the above Obligation is such, That Whereas the said Arthur H Windett did on the 19th day of October A D 1861 before Calvin D Wolf a Justice of the Peace for the said County of Cook recover a judgment against the above bounden Augustin D Taylor for the sum of Eighteen 20/100 Dollars Costs of Suit from which judgment the said Augustin D Taylor has taken an appeal to the Superior Court of Chicago the County of Cook aforesaid and State of Illinois. Now, if the said Taylor shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above Obligation to be void, otherwise to remain in full force and effect

Approved by me at my office
the 21st day of Oct 1861
C D Wolf
Justice of the Peace

Augustin D Taylor
Alfred McTalley

And afterwards to wit on the same day and year aforesaid there issued out of the office of the Clerk of the Superior Court of Chicago the Peoples Writ of Summons, which said Writ was with the Sheriff

return thereon endorsed is in words and figures following to wit —

State of Illinois }
County of Cook } ss

The People of the State of Illinois, To the Sheriff of said County, Greeting! We Command You that You Summon Arthur W Windett if he shall be found in Your County, personally, to be and appear before the Superior Court of Chicago, of said Cook County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, on the first Monday of November next, to answer unto Augustine D Taylor, in an appeal plea on a certain judgment rendered before C D Wolfe Esq a Justice of the Peace in and for said County,

And have You then and there this writ, with an endorsement thereon, in what manner You shall have executed the same,

Witness, Walter Kimball, Clerk of the said Court, and the seal thereof, at the City of Chicago, in said County, this 21st day of October A D 1861

Seal

Walter Kimball

Clerk

Served by reading to the within named Windett at this 25th day of October 1861

A C Bering Sheriff
A Lochbihler Deputy

And afterwards to wit on the Thirteenth day of January in the Year of our Lord, one thousand eight

Hundred and Sixty Two Said day being one of the days of the January Term of Said Court the following among other proceedings was had and entered of Record Viz:

Augustin D Taylor
vs
Arthur W Brindett
} Appeal

This Cause being this day Called for Trial Comes Said Plaintiff by George A. Ingalls his attorney and the Said defendant by. B F Morris his attorney also Comes and issues being Joined herein. it is ordered that a jury Come whereupon Comes the jury of Good and lawful men Viz Josiah Kem. S Browning. H C Ruckle. William Spriddler. Herman Heinemeth. William Potts. Samuel Webb. D T Weeks. Henry Caulk Maurice Smith Charles A Brown and John Baars. Who being duly elected Tried and Sworn to try the issues Joined as aforesaid after hearing Evidence Arguments of Counsel and instructions of the Court Retire to Consider of their Verdict and the hour of adjournment having arrived it is ordered upon agreement of the parties that when the jury Shall have agreed upon a verdict they Shall reduce the Same to writing Sign and Seal the Same and afterwards Separate and meet the Court tomorrow morning

And afterwards to Wit on the Fourteenth day of January in the Year last aforesaid, the following among other proceedings was had in Said Court and entered of record Viz

Augustin D Taylor
vs
Arthur W Windett
Appeal

This day again Comes said Plaintiff by George A Bogalls his attorney and the said defendant by Buckner S Morris his attorney also Comes and the jury empannelled herein on yesterday for the trial of said Cause also Comes and Submit their verdict and say We the jury find the said defendant guilty of feasible detainer
And thereupon the said defendant submits his motion herein for a new trial in said Cause and in arrest of judgment on said verdict

And afterwards to wit on the Eighteenth day of January in the Year last aforesaid - said day being one of the days of the January Term of said Court the following among other proceedings was had and entered of record to wit

Augustin D Taylor
vs
Arthur W Windett
Appeal

This day again Comes said Plaintiff by George A Bogalls his attorney and said defendant by Morris & Garrison his attorney also Comes and this Cause coming on now to be heard before the Court sitting in Banc upon the motion of said defendant heretofore submitted herein at the present term of said Court for a new trial in said Cause and also in arrest of Judgment and Counsel being heard thereon and the Court being fully advised in the premises is of the opinion that the reasons filed by said defendant in support of said motion

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for a new trial and in arrest of judgment are not
sufficient to support the same the motions for a new trial
and in arrest of judgment and thereon severally overruled
whereto said defendant by his Counsel then and there excepted
=ed Wherefore said plaintiff ought to have judgment entered upon
the verdict of Guilty against said defendant rendered by
the jury herein as aforesaid

Therefore it is Considered that the said plaintiff do
have and recover of and from said defendant, the possession
of the premises discribed in the Complaint and Summons in
this Cause as the north twenty nine feet of lot eight in block
Six in the Fractional Section fifteen addition to Chicago
and the house thereon no 225 Wabash Avenue in the City
of Chicago County of Cook and State of Illinois, and that
a writ of restitution issue therefor directed to the Sheriff of
this County Commanding him to deliver to said plaintiff
the possession of the premises aforesaid according to the
true form and effect of his said recovery

And it is further Considered that the said plaintiff
do have and recover of and from said defendant his Cost
and Charges in this Court herein in the Court below in this
behalf Expended and have execution therefor

And thereupon said defendant having entered his
exceptions prays an appeal herein to the Supreme Court
of this State from the judgment of this Court which is
allowed to him upon filing his appeal bond in the penalty
of five hundred dollars with security to be approved
by a Judge of this Court and to be filed with his bill of
exceptions during the present Term of this Court

And afterwards to wit, on the Twenty third day of January (it being one of the days of the January Term of said Court) A.D. 1852 A. H. Bindett filed herein his Appeal bond in words and figures following

Know all men by these presents that we, Arthur H. Bindett, and Leon Strans David J. Eby both of Chicago in the County of Cook and State of Illinois are held and firmly bound unto Augustino D Taylor of said Chicago in said County and State in the sum of Five Hundred Dollars Gold and lawful money of the United States to be paid to the said Augustino D Taylor, his Executors, Administrators and Assigns, to which payment well and truly to be made we bind ourselves and each of us by himself, for and in the whole and our heirs Executors and administrators, firmly by these presents.

Sealed with our Seals dated this Twenty second day of January A D Eighteen hundred and fifty two

The Condition of this obligation is such that Whereas the said Augustino D Taylor did at the January Term of the Superior Court of Chicago in the Year A D Eighteen Hundred and fifty two recover a Judgment of Guilty against the said Arthur H. Bindett in an Action of Forcible Detainer for the detention of the North Twenty Nine feet of Lot Eight in Block Six (6) in Bruchmal Sexteen Fifteen Addition to Chicago, and the house thereon Number two

8.

Hundred and twenty five (225) Wabash Avenue, being in the City of Chicago, in the County of Cook and in the State of Illinois From which said Judgment the said Arthur D Wright last prayed and obtained an appeal to the Supreme Court of the State of Illinois

Now in case said Arthur D Wright shall duly prosecute his appeal with effect; or in case of failure thereof, or in case said Judgment shall be affirmed shall well and truly pay to said Augustus D Taylor all rents which han or may accrue on said premises and Real Estate from the Commencement of said Suit for a Forcible Detainer & Suit, from the Eighth day of October A D Eighteen Hundred and Sixty one, until the final determination of said Suit, together with all damages, Cost and interest in case said Judgment shall be affirmed then this obligation is to be void otherwise to remain in full force and effect

Arthur D Wright
Leon Straus
David J Ely

Affirmed
Van H Higgins
Judge

And afterwards to wit on the Twenty fifth day of January in the year last aforesaid, it being one of the days of the January Term of the Court

Arthur D Wright

filed in the office of the Clerk aforesaid his certain bill of Exceptions in words and figures following, to wit:—

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State of Illinois }
Cook County } ss. In the Superior Court of Chicago
January Term A D 1862

Augustus D Taylor
vs
Arthur W Windett } Forcible Detainer

This Cause Came on to be tried before Judge Van H Higgins and a jury on an appeal from a Justice of the Peace and to maintain the issue on the part Complaint in the Cause filed by plaintiff Counsel in the opening of the Cause as pleadings herein the plaintiff by Geo A Ingalls his attorney offered in Evidence a lease, at the trial admitted by defendant to be signed by the parties to the suit, of the premises described in the Complaint, for one Year beginning October first A D 1860 at three hundred dollars a Year; which lease is in the words and figures following to wit:-

This Indenture. Made this first day of October in the Year of our Lord. One Thousand Eight Hundred and Sixty, between A D Taylor of Chicago party of the first part and Arthur W Windett of the same place party of the second part, Witnesseth, That the said party of the first part, for and in Consideration of the Covenants and agreements hereinafter mentioned to be kept and performed by the said party of the second part his executors, administrators and assigns, has

10. demised and leased to the said party of the second part all those premises situate, lying and being in the City of Chicago, in the County of Cook and in the State of Illinois known and described as follows to wit: — The north twenty nine feet (29) of lot eight in Block Six in Fractional Section Fifteen addition to Chicago with the house thereon numbered Two hundred and twenty five Wabash Avenue, To have and to Hold the said above described premises with the appurtenances unto the said party of the second part, his executors administrators and assigns, from the first day of October in the Year of our Lord One Thousand Eight Hundred and Sixty, for and during, and untill the first day of October A.D. Eighteen hundred and Sixty one

And the said party of the Second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does Covenant and agree with the said party of the first part his heirs executors administrators and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of Three Hundred Dollars per annum payable in monthly instalments at the end of each of twenty five dollars a month. and to pay the regular assessed water rent.

And the said party of the Second part further Covenants with the said party of the first part, that said second party has received said demised premises in Good order and Condition, and that at the expiration of the time in this lease mentioned, or sooner determination thereof by forfeiture, he will Yield up the said premises to the said party of the first part, in as good Condition as when the same were entered upon by the said party of the second part, loss by fire, or inevitable accident

11.

or ordinary Screw expected; and also will keep said premises in good repair during the term, at [illegible] own expence.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises or any part thereof or assign the same without the written assent of the said party of the first part first had and obtained thereto.

It is expressly Understood and agreed by and between the parties aforesaid that if the rent above reserved or any part thereof shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid or if default shall be made in any of the Covenants or agreements herein Contained, to be kept by the said party of the second part his executors, administrators and assigns, it shall and may be lawful for the said party of the first part his heirs, executors administrators agent, attorney or assigns at electing to declare said term ended and into the said premises or any part thereof, either with or without process of law to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same to wholly depart and quit, and part acting such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his first and former estate and to distrain for any rent that may be due thereon upon any property belonging to the said party of the second part which shall be exempt from execution and distress by law or not, and the said party of the second part in that case hereby waives all legal rights which he now has or may have to hold or claim any such property under any exemption laws now in force in this State, or in any other way.

Meaning and intending hereby to give the said party of the first part his heirs, executors, administrators or assigns a valid and first lien upon any and all goods, chattles, and other property belonging to the said party of the second part as security for the payment of said rent, in manner aforesaid, any thing herein before contained to the contrary notwithstanding

And if at any time said rent shall be unpaid at such election of said party of the first part his heirs, executors, administrators and assigns, as aforesaid, or in any other way the said party of the second part his executors, administrators and assigns, do hereby Covenant and agree to Surrender and deliver up said above described premises and property peaceably to said party of the first part, his heirs, executors, administrators and assigns, immediately upon the determination of said time as aforesaid, and if he shall remain in possession of the same after such default after the termination of this lease, or any of the ways above named shall be deemed guilty of a forcible detainer of said premises, under the Statute and shall be subject to all the Conditions and provisions above named and to eviction and removal, forcibly or otherwise, with or without process of law as above stated

Witness the hands and Seals of the parties aforesaid

A D Taylor (Seal)

Arthur P Bedell (Seal)

$75 Rec'd the sum of Seventy Five ($75) dollars being the rent for the first three months due on this lease Jan 1. 1861

Oct 1 1860 A D Taylor

$75 Rec'd on the within lease Seventy five dollars being the

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Rent due on the within lease until April 1 1861

Rec'd on the within lease Seventy five dollars being the Rent due thereon until and on the first day of July A D 1861

The Plaintiff by his Counsel then Called one H W Springer who after being Sworn testified that as agent of Taylor the plaintiff he Served the defendant with a written notice to quit the premises in question signed by Plaintiff, a Copy of which by him testified he produced upon the Court and Jury on said trial which said Copy so produced and offered in evidence is in the words and figures following

Chicago October 4th 1861

To Arthur W Windett

Sir You will please take Notice that Your Lease of the Premises You now occupy or hold Private, lying and being in the City of Chicago in the County of Cook, and State of Illinois, and described as follows, to wit:- The North 29 feet of Lot 8 in Block 6 in Fractional Section 15 addition to Chicago and the House thereon Number 225 Wabash Avenue. expires on the first day of October 1861 and You will further take Notice that You are hereby required to Surrender and deliver up possession of said Premises and to remove therefrom immediately H W Springer is hereby Authorized to receive the possession of the said Premises for me

A D Taylor

Chicago Oct 4th 1861 Served a Copy of the within on A W Windett personally in his office this day H W Springer

Witness Springer further testified that he served said written notice on the defendant on the 4th day of October A D 1861 at his office in Chicago. that Mr Underhill the defendant neglected & refused possession of the premises and said he would see Mr Taylor Witness further testified that on the third day of October A D 1861 he put up on the premises for Taylor a notice offering the premises in question for rent, and that Defendant had been in possession of the same all of the time since the Commencement of this suit October 8th 1861

On Cross examination the Witness stated that he did not serve the written notice to quit on the defendant on the premises in question but at his office

Witness was asked by B S Morris one of the defendant Counsel whether Defendant did not pay at the time Witness left the written demand to quit with him at his office that Mr Taylor had agreed to renew the lease for another year or more & that effect, and Witness was asked to state all that Defendant said at that time upon that subject. Plaintiff by his attorney objected to this question and the Court sustained the objection on the ground that defendant could not bind plaintiff by statements made by defendant to a man sent to defendant by plaintiff simply to serve a notice to quit, under the statute, and to allow this evidence would authorize the Defendant to show that he had sold a deed of the property and claimed title to it. Defendant then and there excepted to the opinion and ruling of the Court in that behalf. Said Defendant by his said Counsel Morris then asked the Witness whether upon the former trial before the Justice he

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Said Court satisfied that defendant did on the occasion of making that demand say, that Plaintiff had agreed with him to renew the lease, or extend it for another Year, or words to that effect, This question was objected to by Plaintiffs Attorney Ingalls and the Court sustained the objection, Defendant then and there excepted to the opinion and ruling of the Court in that behalf, At this stage of the proceedings the Sworn Complaint produced to Court and Jury on the opening of the Cause was objected to by reason of Defendants Counsel's not being sufficient to give the Court jurisdiction which objection to said Complaint was granted by the Court and defendant excepted which affidavit is in the words and figures following, to wit

State of Illinois }
Cook County }

Augustine D Taylor being duly Sworn doth depose and say that he is justly entitled to the possession of the North Twenty Nine (29) feet of Lot Eight (8) in Block Six (6) in Practical Section Fifteen Addition to Chicago and the same known as Number Two hundred and Twenty five Wabash Avenue" being in the City of Chicago County of Cook and State of Illinois,

This affiant further says that on the first day of October A D 1860 he leased and demised said premises from the date last aforesaid for and during and until the first day of October A D 1861 by his Certain Indenture of Lease of date first aforesaid unto one Arthur W Windett and that the terms of said Lease has fully expired, This affiant further says that on the 4th day of October A D 1861 he demanded possession of said premises in writing of and from the

16.

Said Bridett as by the Statute in such Case made and provided, And this affiant further says that the said Arthur D Bridett wilfully and without force holds over the possession of said lands and tenements from time, after the determination of the time for which the same were let, and demand to him after demand in writing, as aforesaid for the possession of said premises and therefore he prays that a Summons for a forcible detainer issue against said Bridett

Sworn to and subscribed before me this 8th day of October AD 1861 O D Wolfe J.P.

Augustus D Taylor

+

And the Plaintiff rested his Case, the defendant then Called Plaintiff as a Witness for defendant who testified that defendant had occupied the premises in question from October first 185[illegible] under an unexpired Lease which had three one Year from that time to run that he had renewed that Lease for two Years and on the expiration of that renewal October first 1860 he had given defendant a new Lease of the premises in question for one Year at $300 a Year, the former Lease was at $500 a Year, the Lease for one Year, which terminated on the first day of October 1861 is the one given in evidence by Plaintiff. Witness testified that sometime in September 1861 about the middle Mrs Bridett asked him whether he Could stay another Year if he paid Witness all up, that he did not wish to store his furniture, and he would like to Rent if he Could have the house, When Witness said that he liked the way Mrs Bridett took Care of the house, and had no objection to her

Windett if he could pay him the rent promptly. that he must sent his power to Landlady that could pay him. that he must pay his rent as he had interest money to pay. that he said you know Mr Windett you have not paid me according to agreement. that he Windett knew he was slow pay. that he knows when the lease was given October first 1860 it was expressly understood that he was to pay all the back rent as it became due, and the new rent as it should become due

The Witness testified that at the expiration of the two year term October first 1860 Defendant was behind on his rent $300. that Plaintiff for the purpose of having it settled gave $B to defendant $200 of the Amount and took three of Defendant note of $100 each for the balance. that three Notes were not paid at maturity, and that two of them were Charged with Mr Windett for other Notes which are not yet paid. Witness further testified that on October first 1861 there was due on the premises leased at that date $193.60. Witness further testified that about the 20th of September 1861 about a week before the expiration of the lease Witness was in Mr Windetts office and asked Mr Windett about a Bond Witness Brother had from the Fort Wayne Rail Road Company, the said Bond relating to some lots near their Depot, and was in the penal sum of $5000. After which Witness asked Mr Windett what he Charged him, when Mr Windett replied not much or something to that effect, and that he had never paid Mr Windett for his advice, Witness also stated that he had always been on good terms and in friendly relations with Mr Windett and found Mr Windett with him as fast that he did not pay him

his rent, that he Called upon Mr Windett on the morning of the Second of October 1861 for Some rent when defendant Replied that he had Some money for him at the house, to go up there and get it, that it was Some gold pieces, that as Witness was leaving Mrs Windetts office Mr Windett told Witness that he might apply it on the old or new lease. when Witness Replied that he Should apply it on the old lease, that he had not made a new lease, that this Reply was made as he went out the door, and he Could not say whether or not Mr Windett heard the last words, that Witness then went to the house and obtained Thirty Dollars in Gold of Mrs Windett, and Gave a receipt therefor that afterwards on the evening of that day he again Called on Mr Windett and told him the gold pieces were not as large as he expected, that he expected $20 pieces when Mr Windett Replied that double Eagles were not very plenty three times, that he then told Mrs Windett that she was not smart enough to rent her house, and that he Should have to employ an agent to rent it Witness Certified that he had not on that day or any day before told defendant that he Could or Could not have the house. Witness further Certified that after the notice to rent was put up on the house October 3rd 1861. defendant Came to his house and said there was a notice put up on the house offering it for rent, that he had thought there was an understanding that he was to have the house that Witness Replied No, there was no understanding that he was to have it, When Mr Windett said there there was a misunderstanding, that then Witness told Mr Windett that he would Come down in the

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morning and he if they could come to any understanding about it. That the next morning the fourth of October he went down to Mr Windetts office when Mr Windett took down a law book and began to read to Witness, and afterwards said to Witness that he would have given him notice the day the lease was up. When Witness stated and testified he saw that Mr Windett meant to stay there, when he told Mr Windett he demanded his house. Afterwards in the same conversation he told defendant he would have to go to his Agents Young & Springer who he had employed to rent the house and that any arrangement he could make with them would be satisfactory, when defendant said he would not go to them, that we could do our own business, Witness further stated that he had not rented the premises to Mr Windett for another year and never had any idea of doing so B. S. Morris one of defendants Counsel then asked Witness if Mr Windett did not understand that he was to have the house for another year when Witness replied he did not know that Mr Windett understood Witness acknowledges the two receipts as the lease of October first 1860. On being dated October first 1860 for the first quarters rent in advance for which Mr Windett gave his note for 90 days which was not paid at maturity, and the other being dated in March which was for the second quarters rent,

Witness further certified that he never made any agreement with, or promise to Mr Windett to renew the lease for any time after October first 1861 and that he often demanded him for rent two and three times a day, Witness further certified that defendant had been sued the premises all of the time since he took possession of the same

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This was all the evidence offered on the Case, The Court then gave the following instructions to the jury at the instance of the Plaintiffs

A D Taylor } Superior Court of Chicago in the
Arthur W Burdett } County of Cook and State of
Illinois January T 1862

Instructions asked by Plaintiffs

Given

1st That the payment of rent after the expiration of lease which accrued during the existence of such lease of itself implies no Renovation of the Contract, to which defendant thereto and thereto excepted, And the Court of its own motion gave the following instructions

2 If the jury believe that the defendant Burdett after the determination of his lease wilfully & without force wrongfully held over the premises in Controversy after demand made in writing for the possession of the premises by the plaintiffs or his agent then the jury ought to find defendant Guilty, But if the plaintiff Taylor Consented, or agreed to Renew the lease for another Year then defendant could not be guilty

Given

3. Consent may be implied from the Conduct & Something from the silence of the Landlord, But the Jury ought to believe from the evidence that the Landlord did Consent or did lead the defendant by his Conduct to believe that he assented to the holding over; & the they ought to find that the holding over was wrongful as against the plaintiffs. If the jury believe from the evidence that the Landlord first gave notice to vacate within three days after the lease expired & also served a notice on the defendant to quit the possession of the premises on the 4th day of October the lease

21.

ending on the first day of October three facts
would find & show that the Landlord did not
Consent to renew the lease to the defendant,
To the giving
of which defendant thro and there objected,
And the Court thro Jan the following instructions
for the defendant

1 If the Jury believe from the evidence that
Taylor by his declarations and acts both during and
after the term of the written lease, caused Bridett
to understand that the tenancy was renewed, and
if by his acts for Seven days after Oct 1st 1861, he
induced said Bridett to act in accordance with, and
upon faith of such an understanding, they must
find a verdict for the defendant

Given

2 If the Jury believe from the evidence that said Bridett
held over with the implied permission and Consent
of said Taylor upon an understanding for the renewal
of the lease. they must find a verdict for defendant

Given

3 If they believe from all the evidence and Circumstances
of the Case, that said Bridett held over rightfully
and not wrongfully, they must find him not guilty
under the decisions of the Supreme Court of this State

Given

4 If the Jury find from the evidence, that Bridett was
tenant of the premises in question under a lease for Several
Years ending Oct 1st 1860, and that said Taylor gave
him a new lease for one year ending Oct 1st 1861, and if
they further find that the agreement or understanding
was open or implied and founded upon the tacit Consent of
both parties, applied between them for the renewal of the lease
and that nothing definite was fixed upon as to terms, and

Given

that said Bridett after the expiration of the old lease remained in possession in faith of this understanding with the tacit or express Consent of Taylor for several days the law will imply a tenancy from year to year on the same terms as the original lease

6 If the Jury are satisfied from all the Circumstances of the Case, that an understanding existed, and that said Taylor intended to renew the lease, and that Bridett held over under said understanding, the law implies a holding over upon the terms of the original lease: and it was not Competent for Taylor afterwards to attempt to alter the terms or increase the rent,

Given

And in addition thereto the said defendant asked the Court to give the following instructions for the defence

5 If they further believe from the evidence, that during the tenancy, Taylor on different occasions Consulted said Bridett upon matters of importance, and that in particular, he did so on the 24th day of September, just before the old lease expired; that he has not paid Mr Bridett his fee for said services, that on no occasion did he intimate any dissent to a renewal of the lease; that on the second day of October after the old lease had expired, he received $30. in gold from said Bridett with the direction that it might be applied either on account of the old rent or the new, without there denying that the lease was renewed, such Conduct and neglect of many are proof in the absence of Counter proof of acquiescence and Consent to a renewal of the lease, and said Taylor is now estopped from maintaining this suit

Refused

23. 7

Refused

That in the proceeding, the presumptions of law are against Taylor, and in favor of the tenant; that Plaintiff must satisfy their minds on all material points; and if they are not satisfied on all points against the tenant, they must find him not guilty

8 The Court instructs the Jury, that if they believe from the evidence that the defendant held over the possession of the premises (by consent of the plaintiff given either expressly or constructively) after the determination of a former lease for a year it is evidence of a new Contract & is construed to be a tenancy from year to year; that the moment a tenant is suffered by the landlord to enter on the possession of a new year there is a tacit renewal of the Contract for another year and if the jury believe from the evidence that the holding over in this case was under circumstances such as above described the plaintiff cannot recover

Refused

9. The notice given to Brindett can only be received in evidence for the purpose of showing a demand of the premises in question of said defendant and without such written demand the Court below could not have acquired jurisdiction and such notice cannot be used for any other purpose as evidence, and is itself no termination of a lease or new tenancy

Refused

10. If the Jury believe that the plaintiff and Brindett so understood by what he said and done, that he Brindett was to have the premises another year or acquired in Brindett remaining in such possession after Oct 1 1861 - then they may infer a new lease, and then such holding over was upon a new

Contract & not wrongful & no notice like that of Oct 4. 1861 could terminate it,
And the law is for the defendant & he should have your verdict

Which the Court refused to give to the jury, and the defendant then and there excepted to the refusal of the Court to give said instructions

The Jury Sworn & Sworn & Returned with a Verdict of Guilty against the Defendant. Which said Verdict was as follows

State of Illinois }
Cook County }

In Superior Court of Chicago
January Term 1862

Augustus D Taylor }
Arthur W Wardell } Forcible Detainer

We the Jurors find the Defendant Guilty of a forcible Detainer as described & Set forth in the Complaint filed herein

Danl T Ward Foreman
C A Bowmer
Julius Davis
Henry Kulyr
William Butts
Samuel Crabb
William Skulden
S Browning
Josiah Horn
Herman Heinrichs
H C Buckline
Moseley Landy

Whereupon the defendant entered a motion for a new trial as follows

In the Superior Court of Chicago
January T A D 1862

Wardell
ats
Taylor } Motion for a new trial

And now Comes the said defendant and Moves the Court for a new trial upon the following Grounds

1 Because the Judge erred in not allowing deft to show the whole of his statements at the trial of the alleged demand

2 Because the Court improperly refused to give instructions for deft as Rec'd for by him

3 Because the Court erred in giving each of the instructions given on part of the Plaintiff

4 Because the verdict was against the ~~Case~~ law

5 And Because it was against the evidence

6 And the Court erred in holding & so stating to the jury that in not surrendering the premises at the time of the termination of the lease by the terms thereof that of itself was a wrongful holding over under the Statute

A Garnsey &
B S Morris for Deft.

Which motion the Court overruled and defendant then and there excepted, Defendant thereupon made and entered a motion in arrest of Judgment as follows

In the Superior Court of Chicago
Jan Term A D 1862

Waudell
at
Taylor

And now Comes the said defendant and Moves in arrest of Judgment

1 Because the Complaint did not show that the Justice before whom the Complaint was made had

27.

jurisdiction of the Case

2 Because the Complaint did not show a Case under the Statute, in this viz - in not averring that deft entered into the premises in question under the lease therein mentioned, or that he ever took or in fact had possession thereof under said lease

3 And because said Petition is in divers other respects informal and insufficient

A Garrison &
B. L. Morris for Deft

Which motion the Court overruled and the defendant then and there excepted,

And the Court rendered judgment against the defendant in accordance with the verdict of the jury, and the defendant then prayed an appeal to the Supreme Court which was allowed on giving Bond in the penalty of Five Hundred Dollars with Daniel J Ely and L Evans as Sureties. And the defendant then and there prayed the Court to sign & seal and allow this his Bill of Exceptions as truly by him to the several rulings and opinions of the Court as aforesaid which is accordingly done

Van A Higgins Seal
Judge

State of Illinois
County of Cook } S.S.

I Thomas. B Carter Clerk of the Superior Court of Chicago, in and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and Complete transcript of all papers on file, and Orders and judgment entered of record in said Court. together with the Bill of Exceptions & Appeal Bond in a certain suit wherein Augustus D Taylor is Plaintiff and Arthur W Windett defendant

In testimony whereof I hereunto subscribe my name, and affix the seal of said Court. at the City of Chicago, in said County this 11th day of April A.D 1862

Thomas. B. Carter Clerk

Fees $8.00. paid by Hon. B.S. Morris

T. B Carter Clerk

Supreme Court of Illinois
Third Grand Division

Arthur W. Windett - appellant
vs.
Augustine D. Taylor appellee } Appeal from the Superior Court of Chicago -

The said Arthur W. Windett assigns for error to his prejudice in the foregoing and annexed Record as follows - to wit.

First. The complaint was insufficient to give jurisdiction to the Justice & Court and in refusing to dismiss the Court therefor.

Secondly. The said Superior Court of Chicago erred in giving the instructions on the part of Taylor and in every number branch and part thereof.

Thirdly. That said Court erred in refusing to grant a new Trial to the appellant.

Fourthly. That said Court erred in refusing to allow the witness Springer to state the whole conversation between him & the appellant at the time of the demand & notice to quit.

Fifthly - The said Court erred in refusing to the jury each & every of to give the 5. 7. 8. 9. and tenth instructions as asked by the appellant.

Sixthly - That the verdict of the jury is informal and insufficient and not warranted by law or by the evidence, as Taylors conduct & words lead Windett to believe the lease would be renewed for a year, which caused him to hold till no house could be had at the time - & the verdict should have been for Windett

Seventhly - That the Judgment on the verdict was not warranted by law - Wherefore said Windett prays that said Judgment may reversed with costs &c.

Morris & Thomas for appellant
Charles C. Bonney

In nullo est erratum

E Van Buren for
defts in error
appellee

Supreme Court of Illinois

Augustus Taylor
adsm Deft in Error
Arthur W Windett

And the said defendant by E Van Buren his Attorney comes & ~~[illegible]~~ says there is no error in the record and proceedings in this cause nor in the giving of judgment therein & prays the judgment may be in all things affirmed

E & A Van Buren
Defts Attys

Arthur W. Windett

vs.

Augustus D. Taylor

Record

Appeal

Filed Apl. 22. 1862

L. Leland

Clk.

Fees. $8.00 paid

by. B S Morris.

T. Blanton

Clerk