

No. 12036

Supreme Court of Illinois

Armstrong

vs.

Cooley, et al

71641  7

State of Missouri
Luzerne County

Now before The Honorable
John. Mason Catton one of the Judges of the
Supreme Court of the State of Missouri
and presiding Judge of the Ninth Judicial
Circuit of said State at a circuit Court
commenced & held in & for the County
of Luzerne at the Court House in Ottumwa
in said State on Monday the fifth day of
November 1847

Present

The Hon. John. M. Catton
Presiding Judge

Be it remembered that here before to wit
on the 28th day of November A.D. 1846 that
Francis H. Cooley & William R. Cooley Sher-
iffs of the clerk's office of the Circuit Court
of said County a summons against
John S. Armstrong & John Mc Carvey in
words and figures following to wit
State of Missouri
Luzerne County

The People of the State of
Missouri To the Sheriff of said County
Greeting
We command you to summon John
S. Armstrong & John Mc Carvey if to be found
in your County personally to be and appear
before the Circuit Court of said County on
the first day of the next Term thereof
to be holden at the Court House in
Ottumwa on Friday the 26th day of March

next to answer Francis H. Cooley & Brunswick L.
Cooley of a plea of Trespass on the Case to their
Demand one thousand and no Dollars as they
say and have you thereon there this
^{now} ~~and~~ make return thereon in what
manner you execute the same

Witness my hand and Seal of said Court
at Ottawa this 28th day of November
A.D. 1846 J. Delaney Clerk

On which summons is the following return
Executed March 16 1847 by reading to John
Armstrong John & Cooley not found in person
H. Hambroff

Under on the 16th day of March A.D. 1847. The plaintiffs
by N.D.S. Parvina filed the Declaration herein in
words and figures following to wit

State of Illinois }
Jusau County } Jusau Circuit Court March
Term A.D. 1847

John S. Armstrong & John & Cooley the
Defendants in this their own summons to
answer the Complaint of Francis H. Cooley
and Brunswick L. Cooley plaintiffs herein
of a plea of Trespass on the case and therefore
the said plaintiffs by N.D.S. Parvina their
Attorney complain for that whereas the said
plaintiffs before and at the time of
committing the said grievances hereinafter
next mentioned were and from thence
forth to have been and still are lawfully
possessors of a certain Tract of Land situated
and being in the County of Jusau

afordance and more particularly known as being
the West half of the South West quarter of Section
Twenty five ^{in Township thirty four} North of range four East of the third
principal Meridian on which tract of Land
there were fifteen stacks of Wheat in the heap
fifteen stacks of Oats in the heap fifteen stacks
of Barley in the heap some stacks of Hay and
four stacks of Buckwheat all the property goods
& chattels of the plaintiff. Yet the defendant well
knowing the premises but continuing and wrongfully
and unjustly intending to injure and oppress
the said plaintiff. Do on the Twenty first
day of November in the Year of our Lord one thousand
Eight hundred and forty six Do met at the County
of Dubuque aforesaid Willingly knowingly and in-
tentionally set fire to and ignited the grass and
combustible matter on the prairie and lands
in the neighborhood of the said premises of the said
plaintiff and so neglected and ~~carelessly~~ ^{careless} watched
and tended the said fire that the said fire so made by
the said defendant as aforesaid came into and
upon the said premises of the said plaintiff and
burned & consumed & destroyed the said stacks of
Grain & Hay of the value of Nine hundred dollars
and consumed the grass and stubble growing and being
on said land of great value to wit of the value of one
hundred dollars

And also for that whereas the said plaintiff heretofore
do met on the day and Year aforesaid to wit at the County
of Dubuque aforesaid more and from thence heretofore to have
been and still are possessor of a certain other
tract of Land in said County on which said last
mentioned tract of Land there were Twenty other
stacks of Wheat in the heap and twenty other stacks of

Put in the sheaf and thirty other stacks of Barley in
the sheaf all of which the said defendants well knew
Yet the said defendants well knowing the premises at the
time and place aforesaid unlawfully set fire to the Grass in
combustible matter then lying and bring in the land in
the vicinity of the said premises of the said plaintiffs
which said fire came into and upon the said premises
of the said plaintiffs and burned and consumed
the last mentioned stacks of Grain of the value of
Eight hundred dollars and consumed the Grass
and herbage growing and being on said land of
the value of two hundred dollars

And also for that whereas the said plaintiffs hereupon
To wit on the 21st day of November in the Year of our Lord one
thousand Eight hundred and forty six To wit at the County
of Saline and State of Illinois aforesaid were possessed
of a certain other piece or parcel of Land situate in
the said County and State aforesaid on which said
last mentioned tract or parcel of Land there were grown
other stacks of ~~Wheat~~ Wheat in the sheaf and other
other stacks of oats in the sheaf and other stacks
of Barley in the sheaf of great value To wit of the
value of seven hundred Dollars Yet the said defendants
well knowing the premises intentionally kindled a fire
on the prairie in the vicinity of the said premises of the
said plaintiffs which said fire so kindled by the said defendants
as aforesaid to wit at the time and place last aforesaid came into
and upon ^{the} said premises of the said plaintiffs and burned
and consumed the last mentioned stacks of Wheat and
Barley of the value of five hundred dollars and consumed the
Grass and herbage growing and being on said Land of the value
of three hundred dollars to the damage of the said plaintiffs
one thousand dollars and therefore they bring this suit

W. E. Carvina
Attorney for Plaintiff

And afterwards, on the twenty sixth day of March A.D. 1847, the same being one of the days of the March Term A.D. 1847 of said LaSalle County Circuit Court, the following proceedings were had - viz

"Francis H. Cooley &

Fredrick S. Cooley

vs.

John S. Armstrong &

John McCawley

Trespass on the case.

On motion of plaintiffs by Savinia their attorney, leave is given to amend the declaration herein, & thereupon on motion of defendant Armstrong by Champin his attorney ordered that this cause be continued until the next term of this Court at the plaintiffs costs to be taxed."

And afterwards, to wit, on the twenty sixth day of October A.D. 1847, the plaintiffs by Savinia their attorney filed the following amended declaration herein which is in the words & figures following, to wit: -

"State of Illinois

LaSalle County

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

John S. Armstrong and John McCawley the defendants in this suit were summoned to answer the complaint of Francis H. Cooley and Fredrick S. Cooley plaintiffs herein, of a plea of trespass on the case, and thereupon the said plaintiffs by W. J. S. Savinia their attorney complain for that whereas the said plaintiffs, before and at the time of the committing the said grievances hereinafter

next mentioned, were, and from thence hitherto have been, and still are lawfully possessed of a certain tract of Land situate and being in the County of LaSalle aforesaid and more particularly known as being the West Half of the South West quarter of Section Twenty five in Township Thirty five North of Range four East of the third principal Meridian, on which tract of Land there were fifteen stacks of wheat in the sheaf, fifteen stacks of oats in the sheaf, fifteen stacks of Barley in the sheaf, four stacks of Hay, and four stacks of Buckwheat, then and there standing and being, the said stacks of Grain & Hay being the property, goods and chattels of the said plaintiffs -

Yet the said defendants well knowing the premises, but contriving, and wrongfully & unjustly intending to injure and aggrieve the said plaintiffs; to wit on the Twenty first day of November A.D. one thousand eight hundred and forty six, to wit at and in the County of LaSalle aforesaid, wittingly, knowingly and intentionally set fire to, and ignited the grass and combustible matter on the prairie and Lands in the neighborhood of the said premises of said plaintiffs, and so negligently and carelessly watched and tended the said fire, that the said fire so made, by the said Defendants as aforesaid came into and upon the said premises of the said plaintiffs, and burned consumed and destroyed the aforesaid stacks of Grain & Hay, of the property of the said plaintiffs.

of the value of nine Hundred dollars, and consumed the grass & stubble growing and being on said Lands of great value to wit of the value of one Hundred dollars.

2nd And also for that whereas the said plaintiffs ^{heretofore} to wit on the twenty first day of November A.D. 1844 at the county of LaSalle aforesaid, were and from thence hitherto have been and still are possessed of a certain other Tract of Land situated in said county of LaSalle, on which said last mentioned tract of Land there were, to wit on the day and year aforesaid twenty other stacks of wheat in the sheaf, twenty other stacks of oats in the sheaf, twenty other stacks of Barley in the sheaf, & five other stacks of Hay, all the property of the said plaintiffs, all of which the said defendants well knew - Yet the said defendants, at the time and place last aforesaid intentionally kindled and set fire to the grass and combustible matter there being & lying on the Lands in the vicinity of the said premises of the said plaintiffs, and so carelessly and negligently tended the same that the said fire extended to, and came into and upon the premises of the said plaintiffs, and burned and consumed the said last mentioned stacks of Grain & Hay, of the value of Eight Hundred dollars, and consumed the grass and herbage growing & being on said Land of the value of Two Hundred dollars

3rd And also for that whereas the said plaintiff heretofore, to wit, on the day and year last aforesaid at the county of LaSalle aforesaid were, and from thence hitherto have been, and

still are possessed of a certain other tract of
Land situated in said County of LaSalle
on which said last mentioned tract of land,
to wit on the day and year last aforesaid
there were standing and being, Ten other
Stacks of wheat, ten other stacks of Barley
ten other stacks of oats, ten other stacks of
Buckwheat, & ten other stacks of Hay of the
property of the said plaintiffs. Yet the said defendants
well knowing the premises to wit at the time & place ^{East} aforesaid
intentionally kindled a fire on the lands in the neighbourhood
of the said premises of the said plaintiffs which said
fire so caused by the said plaintiffs defendants aforesaid
came into and upon the premises of the said plaintiffs
and burning consumed and destroyed the said last
mentioned stacks of Grain ^{and} Hay of the value of
one thousand dollars

45
Unlawfully for that whereas the said plaintiffs brought
to wit on the day and year last aforesaid to wit at
the County of LaSalle aforesaid were and from thence
thence have been and still are possessed of a certain
other tract of Land situated in said County of
LaSalle on which said last mentioned tract of
Land to wit on the year and day last aforesaid
there were twenty other stacks of Hay twenty other
stacks of wheat twenty other stacks of oats twenty other
stacks of Barley and twenty other stacks of Buckwheat
of the property of the said plaintiffs
Yet the said defendants well knowing the premises
to wit at the time and place ^{East} aforesaid negligently
and carelessly kindled a fire on the lands in the
neighbourhood of the premises of the said plaintiffs
which fire so caused as aforesaid extended to
and came into and upon the said premises
of the said plaintiffs and burning consumed and

destroyed the same last mentioned stacks of
Hay, and Grain of the value of one thousand
dollars. To the damage of the said plaintiffs
of one thousand dollars wherefore they bring
suit
W. H. S. Loomis Clerk
Per J. J. S.

And afterwards to wit at the November Term of said
Court ad. 1847, & on the 9th day of November the defendant
Winstron, filed an affidavit in said Court in
words and to the following tenor to wit

Francis H. Cooley & } No. 1. Lumber Court
Andrew S. Cooley } ad. 1847
W } case

John S. Winstron in person
with Mc Carver } John S. Winstron
The defendant in this suit
being duly sworn on oath saith that the
said plaintiffs are as he verily believes
unable to pay the costs of this suit and that the
officers of this court will be in danger of
not being able to collect their legal fees
in this cause unless the said Plaintiffs give
security for costs in this cause
Subscribed and sworn to before me
this 8th day of November ad. 1847 } John S. Winstron
J. Delane Clerk

And on the same day to wit on the 9th day
of November ad. 1847. The following proce-
ding was had in said Court to wit

Francis H. Cooley & Melnick L. Cooley

vs

John A. Armstrong & John McCumley

vs

vs

The Defendant Armstrong by Chapman Smith his Attorney & enters a motion that that the plaintiffs be required to give Security for costs which after consideration have thereon was overruled by the Court

And on the day last aforesaid the said Defendant Armstrong filed the following pleas with plaintiffs Verdict in words and figures following

Verdict
Cooley & Cooley

vs

Armstrong & McCumley

No 1. Lucas Cir Court 1847
Case

said Defendant Armstrong impleaded & caused defend the wrong & injury when & whereby he is not guilty in manner & form as the said plaintiffs have above thereof complain in their declaration of and of this he put himself upon the country &c

And the pels do the like

W. J. L. Georgia
for pels.

And for a further plea in this behalf the said defendant Armstrong, impleaded &c as to the 2nd 3rd & 4th counts of the said plaintiffs declaration saith, actis now, because he saith that the said premises in the said last named counts mentioned, at the said several times where was then & there the soil, close & freehold of the said defendant Armstrong, and not of the said

plaintiffs in manner & form as the said
plaintiffs have above thereof alledged, & this
they are ready to verify, wherefore they pray
judgment &c

J. C. Champlin
atly for Deft. Armstrong.

And the said plaintiffs as to the said plea
of the said defendant Armstrong, by him
secondly above pleaded, say that the same
and the matters therein contained in manner
& form as the same are above pleaded and set
forth are not sufficient in law to bar
them the said plaintiffs from maintaining
their action aforesaid and that they
said plaintiffs are not bound by law to answer
the same, and this they are ready to verify
wherefore by reasons of the insufficiency &c they
pray judgment &c

And for causes of demurrer the said plaintiffs
state & show to the court the following, 1st The
matters alledged in said plea do not constitute
a full defence to the several causes of action
set forth in said counts of the plffs declaration
2nd The title to the land is not in question in this
suit & the plea is inapplicable—

3rd The plea alleges title to but one close—

4th The plea merely alleges title in the Deft.
without attempting to justify or excuse the injuries
to Plffs property in the said counts complained of
and also that in other respects said second
plea is informal & insufficient

Plffs by Savina their atty

Joinder in demurrer

And afterwards to wit on the 10th day of November
A.D. 1847. The following further proceedings were
had in said Court

Murriel H. Cooley &
Merrick Cooley

vs

John A. Armstrong
John J. Crowley

Transposed the case

This day came the plaintiff
by Wood & Smith their attorneys and the said
Defendant Armstrong by Champion his
attorney and the armurer to the second
plea filed herein was taken up & after arguments
had therein was sustained by the Court and
thereupon came the following Jurors of
a Jury viz. W. C. Crozier, P. W. Coates, Thomas
J. Spaulon, William Thornton, Peter Corbet, William
Simmons, Isaac Cronan, Joseph Blair, W. W. W. W.
H. Robinson, James Reed, E. S. Halloran
& Samuel Cronan (who were duly sworn to
try the issue joined herein & a true verdict
render according to evidence And after hearing
part of the proofs & allegations of the parties and
their Counsel the cause was postponed until
tomorrow morning for a further hearing

And on the following day to wit the 11th day of
November A.D. 1847. The further proceedings were
had in said Court as follows

Francis H. Cooley & Merrick L. Cooley

vs

John A. Armstrong & John J. Crowley

This day again came the parties hereto by
their attorneys together with the jury heretofore
drawn herein and after hearing the residue
of the proofs Allegations and arguments of
the parties & their Counsel, and the instructions
of the Court, the jury retired to consider of
their verdict and after having duly considered
the same returned into Court with the following
verdict viz. That the jury find the defendant
guilty and award the plaintiff Damages at
Two hundred & fifteen dollars and twenty five
cents & Judgment was thereupon rendered for
that amount. It is therefore ordered and
adjudged by the Court that the said plaintiff
recover from the said Defendant Damages the
said sum of Two Hundred and fifteen dollars
and twenty five cents together with their
costs and Charges by them herein expended
& that they have execution therefor

And on the 18th day of November A.D. 1847 at the aforesaid
Term as follows

Moses H. Wooley & Mariner L. Wooley

vs

John A. Armstrong & John M. Wooley

to pass on the case

This day the motion
pending for a new trial of this cause after
arguments of Counsel & consideration is
overruled

Came at the next aforesaid Term of said Court
to sit on the 19th day of November A.D. 1847
the following proceedings were had

Francis H. Cooley
Nathan P. Cooley

vs

Excess on the case

John A. Armstrong
& John McCarty

This day again came the
Defendant Armstrong & prayed an appeal
from the Superior Court. Which is
allowed & granted by his filing with the
Clerk of this court within thirty days
his appeal bond with Ambrose Lamb
as security in the penal sum of five hundred
dollars payable to the plaintiffs

~~Verdict at the November Term of said Court at N. H. 1847~~
~~on the 14th day of November the following proceedings~~
~~were had in said Court to wit~~

~~Amos W. Cooley &~~

~~William L. Cooley~~

~~vs~~

~~Joseph on the Case~~

~~John W. Armstrong~~

~~vs~~

~~Then came the plaintiffs by~~
~~Word & Swift their attorneys & the said defendant~~
~~Armstrong by Chamberlin his attorney, and also the~~
~~following Jurors of a Jury to wit, E. D. Crozier,~~
~~and eleven others, who were duly sworn to try~~
~~this issue in said cause, and who returned~~
~~the following verdict therein, "We the Jury~~
~~find the issue for the plaintiffs, and assess~~
~~his damages at two hundred and fifteen~~
~~dollars and seventy five cents."~~

~~And, previous to the retirement of the Jury, the Court~~
~~at the request of the plaintiffs instructed the Jury~~
~~as follows: And thereupon the defendant~~
~~Armstrong, moved the Court for a new trial~~
~~which motion was overruled by the Court,~~
~~and thereupon the defendant Armstrong~~
~~excepted to the opinion of the Court, ~~in said~~~~
~~said motion, and filed his Bill of Exceptions in~~
~~the words of figures following:~~

~~Cooley & Cooley~~

~~vs~~

~~case~~

~~November Term Casue Circuit~~

~~Court 1847~~

~~Armstrong impudant~~

~~with specimley~~

~~Be it remembered that at~~
~~the aforesaid Term this cause~~
~~came on for trial on the plea of the genuine~~
~~issue the plaintiffs to prove that when their~~

part provide that there were stacks of wheat &
Barley of value sufficient to sustain the verdict
as to amount of loss burned on the morning
of the 6th of November A.D. 1846 in their
close in the County of DuSane by a fire
running over the prairie and like sweeping
the stacks from an easterly direction. They
also provide that about two weeks before the
fire was set the defendant Armstrong
had given directions to a witness Austin
that he might him to assist McElwain the
other defendant (who was not engaged with
present and did not appear) to finish burning
around his Armstrongs fields and to
commence burning at a certain spot
which he Armstrong designated at the time but
which the witness could not precisely specify
but believed to be near the top of the bluff
near the south East corner of Armstrongs fire
and to burn from there to the river. Armstrongs
fields have previously to this been burned around
on the west side and for about one half of a
mile on the south side and was considerably
Armstrongs fence. Armstrongs fence on the south
side of his fire is three fourths of a mile long
and 20 rods from the south West corner to the river
it 60 rods and the north East corner of
Plaintiffs fire. near which corner were the
stacks burned (about 30 rods south of the north and
30 rods west of the West end of that fire) is
one half of a mile south of Armstrongs fire
and one mile and a half west of the south
West corner of of Armstrongs fire. The creek
is a ravine commencing at McElwains house

(as per diagram) running both one half of a mile
or thereabouts and then turning and running
East to the river (as per diagram) the Indian trail
crossed the Case hollow at the point (A) the diagram
is made a part of this Bill of exceptions. On the
same evening the stacks were burning. A fire
and Joe Cuddy did set the prairie on fire
commencing near the south East corner of
Armstrongs fire and burning thence to the river
They then returned to where they first com-
menced and set fire along the south side
of Armstrongs fence to near the south west
corner of it. Joe Cuddy then set fire around
his own house situated as per diagram and
there was evidence tending to prove that this
fire spread off over the prairie towards the
plaintiffs stacks and that it was set before
dark on then was also evidence tending to prove
that the fire first set, went in a nearly South
direction till after it had passed the Case
Hollow and not extending west so far as the
top of the Bluff until after it had passed
the Case Hollow. There was also evidence ^{to 1854} that
the grass remained on burning after the
fire South of the Case Hollow for a distance
somewhere between ten rods and half
a mile and also South of a line drawn
due East from the north part of Plaintiffs
field for the same distance. From this point
a line drawn in a northerly or north
easterly direction to near the south west corner
of Armstrongs fire from thence along and East
South of Armstrongs ^{South} fence to near the South East corner
of his fire and from thence to the place of beginning

if lines be drawn they must show that the plaintiffs stacks were burned and this area embraces from 80 to 100 acres on the west of this triangle a line drawn from East West of Peters house (as per diagram) to a point on the north side of Jeffs field about twenty rods west of the N. E. corner of that field would show the westernmost limits of the fire burning. The same evening the plaintiffs stacks were burned. Another was evidence tending to prove that this last mentioned fire burned the plaintiffs stacks and there was also evidence tending to prove that the first mentioned fire that crossed the case however at the point A burned the plaintiffs stacks. The wind was in a north easterly direction at the time the fire was first set by McCawley & Armstrong Austin. The defendant proved by a witness that one or two evenings before the fire must set the husband Armstrong directed Austin to assist McCawley in setting out fire to protect his Armstrongs fields and to commence near the south east corner and burn toward the river. inside the fences must be done to burn with the wind in a north west direction and no other. The witness Austin denies any recollection of any such conversation and further testifies that in a conversation with Armstrong after the stacks were burned ^{Armstrong} had told him that he had no doubt that he the witness had set the fire in good faith and as he Armstrong directed. The Court thereupon ^{at} the request of the plaintiffs instructed the Jury as follows. The plaintiffs own the Court to instruct the Jury that the act of setting fire to the premises in the month of November either intentionally or negligently and carelessly is an unlawful act unless the defendant shall prove that such fire was set or caused to be set on lands adjoining his farm, plantation or enclosure for the necessary protection

1st Inst^d

done

them off from fire, and that he had given to his
neighbours, two days previous notice, of his intention to set
the church fire

3^d That if an unlawful act be done the party doing or causing
the act to be done is responsible for all consequences
resulting from the act

4th That the party who commands or assists or en-
courages the commission of an act in itself unlawful
is equally responsible for all damages resulting
from the commission of the act as he would be if
the act were done by the party in person

5th That if the jury believe from the evidence that
Armstrong gave directions to Mc Carley and Austin
to set out the fire that consumed the plaintiffs
stables and the fire was set out by them in pursuance
of these directions and no other having been set
out if directions had not been given by Armstrong
that Armstrong is liable for the damage done
plaintiffs although Mc Carley and Austin may not in
an express way have followed Armstrong's directions
under the ~~circumstances~~ ~~as follows~~

6th 1st To the going of which instructions
the defendants excepted but the exception over-
ruled.

The defendants also requested the Court to
instruct the Jury as follows

1st If the Jury believe from
the evidence that the fire was set by Austin &
Mc Carley with the wind in a different direction
from the direction Armstrong told them to set it with
then that Armstrong is not responsible for their act
That the last direction given by Armstrong if
different from former directions (re-avocation
of such former directions under the last directions

given are the only directions for which the
defendants can be held responsible

3 That Armstrong is not responsible for the acts of
McCurley and Austin except so far as those acts
are done in the execution of the business which
they were employed to do according to a fair and
reasonable construction of directions given by
Armstrong to them

4 That the law is that greater weight and credit ought
to be given to the affirmative testimony of a witness
to a fact, than to ^{the} negative testimony of a witness
as to the existence of such fact both witnesses being
equally credible unless the means of knowledge of the
witness who testifies to the non existence of the facts
are as good and satisfactory as the other

5 That Armstrong is not responsible for any fire
set by McCurley alone on his own premises
for his own benefit and without any direction
from Armstrong

The first of which instructions
for the defendant the court refused to give and
gave the remainder

To the refusal of the court to give
the first instruction for the defendant the defendant
at the time of such refusal excepting

The Jury returned a verdict for \$215. for
plaintiffs the defendant moved the court for
a new trial which motion was overruled
by the court to which decision of the
the court in overruling said motion for
a new trial the defendant at the time excepted
and pray the court here to seal this his Bill
of exceptions which is done in open court at the time
aforesaid

L. D. Caton

And afterwards to wit on the 7th day of December
A.D. 1847 the Defendant Armstrong filed his appeal
bond herein in the words and figures following
to wit

Know all men by these presents that we
John S. Armstrong and Ambrose Crosby
are here and firmly bound unto Andrew
S. Cooley and Francis W. Cooley in the penal
sum of five hundred dollars for the payment
of which we and truly to be made we have
covenanted our heirs & personal representatives jointly
and firmly by these presents
Witness our hands & seals this 22^d day of
November A.D. 1847

The condition of the above
obligation is such that whereas the above obligors
at the November Term of the Sadale Circuit
Court A.D. 1847 in a certain action on the
case & recovery of judgment in said Court
against said John S. Armstrong impleaded
with John W. Cooley for the sum of two
hundred and fifteen Dollars and twenty
five cents besides costs from which judgment
said Armstrong has prayed an appeal to
the Supreme Court of Illinois.

Now the condition of the above obligation is
such that if the said Armstrong shall pay
the said judgment, costs, interest & Damages
in case the said judgment shall be affirmed in
the Supreme Court and shall also discharge
his said Appeal duty then the above obligation to
be void otherwise to remain in full force & effect

John S. Armstrong
Ambrose Crosby

Seal
Seal

State of Illinois
Said County

J. P. White, Clerk of
the Circuit Court in and for said County,
do hereby certify that the foregoing
Manuscript contains a full true and
complete copy of the Declaration, Amended
Declaration, Pleas, & Demurrer, Instructions,
& Bill of Exceptions. Except the instructions are not
incorporated in the original bill of exceptions, but the
words [I have set out the Pleas instructions] have set
out said instructions [which is done as per Manuscript
also a true copy of all the proceedings & returns
of record in said Court, as the same appear of
records and on file in my office

Witness My Hand, Clerk of
Said Court and the Seal of Said
Court at Ottawa this 13th day of
Novr A.D. 1849
J. P. White, Clerk

John S. Armstrong } In Supreme Court
 u. } 3^d Grand Division
 Cooley & Cooley } Appeal from Sadler

And now comes the said Plaintiff by J. C. Champlin & B. C. Cook his attorneys and saith that in the Record & proceedings aforesaid there is manifest error in this:

- 1st. In the sustaining the demurrer to Plaintiff in Error.
- 2^d. In the giving of the 4th instruction asked for by defendants in Error.
- 3^d. In refusing the first instruction asked for by Plaintiff in Error.

~~and~~ 4th

For other Errors apparent on the face of said Record.

5. In refusing a new trial to the Plaintiff in Error.

J. C. Champlin
 & B. C. Cook,
 for Plff. in Error.

And now comes the def^t in Error by Atty Gen^l and say that there are no such errors in the said record & proceedings as are above alleged & pray that the said judgement may be affirmed.

A. H. G. as
 atty for appellees

7848
39.24
117.72

Filed June 13. 1849.
Holland Ch.

1380-

65
120

Vol. 4

Jos. S. Armstrong

vs

J. H. Cooley et al.

12036

1849