

No. 12414

Supreme Court of Illinois

Simpkins.

vs.

Rodgers.

United States of America

State of Illinois
McHenry County & Place before the Hon
orable Judge & Master
Judge of the thirteenth Judicial Circuit
of the State of Illinois and presiding
Judge of the McHenry County Circuit Court
at a Circuit Court begun and held
at the Court house in Woodstock in
said County on Monday the Twentieth
day of March, in the year of our Lord
one thousand eight hundred and fifty
four, and of the Independence of the
said United States the of America the
Seventy seventh

Present the Hon Isaac H. Hession
Judge
Alfred J. M. M. Boyce
J. H. Sherry State attorney
Chas. Carville Hastings
Sheriff

Be it remembered that heretofore to wit
on the second day of Nov. A.D. 1853.
Richard B. Simpfkins the plaintiff in
this suit caused to be issued out of the
office of the Clerk of the Circuit Court
of said County a writ of Summons in
the name and figures following that to say

State of Illinois, The People of the
McHenry County of State of Illinois to the
Sheriff of said County Greeting.

We command
you that you Summon Orson P. Rodgus
if he shall be found in your County per-
sonally 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 Woodstock in said County
on the third Monday of Nov next to
answer unto Richard B. Simpkins in a
plea of Trover to the damage of the said
plaintiff as he says in the sum of five
hundred dollars. And have you then
and then this writ with an endorsement
thereon as to the manner in which you
execute the same. Witness our hand
and the seal of our said Court and the
seal thereof at Woodstock this 2^d
day of Nov. A.D. 1853.

(Seal) J. H. Johnson Clerk

Enclosed therein
Executed the within writ on Orson P. Rodgus
by reading it to him and in his hearing
this 7th day of Nov. A.D. 1853

Charles Hastings Sheriff
Given Nov 7 1853 J. H. Johnson cly

And Thompson to wit on the 1st day
of November in the year last aforesaid
the said plaintiff filed his declaration
herein in the words and figures following
to wit.

State of Illinois, McHenry County
McHenry County Circuit Court November
Term A.D. 1833.

Richard B. Scripkins plaintiff in this
suit complains of Owen P. Rodgers defen-
dant in this suit being summoned &c of
a plea of trespass on the case.

For that
whereas the said plaintiff heretofore to wit
on the 30th day of October A.D. 1833 at
McHenry County State of Illinois was
lawfully possessed as of his own property
of certain quantities of spring wheat Potatoes
Sapron Osage Orange sets good and
chattel to wit Three hundred bushels of
spring wheat two hundred bushels of
Potatoes five hundred permas of Sapron
two thousand Osage Orange sets and
drives to wit Two thousand sheeps of spring
wheat three hundred bushels of potatoes
five hundred bunches of Sapron one hundred
of Osage Orange - thirty wagon loads of
wheat in the sheaf ten wagon loads of

of potatoes five wagon loads of Barley five
wagon loads of Saffron five wagon loads of
Osage Orange sets three acres of Spring wheat
in the South two acres of Saffron fifty stalks
of Barley of great value to wit of the value
of five hundred dollars. And being so
possessed the said plaintiff afterwards came
on the day and year first above mentioned
at McHenry County aforesaid usually lost
the said Spring wheat Potatoes Saffron
Osage Orange sets & goods and chattels out
of his possession. And the same afterwards came
on the day and year last aforesaid at McHenry
County ~~aforesaid~~ aforesaid came to the possession
of the said defendant by finding. Yet the said
defendant well knowing the said Spring wheat
Potatoes Saffron Osage Orange sets & goods and
chattels to be the property of the said plaintiff
and of right to belong away appertaining to
him but contriving and fraudulently intending
craftily and subtly to deceive and defraud
the said plaintiff in this behalf hath not
as yet delivered the said Spring wheat Potatoes
Saffron Osage Orange sets & Goods and chattels
or any or either of them or any part thereof
to the said plaintiff although often requested
to do so and hath hitherto wholly refused

to do and afterwards to wit On the day
and year last aforesaid at McHenry County
aforesaid bought and disposed of said
spring wheat Potatoes Sugar Oranges
Lits and goods and chattels to his own
use. To the damage of the said Plaintiff
of five hundred dollars and therefore
he brings his suit

Attest Born his atty.
Enclosed therein Filed Nov 7 1853
J. A. Johnson Clk

And afterwards to wit On the 25th day of
November in the year last aforesaid it
being one of the days of the late November
term of said Court the defendant herein
filed his plea herein in the words and figures
following to wit

A. P. Rodgers

R. B. Simpkins

} Doves

And the said
defendant by C. McHenry
his atty answers & defends the wrongs
whereof and says that he is not guilty of
the said supposed grievances above laid to
his charge or any or either of them or any
part thereof in manner and form as the
said plaintiff hath above thereof complain-
ed against him. And of this the said

defendant puts himself upon the Country &c
Answered them

Filed Nov 25 1853

J. H. Johnson

Clk

Now afternoon term on the 24th day of
March in the year of our Lord one thousand
and eight hundred and fifty four
it being one of the days of the late March
Term of said Court the following among
other proceedings were had to wit

Richard B. Scrapping

vs
Orson P. Rogers

Plaintiff

And now came

the plaintiff by Orson
and the defendant by M. C. Johnson and issue
being joined this cause is submitted to the
Court for trial without the intervention of
a jury by the agreement of the parties
and the Court having heard the evidence
and arguments of Counsel finds the issue
for the defendant. It is therefore ordered
and considered by the Court that the said
defendant have and recover of the plaintiff
his costs and charges herein along his
defense expendant and that he have execution
therefor To the opinion of the Court in the

finding and judgement aforesaid the
plaintiff by his Counsel excepts

And thereafter to wit on the 30th day of
March in the year last aforesaid
it being one of the days of the late
March Term of said Court the following
proceedings were had to wit

Richard B. Simptkins

Orson P. Rodgus

Prover And now

And the plaintiff
by counsel now moves the Court for a new
trial herein which motion is overruled
by the Court. To the opinion of the Court
in overruling said motion the plaintiff by
his Counsel excepts

And thereupon to wit on the day and
year last aforesaid the said plaintiff
filed his bill of exceptions in the terms
and figures following to wit.

Richard B. Simptkins, M. Henry, Circ. Court

Orson P. Rodgus } March Term 1854

Be it remembered
that on the 24th day of March A.D. 1854
one of the days of the March Term of said

McHenry Circ Court this cause came on to
be heard before the Hon. J. G. Nelson Judge
of said Court the jury having been named
by consent of parties upon the following plea
duing

State of Illinois } McHenry County Circuit
McHenry County } Court November Term A.D.
1853

Richard B. Simpson

Plaintiff in this suit complains of Oscar P
Rodrigas defendant in this suit being summoned
&c of a plea of trespass on the case.

For that whereas
as the said plaintiff heretofore was on the 3rd or
day of October A.D. 1853 at McHenry County
State of Illinois was lawfully possessed as
of his own property of certain quantities of
Spring wheat Potatoes Saffron Orange Orange
sets goods and chattels to wit. Three hun-
dred bushels of Spring wheat two hundred
bushels of potatoes five hundred pounds
of Saffron two ~~hundred~~^{thousand} Orange Orange sets
and divers to wit Two thousand sheeps of
Spring wheat two hundred bushels baskets
of potatoes five hundred bunches of Saffron
One Muscovy of Orange Orange thirty Magon
loads of Wheat in the sheaf - two Magon
loads of potatoes five Magon loads of barley

five wagon loads of Saffron five wagon loads of
Orange Orange sets three acres of Spring Wheat
in the swath two acres of Saffron fifty stacks
of barley of great value to wit of the value
of five hundred dollars. And being so
possessed the said plaintiff afterwards to wit
on the day and year first above mentioned
at McHenry County aforesaid lawfully for
the said Spring Wheat Potatoes Saffron Orange
Orange sets & Goods and Chattels out of his
possession and the same afterwards to wit on
the day and year first aforesaid at McHenry
County aforesaid came to the possession of
the said defendant by finding. Yet the
said defendant well knowing the said
Spring Wheat Potatoes Saffron Orange Orange
sets & Goods and Chattels to be the property
of the said plaintiff and of right to belong
and appertain to him but contriving and
fraudulently intending craftily and subtly
to deceive and defraud the said plaintiff
in this behalf hath not as yet delivered
the said Spring Wheat Potatoes Saffron Orange
Orange sets & Goods and Chattels or any
of them or either of them or any part thereof
to the said plaintiff although often requested
so to do and hath hitherto wholly refused
so to do And afterwards to wit on the day and
year last aforesaid at McHenry County aforesaid
said mounted and disposed of said Spring

where potatoes Sapin Sugar Orange sets
and groves and Chattels to his own use
To the damage of the said plaintiff of
five hundred dollars and therefore he brings
his suit. At Pleas his atty

Filed Nov 7 1853

J H Johnson etc

C P Rogers

R B Simptons

Provs

And the said defend
ant by C McElum his
attly comes and defends the wrong and
injury whereof and says that he is not
guilty of the said supposed grievances above
said to his charge or any or either of them
or any part thereof in manner and form
as the said plaintiff hath above thereof com
plained against him And of this he puts
the said defendant upon himself upon the
Country &c C. McElum for depts
Filed Nov 25 1853

J H Johnson etc

Upon said trial it was admitted by the
defendant that Langher Baeho was the owner
in fee of the land upon which the crops
for which this suit is brought were raised
until 2^d December 1852 And that plaintiff
in this cause for bid defendant to put in said
crops on said land in the Spring of 1853

before and during the putting in of said
Crops

The Plaintiff then gave in evidence
a Deed from said Backe to him the Plaintiff
bearing date the 14th Nov^r 1852 & covering
the premises on which said Crops now grow
a copy of which Deed is here inserted as
part of this bill of Exemptions.

This Indenture
Made this thirtieth day of November in
the year of our Lord one thousand eight
hundred and fifty two. Between Slaughter
Backe of the County of Troy and State
of Pennsylvania of the first part and Richard
B. Simpkins of McKean County State of
Pennia of the second part. Witnesseth That
the said party of the first part for and in
consideration of One hundred and forty
eight dollars to him in hand paid by
the said party of the second part (the receipt
whereof is hereby acknowledged and the
said party of the second part forever
released and discharged therefrom hath
granted bargained sold remised released
aliened and confirmed and by these presents
doth grant bargain sell remise release alien
and confirm unto the said party of the
second part and to his heirs and assigns
forever all the following described lot more
or parcel of land situated in the County

of McHenry and State of Illinois and
described and bounded as follows viz Part
of the South East quarter of section thirty one
(31) Township forty four (44) North Range six (6)
East Commencing at the South East corner
of said section thence West on the Township line
Twenty nine $29/100$ chains (29.25) to O P Rodgers
line thence Northely on Rodgers East line nine
 $87/100$ chains (9.87) to the right of way for the
rail Road thence South $(90^{\circ}40')$ East along the
right of way of the Rail Road thirty chains (30)
to the East line of the section thence South
twenty five lines (25) to the place of beginning
Containing fraction $43/100$ acres (14.43) more
or less Together with all and singular the
hereditaments and appurtenances therunto belong-
ing or in any wise appertaining and the houses
and ousings remainins and remainds with
issues and profits thereof and all the Estate
right title interest claim or demand whatsoever
of the said party of the first part either in
law or equity of us and to the above named
premises with the hereditaments and appurtenances
as To Have and to hold the said premises
above bargained and described with the
appurtenances unto the said party of the
second part his heirs and assigns forever
And the said Sangher Bachu party of the

first part for himself his heirs Executors and
administrators doth Covenant grant bargain
and agree to and with the said party of
the second part his heirs and assigns that
at the time of the purchasing and delivery
of these presents he is well seized of the premises
above conveyed as of a good sure perfect
absolute and indefeasible Estate of inheritance
in law in fee simple and hath good right
full power and lawful authority to grant
bargain sell and convey the same in manner
and form aforesaid and that the same are
free and clear from all former grants bargains
sales liens taxes assessments and incumbrances
of what kind or nature soever and
the above bargained premises in the quiet
and peaceable possession of the said party of
the second part his heirs and assigns against
all and every person or persons lawfully
claiming or to claim the whole or any part
thereof the said party of the first part
shall and lawfully may defend
In Testimony whereof the said party of the first
part hereunto set his hand and seal the
day and year first above writing
Sylvia Suter Taylor Backe Seal
and delivered
in presence of

State of Pennsylvania } Benjamin B
Tioga County } Smith a Justice of
the peace in and for
said County in the State aforesaid do hereby
certify that Laughen Backe who is personally
known to me as the real person whose name is
subscribed to the above deed appeared before
me this day in person and acknowledged
that he executed the said deed as his free
and voluntary act for the uses and purposes
therein set forth. Given under my hand and
seal this third day of December in the
year of our Lord one thousand eight hundred
and and fifty two. B B Smith J P Seal

Tioga County } I John F Donaldson pro
Seal } thutary of the Court of Common
of Tioga County Pennsylvania
do certify that Benj B Smith
Esq is a magistrate in and for said County
as within duly authorized by law to take
the acknowledgments of deeds and other instru-
ments in writing and that the within signature
purporting to be his is genuine In testimony
whereof I have hereunto set my hand
and affixed my seal of office this 3^d day
of December A.D. 1882
J F Donaldson
Prothy.

Tracy County SS John F. Donaldson

Prothonotary as aforesaid do further certify
that the within deed is executed and
acknowledged according to the laws of
this Commonwealth In Testimony whereof



I have hereunto set my hand and
affixed my seal of office this 20th
day of December 1853

J. F. Donaldson Prothy

Tracy Co 24th 1853 at 9 AM & Recorded
Jan 8th 1853 in vol 5 of Lucas pages
597 & 598 J. H. Johnson

Any sworn by a witness that the land upon
which the crops were raised was.

George Raymond Testifies that he heard the
plaintiff forbid the workmen of the defen-
dant from cutting the wheat, heard him also
forbid the defendants from hauling of the wheat
or taking away the sheaves or doing any
thing to the crops - that Bucke at the time
he sold the land to the plaintiff owned
190 acres adjoining the same land and
much of the same with about 70 acres
under cultivation that the land conveyed
by the deed was in the same field with the
improved land of the plaintiff the defendants
land was west of Simpkins house from one

of the land in question and the remaining
lands of Bucke and separated therefrom by
a North and South line the plaintiff then
rested his case.

The Defendant then offered in evidence the
following letter from Bucke post marked at
Wellsborough Pa. June 14

Wellsboro Pa June 12 1852
Cesar P. Rogers

Dr Friend

I had the pleas
ure of receiving your letter last evening &
was very glad to hear once more from you
& the rest of my Western friends. I was sorry
to hear learn that your wife had been so much
afflicted. Of all the bodily afflictions to which
we are subject, I think blindness is the most
trying. I ~~trust~~^{trust} that she will soon entirely
recover the use of her sight. I have no
objection to your using the piece of land
you speak of but hope you will leave it
in good order & send it down with Timothy
or put top upon your eye down with it.
I do not know that I would like to see
it at present as I might by so doing
injure the sale of the remaining part as
it would probably be an object to the
purchaser to have the privilege of both
sides of the ~~Rail~~ Road. I am willing

+

I am willing to sell the whole lot or the whole that I have there provided I can get a fair price. I would make the terms of payment easy, so that my person wishing to buy would have no difficulty in meeting the installments. I should suppose that land on the line of the Rail Road & as well situated as that is would be in demand. If you know of any chance to sell I would be much obliged to you if you would interest yourself a little in the matter. From your account of the business done on the road I should think it was in a very prosperous condition. I have always thought that when completed it would be one of the most profitable roads in the Country. I have not yet heard whether Mr. Spurr has rented the plowed land or not for this season. When you write again please let me know how it is. As regards myself I have nothing particular to say. I enjoy my usual measure of health & am tolerably prosperous in business matters. I still remain a bachelor of course & always expect to belong to that unfortunate class of mortals, at least as long as I remain in this world but if - as the rapping spirits say - in the next sphere of existence the original relation exists & that every one when he enters that world is immediately married to

then one destroyed for him - if, I say this is true
why then I may still live in hopes - at least
till death. By the way have these mysterious
manifestations penetrated into your section of
Country have you examined into the evidences
of their spiritual Character. For my part after
the most thorough investigation that I am
capable of giving the subject. I cannot
come to any other conclusion than that they
are truly what they purport to be - viz display
of spiritual power & intelligence. If these mod-
est manifestations are not spiritual then
I think there is no evidence to prove that
there ever has been such a thing as spiritual
intercourse. Still I am not absolutely convinced
& am anxious for further proof. What is your
opinion about the weather? The Spring has
been extremely cold & backward & we have
had several hard frosts lately that have
done a good deal of damage. The fruit
however I think is not very much
injured. Write to me again soon as an
opportunity. Give my best respects to your
wife & believe me I am truly
L. Backe

the human writing of Backe was admit-
ted - The reading of the letter was objected
to by the plaintiff and admitted by the
Court subject to exceptions objections.

The defendant then offered in evidence the following letter.

Wellsboro Dec. 14 1852
Friend Orson
Yours of the 4th Inst is just
recd. It is true that I have sold Simpkins
the piece of land between the Rail Road &
him. I have entirely forgotten that I had
given you the privilege of using it. I
regret very much that this should have
happened. I assure you I never would have
sold it without reserving the privilege I
had granted to you. I do not know now
whether I ever knew that the piece you wanted
to build was on the South side of the Rail
R. My only recollection is that it was
situated on the South end of my lot.
I hope Simpkins will not take advantage
of my forgetfulness & forbid your using
the land as you expected. I certainly
should think it a very dishonorable
thing in him so to do. The use of what
you want can be of no consequence to
him for a year or two. I let him have
the land at his own price more to accom-
odate him than from any consideration of
profit to myself. If he should refuse to
let you have the use of the land. I shall
consider him guilty of deception towards
you

me, as he must have been aware that
you had the promise of the use of the
ground by your breaking it. I need not
yet believe that he meant to act underhan-
dily in the matter altho I shall be forced
to that conclusion if he forbids your occupying
the land for a reasonable consideration. As to
the price of land that White wanted I may
have been a high in my estimate of the value.
You know that better about that than I do.
If you think \$12 is as much as it will bring
now or in a year or two. I would not
object to sell it at that price. I do not
remember which it is, that he wants, but sup-
pose it is the north end of the east lot.
If so he need not expect to have the same
there in of course. I understand that some
person wants a piece of timber. I wrote to
Spicer that he might see it & fix the
minimum price at \$20. but told him to
get the best price he could for it. I believe
I will sell off all I have out there as
there is no probability that I shall want
to return to live there. I am still engaged
in trade & lumbering but intend to quit
the lumbering part of the business as soon
as I can see out. Now say you think
I could now sell timber at a high price.

I wish you would see that Spencer does
as well as he can for me if he should
see that piece of timber to the person who
owns it. If Sampkins ~~was~~ at home I
would write to him in reference to that piece
of pine. But if he is to be gone through
the winter then would be no use in
writing to him. Say to him in reference to
this matter that I had given you the
promise of the use of the land & that
I certainly never should have felt at
liberty to give him the land without preserv-
ing the right I had granted you & that
I shall consider it a breach of friendship
between us if he takes advantage of my
forgetfulness to exclude you from the
land. Write to me again as soon as you
remember let me know how matters
are going. Give my best respects to your
wife & believe me
Yours Truly

L. Bucke

It appears by your letter that Ad. has not
yet^d but he made a very big pile by his trip
to California.

Sam said Bucke the hired money
of which was admitted which was objected
to by the plaintiff and was subject to
objections.

Calvin Spomer called by the defendant and testified

At all times of the year during the winter of 1851, 1852 and 1853 the agent of said Bucke to lease his land and pay the taxes - that he knew in the fall of 1852 that defendant intended to put in said breaking with Osage Oranges in the Spring of 1853 that the plaintiff several times during the Spring Summer and fall of 1852 talked with him about paying buying the land south of the Rail Road from Bucke does not know whether the plaintiff when he bought the land of Bucke knew that the defendant had the right from Bucke to put out osage Oranges covered by the deed that the defendant put in about 6 acres of the land covered by the deed to Crops.

That he was during the year 1851, 1852 and 1853 the agent of said Bucke to lease his land and pay the taxes - that he knew in the fall of 1852 that defendant intended to put in said breaking with Osage Oranges in the Spring of 1853 that the plaintiff several times during the Spring Summer and fall of 1852 talked with him about paying buying the land south of the Rail Road from Bucke does not know whether the plaintiff when he bought the land of Bucke knew that the defendant had the right from Bucke to put out osage Oranges covered by the deed that the defendant put in about 6 acres of the land covered by the deed to Crops.

Corn Pike testified that the defendant put in two acres or two and a half to wheat a few potatoes and the balance of the land broke to Sapin & Osage Orange plants that the defendant harvested the wheat picked the Sapin and pulled the Osage Orange plants - that the plaintiff ^{forbid} the witness who was in the employ of the defendant from harvesting the wheat picking the Sapin and pulling and taking off the Osage Orange plants at and during the time the same was being harvested that there was

Wm. M. Moore

A. J. Spoon

about 60 bushels of wheat worth 75 cts per
bushel 160 lbs of Saffron worth 75 cts per
pound that there was about 175,000 Oregon
Orange plants worth \$2.00 per thousand the
defendant converted all of the aforesaid per-
sonal property to his use before the commence-
ment of this suit On Cross Examination stated
that defendant broke the land in the fall
of June 1852 Plaintiff knew when
it was broke lived about half a mile from
the breaking asked the witness the day
after the defendant finished breaking what
Rogers was agreeing to do with the breaking
witness replied to the plaintiff that he
was breaking it for Oregon Orange that
in December 1852 the witness told Simp-
son the plaintiff's plf that Rogers had per-
mission from Backe to put the breaking into
Oregon Orange - plaintiff replied that he
must not do so as he had then bought
the land and he did not want Oregon
Orange put into it. Witness at the time lived
with the defendant about half a mile from
the plaintiff's house it was worth \$2 per acre
to break the land. Witness never told him of
it never talked with him about it before
he saw from Backe to him plaintiff and
defendant lived about half a mile apart
but were not on intimate terms that as the
agent of Backe he had rented some of

End of Other evidence & witnesses examined

A. W. Coon

E. M. Coon

Each improved land at fifty Acre for New & same
at 75 cts

And this was all the evidence in
this cause upon which the Court found the
issues in favor of the Defendants. The Plaintiff
by his Counsel entered a motion for a new trial
which was overruled by the Court and final
judgement rendered by the Court which
upon the finding to which overruling of said
motion for a new trial as well as the render-
ing a final judgement by the Court the plain-
tiff by his Counsel excepts and prays that
the law of exceptions may be signed sealed
and made part of the record in this cause
which is done

Enclosed therein

New March 30 1854

J H Johnson Cky.

Isaac J Nelson (Seal)
Judge

State of Illinois }
McHenry County } I the undersigned
Clerk of the Circuit
Court in and for the said County
in the State aforesaid do certify that
the foregoing is a true and perfect
copy of the record and proceedings
in the above entitled Cause by this
office Witness Joel H. Johnson Clerk
of our said Court and the
Seal thereof at Woodstock this
9th day of June A.D. 1834

Joel H. Johnson
Clerk

Richard B. Simpkins }
vs }
Ezra P. Rockens }

} and the said defendant comes
and says that the record and
proceedings aforesaid there is manifest error in
this trial -

First the Court erred in admitting
in evidence the letters of Beebe & each of them
ground - The Court erred in
finding for the defendant -

Third - The finding of the Court
was against law & evidence -

Fourth - The Court erred
in refusing to grant a new trial -

Fifth the Court erred in
concluding judgment for the defendant
on the finding - Wherefore the said Simpkins
prays that the said judgment may be
reversed & that he may be restored to

Saml. Higgins & A. B. Coon
for plaintiff

And The said defendant G. C. Melburn his
Atty. says That There is no error in the
record of proceedings in the aforesaid
Cause wherefore he prays That the Judgment
may be affirmed

G. C. Melburn for
Deft

69
R. B. Simphins
by
Q. P. Rodgers
Record

1854

69

Filed June 14. 1854.
L. Seland Clerk.

12474

Prepared.

1854

6210/100 621
Cur 20
7646

R. B. Lemphris
vs
O P Rogers

In the Supreme Court June
Term A.D. 1854.

error to McHenry County

This was an action of Trover instituted
in the McHenry County circuit Court to recover
for certain personal property ~~unlawfully~~ converted
by the Defendant. the declaration is in the usual
form & the plea of the Defendant is the General Issue

The proof shows substantially that Laughen
Bache was the owner of certain lands upon
which the crops were raised about which this Suit
was brought until December 2^d A.D. 1852 & that the
plaintiff forbade the defendant putting in said crops
on the ^{same} lands in the Spring of A.D. 1853 before and
during the putting of them in, = Plaintiff then offered
and read in evidence a Warranty Deed from said
Bache to him dated 30th November A.D. 1852 ack-
nowledged 2^d Dec. 1852 & filed for record in McHenry Co.
Dec. 24th A.D. 1852 covering the land on which said
crops were grown. he then proved by a witness
that the land upon which the crops were raised
was the same land covered by the Deed. that the
Defendant put in about six acres of the land covered
by the deed to crops.

George Raymond testified that he heard the plaintiff
forbid the workmen of the defendant from cutting
the wheat & heard him also forbid the defendant
from helling off the wheat or taking away the top:
from or doing anything to the crops, that Bache at
the time he sold the land to the plaintiff owned
190 acres adjoining the same lands and north of the
same with about 70 acres under cultivation, that the
land conveyed by the Deed was in the same field

with the improved land of the plaintiff - the defendant's land was west of Lumpkins home farm & of the land in question & of the adjoining lands of Baiche & separated therefrom by a North & South line fence Ezra Pike testified that the defendant put in two acres or two & a half to wheat a few potatoes and the balance of the land broke by him to Saffron & Asage Orange plants, that the defendant harvested the wheat picked the the Saffron & pulled the Asage orange plants, that the plaintiff forbade witness when in the employ of the defendant from harvesting the wheat picking the Saffron & pulling & taking off the Asage orange plants at one during the time the same were being harvested, that there was about 60 bushels of wheat worth 75 ct. per bushel 160 lbs of Saffron worth 95 ct. per lb. there was 1950 or Asage Orange plants worth 2¢ per thousand the defendant converted all of the aforesaid personal property to his ^{own} use before the commencement of this suit. the defendant broke the land in the fore part of June A.D. 1852. plaintiff knew when it was broke he lived about half a mile from the breaking, asked the witness the day after the defendant finished breaking, what Rogers was going to do with the breaking witness replied to the plaintiff that he was breaking it for Asage orange. that in Dec. A.D. 1852. witness told the plaintiff that Rogers had permission from Baiche to put in the breaking to Asage Orange, plaintiff replied that he must not do so as he had there bought the land & he did not want Asage Orange put into it. witness then lived with the defendant about half a mile from the plaintiffs house it was worth \$2. per acre to break the land.

Calvin Spencer testified that he was during the years 1851 52 & 53 the ^{agent} of said Baiche to lease his land and pay the taxes. that he knew in the

fall of A.D. 1852 that the defendant intended to put in the breaking with Asage Orange in the Spring of A.D. 1853. That the plaintiff several times during the Spring Summer & fall of A.D. 1852 talked with him about buying the land South of the Rail Road from Boche does not know whether the plaintiff when he bought the land of Boche knew the defendant had the right from Boche to put out Asage Orange witness never told him of it never talked with him about it before the sale from Boche to him. Plaintiff & defendant lived about half a mile apart, and were not on very intimate terms. That as the agent of Boche he had rented some of the improved land at 50 ct. per acre and some at 75 ct. per acre. Defendant further offered and read in evidence a letter from Boche to himself dated at Wellsborough Pa. June 12th A.D. 1852 and post marked Wellsborough Pa. June 11th 1852. which among other things not concerning said land is as follows viz "I have no objection to your using ~~any~~ the piece of land you speak of but hope you will leave it in good order & seeded down to timothy or red-top when you are done with it. I do not know that I would like to sell it at present as I might by so doing injure the sale of the remaining part of as it would probably be an objection to the purchaser to have the privilege of both sides of the Rail Road" the hand writing of Boche was admitted by the plaintiff. but objections were made to its competency & unimpeaching value subject to objections. Defendant then offered & read in evidence another letter from Boche to him dated at Wellsborough Pa. Dec. 16th A.D. 1852 as follows "Yours of the 4th Inst is just recd. it is true that I have sold Simpkins the piece of land between the Rail Road and him

I had entirely forgotten that I had given you the
privilege of using it I regret very much that this
should have happened. I assure you I never would
have sold it without reserving ~~your~~ the privilege
I granted to you. I do not now know whether I
ever knew that the piece you wanted to break
was on the South Side of the Rail Road, my only
recollection is that it was some where at the South
end of my lot. I hope Simpkins will not take ad-
vantage of my forgetfulness & forbid your using the
land as you expected I certainly shall think it a
very dishonorable thing in him so to do. the use of what
you want can be of no consequence to him for a year or
two. I let him have the land for his own price more
to accommodate him than from any considerations of
profit to myself. If he should refuse to let you have
the use of the land I should consider him guilty of de-
ception towards me, as he must have known that you
had the promise of the use of the ground by your
breaking it. I will not yet believe that he meant
to act unethrandedly in the matter although I
shall be forced to that conclusion if he forbids
your occupying the land for a reasonable consideration.

The hand writing of Boche was admitted by the plaintiff
counsel, its introduction was objected to by the plaintiff
counsel, and admitted by the court subject to objection.

This was all the testimony in the case. The court
found for the Defendant motion for new trial motion
for new trial overruled and judgment upon the
finding for the defendant for costs. the plaintiff
excepted and presented his bill of exceptions which
was signed - and brought his writ of error

had then bought the land & he did not
want Osage Orange put onto it, neither then
lived with the Defendant about half a mile from
the plaintiffs house it was worth \$2, per acre to cross
the land.

Calvin Spencer testified that he was clearing the
grass 1852 53 the agent of said Boche to
lose his land and pay the taxes, that he knew
in the fall of 1852 that the Defendant intended
to put in the breaking with Osage Orange
in the Spring of 1853. that the plaintiff several
times during the Spring Summer & fall of 1852
talked with him about buying the land south
of the Rail Road from Boche does not know
whether the plaintiff when he bought the land
from Boche knew the defendant had the
right from Boche to put out ^{orange} ~~Osage~~ ^{neither}
never told him of it - never talked with him
about it before the sale from Boche to him

plaintiff & defendant lived about half a mile a
part and were not on very intimate terms

that as the agent of Boche he had notice some
of the improved land at 50 cts per acre and some
at 75 cts per acre, Defendant further offered in evidence
a letter from Boche to himself dated at Wellsboro
rough Pa June 12th 1852 and post marked Wellsboro
Pa June 14th 1852 which among other things
not concerning said land is as follows viz;

"I have no objection to your using the price
of land you speak of but hope you will leave
it in good order & settled down to timothy or
wheat when you are done with it I do not
know that I would like to see it at present, as
I might by so doing injure the sale of the remaining
a part as it would probably be an object to the

"purchaser to have the privilege of both sides of
the Rail Road." The hand writing of Brooke
was admitted by the Plaintiff, but objections
were made to its competency & insufficiency and
subject to objections. I find that there is no
evidence another letter from Brooke to
him dated at Willborough Pt. Dec. 14th. 1852
as follows "Yours of the 4th Inst. is just recd
it is true that I have sold Simpkins the piece
of land between ~~him~~ and the Rail Road and
him. I had entirely forgotten that I had given
you the privilege of using it I regret very much
that this should have happened I assure you
I never would have sold it without reserving the
privilege I granted to you. I do not now know whether
or I ever knew that the piece you wanted to break
was on the South side of the Rail Road my
only recollection is that it was some where at
the South end of my lot. I hope Simpkins will
not take advantage of my forgetfulness & forbid
your using the land as you request it certainly
I shall think it a very dishonorable thing in
him to do. The use of what you want can
be of no ~~con~~ consequence to him for a year or two
I let him have the land for his alone price more
cheaply to accommodate him than from any con-
siderations of profit to myself. If he should refuse
to let you have the use of the land I should
consider him guilty of deception towards me, as
he must have known that you had the promise
of the use of the ground by your breaking it I will
not get behind that he meant to act unethically
in the matter although I shall be forced to that
conclusion if he forbids your occupying the land

R B Sampkins
vs
O P Rogers

In the Supreme Court June Term
A D 1854

error to McHenry Co

This was an action of Trover instituted in the McHenry County Circuit Court for recovery for certain personal property wrongfully converted by the defendant the Declaration is in the usual form & the plea of the defendant is the General Issue

The proof shows substantially that Laughers Boche was the owner of certain lands upon which the crops were raised about which this suit was brought until December 24th A D 1852 & that the plaintiff forbade the defendant putting in said crops in the same lands in the Spring of A D 1853 before and during the putting of them in Plaintiff there offered and read in evidence a ^{promissory} deed from said Boche to him dated 30th November A D 1852 acknowledged 24 December A D 1852 & filed for Record in McHenry County December 24th A D 1852 covering the land on which said crops were grown he there proved by a witness that the land upon which the crops were raised was the same land covered by the deed that the defendant put in about six acres of the land covered by the deed to crops

George Raymond Justice that he heard the plaintiff forbid the workmen of the defendant from cutting the wheat & heard him also forbid the defendant from haling off the wheat or taking away the Tassels or doing anything to the crops. that Boche at the time he sold the land to the plaintiff owned 190 acres adjoining the same lands and north of the same with about 70 acres under cultivation

that the land conveyed by the deed was in the same field with the improved land of the plaintiff the defendants land was west of Simpkins home farm & of the land in question & of the adjoining lands of Booke & Soperate therefore by a north & south line fence.

Esso Pike Testifies that the defendant put in two acres to two & a half to wheat a few potatoes and the balance of the land broke by him to Saffron & Asage Orange plants that the defendant harvested the wheat picked the Saffron & picked the Asage Orange plants that the plaintiff for-
mer witness when in the employ of the defendant from harvesting the wheat picking the Saffron & picking & taking off the Asage Orange plants at and during the time the same were being harvested, that there was about 60 bushels of wheat worth 75cts per bushel 160 lbs. of Saffron worth 75cts per lb., there was 145000 Asage Orange plants worth \$2.00 per thousand, the defendant converted all of the above personal property to his own use before the commencement of this suit. The defendant broke the land in the fore part of June A.D. 1852. Plaintiff knew when it was broke he lived about half a mile from the breaking asked the witness the day after the defendant finished breaking, what Rogers was going to do with the breaking witness replied to the plaintiff that he was breaking it for Asage Orange; That in December A.D. 1852 witness told the plaintiff that Rogers had permission from Booke to put in the breaking to Asage Orange plaintiff replied that he must not do so as he