

12720

No. _____

Supreme Court of Illinois

Armour

vs.

Knif^Nfe~~ss~~

198 = 192

George Armour

vs

Elizabeth Kniffen

12720

1859

United States of America)
State of Illinois ss.
Cook County §

Pleas before the Honorable John M. Wilson sole Judge of the Cook County Court of Common Pleas, within and for the County and State aforesaid at a regular term of the Cook County Court of Common Pleas, begun and holden at the Court house in the City of Chicago in the County of Cook and State of Illinois on the second Monday being the Thirtieth day of September in the year of our Lord one thousand eight hundred and fifty eight, and of the Independence of the United States of America the Eighty third.

Present. John M. Wilson Judge
Carlos Hanes Prosecuting Attorney
John L. Wilson Sheriff
Attest. Walter Kimball, Clerk,

Be it Remembered that heretofore to wit on the Sixth day of July in the year of our Lord one thousand eight hundred and fifty seven, there

was filed in the office of the Clerk of the Cook County Court of Common Pleas, a Declaration & Notice in Ejectment, wherein George Armour is Plaintiff and Elizabeth Kniffin is defendant; which said Declaration is in the words and figures following, that is to say.

"State of Illinois } In the Cook County Court of
County of Cook } P. Common Pleas. Of the July
Term A. D. 1857.

George Armour Plaintiff by Seres, McAlister & Jewett his Attorneys complains of Elizabeth Kniffin, defendant, of a Plea of Trespass in Ejectment.

For that whereas the said George Armour on the first day of May in the year of our Lord one thousand eight hundred and fifty three was possessed of a certain Lot, piece or parcel of land, with the appurtenances situate lying and being in the City of Chicago in the said County of Cook, known and described as follows, to wit. Sublot. Number four (4) of lot Number Nine (9) in Block Number forty six (46) in the original Town of Chicago, in said County of Cook and State of Illinois: Which said premises the said George Armour as owner thereof claims in fee simple, and being so possessed thereof the said Elizabeth Kniffin, defendant, afterwards to wit on the day and year aforesaid entered into the said

Premises and unlawfully withholds from the said George Armour the possession thereof

To the damage of the said George Armour of Five hundred dollars And therefore he brings this suit for

Beates, McAllister & Jewett
Attys for Plt.

To Elizabeth Kniffen

You are hereby notified that a Declaration in Ejectment, a Copy of which is above given, will be filed in the Cook County Court of Common Pleas, on the first day of the next Term thereof, to be begun and holden in the Court house in the City of Chicago, on the first Monday of July next, to wit the 10th day of July A. D. 1857. That upon the filing of the same, a rule will be entered in said Court, requiring you to appear and plead to said declaration, within Twenty days after the entry of such rule, and that if you neglect or to appear and plead a Judgment by default will be entered against you, and the said George Armour will recover possession of the premises in said declaration described.

Beates, McAllister & Jewett
Attys for Plt. Geo: Armour.

Chicago

June 10th 1857

To which said Declaration there was appended a certain Affidavit, in the words & figures following

that is to say.

"State of Illinois }
County of Cook } ss.

John St. Part being first duly sworn
deposes and says that he served the foregoing declaration
& Notice in Exemption on Elizabeth Kniffen, the defendant,
therein named by delivering to her, upon the Premises
in said Declaration described a true and correct
Copy thereof, on the third day of July A. D. 1857.

Subscribed and sworn to before me
this 10th day of July A. D. 1857, John St. Part.

Wm S. Church

Fees for serving

Clerk of Circuit Court

Declaration &c \$1.40

of said County.

fe by His Atty.

And thereafter to wit on the sixteenth day of
July A. D. One thousand eight hundred and fifty
seven, the said defendant, filed in the Office of the
Clerk of said Court, her plea to said declaration,
which said plea is in the words and figures
following, that is to say.

"Elizabeth Kniffen

vs

George Armour }

And now comes the said
Defendant by Arthur W. Heidelt her Attorney,
and defends the wrong and injury whereof, and
says that she is not guilty of the said supposed

Arrest and Ejectment above said to her charge or
of any part thereof, in manner & form as the
said George Armour, hath above thereof complained
against her; and of this she puts herself upon
the Country &c

Arthur W. Hindell.

July 17: 1857

Attys for Def.

And afterwards to wit on the fourth day of October
A.D. one thousand eight hundred & fifty eight (being
one of the days of the September Term of said
Court in the year last aforesaid) the following among
other proceedings were had, and entered of record,
in said Court, to wit.

"George Armour

vs

Ejectment

Elizabeth Kniffen

This day comes said Plaintiff by Deatus
McAllister, Jewett & Peabody his Attorneys and the said
Defendant by A. W. Hindell, her Attorney also comes
and issue being joined herein it is Ordered that a Jury
come. Whereupon comes the Jury of good and lawful
Men, to wit?

Lorenzo Snow, George Stevens, S. J. Clark, A. S. Fay, Joseph
Spades, H. Gardner, M. S. Nichols, M. Claeslin, A. Sutton
D. P. Wood, James Youngs & G. Delmator.

who being duly elected, tried and sworn to try the issues
joined aforesaid, after hearing the testimony adduced

arguments of counsel and instructions of the Court retire to consider of their Verdict and afterwards come into Court and say we the Jury find the said Defendant guilty in manner and form as alleged in said plaintiff's Declaration, of withholding from said plaintiff the possession of the premises described therein as follows namely, A certain Lot piece or parcel of Land, situate lying & being in the City of Chicago in said County of Cook known & described as follows to wit, Sublot Number four (4) of lot Number Nine (9) in Block Number Forty six (46) in the Original Town of Chicago in the said County of Cook and State of Illinois, with the privileges and appurtenances therunto belonging or in anywise appertaining.

Therefore it is considered that the said Plaintiff do have and recover of the said Defendant the possession of the premises described in his said Declaration herein before described and that he have a Writ of possession therefore and that he also recover of the said Defendant his costs by him about his suit in this behalf expended and have execution therefor.

And thereafter to wit on the Sixteenth day of October A.D. one thousand eight hundred and fifty eight & as there was filed in the Office of the Clerk of said Court a certain Affidavit of said Defendant's Counsel; Which said Affidavit is in the words & figures following, that is to say.

State of Illinois }
Cook County, } fi

In the Cook County Court
of Common Pleas.

Elizabeth Ruffen
vs
George Armour }

September Term A.D. 1858.

Arthur W. Widdett being first
duly sworn doth depose and say that he is & for a
year past has been the Attorney of the above named
Defendant in this cause, that he had fully prepared &
was ready for Trial at this time & personally was
desirous of having said cause tried. That he was
absent on Saturday last from the City to fulfil an
Engagement made three weeks before; and fixed for
Saturday as he this affiant supposed that by that
time, said cases would have been reached & tried.

Affiant further saith that he made arrangements
to return to the City by the Night Express train upon
the Burlington Road by which he hoped to arrive in
this City on Sunday morning. That with purpose he
stopped by the Depot Saturday night and especially
engaged a man to sit up to call affiant in time for
said Express Train - that train not stopping unless
specially signalled, - that through the negligence or
stupidity of the man so engaged by affiant, altho'
affiant was ready to take the cars when they approached
he had neglected to provide himself with a Lamp to
signal the train, and was unable to make the signal
and in consequence the train did not stop and affiant

was left. Affiant further saith that he then hoped to return to Chicago Monday Morning by the Mendota Morning accommodation train, arriving here at 11 A. M. of each day, and was ready to take the same at half past Seven of Monday Evening, Morning, the usual hour of its reaching the Bristol Station where affiant was; that affiant there learned for the first time that said Mendota train had been withdrawn on Saturday and would be run no more this season, leaving no means whatever by which affiant could possibly return to this City, before the arrival of the Monday day Express Train from Burlington arriving at said Station at 1/2 past 3 o'clock of the afternoon of each day or thereabouts and reaching Chicago between Six and Seven o'clock in the Evening, by which train affiant returned to this City Monday Evening. Affiant was extremely anxious to return to this City by Sunday Morning and made every exertion in his power to do so, and should have done so but for the neglect of the person employed by him to stop the train as aforesaid. That affiant was expressly informed on Saturday as he went out by the Collector Conductor of the Morning Express train, that the accommodation train from Mendota would be run on Monday as usual. Affiant had not then or afterwards till he was informed on Monday Morning as aforesaid, that a change had been made.

Affiant used his utmost endeavors in entire good faith, by every means in his power to return to

Chicago first by Sunday morning, then by Monday
noon all fruitlessly - Since his return to Town affiant
has been confined to his room by severe cold & illness
till this morning, whereby he has been prevented from
making earlier application to the Court - affiant has
diligently and thoroughly as he believes prepared himself
for Trial of said cause - has examined the same and
believes that the Defendant has a perfectly solid & good
title to the premises in question in this case - and that
the necessary deeds & muniments of title, without which
it was impossible for Defendant to defend said suit,
were in affiant's possession & solely accessible to him,
and not to Defendant in affiant's absence - that he
deems the case one of great importance in point of
value, and of the legal characters of the title; and he
thinks that great hardship & injustice will be suffered
by Defendant unless the Court grant a New Trial -
Affiant will if required by the Court be ready to try
said cause at any day of this Term.

Subscribed & sworn to before me

this 8th October 1858

} Arthur W. Wendell,

(Sd.) John Summerfield - Not. Pub.

And afterwards to wit on the said sixteenth day
of October A. D. One thousand eight hundred and fifty
Eight, (being another of the days of the said September
Term of said Court) the following among other
proceedings were had, and entered of record in said
Court, to wit.

George Armour

(vs)

Elizabeth Kniffen

And now at this day comes the said parties to the case by their Attorneys aforesaid, and the said defendant by his Counsel upon the Affidavit of said defendants Counsel filed herein this day, Submits his Motion to set aside the Judgment heretofore rendered by the Verdict of the Jury in this cause and Entered of record and for a New Trial herein

And afterwards to wit on the twenty ninth day of October (being another of the days of the said September Term of said Court) A. D. one thousand eight hundred and fifty eight, the following among other proceedings were had and entered of record in said Court, to wit:

" George Armour

(vs)

Elizabeth Kniffen

And now again come the parties to this cause by their Attorneys aforesaid and the Court upon the reading the affidavit of said defendants Counsel heretofore filed upon the Motion then submitted to set aside the Judgment Entered of record, in this cause and for a New trial herein, and after hearing arguments of Counsel, having fully considered the premises, and being fully advised overrules and denies the Motion of

said defendant - to which the said defendant then and there excepted.

And afterwards to wit on the ^{thirtieth} ~~twenty~~ ninth day of October (being another of the days of the said September Term of said Court) A.D. one thousand eight hundred and fifty eight, the following among other proceedings were had and entered of record in said Court to wit.

" George Armour

(vs)

Elizabeth Kniffen

And now comes again the said Defendant by her Counsel and prays an Appeal of this cause to the Supreme Court of the State of Illinois which is allowed to her upon the condition that she file her Appeal Bond within Fifteen days in the penal sum of Four hundred dollars, to be approved by the Judge of this Court, signed by William H. Stow as surety by agreement of parties.

And thereafter to wit on the ninth day of November in the year of our Lord one thousand eight hundred and fifty eight, the said Defendant filed in the Office of the Clerk of said Court her Appeal Bond as aforesaid, which said Bond is in the words and figures following, that is to say,

" Know all Men by these presents That we Elizabeth Kniffen and William H. Stow of the County of Cook and State of Illinois are held and jointly

bound unto George Armour also of the same County & State in the penal sum of four hundred 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 finally by these presents.

Witness our hands and seals this Eighth day of November A.D. 1858.

The Condition of the above obligation is such that whereas the said George Armour did on the fourth day of October A.D. 1858 in the Cook County Court of Common Pleas, in and for the County and State aforesaid and of the September Term thereof A.D. 1858 recover a Judgment against the above bounden Elizabeth Kniffen for the recovery of Sublot four of lot Nineteen in Block forty six in the Original Town of Chicago in Cook County Illinois, besides Costs of Suit from which said Judgment of the said Cook County Court of Common Pleas, the said Elizabeth Kniffen has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Elizabeth Kniffen shall duly prosecute her said Appeal with Effect, and moreover pay the amount of the Judgment, costs, interest and damages, rendered and to be rendered against her, in case the said judgment shall be affirmed in the said Supreme Court; then the above obligation to be void otherwise to remain in full force and virtue.

(signed) Elizabeth Kniffen
W. H. Stow

And afterwards to wit on the day of
A. D. one thousand eight hundred and fifty eight the said
defendant filed in the Office of the Clerk of said Court, his
Bile of Exceptions in said suit; Which said Bile of
Exceptions is in the words & figures following, that is to say,
"George Armour, In the Cook County Court of Common
Pleas. September Term A. D. 1858
Elizabeth Kniffen } Ejectment"

"Be it remembered that on the sixteenth day of October in the year of our Lord one thousand eight hundred and fifty eight, after the trial and verdict and judgment on the Verdict in said cause, but during the term at which the Trial was had the said defendant by Arthur W. Wendell his Attorney, came and moved the Court to set aside the same, and to grant him a new trial; Not under the Statute, but for reasons assigned; Which Motion duly filed in said cause is as follows.

"State of Illinois,
Cook County, ss. In the Cook County Court of
"Elizabeth Kniffen Common Pleas.
at September Term A. D. 1858.
George Amour

Arthur W. Wendell being first duly sworn doth depose and say - that he is and for a year past has been the Attorney of the above named defendant in this Cause, that he had fully prepared and was ready for Trial at this term, and personally was desirous of having said Cause tried - that he was absent on Saturday last

from the City to fulfil an Engagement made three weeks before
and fixed for Saturday as he this affiant supposed that by
that time said Cause would have been reached & tried -

Affiant further saith that he made arrangements to
return to the City by the Night Express train upon the
Burlington Road, by which he hoped to arrive in this City
on Sunday morning - that with purpose he stopped by
the Depot Saturday night, and especially engaged a man to
sit up, to call affiant in time for said Express train, and
to signal the train - that train not stopping unless specially
signalled - that through the negligence or stupidity of the
man so engaged by affiant, altho' affiant was ready to
take the cars when they approached, he had neglected to
provide himself with a Lamp, to signal the train and
unable to make the signal and in consequence the train
did not stop and affiant was left - Affiant further saith
that he then hoped to return to Chicago Monday morning
by the Mendota morning accommodation train, arriving
here at 11 A.M. of ^{each} ~~week~~ day - and was ready to take
the same at half past seven on Monday morning - the
usual hour of its reaching the Bristol Station where
affiant was - that affiant then learned for the first time
that said Mendota Train had been withdrawn on
Saturday and would be run no more this season, leaving
no means whatever by which affiant could possibly return
to this City before the arrival of the Monday day Express
Train from Burlington, arriving at said Station at half
past three o'clock in the afternoon of each day or on

throughouts and reaching Chicago between six and seven o'clock
in the Evening, by which train affiant returned to this City
Monday Evening - Affiant was extremely anxious to return
to this City by Sunday Morning and made every exertion in
his power to do so, and should have done so, but for the
neglect of the person employed by him to stop the train as
aforesaid - that affiant was expressly informed on Saturday
as he went out, by the Conductor of the morning Express train
that the Accommodation train from Mendota would be run on
Monday as usual - Affiant had not then, or afterwards till
he was informed on Monday Morning as aforesaid, that a
change had been made - Affiant used his utmost endeavors
in entire good faith by every means in his power to return
to Chicago first by Sunday Morning, then by Monday
noon - all fruitlessly - Since his return to Town affiant
has been confined to his room by a severe cold & illness
till this morning, whereby he has been prevented from
making earlier application to the Court - Affiant has
diligently and thoroughly as he believes prepared himself
for Trial of said Cause; and that the necessary deeds &
instruments of title, without which defendant could not
possibly defend said Suit, were in affiant's possession and
solely accessible to him, and not to defendant, during affiant's
absence as aforesaid, - has examined the same & believes that
the Defendant has a perfectly valid and good title to the
premises in question in this case, that he deems the case
one of great importance in point of value and of the legal
character of the title - and he thinks that great hardship

and injustice will be suffered by the defendant, unless the Court grant a new trial - Affiant will if required by the Court be ready to try said cause at any day of this term."

"Subscribed & sworn to before me this 8th October 1858"

(Seal) "Ans: Summersfield
Not: Sub:"

"Elizabeth Kniffen" Cook County Court of Common
Plas of September term 1858.
at
George Armour's Motion,

"And now comes the said defendant by Arthur W. Windett his Attorney, and moves to set aside the Verdict and Judgment rendered in said cause, and that the Court grant her a new trial, upon the grounds set forth in the Affidavit herewith filed."

"Arthur W. Windett, Othy for deft."

Which Motion the Court being advised of the same, then & there overruled and refused to grant the said defendant a new trial, upon his said Motion and affidavit therewith filed and above set forth. But did not refuse the defendant a new trial under the Statute nor did defendant pay or offer to pay the Costs or any of them. To which opinion and ruling of the Court, the said Defendant by his said Attorney, then and there excepted And then and there requested the said Court to sign, seal and allow this his Bill of Exceptions, which is accordingly done.

John M. Wilson (Seal)

State of Illinois
County of Cook

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the said County and State Do hereby Certify That the foregoing is a true and correct Transcript of the papers now on file in my office, and of all proceedings entered of Record in said Court, in a certain suit wherein George Armour is Plaintiff and Elizabeth Kniffen is defendant.

In witness whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago, in said County, this Thirtieth day of January in the year of our Lord one thousand Eight hundred and fifty nine.

Walter Kimball Clerk



Supreme Court of the
State of Illinois
Third Grand Division

Elizabeth Kniffen

April Term AD 1889

George Ammer

And now comes the said Elizabeth Kniffen Plaintiff in Error by Arthur W. Midett her Attorney and says that in the record of judgment and proceedings of the Court below in the above entitled Cause there is great and manifest error in this writ:

- First. The Court erred in trying said Cause without a Replication being ^{first} to the plea
- Second. The verdict of the Jury is insufficient informal Contrary to Law and void
- Third. The judgment of the Court upon the verdict is insufficient, informal. Contrary to Law and void
- Fourth. The Court erred in overruling the motion to set aside the verdict, and for a new trial and in rendering said judgment upon said verdict
- Arthur W. Midett
Atty for Appellant

And the said deft in Error by Seate McC
Arthur & Jewett his Attorneys Counsel and
says that there is no error in the Record
and proceedings or in giving the judgment
aforesaid, in manner and form as alleged

by the p[er]f[ect] in ev[er]y ap[er] and
wherefore he prays that said Judgment
may be in all things affirmed &c
Scutus M[er]it[us] & Jewels
Left att[est]

198
In the Cook County Court
of Common Pleas,

George Armour }

(vs)

Elizabeth Kniffin }

Record Asst.
of Court & Recorder

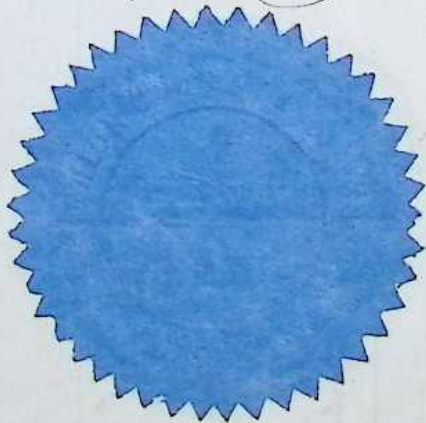
Filed Apl. 19. 1889
Leland Ch.

Draught 4.60

Cert. of Sale

35
Paid to by M. H. Shaw
M. H. Shaw

George Armour was plaintiff and Elizabeth Kniffen was
Defendant.



In testimony whereof I the said Walter
Kimball have hereunto set my hand and
affixed the Seal of said Superior Court
at Chicago in said County, this tenth
day of May A. D. Eighteen hundred
and fifty nine.

Walter Kimball Clerk

198
State of Illinois
Cook County

George Armour }
— (vs) —

Elizabeth Kniffen }

Certified Copy
Amended Order and
Judgment.

Filed May 16. 1859
L. Leland
Clerk

Monday Morning October 14th 1858.

George Armour }
vs. } *Exemption*
Elizabeth Kniffen }

This day comes said Plaintiff by Deacons
Mr. Allister, Bennett & Peabody his Attorneys and the said
Defendant by A. W. Knicker his Attorney also comes and issues
being joined herein it is ordered that a Jury come thereupon
comes the Jury of good and lawful men to wit: Lorenzo
Snow, George Stevens, J. T. Clark, G. S. Fay, Joseph Spaw, Jr.
A. H. Gardner, W. S. Nichols, W. Claxton, W. Sutton, D. H. Hill
James Youngs and G. Delmarter, who being duly elected, sworn
and sworn to try the issues joined aforesaid, after hearing the
testimony adduced, arguments of Counsel and instructions of the
Court, retire to consider of their Verdict, and afterwards come
into Court and say to the Jury find that the Plaintiff is the
owner in fee simple of the premises described in his Declaration
and the said Defendant guilty in manner and form as alleged
in said Plaintiff's Declaration of withholding from said Plaintiff
the possession of the premises described therein as follows, to wit:
A certain lot piece or parcel of land situate lying and being in
the City of Chicago, in the County of Cook, known & described
as follows, to wit, namely, Sublot Number four (4) of Lot
Number Nine (9) in Block Number forty six (46) in the
Original Town of Chicago, in said County of Cook and State

of Illinois, with the privileges and appurtenances thereto
belonging, or in anywise ascertaining.

Therefore it is considered that the said Plaintiff is the
owner in fee simple of the premises described in his Declaration
and that he do have and recover of the said Defendant the
possession of the premises described in his said Declaration
and hereinbefore described and that he have a Writ of
possession therefor, and that he also recover of the said
Defendant his Costs by him about his suit in this behalf
expended and have execution therefor

State of Illinois)
Cook County . . .) s.s.

I Walter Kimball, Clerk of the Superior
Court of Chicago (late Cook County Court of Common Pleas)
in said County of Cook and State aforesaid Do hereby
certify the above and foregoing to be a true and correct
copy of the ~~Verdict~~ ^{Verdict} and judgment, entered of record in said
Court in a certain suit heretofore pending therein, wherein