

13289

No. _____

Supreme Court of Illinois

Curtis

vs.

Root

United States of America
State of Illinois
Kane County
City of Elgin

Pleas before the Honorable Benjamin
F. Parks Judge of the Court of Common Pleas
of the City of Elgin in the County of Kane and
State of Illinois at a Special term of said
Court began and held at the Court Room
in the City of Elgin in said County on the
nineteenth day of March in the year
one Thousand Eight hundred and Sixty

Present The Honorable Benjamin F. Parks Judge
Ethan J. Allen Sheriff of Kane County
E. L. Joslyn State Attorney

attest
A. W. Padelord
Clerk

Be it remembered that heretofore
to wit on the 13th day of February A.D.
1860, the following copy of Record was filed
in the Office of the Clerk of the Court of Common Pleas
of the City of Elgin which is in the words and
figures following to wit:

Pleas began before the Honorable
Isaac G. Wilson Judge of the thirteenth Judicial
Circuit and Presiding Judge of the Kane
County Circuit Court State of Illinois
At a term of Kane County Circuit Court

began and held at the Court house in Geneva in said County on the Eighth day of November in the year of Our Lord One thousand Eight hundred and fifty two

Present the Hon Isaac G. Wilson Judge
Amos B. Coon State Attorney
Luther Dearborn Sheriff
Attest
Chas B. Wells Clerk

And whereas afterwards to wit on the 8th day of November in the year of Our Lord One thousand Eight hundred and fifty two it being one of the days of the November Term of the Kane County Circuit Court aforesaid the following proceedings amongst others was had to wit:

"Anson Root

vs

George Stringer

Henry Bishop

John Bishop

Ejectment

This day came the Plaintiff by Plato his Attorney and files his declaration against the defendants, and on his motion, it is ordered by the Court that the defendants plead herein in twenty days"

And whereas afterwards to wit on the 4th day of December in the year of Our Lord One thousand Eight hundred and fifty two it being one of the days of the Kane County Circuit Court aforesaid the following proceedings among others was had to wit:

"Anson Root
 vs
 George Stringer
 Henry Bishop
 John Bishop } Ejectment

Leave is given to George
 Curtis to appear and
 defend herein in place of George Stringer
 Henry Bishop and John Bishop, and by
 agreement of parties it is ordered by the Court
 that the venue herein be changed to the County
 of Kendall in the Ninth Judicial Circuit.

State of Illinois }
 County of Kane }

I the undersigned Clerk
 of the Kane County Circuit Court in and for
 the said County and State aforesaid do hereby
 certify that the foregoing is a true copy of the
 Record in the above entitled Cause in this
 Office and that the accompanying papers
 numbered "1" "2" & "3" are all of the papers
 filed in and pertaining to said suit.

LS

Witness Luther Dearborn Clerk of
 said Court and the Seal thereof
 at Geneva in said County this
 12th day of March AD 1853.

Luther Dearborn
 Clerk.

On the back of which said Record is
 an indorsement in the words and figures
 following to wit:

"Filed March 15. 1853

J M Crothers Clerk

Filed Nov. 19th 1852. C. B. Wells (Clerk)

And afterwards to wit: on the 13th day of February A.D. 1860. the following Narr in Ejectment was filed in the Office of the Clerk of the Court of Common Pleas of the City of Elgin aforesaid which is in the words and figures following to wit:

State of Illinois } Kane Circuit Court of the
Kane County } ss November Term 1852.

Anson Root Plaintiff in this
Suit by Plato his Attorney complains of George
Stringer, Henry Bishop and John Bishop
defendants according to the form of the
Statute in such cases made and provided
of a plea in Ejectment. For that the said
Plaintiff heretofore to wit on the seventh
day of January A.D. 1851. was possessed
of the following described lands and premises
to wit, the South half of the North East
quarter of Section twenty seven in Township
number forty one North of Range eight
East of the 3^d principal Meridian. Also
a certain other lot of land located in the
South East Corner of the North West quarter of
Section twenty seven aforesaid and bounded
as follows to wit: beginning at the South
East Corner of said quarter Section. Thence
north $\frac{1}{2}^{\circ}$ west along the East line of said
quarter Section 20 chains to the North East
corner of the South East quarter of said
North West quarter. Thence South $88\frac{1}{4}^{\circ}$
west along the North line of said South
East quarter 12. Chains & 53 links to the

centre of the road passing north by George Stringers. Thence north $3\frac{1}{4}^{\circ}$ west 20 chains and 3 links to the south line of said quarter section. Thence east along said south line to the place of beginning 13 chains & 78 links - in the County of Kane and State of Illinois in which premises the said Plaintiff claims an estate in "fee simple," and being so possessed thereof the said defendants afterwards & with on the first day of March 1851. entered into and upon the said premises and from thence hitherto unlawfully withhold from the said Plaintiff the possession thereof to the damage of the said Plaintiff of one thousand dollars and therefore he brings suit &c. by his Atty &c.

W. B. Plato

To the above named defendants
You will please to take notice that on the first day of the November Term of the Kane County Circuit Court to be held at Geneva on the 2^d Monday in November next a declaration of which the foregoing is a copy will be filed with the Clerk of said Court and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead, a judgement by default will be entered against you and the Plaintiff will recover possession of the lands in said

declaration mentioned

Dated this 15th day of October A.D. 1852
W. B. Plato
Atty of Plaintiff

State of Illinois }
Kane County, Jo. } George W. Renwick being
duly sworn doth depose
and say that on the 28th day of October A.D.
1852. he delivered a copy of the foregoing
declaration and notice to George Stringer
John Bishop & Henry Bishop they being
then in possession of & occupying the premises
described in said declaration

G. W. Renwick
Sworn & subscribed before me this 9th day of
Nov 1852. C. B. Wells Clerk

On the back of which said Narr is
an indorsement in the words and figures
following to wit:

"Filed Nov 8th 1852 C. B. Wells Clerk"
"Filed March 15, 1853 J. M. Crothers Clerk"

And afterwards to wit on the
same 13th day of February A.D. 1860,
was filed in the Office of the Clerk of the
Court of Common Pleas of the City of Elgin aforesaid
a Plea in Ejectment which is in the words &
figures following to wit:

State of Illinois
Kane County
Circuit Court

United States of America
State of Illinois } ss
Kendall County }

ES } Hear before the Honorable Madison
E. Hollister Judge of the Ninth
Judicial Circuit of the State of
Illinois and presiding Judge
of the Kendall County Circuit
Court at a term thereof begun and held
at the Court House in Oswego on the
9th day of January in the year of
Our Lord One thousand Eight hundred
and sixty and the year of the Independence
of the United States of America the Eighty third
Present the Honorable Madison E. Hollister Judge
Washington Bushnell Esq. State Attorney.
Geo M. Wallenback Clerk
Wright Murphey Sheriff

Attest

G. M. Wallenback
Clerk

Be it remembered that heretofore to wit
on the 19th day of March A.D. 1853 the same being
one of the days of the March Term A.D. 1853.
of the Kendall County Circuit Court then in
session in the Court House in said County for the
transaction of business The following proceedings
were had and entered of Record in said
Court.

that is to say

Anson Root
 v
 George Curtis } Ejectment

This day this Cause
 is Continued -

And afterwards to wit: on the 29th
 day of September A.D. 1853. The same being
 one of the days of the Sep^r Term A.D. 1853.
 of the Court aforesaid sitting as aforesaid
 for the transaction of business the following
 proceedings among others were had and
 entered of Record to wit:

Anson Root
 v
 George Curtis } Ejectment

This day come the parties
 to this suit by their attorneys and by
 agreement this Cause is Continued.

And afterwards to wit on the 17th
 day of March A.D. 1854 the same being
 one of the days of the March Term A.D. 1854
 of said Court sitting for the dispatch of
 business in the Village of Oswego aforesaid
 at the Court House aforesaid the following
 among other proceedings were had in
 said Court and entered of Record, to wit:

Anson Root
 v
 George Curtis } Ejectment

This day this Cause is Ordered to be Continued.

And afterwards to wit on the 19th day of September in the year of Our Lord one thousand Eight hundred and fifty four the same being one of the days of the September Term A D 1854, of said Court sitting for the transaction of business in the Court House in Oswego in the County aforesaid the following among other proceedings were had and entered of Record to wit:

Anson Root
v
George Curtis } Ejectment

And now on this day came the Plaintiff by his Attorney and the said defendant by his Attorney and they agree that in this Cause a Jury shall be waived and that this Cause be submitted to the Court for trial.

And afterwards to wit: on the 23^d day of September A D 1854 the same being still one of the days of the Term of said Court last aforesaid sitting as aforesaid, the following proceedings among others were had in said Court and entered of Record to wit:

Anson Root
v
George Curtis } Ejectment

And now on this day

came the parties to this suit by their Attorneys and this cause having heretofore been submitted to the Court for trial and the Court hears the Evidence and not being fully advised in the premises takes this Case under advisement -

And afterwards to wit on the 13th day of March A.D. 1855. the same being one of the days of the March Term A.D. 1855. of said Court sitting for the dispatch of Business as aforesaid, the following among other proceedings were had and entered of Record in said Court to wit:

Anson Rook }
 vs } Ejectment
 George Curtis } And now on this day
 Came the parties to this suit
 by their Attorneys and the Court now being
 fully advised in the premises finds the
 issues in this Cause for the Defendant -

Thereupon it is considered by the Court that the Plaintiff have nothing for his said writ - and that the said Defendant recover of the Plaintiff his Costs herein Expended and that he have Execution therefor - And by Agreement of the Parties the time for preparing and tendering a bill of Exceptions is extended to the first of May next.

And afterwards to wit on the

11th day of September A.D. 1855, the same being one of the days of the Sept Term A.D. 1855, of the Court aforesaid sitting for the transaction of Business as aforesaid the following proceedings among others were had in said Court and entered of Record to wit:

Anson Root
v
George Curtis } Ejectment
And now on this day
Came the Plaintiff by
Plato his Attorney and moves the Court
for a new trial in this cause (which
was decided at the late March Term of
this Court) under the Statute which motion
was sustained by the Court and a New
trial granted -

And afterwards to wit: on the 11th
day of June A.D. 1856 the same being one
of the days of the Special June Term A.D.
1856, of said Court sitting for the transaction
of Business in manner and form as aforesaid
the following among other proceedings were
had in said Court and entered of Record
to wit:

Anson Root
v
George Curtis } Ejectment
This day this Cause is
Continued by agreement on file.

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And afterwards to wit on the 15th day of September AD 1856. the same being one of the days of the September Term AD 1856 of said Court sitting for the transaction of Business in the Court House at Oswego aforesaid. The following among other proceedings were had in said Court and entered of Record to wit:

Anson Root
v
George Curtis } Ejectment

This day came the parties to this suit by their Attorneys and by ^{their} Agreement this Cause is continued.

And afterwards to wit on the 7th day of April AD 1857 the same being one of the days of the April Term AD 1857. of said Court sitting for the transaction of Business in the Court House in Oswego in said County when the following proceedings among others were had and entered of Record in said Court to wit:

Anson Root
v
George Curtis } Ejectment

And now on this day came the Plaintiff by Plato his Attorney and the Defendant by Wright his Attorney and by their Agreement this Cause is set for trial on the Seventh (7th) day of the present Term of this Court.

And afterwards to wit on the 13th day of April A.D. 1857, the same being one of the days of the Term of ~~the~~ said Court last aforesaid still in session for the transaction of business aforesaid the following among other proceedings were had in said Court and entered of Record to wit: -

Anson Root
 vs
 George Curtis } Ejectment
 And now on this day comes the Plaintiff by Plato his Attorney as well as in his own proper person and the said Defendant by Wright his Attorney also comes and upon motion of the Plaintiff's Attorney it is considered by the Court that a Jury also come and thereupon come the following named persons as a Jury to wit Jacob F. Holt, James Stafford, Thomas G. Getty, John Bon-ton, James A. Van Emem, Albert Cook, Charles Sutherland, William Ladd, C. D. Shaw, James A. Durand and Richard R. Ferris and George W. Hartwell each of whom were severally chosen selected and sworn and after hearing the evidence and receiving the instructions of the Court retire in charge of an Officer to consider upon their verdict - And who afterwards come into court and say we the jury find for the Plaintiff and that he is possessed of the title of the Land in fee simple which is ordered to be entered of Record by the Court And thereupon the

Defendant moves the Court for a New Trial herein which is overruled by the Court to which decision of the Court the Defendant by his Counsel Excepts. It is therefore considered by the Court that the Plaintiff recover against the Defendant according to the Verdict of said Jury the possession of the premises described in the Plaintiff's Declaration to wit: The South half of the South East quarter of Section twenty seven in Township Forty one North of Range eight East of the 3^d principal Meridian, also a lot of land situated in the South East corner of the North west quarter of Section twenty seven aforesaid and bounded as follows to wit: Beginning at the South East corner of said Quarter Section Thence north $\frac{1}{2}^{\circ}$ west along the East line of said Quarter Section 20 chains to the North East corner of the South East quarter of said North west quarter Thence South $88\frac{1}{4}^{\circ}$ West along the North line of said South East quarter 12 Chains & 53 links to the centre of the Road passing north by George Stringers thence North $3\frac{1}{4}^{\circ}$ West 20 chains and 3 links to the South line of said quarter section thence East along said South line to the place of beginning 13 chains & 78 links. And it is further considered that Plaintiff have and recover of the Defendant his costs in this behalf expended and that have his writ of possession for said premises according to the face, form, and effect of his said recovery & Execution for his costs aforesaid.

And afterwards to wit on the 14th day of April A.D. 1857, the same being one of the days

of the Term of said Court last aforesaid sitting for the transaction of Business aforesaid the following among other proceedings were had and entered of Record to wit:

Anson Root }
 or } Ejectment
 George Curtis }

And now on this day comes the Plaintiff by Plato his Attorney and the Defendant by Wright his Attorney also comes, and the Court after hearing the parties in relation to the Defendants Motion for a new trial herein and being fully advised in the premises overrules the same - And thereupon came the Defendant by Wright his Attorney and prays an Appeal to the Supreme Court -

Thereupon it is considered by the Court that the defendant be allowed an Appeal to the Supreme Court upon condition that Paul R. Wright enter into Bond to said Plaintiff in the penal sum of \$200.⁰⁰ in three days from this date.

And afterwards to wit on the 6th day of October AD 1857. the same being one of the days of the October Term AD 1857. of said Court sitting for the transaction of business in the Court House at Oswego in said County the following among other proceedings were had and entered of Record in said Court to wit:

Anson Root }
 or } Ejectment
 George Curtis }

And now on this day comes

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the Defendant by Wright his Attorney and moves the Court to vacate the Judgment rendered herein at the April Term of this Court AD 1857. And it appearing to the Court that the Costs herein have been paid and that the space of one year has not elapsed since the rendition of the Judgment aforesaid thereupon it is considered by the Court that the said Judgment be vacated and that a new trial be granted herein and that this suit be continued till the next Term of this Court all of which is ordered to be entered of Record.

And afterwards to wit on the 10th day of April AD 1858. the same being one of the days of the April Term AD 1858 of said Court sitting for the transaction of Business in the Court House at Oswego in said County the following among other proceedings were had in said Court and entered of Record to wit:

Anson Root	} Ejectment	This day this cause is Ordered to be continued
George Curtis		

And afterwards to wit on the 4th day of October AD 1858. The same being one of the days of the October Term AD 1858. of said Court sitting for the transaction of Business in the Court House in Oswego in said County the following among other proceedings were had in said Court and entered of Record to wit:

Anson Root }
 vs } Ejectment
 George Curtis } This day this cause is
 Continued by Stipulation
 on file.

And afterwards to wit on the 11th day
 of January A.D. 1860 The same being one
 of the days of the January Term A.D. 1860
 of said Court sitting for the transaction of
 Business in the Court House in Oswego
 the following among other proceedings were
 had in said Court and entered of Record to
 wit:

Anson Root }
 vs } Ejectment
 George Curtis } And now on the
 day comes the Plaintiff
 by Plato his Attorney and moves the Court
 to vacate the order entered herein for a
 new trial at the October Term of this Court
 in the year of our Lord one Thousand Eight
 Hundred and fifty seven - And thereupon
 came the Defendant by Wright his Attorney
 and moves the Court to suppress the Disposition
 of J. R. Morgan and R. W. Rudelford filed herein
 and afterwards this suit is set for trial by
 consent next Monday afternoon -

And afterwards to wit on the 13th day
 of January A.D. 1860. the same being one of the
 days of the Term of Court last aforesaid the

following among other proceedings were had and entered of Record in said Court

Anson Root } Ejectment
 v
 George Curtis } And now upon this day
 the Court after due Consideration of the Defendants Motion to suppress the Depositions of J. B. Morgan and R. W. Padelford herein and being fully advised in the premises overrules the said Motion.

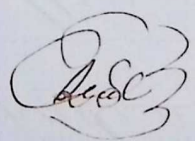
And afterwards to wit on the 16th day of January A.D. 1860. the same being still one of the days of the Term of the Court last aforesaid sitting for the transaction of business as aforesaid the following among other proceedings were had in said Court and entered of Record, to wit:

Anson Root } Ejectment
 v
 George Curtis } And now on this day came the Defendant by Wright and Moore his Attorneys and moves the Court to Exclude the agreed Statement of facts filed herein and the Court after hearing the parties in relation to the Defendants motion and being fully advised in the premises considers that so much of said agreed statement of fact as are in the words and figures following be and the same are hereby excluded, that is to say
 "That on the 8th day of January 1848. Weed Masters and
 "Weed commenced suit on the Appeal Bond Executed

" by said Root as aforesaid and at the Jan-
 " uary Term of the Kane Circuit Court 1850. re-
 " covered a Judgment against said Root for the
 " full amount or ballance of their original
 " Judgment & Costs against said Ambrose
 " without any deduction on account of the
 " Sale of the lands on their Execution as aforesaid
 " the whole amount of which Judgment & Costs
 " was afterwards paid by said Root -"

And afterwards came the parties
 hereto by their Attorneys aforesaid and by
 agreement of the parties the venue herein is
 changed to the Court of Common Pleas
 of the City of Elgin whereupon it is consid-
 -ered by the Court that the Clerk of this Court
 transmit all papers and proceedings herein
 to the Clerk of the Court of Common Pleas of the
 City of Elgin -

State of Illinois }
 Kendall County } ss I George M Hollenback
 Clerk of the Circuit Court of
 said County do hereby certify that the above and
 foregoing is a true and correct transcript and copy
 of all proceedings had and entered of Record in
 said Court in a certain matter in which Anson
 Root was Plaintiff and George Curtis was Defendant
 and that the accompanying papers marked from "A"
 to "L" inclusive are all the papers remaining on
 file in my Office pertaining to said Cause



In testimony whereof I have hereunto set my hand
 and affixed the seal of said Court the 6th day of February
 AD 1860. G. M. Hollenback, Clerk

And whereas afterwards to wit
on the 29th day of March A.D. 1860. the same
being one of the days of the March Special Term
A.D. 1860. of the said Court of Common Pleas of the
City of Elgin aforesaid sitting as aforesaid
for the transaction of Business the following
proceedings among others were had (and
Entered of Record to wit:

Anson Root }
vs } Exctment
George Curtis }

This day came the
Plaintiff in this suit by his Attorney
Plato Joslyn & Riddle and the defendant
by his Attorney J. R. Wright and by
agreement of the parties this suit is
continued for the Term -

And afterwards to wit: on the 13th
day of September A.D. 1860. the same being
one of the days of the September Term
A.D. 1860 of said Court sitting for the trans-
action of Business in the Court House
in the City of Elgin aforesaid the following
among other proceedings were had and
Entered of Record to wit:

Anson Root }
vs } Exctment
George Curtis }

This day comes the Plaintiff
by Plato, Joslyn & Riddle
his Attorneys and the Defendant by J. R.

Wright his Attorney and on motion of the Plaintiff It is ordered by the Court that a Jury Come whereupon come a Jury of good and lawful men to wit: E. H. Reeves, John Day, D. A. Drunison, C. J. Hawkins, Thomas Parkins, ~~Thomas~~ Clark, David Harvey, H. C. Adams, R. K. Florence, L. T. Pember, Jonathan Teyft Jr. & Thomas Clark, H. P. Poolidge being severally elected tried and sworn also come and after hearing the evidence argument of Counsel and instructions of the Court retire under the charge of a sworn Officer of the Court to consider of their Verdict - It is agreed by the parties that the jury may seal their verdict and bring it into Court to-morrow morning at the opening of Court

And afterwards to wit on the 14th day of September A.D. 1860 the same being still one of the days of said Court last aforesaid sitting as aforesaid the following proceedings among others took had in said Court and entered of Record to wit:

Anson Pook }
 vs } Ejectment
 George Curtis }

This day come the parties to this suit and the jury heretofore empannelled and present their sealed Verdict to the Court which is read by

the Court and confirmed by the jury as follows. We the jury find the Defendant guilty and find that the Plaintiff is possessed of the premises in fee simple.

It is therefore considered by the Court that the Plaintiff recover possession of the lands described in the declaration, to wit:

The south half of the north east quarter of section twenty seven in Township Number forty one north of Range Eight East of the 3^d principal Meridian. Also a certain other lot of land located in the south east corner of the northwest quarter of section twenty seven aforesaid and bounded as follows to wit: Beginning at the south east corner of said quarter section. Thence north $\frac{1}{2}^{\circ}$ west along the east line of said quarter section 20 chains to the north east corner of the south east quarter of said northwest quarter. Thence south $88\frac{1}{4}^{\circ}$ west along the north line of said south east quarter 12 chains & 53 links to the centre of the road passing north by George Stringers; Then north $3\frac{3}{4}^{\circ}$ west 20 chains and 3 links to the south line of said quarter section; Thence East along said south line to the place of beginning 13 chains & 78 links in the County of Kane and State of Illinois and that the Plaintiff have a writ of possession therefor. And that the Plaintiff have judgment against the Defendant for his costs in this suit.

expended and that he have execution therefor— (Whereupon the Defendant moves for a new trial. The Court being fully advised overrules the motion, to which ruling the Defendant Excepts and thereupon prays an Appeal to the Supreme Court, which is allowed by the Court on Paul R. Wright filing a Bond in the penal sum of Two Hundred Dollars with Paul R. Wright as principal with a security to be approved by the Clerk by agreement of parties. Bond to be filed within thirty days. Bill of Exceptions to be filed by the first day of December next—

And afterwards to wit on the 14th day of September A.D. 1860. a Bond was filed which is in the words and figures following to wit:

Know all men by these presents, that we Paul R. Wright and Orlando Davidson of the County of Kane (and State of Illinois are held and firmly bound unto Anson Root of said County in the penal sum of two hundred dollars to be paid to the said Root his Executors or Administrators for which payment well and truly to be made we bind ourselves, our heirs Executors and Administrators firmly by these presents. Sealed with our seals and dated this 14th day of September A.D. 1860.

The Condition of this obligation is such that whereas the said Root did, at the September Term A.D. 1860. of the Court of Common Pleas of the City of Elgin in said Kane County, recover a judgment against George Curtis in a certain suit of Ejectment therein between the said Anson Root, Plaintiff and George Curtis Defendant for possession of certain lands described in the Declaration in said Cause & for the costs of suit, from which judgment the said Defendant George Curtis has prayed an Appeal to the Supreme Court of the State of Illinois.

Now if the said George Curtis shall prosecute his said Appeal with effect and shall pay all costs & damages & whatever judgment shall be rendered against him in case the said judgment shall be affirmed then this obligation to be void. Otherwise to be and remain in full force.

Paul R. Wright Seal
A. Davidson Seal

On the back of the above named bond is the following endorsement to wit:
"Approved and Filed Sept. 14. 1860
R. W. Adelford
Clerk"

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And afterwards to wit on the 30th day of November A.D. 1860 a bill of Exceptions was filed in the office of the Clerk of the Court of Common Pleas of the City of Elgin which is in the words and figures following to wit:

Auson Root	} Ejectment	Court of Common Pleas of the City of Elgin September Term 1860.
George Curtis		

Be it remembered that on the 13th day of September 1860, the same being one of the days of the September Term 1860 of said Court, this cause came on for trial before said Court & a jury, And an Agreed Statement of facts was offered in Evidence in the words and figures following to wit:

Auson Root	} Ejectment	Kendall Co. Circuit Court
George Curtis		

The following facts are agreed upon by the parties to this suit to wit: That at the April term 1845 of the Kane County Circuit Court Weed Master and Weed obtained a judgment against one Ruel Ambrose of Kane Co. for the sum of \$833.72 & costs, On the same day Asher Rossiter also obtained judgment in said Court against said Ambrose for \$361.49 and costs of suit, And Executions were immediately issued by order of Court on affidavits filed in both cases Said Executions were forthwith levied upon a stock of Merchandise belonging to said Ambrose in the town of Elgin of

sufficient value to satisfy both Executions which goods were afterwards released by the Sheriff receiving a delivery bond executed by said Ambrose and the said Anson Root the plaintiff in this suit as surety - That afterwards and during the same term of said Court Ambrose took an Appeal in both cases from the Circuit to the Supreme Court and executed Appeal bonds according to the order of Circuit Court with the said Root as surety.

That at the time of executing the said delivery bond to the Sheriff the said Root took a Chattel Mortgage of said Merchandise from said Ambrose to indemnify him as said surety that afterwards in July 1845 Ambrose by and with the consent of Root exchanged said stock of Merchandise with Joshua P. Morgan & R.W. Padelford for the lands described in the declaration in this case and some town property in Elgin, the lands in question were owned by said Morgan and the town property by said Padelford. the lands in question were conveyed by said Morgan to said Ambrose by deed dated July 22nd 1845 acknowledged the 28th July and recorded August the 7th 1845 at the same time Padelford conveyed the town property to Ambrose who executed a Mortgage to Padelford to secure the payment of a part of the purchase money over and above the value of the goods deducting

the price of the farm in question said Ambrose executed to said Root a Mortgage of the lands in question and also the town property aforesaid which said Mortgage was dated and acknowledged the first day of August 1845 and recorded in the Recorder's office of said Kane County August 7th 1845 and is in the words and figures following to wit This Indenture made this first day of August A.D. 1845 between Ruel Ambrose and Rebecca his wife of the County of Kane State of Illinois of the first part and Aaron Root of the same place party of the second part Witnesseth as follows Whereas the said Root on or about the 24th day of April A.D. 1845 signed as surety for said Ambrose a bond to the Sheriff of Kane County for the forthcoming of certain goods and Merchandize seized by said Sheriff on two Executions issued out of the Clerk's office of the Circuit Court of said Kane County in favor of Weed Mastey and Weed and Asher Rossiter the whole amount being dollars and whereas the said Root also signed as surety for said Ambrose two certain appeal bonds in the cases Weed Mastey and Weed against said Ambrose and Asher Rossiter against said Ambrose tried at the last term of the said Kane County Circuit Court and appealed to the Supreme Court the whole amount of said appeal bond being Eighteen Hundred Dollars Now therefore

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quarter section thence East along David Smith line to the place of beginning thirteen chains and seventy eight links, containing twenty six $\frac{3}{4}$ acres be the same more or less. To have and to hold the same together with all and singular the hereditaments and appurtenances therunto belonging to the said Root his heirs Executors Administrators and assigns forever

Provided always and there presently are upon this condition that if the said Ambrose his heirs or assigns shall well and truly release and discharge the said Root from all liabilities incurred in consequence of signing said bonds then these presents to be and remain null and void

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written

In presence of
Saml. Hunting

Ruel Ambrose Seal
Rebecca Ambrose Seal

State of Illinois
Kane County $\&^{\text{ss}}$ I Saml. Hunting justice of the peace in and for the said County in the State aforesaid do hereby certify Ruel Ambrose and Rebecca Ambrose personally known to me as the persons whose names are subscribed to the within Mortgage appeared before me this day in person and acknowledged that they signed

Scaled and delivered the said instrument of writing as then free and voluntary act & for the uses and purposes therein set forth and the said Rebecca Ambrose wife of the said Abel Ambrose having been by me examined separate and apart ~~and~~ out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her she acknowledged she had fully and voluntarily executed the same and relinquished her ~~right~~ dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same

Given under my hand and Seal this first day of August AD 1845-

Saml. Huntington {Sub}
Justice of the Peace

State of Illinois }
Kane County }

This is to certify that the within Mortgage was left for record this Seventh 7th day of August AD 1845 at 12 o'clock M and that I recorded the same in Book A of Mortgages at pages 187, 188 & 189

Geo W. Gorton

Recorder of Kane Co Ill.

That at the December term 1845 at the Supreme Court the appeals taken by said Ambrose as above mentioned were dismissed for want of prosecution and a procedendo issued to the Kane Circuit Court and on the

21st day of January 1846 an Execution
 issued in the judgment of Weed Masters.
 and Weed which was afterwards returned
 by the Sheriff by order of the Plaintiff Attorney.
 On the 14th day of July 1846 another Execution
 issued on said judgment which was levied
 upon the lands in question and after being
 duly advertised the lands were sold by the
 Sheriff on the 15th day of August 1846 and
 bid off by E. E. Harvey Attorney of said
 Weed Masters and Weed for the sum of two
 hundred dollars. Said Harvey for value received
 afterwards on the 1st day of September ¹⁸⁴⁶ assigned
 the Sheriff's Certificate of sale to Thaddeus Spencer
 the witness whose deposition has been taken
 in this case. Said Spencer afterwards
 assigned said Certificate to Jonathan
 Havens a Creditor of said Ambrose. On
 the 7th day of February 1850 the Sheriff
 of said Kane County Executed a deed of
 said lands in due form to said Havens
 (no redemption having been made). Said
 Havens afterwards conveyed to the defendant
 in this suit by deed duly acknowledged
 and recorded before the commencement of this
 suit. That on the 18th day of February
 1847 Root the Plaintiff in this suit
 filed his bill in Chancery in the Kane
 Circuit Court against said Ambrose and
 others to foreclose the mortgage on the
 lands in question given by said Ambrose
 & wife as above set forth and at the
 February term 1849 of said Court obtained

a decree for the sum of \$567.²⁶/₁₀₀ & for a sale of the said lands and said lands were accordingly sold by a special Commissioner on the 2nd day of August 1849 to said Root for the sum of \$624.¹³/₁₀₀ being the amount of his decree interest and costs and on the 15th of November 1850 a deed was made to said Root by said Commissioner in due form of law which deed was duly acknowledged and recorded

[That on the Eighth day of January 1848 Weed Masters & Weed commenced suit on the appeal Bond executed by said Root as aforesaid and at the January term of the Kane Circuit Court 1850 rendered a judgment against said Root for the full amount or balance of their original judgment & costs against said Ambrose without any deduction on account of the sale of the lands on their Execution as aforesaid the whole amount of which judgment & costs was afterwards fully paid by said Root.]

It is also agreed that all the judgments decrees, Executions, Sales and Conveyances herein mentioned are in due form and that the defendant was in possession of the premises described in the declaration at the commencement of this suit

Each party reserves the right to object to the Competency of any one of the foregoing facts as Evidence

W. B. Plato

Att'y of Plaintiff

P. R. Wright

Att'y of deft.

Not to be considered by
the jury.

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The defendant objected to that part of said argument included in brackets and marked "Not to be considered by the jury," as incompetent evidence. The Court sustained said objection and refused to allow the same to be read as evidence to the jury to which decision of the Court in excluding said evidence the Plaintiff by his Counsel at the time excepted. The remainder of said argument was then read as evidence to the jury.

The Plaintiff further offered in evidence the depositions of Joshua P. Morgan & R. M. Padelford to which depositions as evidence and to each Interrogatory & answers therein ~~contained~~ the defendant objected all of which objections were overruled by the Court and the depositions were allowed to be read to the jury, to which rulings of the Court in overruling said objections and allowing the depositions to be read in evidence the defendant by his Counsel then & there excepted.

Said Depositions were in the words & figures following, to wit:

State of Illinois }
Kane County }
Joshua P. Morgan being duly sworn
deposes and says as follows to wit:

Interrogatory 1 On the part of the said Plaintiff
What is your Name, age & place of residence.
Ans J. P. Morgan, Fifty two, Elgin Kane County Illinois

Sub 2nd Are you acquainted with the parties to this
suit & Ruel Ambrose.

Ans I am acquainted with the Doctor & Ruel
Ambrose the other person I am not

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Int. 3^d

Were you ever the owner of the piece of land now in dispute between these parties,
Ans. I was.

Int. 4
Ans.

State when you was the owner of the said land
I was the owner of it twelve years ago
Objected to by Deft.

Int. 5

State fully when, to whom & for what you sold the said land

Ans.

It is my impression now that it is twelve years I sold it to Ruel Ambrose for twelve Dollars per acre. It amounted, I think to twelve hundred Dollars or thereabouts, I received my pay in goods

Int. 6

State the number of acres in the piece

Ans.

I think there was one hundred & five acres or thereabouts

Objected to by Deft

Int. 7

State who was in possession of the goods at the time of the exchange and state fully how the trade was made and with whom and who put you in possession of the goods

Ans.

Ruell Ambrose, Mr. Padelford & myself exchanged a farm and a house and lot in Elgin for the goods. Mr. Ambrose is the man we dealt with altogether. There was a levy made on the goods, in which Doctor Root was the receptor in which Mr. Ambrose agreed to have discharged. I did my business with Mr. Ambrose, Doctor Root gave us a discharge from it so that we were satisfied

Int objected to by Deft.

Int. 8. Do you know of Doctor Root taking any security of Mr. Ambrose in consideration of giving said release if so state what it was.

Ans. I think he had a Mortgage on the property on the farm, the farm I sold to Ambrose.

Int objected to by Deft.

Int. 9. State if the said sale of the said land to Ambrose, the release of the said goods by Root and the Mortgage of the said land to Root by Ambrose was one and the same transaction or bargain.

Ans. I considered it so.

Int. 10th Were the goods you speak of taken by you in payment for the land,

Ans. Yes Sir.

Int. objected to by Deft.

Int. 11th Was the Mortgage you spoke of given to Root to secure him for letting the said goods go as payment on said farm.

Ans. And as I said before we did the business with Mr. Ambrose receiving the release of the goods from Mr. Root. I think it was.

Int. 12th State fully what you know, if anything about the making out of the papers relating to the whole bargain,

Ans. I think Mr. Padelford made out the papers, a mortgage to Dr. Root signed by Mr. Ambrose, I deeded to Ruel Ambrose the farm. Mr. Padelford deeded to him the house & lot.

Int. 13th Int objected to by the Deft.
 State whether the said deeds and the Mortgage
 to said Root were made and signed at the same
 time or not.

Ans. I don't know. I can't say whether it was
 at the same time or not - I think it was about
 at the same time.

Int. 14 Did Padelford make out the deeds, Release
 and Mortgage all at the same time.

Ans. I think he did, or about the same time - It
 was considered the same transaction

Examination by Plaintiff closed.

J. P. Morgan

State of Illinois }
 Kane County }

Rodolphus W. Padelford being
 being duly sworn deposes
 and says as follows to wit:

Int. 1st By the Plaintiff What is your name, age
 and place of residence

Ans. My name is Rodolphus W. Padelford my age
 is fifty my residence is Elgin Kane County
 Illinois

Int 2nd Are you acquainted with the parties to this
 suit and Ruel Ambrose

Ans. I am acquainted with Aaron Root and
 Ruel Ambrose - I don't know Curtis

Int 3rd Did you & J. P. Morgan ever exchange any land
 or goods in Elgin with Ruel Ambrose & Aaron
 Root if you state all you know in relation
 to said exchange - state fully the whole
 transaction

Aug. 30

J.P. Morgan & myself exchanged real estate with Ruel Ambrose for goods. The goods prior to this exchange had been levied upon, by the sheriff against Ruel Ambrose. Morgan & myself refused to make the exchange without being indemnified against this levy. Anson Root was the recipient of the goods to the sheriff - Anson Root executed a bond of indemnity to Morgan & myself indemnifying us against any loss in consequence of the levy - Whereupon I executed to him, Ruel Ambrose, a deed of the house and lot in Elgin of J.P. Morgan & myself executed ^{a deed} to Ruel Ambrose of the farm. Ruel Ambrose made to Anson Root a mortgage on the property sold by Morgan & myself to Ambrose to secure Root for making the Bond of indemnity to Morgan & myself.

Int. Objected to by Deft.

Int. 4th Did Root at this time make to you and Morgan, a release of any claims to said goods.

Ans. I think not but the bond of indemnity.

Int. Objected to by Deft.

Int. 5th State whether Root required of Ambrose security before he would release or make said Bond of indemnity if you state if he obtained security and what it was.

Ans. He required it and obtained security on the premises sold him by Morgan & myself.

Int. 6. Did you draw the deeds from you & Morgan

to Ambrose & the Mortgage from Ambrose to Root spoken of, if you, state if it was all done at the same time or not.

Ans. I think I did, it is possible that I did not draw the Mortgage but I think I did. My impression is that it was all done at the same time, it is a long time ago, & I don't pretend to recollect every minutiae.

Int objected to by Deft.

Int 7th State what you know of the execution of the said deed, & Mortgage, state particularly as to the time of their execution. Whether they were executed at the same time or not & if not the reason why.

Ans. The deeds I think were executed at the same time, & the Mortgage before the papers were delivered, that is my impression, I had taken back from Ambrose a Mortgage on the house and lots that I had sold to Ambrose and it was the understanding that that should be the first lien. It is possible that Root's Mortgage was dated a little later in order to make my lien prior to the other.

Int 8th State if said deed, & Mortgage were then considered as relating to the one transaction or bargain ~~that~~ that you have stated.

Ans. I considered that they were. We would not buy the goods of Ambrose unless we were indemnified & Root would not indemnify unless he was secured.

Int 9th State if you know whether the land

deeded by Morgan to Ambrose & Mortgaged by Ambrose to Root in the transaction you have mentioned is the same land which is in controversy between the parties to this suit - State your knowledge on that subject.

Ans. If it is the same suit that I was a witness in at Oswego in Kendall County it is the same Examination closed on the part of Plaintiff

Int 1 By Defendant. Was the Mortgage you have mentioned from Ambrose to yourself delivered to you before you executed & delivered the deed of the house lots described in said Mortgage to Ambrose.

Ans. I think not.

Int 2^d Look at the Mortgage now shown you & state whether it is the same Mortgage you have referred to as given by Ambrose to yourself, if so, state the date of the Mortgage, the date of the acknowledgment and the date of the recording of the same as appears by the certificate of the Recorder thereon.

Ans. It is the same Mortgage. The date is July 22nd 1845 the date of the acknowledgment is July 28th 1845, the certificate of the Recorder shows that it was recorded July 30, 1845.

Int. 3^d Was the Mortgage from Ambrose to Root which you have mentioned executed and delivered prior to the recording of the Mortgage to yourself referred to in your last answer.

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Sus.

I think so.

R.W. Fadelord

R.W. Fadelord the witness whose deposition had been read was then sworn and testified as follows on the part of the Plaintiff

I knew E. E. Hawley, knew Thaddeus Spencer. Hawley was Attorney for Weed Masters & Weed. I know Spencer came here for the purpose of making a settlement of debt against Aubroe to persons in New York. Weed Masters & Weed & Rossiter were creditors. don't recollect as to Haven or Curtis. I think I had some conversation with Spencer. he was frequently with Aubroe. he bought a Mortgage of me on the home lot. - I think Spencer & Hawley were together some. Don't recollect about Haven or Curtis. I think Spencer represented one Sackett. I would not say that Spencer represented Weed Masters & Weed. My general impression is that Spencer represented more than the interest of Sackett but don't know that he represented Weed, Masters & Weed.

The original Mortgage from Aubroe to Root a copy of which was given in the agreed statement of facts was here shown to the witness who testified as follows:

"This mortgage is the one I referred to in my deposition. I think the body of the Mortgage is in Judge Wilson's hand writing. The body of the Mortgage is not in my hand writing. I know that the Mortgage was present during the transactions I don't know what day

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whether it was the same day that the deed was made or not, I think that the Mortgage was delivered at the same time with all the rest."

The Mortgage from Ambrose to the witness Radelford was here shown to witness and identified by him as the same Mortgage referred to in his deposition, The certificate of the Recorder indorsed on said last mentioned Mortgage was then read to the jury on the part of the defendant which certificate is in the words and figures following:

"Received for Record July 30th A.D. 1845, at 10 o'clock A.M. and Recorded the same in Book marked A of Mortgages at pages 167. & 168.
Geo W. Lorton Recorder Lane Co. Ill."

The foregoing was all the evidence given to the jury in the case. —

The following instructions were then asked on the part of the Plaintiffs and given by the Court.

1. If the jury believe from the evidence that the Mortgage given by Ambrose to Root was given to secure Root for the goods surrendered by him in payment of the purchase of said lands, and that the giving of the Deed to Ambrose and the Mortgage to Root was one transaction then the Mortgage was a lien and had preference over the judgments against Ambrose, and the jury should find for the Plaintiffs, if the jury further believes that Curtis had notice of said Mortgage.

2. If the jury believe from the evidence that the judgments against Ambrose were appealed to the Supreme Court and whilst such appeals were pending and undetermined, the said Ambrose purchased the farm in question and executed the Mortgage to the Plaintiff to secure the payment of the purchase money and that said Mortgage so given for that purpose was put upon record at the same time or as soon as the deed to Ambrose, then the Mortgage had a priority or preference over said judgments and the jury should find for the Plaintiff.

3. If the jury believe from the evidence that the Mortgage given by Ambrose to Root was given to secure the payment of the purchase money paid for the farm in question and that the giving of the deed to Ambrose and the Mortgage to Root by Ambrose was one transaction, then the Mortgage was a lien and had preference over the judgments against Ambrose, and the jury should find for the Plaintiff, provided they believe from the evidence that the defendant had notice of such Mortgage and the purpose for which it was given prior to his purchase of the lands in question.

To the giving of the said instructions on the part of the Plaintiff the defendant at the time Excepted.

The Defendant then asked the Court to instruct the jury as follows

1. That a judgment in the Circuit Court of any County of this State is a lien from the last day of the term at which such judgment was rendered on all the lands and real estate of the Defendant within the County, for the period of seven years if execution is issued within one year on such judgment. And that such lien affects as well the lands acquired by the defendant after as those owned by him at the time judgment was rendered.
2. That the lien of the judgment is not defeated by an appeal to the Supreme Court, if such appeal be dismissed and the judgment affirmed, - such appeal may suspend but does not destroy the lien -
3. That the judgment in favor of Weed, Masters & Weed against Ruel Ambrose was a lien upon the lands described in the declaration in this cause, the moment Ambrose acquired title thereto and taken precedence over the Mortgage from Ambrose to Root. unless said Mortgage was made and delivered at the same time with the deed from Morgan to Ambrose, and to secure the payment of purchase money paid for the lands in question, and unless also the defendant Curtis had notice of such facts prior to his purchase of said lands.

4.

That the Mortgage from Ambrose to Root does not purport on the face to be given to secure the payment of purchase money, but for an entirely different consideration, and even if the jury believe from the evidence that said Mortgage was in fact given to secure the payment of purchase money and executed at the same time with the deed from Morgan to Ambrose such facts cannot affect the rights of the defendant, and the jury must find for the defendant, unless they also believe from the evidence that the defendant had notice of such facts prior to his purchase of said land, which notice is not to be inferred but must be proven by the plaintiff.

The 1st 2nd & 3^d Instructions asked by the defendant were given as asked.

The 4th ^{instruction} was qualified by the court by adding the following words:

"But the Recording of the Mortgage before the purchase at Sheriff's Sale if such fact is in proof is sufficient to put the purchaser on his guard." To which qualification the defendant objected and his objection was overruled by the court, and the defendant at the time Excepted.

The 4th instruction was given as qualified by the Court.

The jury retired to consider of their

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verdict and returned into Court with a verdict for the Plaintiff.

Thereupon the defendant moved for a New trial which motion was overruled by the Court and Judgment ordered for the Plaintiff upon the verdict of the jury, to which decision of the Court in refusing a new trial the defendant by his Counsel Excepted

All of which several exceptions and this bill of exceptions the defendant prays may be signed and sealed by the Judge of said Court and made a part of the Record in this case, which is done.

B. F. Parks C. J.
Judge of the Court of Common
Pleas of the City of Elgin

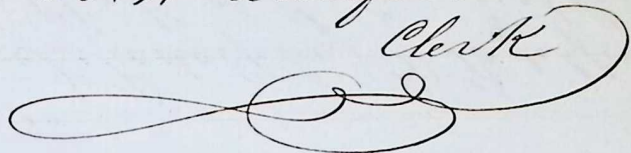
State of Illinois }
Kane County } ss
City of Elgin }

J. Rodolphus W. Padelford
Clerk of the Court of Com=
mon Pleas of the City of Elgin in said County
do hereby certify that the above and foregoing
is a true and correct transcript and copy of
all proceedings had and entered of Record in
said Court in a certain matter in which
Anson Root was Plaintiff and George Carter
was defendant. Also a true copy of the follow=
ing named papers on file in my office pertaining

to said cause, to wit: Transcript of Record in
Hane County Circuit Court, Declaration, Plea
Transcript of Record in Kendall County Circuit
Court, Appeal Bond and Bill of Exceptions

In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court the 30th day
of March A.D. 1861.

A. W. Paddelford
Clerk



The said George Lemtis, Appellant now comes
and says that in the Record & proceedings aforesaid there
is manifest error in this, to wit:

First. The Court erred in overruling the motion to suppress
the depositions of Morgan and Paddelford.

Second The Court erred in allowing the depositions of
Morgan and Paddelford to be read in evidence to the jury.

Third. — The Court erred in admitting parol evidence
to vary or contradict the terms of the Warranty from Ambrose
to Root.

Fourth. The Court erred in giving each of the instruc-
tions asked by the Plaintiff.

Fifth — The Court erred in qualifying the 4th instruction asked
by the defendant.

Sixth — The verdict was against law and the evidence
in the case.

Seventh. — The Court erred in overruling the defendant's
motion for a new trial and in rendering judgment on the
verdict.

Wherefore he prays that said Judgment may be reversed
with costs &c

P. H. Wright for Appellant

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George Smith, Appellant
v

Anson Root, Appellee

Transcript from Court
of Com. Pleas of the City of Clogm.

[Handwritten signature]

Filed Apr. 18. 1861.
L. Deland
clerk.

13280

1861

Deland & L. p. 710.

per 14.50